

**LAND INFORMATION NEW ZEALAND**  
**OVERSEAS INVESTMENT OFFICE COVER SHEET**

**REPORT NUMBER** 794/200720116/200810020

**DATE** 1 April 2008

**SUBJECT** Overseas Investment Act 2005  
Applicant – Canada Pension Plan Investment Board

**AUTHORISED BY** Warwick Quinn – General Manager Regulatory  
Land Information New Zealand

**ACTION SOUGHT FROM  
MINISTER OF THE CROWN,  
THE HONOURABLE MR  
CLAYTON COSGROVE** Sign the attached memorandum and refer  
it to the Minister for Land Information

**ACTION SOUGHT FROM  
MINISTER FOR LAND INFORMATION** Sign the attached memorandum once it is received  
from the Minister of the Crown, the Honourable Mr  
Clayton Cosgrove and return it to the Overseas  
Investment Office

If the Ministers' decisions differ they should discuss  
the application.

If Ministers wish to make changes to the conditions of  
consent, those changes should be discussed with the  
Overseas Investment Office before being finalised.

**TIMEFRAME** Signed by Minister of the Crown, the Honourable Mr  
Clayton Cosgrove for the Minister of Finance  
3 April 2008  
Signed by Minister for Land Information  
6 April 2008

**SECURITY CLEARANCE** Commercial: In Confidence

**OIO CONTACT** Warwick Quinn – General Manager Regulatory  
Land Information New Zealand  
Phone: 04 462 4467



Application No.s 200720116/200810020



1 April 2008

Minister of the Crown, the Honourable Mr Clayton Cosgrove  
Minister for Land Information

## OVERSEAS INVESTMENT PROPOSAL

REPORT NUMBER 794

### SUMMARY

"Farm-land"	Yes
Advertised	Exemption sought
Land Interest	Freehold
Land Area	1,548.0588 hectares
Current Land Use	1,548.0588 hectares: Transport & Storage - Air Transport
Proposed Land Use	1,548.0588 hectares: Transport & Storage - Air Transport
Beneficial Overseas Ownership	
Asset Current	N/A
Asset Proposed	N/A
Share Current	30 percent
Share Proposed	57.44 percent
Recommendation	Approve

**Ministerial consideration is required to this matter as the land:**

**includes an off-shore island (Wiroa Island);**

**includes and adjoins the foreshore and seabed;**

**adjoins land listed, or in a class listed, as a reserve, public park or other sensitive area by the regulator under section 37; and**

**contains and adjoins land containing Historic Places and wahi tapu sites that are registered under the Historic Places Act 1993.**

### APPLICANT

1. Canada Pension Plan Investment Board
  - (a) 100 percent - Canada, Canadian Public

## **APPLICATION**

### **Partial Takeover Offer**

2. For NZ Airport NC Limited (a wholly-owned subsidiary of the Applicant) to acquire up to 40 percent of the shares of Auckland International Airport Limited (AIAL) for a consideration of \$1,752,332,651.

### **Acquisition of Assets during Amalgamation Process**

3. For NZ Airport HC Limited (a 40 percent subsidiary of the Applicant) to acquire 100 percent of the assets of AIAL.

## **DETAILS OF THE LAND**

4. 1,548.0588 hectares of freehold situated at Auckland International Airport, Manukau City, Auckland being CTs 219885, NA105D/359, NA106B/643, NA109D/595, NA109D/596, NA11C/663, NA125B/39, NA125B/98, NA1675/15, NA1691/38, NA1B/711, NA24A/830, NA366/26, NA47C/137, NA47C/82, NA55A/937, NA56B/945, NA56D/993, NA586/221, NA58D/290, NA62C/558, NA73B/518, NA78D/181, NA78D/182, NA78D/183, NA78D/185, NA78D/186, NA78D/187, NA78D/188, NA78D/189, NA78D/191, NA78D/192, NA78D/193, NA78D/194, NA78D/195, NA78D/196, NA78D/197, NA78D/198, NA78D/199, NA78D/200, NA78D/201, NA78D/202, NA78D/203, NA78D/204, NA78D/205, NA78D/206, NA78D/207, NA78D/208, NA798/163, NA82C/672, NA867/2, NA902/21, NA985/62, NA586/220 and NA97D/261 (North Auckland Registry).

## **DETAILS OF ANY SENSITIVE LAND, BEING LAND IN THE FIRST SCHEDULE TO THE OVERSEAS INVESTMENT ACT 2005**

5. The land includes non-urban land exceeding 5 hectares.
6. The land includes land on an off-shore island (Wiroa Island).
7. The land includes and adjoins the foreshore and seabed.
8. The land adjoins land listed, or in a class listed, as a reserve, public park or other sensitive area by the regulator under section 37 (being a Maori Reservation).
9. The land contains and adjoins land containing Historic Places and wahi tapu sites that are registered under the historic Places Act 1993.

## **BACKGROUND TO THE INVESTMENT**

10. Canada Pension Plan Investment Board (CPPIB) proposes to acquire a 40 percent shareholding in Auckland International Airport Limited (AIAL). CPPIB currently holds approximately 0.8 percent of the shares in AIAL.
11. AIAL owns and operates Auckland International Airport. Its objective is to provide for the commercial aviation needs of the Auckland region for the next 50 years and beyond. AIAL is a diversified business with investments in property, retail and car parking. Its investment property portfolio supports and provides services for the airport community including the airport's commercial park, and shopping centre.

