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Air New Zealand

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Dear Chairs

The Treasury's monitoring of and engagement with listed companies that are majority-owned by the Crown

This letter sets out the approach that Treasury will follow in providing advice to shareholding Ministers regarding their majority shareholdings in Air New Zealand, Mighty River Power, Meridian Energy and Genesis Energy ("the companies"). It builds on the relationship protocols for Air New Zealand that have evolved over time since the Crown took a majority shareholding in the company in 2002.

It also sets out our proposed approach for communications between the companies, the Treasury and shareholding Ministers.

Relationship between the Crown and the companies

As you know, the Mighty River Power offer document (on pages 70 to 79), the Meridian offer document (pages 76 to 82) and the Genesis Energy investment statement (page 26) and prospectus (page 49 to 52) set out the relationship between the companies and the Crown.

The Mighty River Power, Meridian and Genesis Energy offer documents stated that:

- the Crown will continue to hold at least 51% of the shares in the companies, and as such generally will be able to control the outcome of matters put to shareholders that require majority approval, including resolutions for the election and removal of directors
- in addition the Chair nominated by the board must be approved by the Minister of Finance
- the Crown does not guarantee the shares in the companies, or any returns in respect of them or the companies, or any obligations of the companies

- the Crown intends to continue to be a supportive shareholder of the companies and their plans. This does not imply any guarantee of the shares in the companies by the Crown, or any commitment in respect of future capital contributions by the Crown.

The approach that we intend to follow when monitoring the companies is consistent with the relationship between the Crown and the companies as set out in the offer documents.

The Treasury's objective

The Treasury's over-riding objective is for:

- the companies to deliver superior long-term commercial performance (consistent with the Government's objectives for the Government Share Offers programme) and
- the Crown to demonstrate to other investors (and potential investors) in the companies that its behaviour as majority shareholder will be commercially focused.

Treasury recognises the Crown's role as the majority shareholder of the companies, and that boards and management, not shareholders, are responsible for company decisions.

Ability to encourage the companies to deliver superior commercial performance

The Crown is able to buy or sell shares in the companies (subject to maintaining at least 51% ownership as required by section 45R of the Public Finance Act 1989) but it is likely to do so rarely if at all. This means the Crown will not usually carry out any trading activity that would impact the companies' share prices. But like any other majority shareholder, the Crown does have the ability to control the outcome of matters put to shareholders that require majority approval, including resolutions for the election and removal of directors.

The Treasury's monitoring of the companies and advice to shareholding Ministers will rely in part on the ability of market commentators and participants to impact the companies' share prices both indirectly, through their advice and research, and directly, through trading in the companies' shares. We will also rely on the Crown's strength as a long-term investor with a majority shareholding.

The Crown will not use its position as majority shareholder to influence the companies to make non-commercial decisions. Company decision making rests at all times with their boards¹, and the Treasury expects all company decisions to be commercial.

The Crown retains the right to make regulatory decisions, but these would affect all companies, not just the ones where the Crown is a majority owner. Where the Crown does have decision rights as a shareholder, ensuring that the Crown's decisions are commercially focused will be particularly important, particularly when it comes to voting for the appointment and reappointment of board members, and the Minister of Finance approving or disapproving the board's choice of Chair.

¹ With the exception of matters that must be put to shareholders for approval, e.g. major transactions.

In Treasury's view the main way that the Crown can do this is to demonstrate a consistent, commercially focused approach over time to its actions as a long-term majority shareholder. The Treasury intends to take the same approach to its monitoring and advice to shareholding Ministers.

Monitoring approach

Like any other significant shareholder of a listed company, the Treasury intends to engage with the companies and their other significant shareholders by:

- meeting at least twice a year with the companies (e.g. following their half-year and full-year results announcements). The objective would be to understand the companies' views on performance and strategy (but consistent with the companies' continuous disclosure obligations) and also to pass on Treasury's views in relation to their long-term commercial performance
- engaging with the companies' Chairs on board appointments (discussed further below), and
- meeting regularly (once or twice a year) with significant institutional shareholders in the companies; the equity analysts who examine the companies; and any other relevant, informed and interested parties. The objective of these engagements would be to seek the other parties views on the companies and their performance, and the boards and their performance

The Treasury will also attend market-related events or briefings (including investor briefings) or capital markets days that the companies hold (these are also a useful forum to engage with other interested parties).

The Treasury will generally attend annual meetings to vote on shareholder resolutions (on behalf of and as directed by shareholding Ministers).

The Treasury will report regularly to Ministers, summarising external views on the companies' performance and providing our own assessment. As required we will seek decisions from Ministers on board appointments, and where other formal decisions are required from Ministers such as voting on shareholder resolutions.

When engaging with the companies and with other interested parties, the Treasury will have access to the same public information that is available to all shareholders. Except in rare circumstances, the Treasury will not have access to any "inside information" on the companies. This is discussed further below.

Engaging with significant shareholders in the companies

The Crown knows which institutions were allocated shares in the IPOs, and substantial shareholder notices to the NZX will reveal any significant changes following this (shareholders need to disclose any holdings above 5%, and any changes of 1% or more in these holdings). However new significant investments below the 5% threshold will not be public knowledge.