## THE INVESTMENT

12. The proposed Transaction comprises two steps:
  - (a) An all-cash partial takeover offer, made by NZ Airport NC Limited (NoteCo), a wholly-owned subsidiary of CPPIB, to all AIAL shareholders of \$3.6555 per share to take CPPIB's holding in AIAL to 40 percent. NoteCo lodged a takeover notice in accordance with Rule 41 of the Takeovers Code on 16 November 2007 (Takeover); and
  - (b) As soon as possible after the successful completion of the takeover, it is CPPIB's intention that a proposal will be put to all AIAL shareholders under which AIAL will amalgamate with NZ Airport HC Limited (HoldCo), a wholly-owned subsidiary of CPPIB, under the process prescribed in Part XIII of the Companies Act 1993 (Amalgamation).
13. CPPIB and NoteCo have entered into a Deed relating to voting on resolutions under which they have undertaken in favour of AIAL and AIAL shareholders that they will not exercise more than 24.9 percent of the votes that may be cast on all AIAL shareholder resolutions (or any other company in which they hold securities as a result of the Amalgamation), other than resolutions which affect the rights attaching to CPPIB's shares.
14. Under the proposed Amalgamation, HoldCo will be the surviving entity and will succeed to all of the property, rights and obligations of AIAL. CPPIB and other AIAL shareholders will hold shares in HoldCo's ultimate holding company, NZ Airport HCP Limited (HoldCo Parent). On the effective date of amalgamation, HoldCo Parent and HoldCo will change their names to Auckland Airport Limited and Auckland International Airport Limited, respectively.
15. The consideration AIAL shareholders will receive in relation to the Amalgamation will be a combination of cash (paid by HoldCo Parent) and stapled securities (consisting of a loan note (issued by NoteCo) stapled to an ordinary share (issued by HoldCo Parent)). The Amalgamation will be conditional upon the necessary resolutions of AIAL shareholders and a favourable ruling from the Inland Revenue Department.
16. At the conclusion of the Transaction, CPPB will enter into a Co-operation Agreement with HoldCo, under which CPPIB will agree among other things, that:
  - (a) It supports the vision and strategy for AIAL's business recorded in the five year corporate plan for the financial years from 2008 to 2012 inclusive adopted by the board of AIAL and entitled "Our Strategy for New Zealand's Airport";
  - (b) It will share with NZ Airport HC Limited (which will be the surviving entity following the amalgamation) the experience and know-how of best practice, strategy and performance optimisation it has gained from other investments;
  - (c) It will work with NZ Airport HC Limited on growth opportunities for its business; and
  - (d) It will work together with NZ Airport HC Limited to pursue opportunities for investment in, or the development and management of, airports to the extent that HoldCo wishes to pursue such opportunities.

## RATIONALE FOR THE INVESTMENT

17. An investment in AIAL's business and assets is consistent with CPPIB's long-term investment principles because AIAL's business and assets are expected to provide stable long-term returns, AIAL operates in a strong regulatory environment, AIAL has a relatively low technology replacement risk and possesses minimal substitution risks being New Zealand's premier gateway airport. Infrastructure investments, such as AIAL, play a key role in CPPIB's strategy because their underlying value tends to rise

along with inflation. This characteristic makes infrastructure investments a good match for the long-term nature of the Canada Pension Plan's (CPP) net liabilities given that CPP benefits are linked to inflation.

#### APPLICANT'S BACKGROUND

18. CPPIB was incorporated as a federal Crown corporation in Canada by an Act of Parliament in December 1997. CPPIB is a professional management organisation based in Toronto, Canada. Its purpose is to invest the assets of the CPP in a manner that maximises returns without undue risk of loss. As at 30 September 2007, CPP holds assets with a value of C\$121 billion (NZ\$161 billion). CPPIB invests the funds not needed by the CPP to pay current benefits. It is not expected to be required to contribute investment earnings to the CPP to help pay benefits until 2019, providing a 12 year period for investment growth before a portion of the investment income is needed to help pay CPP benefits.
19. The Overseas Investment Office is advised that the CPPIB is similar to the New Zealand Superannuation Fund in its mandate, independence from Government, governing principles, and its targeted investment portfolio.

#### CRITERIA SET OUT IN SECTIONS 16 AND 18 OF THE OVERSEAS INVESTMENT ACT 2005

20. We have sought sufficient:
  - (a) information from the applicant for us to be assured about the accuracy of the information supplied; and
  - (b) evidence from the applicant for us to be able to judge whether the criteria and factors that apply to the relevant category of overseas investment are likely to eventuate.
21. This report has been prepared on the presumption that the investment will be compatible with the foreign direct investment policy of the Government.
22. **Does the relevant overseas person, or do the individuals with control of the relevant overseas person collectively, have business experience and acumen relevant to that overseas investment?** ✓
  - (a) The individuals with control of CPPIB collectively have business experience and acumen relevant to the proposed investment. CPPIB advises that its recommended board members will include persons with established skills and experience to operate AIAL's business.
23. **Has the relevant overseas person demonstrated financial commitment to the overseas investment?** ✓
  - (a) CPPIB has demonstrated a financial commitment to the investment. The consideration for the acquisition of 40 percent of the shares in AIAL will be funded in cash derived from the sale of other public market investments from the CPP Fund. The consideration for the amalgamation will be provided partly by the issue of securities in Hold Co Parent and Note Co and partly in cash which will be funded by bank funding to be entered into.

24. **Is the relevant overseas person, or are all the individuals with control of the relevant overseas person, of good character?** ✓

- (a) As outlined in the attached application and correspondence, a statement has been received from the Managing Director of the Applicant that has the effect of stating that the relevant overseas person is, or (if that person is not an individual), all the individuals with control of the relevant overseas person are, of good character.
- (b) The Overseas Investment Office is satisfied that the statement supplied with the application can be relied on because the statement is in the form of a statutory declaration which complies with the requirements of the Oaths and Declarations Act 1957.

25. **Is the relevant overseas person, or is each individual with control of the relevant overseas person, not an individual of the kind referred to in section 7(1) of the Immigration Act 1987?** ✓

- (a) As outlined in the attached application and correspondence, a statement has been received from the Managing Director of the Applicant that has the effect of stating that the relevant overseas person is, or (if that person is not an individual) each individual with control of the relevant overseas person is not, an individual of the kind referred to in section 7(1) of the Immigration Act 1987.
- (b) The Overseas Investment Office is satisfied that the statement supplied with the application can be relied on because the statement is in the form of a statutory declaration which complies with the requirements of the Oaths and Declarations Act 1957.

26. **Is the relevant overseas person or are all the individuals with control of the relevant overseas person New Zealand citizens, ordinarily resident in New Zealand, or intending to reside in New Zealand indefinitely?** X

27. **Will the overseas investment, or is it likely to, benefit New Zealand (or any part of it or group of New Zealanders)?** ✓

The proposed overseas investment is or is likely to benefit New Zealand (or any part of it or group of New Zealanders) having regard to the following factors:

- (a) Overseas Investment Act 2005:
  - (i) s17(2)(d) - Historic Heritage; and
  - (ii) s17(2)(e) - Walking access.

28. **Will the benefit be, or likely be, substantial and identifiable?** ✓

- (a) Having considered the factors (or parts of them) in section 17 of the Overseas Investment Act 2005 and Regulation 28 of the Overseas Investment Regulations 2005 and determined which of them are relevant to the overseas investment and the relative importance to be given to each relevant factor (or part), the proposed benefits are likely to be substantial and identifiable.

29. **Has the farm land, or have the farm land securities, been offered for acquisition on the open market to persons who are not overseas persons, in accordance with the Overseas Investment Regulations 2005?**

Exemption sought

- (a) The land includes farm land.
- (b) The proposed acquisition of up to 40 percent of the shares of AIAL by CPPIB is exempt from this criterion:
  - (i) Clause 1(a) of the Notice of Exemptions from farm land offer criteria pursuant to section 20 of the Overseas Investment Act 2005 exempts the acquisition by an overseas person of farm land securities that are quoted on a market operated by New Zealand Exchange Limited. AIAL shares are quoted on the New Zealand Stock Exchange; and
  - (ii) Clause 1(c) of the Notice of exemptions from farm land offer criteria pursuant to section 20 of the Overseas Investment Act 2005 exempts the acquisition by an overseas person of farm land securities if:
    - (i) the Takeovers Code in force under the Takeovers Act 1993 applies to the acquisition; and
    - (ii) the acquisition is under an offer made to all holders of those securities other than the offeror (whether the offer is for all or some of the farm land securities).
- (c) The amalgamation transaction has the effect of a takeover except that HoldCo will succeed to all the assets and liabilities of AIAL rather than acquiring the shares in AIAL. Accordingly, neither Clause 1(a) nor Clause 1(c) of the Notice of Exemptions from farm land offer criteria pursuant to section 20 of the Overseas Investment Act 2005 apply. However the policy reasons behind the Notice for Exemptions are directly applicable to the Amalgamation.
- (d) The policy behind the advertising requirement is to ensure that New Zealanders are aware that farm land is available on the open market for sale. Given that CPPIB's acquisition of the land is required to operate the Airport business and not just the farm land itself, it would be inappropriate for the farm land to be separately advertised. Moreover, the farm land is integral to the operation of the business as it operates as a buffer zone and future development land. The Overseas Investment Office recommends that in these circumstances set out above, you exempt the transaction from the criterion contained in section 16(1)(f) of the Overseas Investment Act 2005.
- (e) Section 14(1)(d) provides that the Ministers must decline to grant consent if not satisfied that all of the criteria in section 16 are met. One of the section 16 criteria (section 16(1)(f)) is that if the relevant land is farm land, either the farm land or the securities to which the overseas investment relates have been offered for acquisition on the open market to persons who are not overseas persons in accordance with the procedure set out in the regulations (unless the overseas

investment is exempt from this criterion under section 20 of the Act).

- (f) Section 20(a) of the Act provides that section 16(1)(f) does not apply to an overseas investment if the relevant Ministers consider that the overseas investment need not meet this criterion by reason of the circumstances relating to the particular overseas investment, interest in land, or rights or interests in securities.
- (g) CPPIB has requested that Ministers exempt the transaction from the farmland offer criterion in section 16(1)(f) by reason of the circumstances that apply to the investment.

30. **Will the overseas investment, or is it likely to, result in the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost?**

UNKNOWN

Claimed benefits

- (a) CPPIB advises that AIAL currently employs approximately 320 people (300 FTEs) in the operation and management of its business. In addition to these employees, AIAL has outsourced a number of operations and services to local suppliers.
- (b) The implementation of AIAL's 20-year Masterplan, which includes an upgrade and migration of the Domestic terminal, an expansion of the International terminal, construction of a second runway and the provision of improved access to the Airport for travellers and freight, and the initiatives that CPPIB intends to promote and encourage the Board of AIAL to implement will result in growth in passenger numbers, increased capital expenditure and possible expansion internationally. Correspondingly, this will result in an increase in employment at AIAL. Specifically, additional employees will be required to support CPPIB's initiatives in route development, retail and car parking improvements and property development. CPPIB estimates that AIAL staff numbers will need to increase by at least          percent (FTEs) over the next 5 years.

Our assessment

- (c) The implementation of AIAL's 20-year Masterplan and the initiatives outlined by CPPIB is likely to result in the creation of new job opportunities in New Zealand. However, the projects contained in the AIAL 20-year Masterplan are likely to occur irrespective of the proposed investment. It is not known whether the initiatives proposed by CPPIB will be implemented by the AIAL Board as it may not have the voting power to influence the AIAL Board.

31. **Will the overseas investment, or is it likely to, result in the introduction into New Zealand of new technology or business skills?**

X

Claimed benefits

- (a) CPPIB will support the introduction of highly experienced New Zealand and international directors with experience in business or managing airports, who will provide high level strategic guidance and will facilitate the introduction of new international skills and technologies.

- (b) CPPIB will look to provide assistance in ensuring that the best IT systems are available to the Airport and support the current initiatives that the Airport has in relation to developing and improving the current IT systems, including an expansion of the resources available for completion of current IT projects. The transaction will also allow CPPIB to bring its expertise and experience, in conjunction with infrastructure businesses, to New Zealand.

Our assessment

- (c) CPPIB has not identified whether the technology or business skills are likely to be new to New Zealand. The business skills, however, that CPPIB's Directors may bring to New Zealand are unlikely to be new to New Zealand.

32. **Will the overseas investment, or is it likely to, result in increased export receipts for New Zealand exporters?**

UNKNOWN

Claimed benefits

- (a) CPPIB advises that improvements to the operation of the airport should assist in the increasing number of tourists visiting New Zealand and therefore increasing the amount of export receipts for New Zealand exporters.

Our assessment

- (b) It is not known whether the proposed investment is likely to result in increased export receipts for New Zealand exporters. However, it is unlikely that CPPIB will be able to influence the Board in respect of the operations of the Airport given its restricted voting rights.

33. **Will the overseas investment, or is it likely to, result in added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand?**

UNKNOWN

Claimed benefits

- (a) CPPIB has identified the following opportunities to improve the Airport's performance:
  - (i) Route Development – the addition of human resources and increased budgeted funding will enable AIAL to assist airlines in identifying profitable new routes and to work with organisations such as Tourism New Zealand to build passenger demand;
  - (ii) Retail – CPPIB has identified gaps of the retail offering at the Airport and intends to work with management to improve these offerings;
  - (iii) Carparking – CPPIB believes that there are opportunities to include additional capacity closer to the terminal buildings and greater segmentation of price and convenience;
  - (iv) Property – CPPIB intends to augment the resources of the current AIAL property team to optimise the development strategies for AIAL in a manner that complements the Masterplan including the development of land around the airport to build revenue for AIAL, and improving the productivity of transportation companies by utilising modern and

specifically designed facilities to form a hub at the airport.

Our assessment

- (b) The implementation of AIAL's 20-year Masterplan and the initiatives outlined by CPPIB is likely to result in greater efficiencies and enhanced domestic services in New Zealand. The projects contained in the AIAL 20-year Masterplan are likely to occur irrespective of the proposed investment. It is therefore unknown whether the initiatives proposed by CPPIB will be implemented by the AIAL Board.

34. Will the overseas investment, or is it likely to, result in the introduction, into New Zealand of additional investment for development purposes?

UNKNOWN

Claimed benefits

- (a) CPPIB has a long-term investment strategy to look for long-term assets that can be held for periods of 20-30 years and is willing to invest additional follow on capital to foster growth and expansion. CPPIB has access to capital resources to be able to provide its proportionate share of any shareholder funding to successfully refine and implement growth of AIAL's business.
  - (b) The AIAL Masterplan provides a vision of how the Airport will develop over the next 25 years. CPPIB is supportive of the proposed developments which include:
-

Our assessment

- (d) It is unknown whether the implementation of AIAL's 20-year Masterplan and the initiatives outlined by CPPIB are likely to result in the introduction into New Zealand of additional investment for development purposes. The projects contained in the AIAL 20-year Masterplan are likely to occur irrespective of the proposed investment by CPPIB and it is not known whether these will be funded by way of additional investment into New Zealand or retained earnings of AIAL. It is not known whether the initiatives proposed by CPPIB will be implemented by the AIAL Board.
35. **Will the overseas investment, or is it likely to, result in increased processing in New Zealand of New Zealand's primary products?** X
- (a) The proposed investment is not likely to result in the increased processing of New Zealand's primary products.
36. **Are there, or will there be, adequate mechanisms in place for protecting or enhancing existing areas of significant indigenous vegetation and significant habitats of indigenous fauna?** N/A
- (a) CPPIB advises that the land does not contain any significant indigenous vegetation or habitats of indigenous fauna.
37. **Are there, or will there be, adequate mechanisms in place for protecting or enhancing existing areas of significant habitats of trout, salmon, wildlife and game, and providing, protecting or improving walking access to those habitats?** N/A
- (a) CPPIB advises that the land does not contain any significant habitats of trout, salmon, wildlife protected under section 3 of the Wildlife Act 1953, or game as defined in section 2(1) of that Act.
38. **Are there, or will there be, adequate mechanisms in place for protecting or enhancing historic heritage within the relevant land?** ✓

Claimed benefits

- (a) The land and the adjoining land contain Historic Places and wahi tapu sites that are registered under the Historic Places Act 1993, and archaeological sites recorded by the Archaeological Association as wahi tapu sites.
- (b) The District Plan schedules the following heritage sites located on AIAL land:
- (i) Abbeville Farm House and Barn;
  - (ii) The Westney Road Methodist Church; and
  - (iii) The Rennie Jones Homestead.
- (c) The future relocation, restoration, and protection of these sites are required by conditions attached to Manukau City Council's Land Use Designation 231 which applies to AIAL owned land which is designated for airport purposes. The Auckland Airport Masterplan states that work is currently underway with the New Zealand Historic Places Trust to

relocate these buildings to a historic area to be developed at another AIAL site.

Our assessment

- (d) There are adequate mechanisms, being registration under the Historic Places Act 1993 and the District Plan Designation, to protect the historic heritage contained on the relevant land.

39. **Are there, or will there be, adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land, or a relevant part of that land, by the public?** ✓

- (a) Due to reasons of public safety and security, it is impracticable to provide public access to large parts of AIAL land. CPPIB advises that it will continue to support providing access to those areas which are of natural or cultural significance in the same manner as currently provided by AIAL. However, CPPIB may not be able to influence the AIAL Board as it has restricted voting rights.
- (b) AIAL is required by the conditions of Designation 231 to provide reasonable public access to the fossil forest and access to coastal areas as far as can be achieved without interference with the proper functioning of the airport. AIAL provides road access for the public to the coastal marine area through the designated area to a point near the fossil forest. Pedestrian access is also provided from the end of Puhinui Road to the coastal marine area and the fossil forest.

Our assessment

- (c) There is an adequate mechanism, being the District Plan Designation, to provide public walking access over part of the relevant land.

40. **Has any foreshore, seabed, riverbed, or lakebed has been offered to the Crown?**

N/A

- (a) The land includes the foreshore and seabed.  
Acquisition of up to 40 percent of the shares of AIAL
- (b) Regulation 13 of the Overseas Investment Regulations 2005 (the Regulations) imposes an obligation on an owner of special land to give notice to the Ministers and the regulator if the owner intends to give effect to an overseas investment in respect of any relevant land and that land includes special land. In the case of an acquisition of shares by CPPIB, AIAL (the owner of the land) is not intending to give effect to an overseas investment. The parties giving effect to the overseas investment are the AIAL shareholders and a wholly-owned subsidiary of CPPIB. Therefore the requirement that the special land be offered to the Crown does not apply.  
Amalgamation
- (c) The Amalgamation and the statutory vesting of the assets of AIAL (including its special land) in HoldCo, as the amalgamated company occurs by operation of section 225 of the Companies Act 1993. The legal effect of an amalgamation is that AIAL and HoldCo merge and continue to exist as one entity. HoldCo is not therefore, after the

amalgamation, a different entity from AIAL and HoldCo but is rather the continuation of the same entities as one company.

- (d) Whether the passing of those resolutions and the signing of those certificates by AIAL shareholders and directors and the other procedural steps that need to be passed and/or signed by the shareholders and directors to enable the Amalgamation to occur constitute "giving effect to the overseas investment" is arguable. Hence an application for the Crown to waive its right to acquire the special land has been submitted.

41. **Will the overseas investment result in, or is likely result in, other consequential benefits to New Zealand (whether tangible or intangible benefits (such as, for example, additional investments in New Zealand or sponsorship of community projects))?**

X

42. **Is the overseas person a key person in a key industry of a country with which New Zealand will, or is likely to, benefit from having improved relations?**

UNKNOWN

- (a) CPPIB advises that there are substantial similarities in the governance structure and investment strategy of the CPP Fund and the New Zealand Superannuation Fund. Approval of this transaction will strengthen the relationship between CPPIB and New Zealand to the benefit of the New Zealand Superannuation Fund through:

- (i) Continuing opportunities for benchmarking between the two organisations; and
- (ii) Showing that New Zealand understands the need for national pension funds to invest internationally.

Our assessment

- (b) It is not known whether the proposed investment is likely to result in improved relations benefiting New Zealand.

43. **Will refusal adversely affect, or likely adversely affect, New Zealand's image overseas or its trade or international relations, or result in New Zealand breaching any of its international obligations?**

UNKNOWN

- (a) Canada and New Zealand have close economic ties. Canada was New Zealand's 12th largest export destination and 14th largest trading partner in the year ended December 2006, with exports from New Zealand of \$553 million and imports into New Zealand of \$691 million.
- (b) Refusal of consent may adversely affect the likelihood of New Zealand attracting investment from other investors of CPPIB's calibre. A decision to decline consent to CPPIB's application would adversely affect New Zealand's image overseas, particularly in the overseas business and investment communities. This is particularly so, given the perception that the Regulations were amended and applied retrospectively, several weeks after CPPIB's application was lodged with the OIO. The potential harm to New Zealand's image has been reflected in comments published in the media to date and the adverse reaction of the investment community to date.

Our assessment

- (c) The amendment to the regulations has been passed to protect New Zealand's strategic assets. New Zealand already has foreign ownership restrictions in certain assets, by way of the Kiwi Share in Telecom Corporation of New Zealand Limited and Air New Zealand Limited
  - (d) Other countries have protected their strategic assets from being owned or controlled by overseas persons. In this respect, the new regulation 28(h) passed recently is in tandem with other nations who protect their strategic assets through legislation. The Australian Foreign Investment Policy restricts foreign ownership of certain assets including airports. The Airports Act 1996 stipulates a 49 per cent foreign ownership limit on airports offered for sale by the Commonwealth.
  - (e) As other countries also have foreign investment restrictions it is not known whether refusal of this application is likely to adversely affect New Zealand's image overseas or its trade or international relations.
44. **Will granting the application for consent result in, or likely result in, the owner of the relevant land undertaking other significant investment in New Zealand?** X
45. **Has the overseas person previously undertaken investments that have been, or are, of benefit to New Zealand?** X
- (a) This is the first proposed direct investment in New Zealand by CPPIB. CPPIB actively invests in the New Zealand Stock Exchange. As at 13 November 2007, CPPIB had \$64.5 million invested in New Zealand including \$35.2 million invested in AIAL shares.
46. **Will the overseas investment, or is it likely to, give effect to or advance a significant Government policy or strategy?** UNKNOWN
- (a) CPPIB advises that the investment will give effect to and advance several Government policies based around economic transformation - growing globally competitive firms and international linkages, world class infrastructure, innovative and productive workplaces and an internationally competitive city - Auckland.
  - (b) CPPIB is likely to give effect to or advance these policies by appointing directors with international airport experience, improving the Airport's facilities and services as a result of CPPIB's innovation, making additional funds and human resources available to assist airlines in their route development, and seeking to improve the retail offering within the terminals and adjacent sites, improving infrastructure, such as the proposed second runway and new international terminal.
- Our assessment
- (c) It is not known whether the initiatives proposed by CPPIB will be implemented by the AIAL Board as it may not have the voting power to influence the AIAL Board.
47. **Will the overseas investment enhance, or is it likely to enhance, the ongoing viability of other overseas investments undertaken by the relevant overseas person?** X

48. **Will the overseas investment, or is likely to, assist New Zealand to maintain, New Zealand control of strategically important infrastructure on sensitive land?**

UNKNOWN

- (a) In December 2007, CPPIB had in place a Voting Limitation Deed which would limit its voting rights to 25.7 percent of all AIAL shares on resolutions to appoint and remove AIAL directors. Since then this Deed has been amended.
- (b) In recognition of the intent and purpose of Regulation 28(h) and also because it remains completely consistent with its intention of being a non-controlling minority shareholder in AIAL, CPPIB has decided to extend and amend that limitation in three ways:
  - (i) the limitation will be reduced to 24.9 percent of all AIAL voting securities on issue;
  - (ii) the limitation will apply to all AIAL shareholder resolutions (other than resolutions which affect the rights attaching to CPPIB's shares, these being the rights under section 36 of the Companies Act 1993); and
  - (iii) the limitation will only be able to be revoked or relaxed by CPPIB if it is permitted by a New Zealand overseas investment law or regulatory approval to vote more than 24.9 percent of the voting securities in AIAL on issue, and by resolution of other AIAL shareholders.
- (c) CPPIB submits that this extension and amendment of the limitation on its voting rights further confirms the fact that CPPIB will not control AIAL and that CPPIB's investment in AIAL will assist New Zealand to maintain New Zealand control of Auckland Airport (and its infrastructure on sensitive land) for the following reasons:
  - (i) Following the successful completion of CPPIB's partial takeover, CPPIB estimates that AIAL is likely to be more than 50 percent New Zealand owned. CPPIB's 24.9 voting securities will be able to be outvoted by the three large New Zealand shareholders (being the Auckland City Council, the Manukau City council and the New Zealand Superannuation Fund) which between them will hold approximately 26.8 percent of the voting securities on issue;
  - (ii) CPPIB's ability to vote its AIAL shares will be limited to 24.9 percent of all voting securities on all resolutions (other than resolutions affecting the rights attaching to CPPIB's shares). In effect CPPIB will be able to vote 29.3 percent of securities that are eligible to vote. All other shareholders' voting percentages will also increase proportionately. It is likely that the Auckland City Council, the Manukau City Council and the New Zealand Superannuation Fund/Infratil would hold a combined total of approximately 31.57 percent of the securities eligible to vote;

- (iii) CPPIB has advised that it will be able to nominate two directors for appointment to the AIAL board representing a maximum of 25 percent of the AIAL directors. CPPIB will only be able to nominate directors, it will not have the power to appoint them. CPPIB's nominees for directors can only be elected if they have a significant level of support from other shareholders;
- (iv) The existence of CPPIB as a long-term cornerstone shareholder will assist in maintaining New Zealand control by deterring any other potential takeover offers; and
- (v) The smaller free float of shares is likely to mean there will be a reduced ability of overseas investors to build up substantial holdings of shares.

Our assessment

- (a) It is not known whether the overseas investment is likely to maintain New Zealand control of strategically important infrastructure on sensitive land. The Overseas Investment Office proposes that should consent be granted that it be a condition of consent that CPPIB not vote in excess of 24.9 percent of the AIAL voting securities.
- (b) In assessing Regulation 28(h), the OIO's view is :-  
 Assuming that AIAL is "strategically important infrastructure," the meaning of the following are considered: "assist", "control", "maintain" and "New Zealand".  
**"Assist"** means "to help or aid"  
**"Control"** is not defined in The Overseas Investment Act 2005 but the definition of "control" is imported from sections 5 to 7 of the Companies Act 1993. The essence of the definition in section 7 is that the person A will have control over person B if A can appoint or remove all directors of B or enough to hold a majority of votes at a meeting of the board of directors.  
 A is taken to have power to make an appointment if:
  - (i) another person cannot be appointed as a director of B without A exercising its power in that person's favour; or
  - (ii) A person's appointment to B follows necessarily from that person's position as a director or officer of A. This approach is consistent with the definition of "control" used in foreign jurisdictions (where it relates to corporate structures) which consider the essence of control to be whether a person has the power to appoint the members of the governing body of another person.**"Maintain"** means to keep up, to preserve, to cause to continue  
**"New Zealand"** means all persons other than "overseas persons" under section 7 of the Overseas Investment Act 2005.

THIRD PARTY SUBMISSION SUPPORTING PROPOSAL

Third Party Submission – E Rutherford

- (a) The submission supports the proposed transaction for CPPIB to acquire a 40 percent holding in AIAL which will likely result in a material wealth transfer to AIAL shareholders and a major cash injection into the New Zealand economy.

Third Party Submission – B Langford

- (b) The submitter, an AIAL shareholder, supports the proposed transaction for CPPIB to acquire a 40 percent holding in AIAL which will likely result in the submitter being able to realise her investment at a premium to the current AIAL share price.

Third Party Submission – Rotorua Trust

- (c) The submitter, an AIAL shareholder, supports the proposed transaction for CPPIB to acquire a 40 percent holding in AIAL which will likely result in the submitter realising their investment at a premium to the current AIAL share price.

THIRD PARTY SUBMISSIONS

Third Party Submission – D Caulton

- (d) The submission states that a 40 percent holding in AIAL will pass effective control of the airport to CPPIB. At this level of control (and even a 30 percent level) the submitter believes that CPPIB will be able to appoint effectively 100 percent of the Board and control the company for their benefit.
- (e) CPPIB has no airport or relevant industry experience and it is difficult to see how it will add value to the airport.
- (f) The effective level of off shore ownership will be much larger because of the expected presence of other of shore investors.
- (g) CPPIB intends to restructure the airport's capital structure which will result in significant additional debt on the airport's balance sheet and that this process will have the effect of stripping New Zealand's tax base putting such a level of debt on the airport balance sheet as to constrain its growth and its ability to withstand financial or industry shocks.

CPPIB's response

- (a) CPPIB has advised that it will not have control which is reinforced by CPPIB's intention to limit its voting rights to 24.9 percent of the voting shares in AIAL on issue.
- (b) CPPIB has experience in undertaking large infrastructure investments internationally. CPPIB intends to nominate directors to the airport board one of which is likely to have international airport experience.

- (c) CPPIB advises that AIAL is likely to remain more than 50 percent owned by New Zealand shareholders and that New Zealand shareholders are likely to hold approximately 60 percent of the shares that are eligible to vote on AIAL shareholder resolutions.
- (d) CPPIB intends to put in place a capital structure that provides for balance sheet efficiency, including a bank funding structure that enables AIAL to maintain its leverage at efficient and sustainable levels similar to those used to finance other leading infrastructure companies worldwide. The capital structure will allow AIAL to meet all of its capital expansion needs and is likely to result in a lower overall cost of capital.
- (e) CPPIB's intention is to ensure that the New Zealand tax legislation is complied with and CPPIB are seeking to have the taxation implications of the proposed amalgamation structure confirmed through the Inland Revenue Department's binding ruling process.

#### Third Party Submission – P O'Grady

- (a) The submission states CPPIB will have an effective veto on future major changes in AIAL's shareholding as CPPIB holding a 40 percent interest means that no other party, including New Zealanders, can secure control, in practical terms, without CPPIB's acquiescence.
- (b) While restricting its voting rights to 24.9 percent, CPPIB can still elect to block special resolutions which are required for constitutional changes, major transactions and major capital restructures.
- (c) The voting limitation creates a bad precedent. While CPPIB is bidding for 40 percent of AIAL, the limitation could be used by a party to bid for a higher percentage for example 75 percent meaning that other shareholders have votes totaling 25 percent.
- (d) Under the present circumstances CPPIB will have 24.9 percent of the votes out of 85 percent of AIAL shares eligible to vote.
- (e) It is a simple matter for CPPIB to acquire a higher percentage of AIAL shares on the same undertaking limiting its voting rights. CPPIB have not offered any standstill agreement or commitment not to increase their control position further.

#### CPPIB's response

- (a) CPPIB could, if it chooses to do so, exercise its votes to veto a special resolution. The combined votes of the Auckland City Council and the Manukau City Council would also be sufficient to block a special resolution. CPPIB submits that the ability to block a special resolution is not synonymous with having control of a company, and that all significant decisions in relation to the direction of a company's business, its strategy and

management, are made by the company directors. In that regard, only two of the eight directors will be associated with CPPIB, and resolutions to appoint directors are ordinary resolutions upon which CPPIB will be able to be outvoted by New Zealand shareholders, and it is generally the board that determines which resolutions will be put to shareholders to vote on.

- (b) CPPIB does not believe that the voting limitation creates a bad precedent. The comparison to a limitation to 24.9 percent of voting rights by a holder of a 51 percent, 60 percent or 75 percent holder are not valid because the effect of the limitation would not be the same. CPPIB believes that given the circumstances of the makeup of AIAL's share register, the levels of New Zealand ownership and sizable New Zealand holdings is unique.
- (c) CPPIB has made it clear the voting limitation is 24.9 percent of all voting shares on issue, which means that CPPIB can vote 29.3 percent of the eligible voting shares. The voting shares held by New Zealand shareholders will also proportionally increase.
- (d) If CPPIB was to acquire further AIAL shares a new consent would be required under the Overseas Investment Act and Regulations, and could only occur through a takeover offer to all AIAL shareholders under the Takeovers Code or by way of an acquisition or allotment approved by other shareholders by an ordinary resolution.

#### **CONDITIONS**

- 49. See the appendices for the proposed conditions of consent.

#### **CONFIRMATION DATE**

- 50. Upon consent of the Overseas Investment Office.

**RECOMMENDATION**

51. It is recommended that:

- (a) Having had regard to the circumstances relating to the particular transaction, that you, in terms of section 20(a) of the Overseas Investment Act 2005, you grant an exemption from the provisions of section 16(1)(f) of the Overseas Investment Act 2005.

*No decision required*

*[Signature]* 10/4/08

Minister of the Crown, the Honourable Mr Clayton Cosgrove  
for the Minister of Finance

Exemption Granted:

Exemption Declined:

*No decision required*

*[Signature]* 10/4/8

Minister for Land Information

Exemption Granted:

Exemption Declined:

and

- (b) Having considered the criteria and factors that apply to the sensitive land and significant business assets categories of overseas investment, and having determined which factors (or parts of them) are relevant to this overseas investment and the relative importance to be given to each relevant factor (or part), you be satisfied that all of the criteria in sections 16 and 18 of the Overseas Investment Act 2005 are met, you grant consent to the transaction subject to the conditions in Appendix A.

*[Signature]* 10/4/08

Minister of the Crown, the Honourable Mr Clayton Cosgrove  
for the Minister of Finance

Consent Granted:

Consent Declined:

*See attached document which sets out the reasons for the decision*

*[Signature]* 10/4/8

Minister for Land Information

Consent Granted:

Consent Declined:

*See attached document which sets out the reasons for the decision*

**Conditions relating to The Acquisition Of Shares In Auckland International Airport Limited and Conditions Relating to the Amalgamation**

- 1 Consent is granted subject to the following conditions:
  - (a) the consent will lapse if the land, the rights or interests in the securities, the business, or property, as the case may be (the investment) has not been acquired by and transferred to the Applicant within twelve months of the date of consent;
  - (b) the Applicant must notify the Overseas Investment Office in writing as soon as practicable, and no later than twelve months from the date of consent, whether settlement of the acquisition of the investment took place. If settlement of the acquisition of the investment did take place, the notice must include:
    - (i) the date of settlement;
    - (ii) final consideration paid (plus GST, if any);
    - (iii) the structure by which the acquisition was made, and whether an associate of the Applicant acquired the investment;
    - (iv) where applicable, copies of transfer documents and settlement statements; and
    - (v) any other information that would aid the Overseas Investment Office in its function to monitor conditions of consent.
  - (c) That the Applicant, or the individuals with control of the Applicant, must:
    - (i) continue to (and in the case of individuals with control of the Applicant, collectively) have business experience and acumen relevant to the investment;
    - (ii) continue to demonstrate financial commitment to the investment;
    - (iii) continue to be of good character; and
    - (iv) not become an individual of the kind referred to in section 7(1) of the Immigration Act 1987.
  - (d) The Applicant must notify the Overseas Investment Office within 28 working days if the Applicant:
    - (i) or any person in which the Applicant has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the law (whether convicted or not); or
    - (ii) ceases to be an overseas person; or
    - (iii) sells the investment.
  - (e) The Applicant must report in writing to the Overseas Investment Office providing evidence of compliance with condition 1(c) no earlier than six months from the date of consent and no later than twelve months from the date of consent. The Applicant must also, if required by the Overseas Investment Office, provide this information at any subsequent time.
- 2 Section 28 of the Overseas Investment Act 2005 provides that it is a condition of every consent, whether or not it is stated in the consent, that

- (a) The information provided by each applicant to the regulator or the relevant Minister or Ministers in connection with the application is true and correct at the time it was provided; and
- (b) Each consent holder must comply with the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent is granted, unless compliance should reasonably be excused.

**3** For the purposes of section 28, the Overseas Investment Office advises that it has taken into account the following information:

- (a) Your application letter dated 16 November 2007 and subsequent letters dated 19 December 2007, 29 January 2008, 22 February 2008, 10 March 2008, 12 March, 14 March 2008 and 18 March 2008.

### **“Conditions Relating To the Acquisition of Shares In Auckland International Airport Limited”**

#### Definitions:

1. “AIAL” means Auckland International Airport Limited.
2. “Amalgamation” means the transaction or series of transactions giving effect to the “Amalgamation” as described in the Application whether in the same form as described in the Application or in a modified form.
3. “Associate” has the same meaning as given to it in section 8 of the Overseas Investment Act 2005 and may include more than one person.
4. An “Affiliate” of a person means the Applicant, CPPIB and all Associates of the Applicant or CPPIB.
5. “CPPIB” means the Canada Pension Plan Investment Board.
6. “Excluded Resolution” means:
  - (a) A resolution of shareholders which could affect the rights attaching to an Affiliate’s shares in a relevant Company; but
  - (b) Does not include a resolution of shareholders which would affect:
    - (i) the rights attaching to all shares of a Company in the same way; or
    - (ii) the rights attaching to all shares of a class of a Company in the same way.
7. “Director Election Resolution” has the meaning given to it in the Deed.
8. “Relevant Minister” has the meaning as given to it in section 6 of the Overseas Investment Act 2005.
9. “The Deed” is the Deed relating to voting on resolutions made by the Applicant dated 3 December 2007.
10. “The Company” has the meaning given to it in the Deed. “A Company”, “each Company” and “that Company” have corresponding meanings.

#### Prerequisites for Giving Effect to Transaction

11. This consent shall be of no effect, and the Applicant must not give effect to the transaction, unless:
  - (a) The Applicant has executed a bond (in the annexed form) in favour of the Regulator; and
  - (b) The Applicant has amended the Deed pursuant to condition 17; and
  - (c) The Regulator has received an amended copy of the Deed; and
  - (d) The Applicant has executed a co-operation agreement between the Applicant and AIAL in relation to the matters described in paragraph 1.5(f) of the application letter dated 16 November 2007 (provided that this condition shall not impose any obligations on the Applicant to ensure that the co-operation agreement is executed by AIAL).

#### Constitution of the Company

12. The Applicant must put forward a shareholder proposal for a resolution to be put to shareholders of the Company (and use all reasonable endeavours to procure the passing of the resolution) to alter the constitution of the Company to include voting restrictions of the kind imposed by paragraph 19 of this consent at the first annual general meeting of the Company which is held following the date of this

consent and the Applicant must ensure that all of the shares held in the Company by the Applicant (or an Affiliate as the case may be) which are eligible to vote on the proposal are voted in favour it.

13. If the shareholder resolution as described in condition 12 above is approved, the Applicant must provide a copy of the amended constitution of the Company within 14 days of the constitution being amended.

#### Transfers

14. The Applicant shall not transfer any securities acquired pursuant to this consent in reliance on regulation 33(1)(a) of the Overseas Investment Regulations 2005 (the "Regulations").
15. The Applicant shall not transfer any securities acquired pursuant to this consent to an Affiliate without the prior written consent of the Regulator, regardless of whether that transfer requires consent pursuant to section 10 of the Overseas Investment Act 2005 or not.
16. In the event that the Amalgamation is not completed and the Applicant wishes to transfer any securities acquired pursuant to this consent in reliance on regulation 33(1)(a) of the Regulations or to an Affiliate, the Relevant Minister and the Applicant shall negotiate revised conditions that will apply to the transferee and that will continue to give effect to all the conditions of this consent.

#### Update the Deed

17. The Applicant must amend the Deed so that, in aggregate, Affiliates shall not vote:
  - (a) In relation to all ordinary resolutions of shareholders of a Company, apart from Excluded Resolutions and Director Election Resolutions, more than the number of votes attaching to 24.9% of all the voting securities in that Company; and
  - (b) In relation to Director Election Resolutions, more than the number of votes which is the lesser of:
    - (i) The number of votes attaching to 24.9% of all the voting securities in a Company; or
    - (ii) The number of votes permitted by clause 2.1 of the Deed;
  - (c) In relation to all special resolutions of shareholders of a Company the number of votes which is the lesser of:
    - (i) The number of votes attaching to 24.9% of all the voting securities in that Company; or
    - (ii) The number of votes permitted by clause 2.1 of the Deed.
18. The Applicant shall not amend any part of the Deed such that the Deed no longer satisfies the requirements of condition 17 above unless the written consent of the Regulator is obtained prior to the amendment.

#### Limit voting

19. Affiliates shall not vote:
  - (a) In relation to all ordinary resolutions of shareholders of a Company, apart from Excluded Resolutions and Director Election Resolutions, more than the number of votes attaching to 24.9% of all the voting securities in that Company; and
  - (b) In relation to Director Election Resolutions, more than the number of votes which is the lesser of:
    - (i) the number of votes attaching to 24.9% of all the voting securities in a Company; or
    - (ii) the number of votes permitted by clause 2.1 of the Deed;

- (c) In relation to all special resolutions of shareholders of a Company the number of votes which is the lesser of:
- (i) The number of votes attaching to 24.9% of all the voting securities in that Company; or
  - (ii) The number of votes permitted by clause 2.1 of the Deed.

## FORM OF BOND – CONDITION 11(a)

BY THIS BOND dated \_\_\_\_\_, NZ Airport NC Limited ("the Applicant") and Canada Pension Plan Investment Board ("CPPIB"), acknowledge that they will be jointly and severally bound to pay to the Regulator, the sum of \$10,000,000 (ten million dollars, "the penalty") if an event set out below under the heading "Penalty" occurs.

### WHEREAS:

- A. The Applicant and CPPIB have agreed to enter into and execute this bond;
- B. The Applicant and CPPIB agree that words defined in the consent letter dated XXX shall have the meanings given by that letter;
- C. The Applicant has been granted consent ("the consent") to acquire up to 40% of the shares in Auckland International Airport Limited ("AIAL");
- D. As a condition of granting the consent, Affiliates have been prohibited from voting their shares otherwise than in accordance with condition 17 of the letter of consent ("the voting conditions");
- E. As a condition of granting the consent, the Applicant has been prohibited (unless an alternative arrangement has been negotiated and agreed pursuant to condition 16) from transferring any securities acquired pursuant to the consent:
  - (a) In reliance on regulation 33(1)(a) of the Overseas Investment Regulations 2005 (condition 14 of the consent); or
  - (b) To an Affiliate without the prior written consent of the Regulator, regardless of whether that transfer requires consent pursuant to section 10 of the Overseas Investment Act 2005 or not (condition 15 of the consent);(collectively "the transfer conditions");

### PENALTY

In the event of it being finally determined by an Arbitrator pursuant to the Arbitration Act 1996 that:

- (a) The Applicant and its Affiliates have breached the voting conditions; or
- (b) The Applicant has breached one or both of the transfer conditions; or
- (c) The Applicant has not used all reasonable endeavours to procure the passing of the resolution contemplated by condition 12; or
- (d) The Applicant and its Affiliates have not voted their shares in AIAL which are eligible to vote to approve an amendment to the constitution contrary to condition 12 of the consent, or
- (e) There has been a breach of any of the conditions in Appendix B "Conditions Relating to the Amalgamation" occurring in connection with an "Amalgamation" (as defined in those conditions),

the penalty shall become payable upon written demand by the Regulator.

## REMEDY

The Penalty shall not be payable:

- (a) if the breach causing the Penalty to be payable is remedied to the satisfaction of the Regulator by or on behalf of the Applicant within 5 working days of the Applicant becoming aware of the breach; or
- (b) in the case of an immaterial, inadvertent or inconsequential breach of the terms of this Bond, for example in the case where a shareholders' resolution would have been passed irrespective of whether the breach had occurred; or
- (c) if the breach arises through no fault of CPPIB, the Applicant or any of its Affiliates, for example in the case where AIAL or AIAL's share registrar provides the Applicant or CPPIB with incorrect details of the number of shares in AIAL which are eligible to be voted by the Applicant and its Affiliates on any given resolution.

## VOID

This Bond shall be void if:

1. The transaction for which consent has been granted is not given effect to; or
2. The securities acquired pursuant to the consent have been divested to a person other than an Affiliate; or
3. CPPIB and its Affiliates have less than a 25% ownership or control interest in the Company.

## VARIATION

This Bond may be varied by agreement between the parties. Any such variations shall be effective if made in writing and signed by or on behalf of the parties.

SIGNED etc

### **"Conditions Relating to the Amalgamation"**

#### Definitions:

1. "Amalgamation" means the transaction or series of transactions giving effect to the "Amalgamation" as described in the Application whether in the same form as described in the Application or in a modified form.
2. "Application" means the application letter dated 16 November 2007.
3. "Associate" has the same meaning as given to it in section 8 of the Overseas Investment Act 2005 and may include more than one person.
4. An "Affiliate" of a person means the Applicant, CPPIB and all Associates of the Applicant or CPPIB.
5. "Documentation" means whatever documentation is necessary to ensure that the intent and purpose of the conditions set-out below are given their fullest effect.
6. "Holding Company" means the entity that holds the shares in the Company acquired pursuant to the Application following Amalgamation whether directly or indirectly through a subsidiary or subsidiaries or otherwise.
7. "The Company" has the meaning given to it in the Deed.
8. "Partial Takeover Conditions" means the conditions imposed by the Regulator in relation to the acquisition of shares in AIAL by the Applicant.

#### Prerequisites for Giving Effect to Transaction

9. This consent shall be of no effect, and the Applicant must not give effect to the Amalgamation (whether in the form as described in the Application or in a modified form) unless:
  - (a) The Applicant has provided the Documentation to the Regulator; and
  - (b) The Regulator at its discretion has consented in writing to the form and content of the Documentation ; and
  - (c) The Documentation (as consented to by the Regulator) has been executed by all necessary parties.

#### Transfers

10. After the Amalgamation, the Holding Company shall not transfer any securities acquired pursuant to this consent:
  - (a) In reliance on regulation 33(1)(a) of the Overseas Investment Regulations 2005 (the "Regulations"); or
  - (b) To an Affiliate without the prior written consent of the Regulator, regardless of whether that transfer requires consent pursuant to section 10 of the Overseas Investment Act 2005 or not.
11. In the event that the Holding Company wishes to transfer any securities acquired pursuant to this consent in reliance on regulation 33(1)(a) of the Regulations or to an Affiliate, the Relevant Minister and the Applicant shall negotiate revised conditions that will apply to the transferee and that will continue to give effect to all the conditions of this consent.

Provisions of Constitutional Document

12. The Company's constitutional document must contain provisions that:
- (a) In all respects replicate and reflect the voting limitations referred to in conditions 17 and 19 of the Partial Takeover Conditions; and
  - (b) Prohibit the terms of the Company's constitutional document (insofar as they relate to condition 12(a) above) from being changed in any way unless the Regulator at its discretion gives its prior written consent to any changes.