Therefore we request that the companies regularly (twice a year) provide us with the identities of the largest shareholders on their share registers other than the Crown. The purpose of receiving this information is solely so that the Crown can seek to meet with significant shareholders in the companies to discuss their views, as discussed above. We expect you will want to obtain the permission of the other shareholders before passing on their identities to the Treasury.

For the avoidance of doubt, if a shareholder does not consent to their details being passed on to the Crown, then the company should not, and is under no obligation to, pass on those details

Board appointment processes

We expect that the most common action to be taken by shareholding Ministers will be to vote for or against the appointment of directors at the annual meeting of shareholders (as well as voting for any other resolutions at the annual meeting).

As you know, the offer documents for the companies did not set out any process for board appointments, beyond the process specified in the Companies Act and the company constitutions, but stated that the Crown generally will be able to control the outcome of resolutions for the election and removal of directors as a result of holding 51% or more of the company's voting shares.

As majority shareholder, Ministers expect to be consulted by the companies on board appointments. The process that Ministers expect the companies to follow regarding board appointments (including appointments to fill casual vacancies) is:

- the board of each company will conduct its own search process for candidates for appointment. Ministers and the Treasury will not put forward candidates for consideration as part of this process
- at the end of this process, the company will advise shareholding Ministers and the Treasury of the name of the candidate it proposes to put forward for appointment
- the Treasury will provide advice to shareholding Ministers on the company's proposed candidate for appointment
- shareholding Ministers will consult with their colleagues through the Cabinet Appointments and Honours Committee
- Ministers and/or the Treasury will provide feedback to the company on the candidate, and
- the board will decide on the candidate it will nominate for approval by shareholders (or it will appoint to fill a casual vacancy) taking into account shareholding Ministers' feedback (and any feedback from other shareholders).

Shareholding Ministers may also issue generic expectations of criteria they would want to see included in company director identification (skills, experience, diversity, level of assurance required about suitability e.g. assurance that appropriate reference checks have been carried out, etc).

Shareholding Ministers would expect to support the board's proposed candidates for appointment, as long as Ministers are comfortable that the company is performing well, and that the board has applied appropriate criteria in making the appointment. However, shareholding Ministers reserve the right to nominate and vote for their own candidates, to vote against board-nominated candidates, or to vote for candidates nominated by other shareholders if they feel that any of these steps are appropriate. The Treasury expects that such a step would be a last resort, and only be taken towards the end of a process of escalating concerns with the board regarding the company's commercial performance or board composition, where Ministers were not satisfied that those concerns were being addressed.

Appointment of a Chair

As set out in the offer documents for Mighty River Power, Meridian Energy and Genesis Energy, the boards of the companies are responsible for nominating one of their number to be the Chair. The person who is nominated by the board must be approved by the Minister of Finance before being appointed as Chair. A similar approach is set out in the Air New Zealand constitution.

Nominations by other shareholders

Any shareholder of a company can nominate a candidate for appointment to the board. Ministers do not expect the companies to consult with them regarding candidates nominated by other shareholders. The Crown will form a view on any candidates nominated by other shareholders (after seeking the views of the companies and other interested parties, as appropriate) and vote accordingly.

Communications with shareholders

The companies, like all listed entities, need to communicate with their shareholders, including shareholding Ministers, and also with the Government in relation to policy and regulatory issues. We believe there are three categories of communication:

1. Standard communications to shareholders

In almost all situations, we expect the Crown to be treated no differently to any other shareholder. Communications from the companies should be sent to both Treasury officials (as shareholder's advisors) and directly to shareholding Ministers, at the same time as all other shareholders are informed. Shareholding Ministers do expect to be briefed about significant matters, like any other shareholder. There is no expectation that public disclosures would be delayed until shareholding Ministers had been briefed.

2. Inside information

The companies may wish to discuss specific proposed transactions with the Crown as majority shareholder. This may require the companies to provide information that is not publicly available and that is market sensitive ("inside information"). The Treasury expects that these situations would be rare.

The Treasury's monitoring approach relies on the Crown having access only to public information under normal circumstances. Having access to "inside information" from a company is risky for the Crown and for the companies. If the Crown is in possession of "inside information" on a company, then the Crown must not:

- a. trade or enter into any commitment to trade (whether conditional or not) in shares in the company, or advise or encourage any person to trade shares in the company or
- b. communicate the "inside information", or cause the "inside information" to be disclosed to any person, knowing or believing that person or another person will, or is likely to:
 - (i) trade shares in the company
 - (ii) advise or encourage another person to trade shares in the company or
 - (iii) continue to hold shares in the company.

These restrictions apply until the "inside information" is made available to the public, or otherwise ceases to be "inside information".

The prohibition on trading will not normally be a concern, given that the Crown is likely to be trading shares in the companies rarely, if at all. However, even if it is not trading, the Crown must take particular care in the management of inside information, because:

- the Crown will have majority ownership of three listed electricity companies, which compete with each other and with two other privately owned, listed companies (Contact and Trustpower). "Inside information" from any one of the three electricity companies will potentially also be "inside information" in relation to the other two and to the two privately owned companies
- if the Crown has "inside information" there is a risk that it is inadvertently disclosed to a third party, or that the Crown is accused of either deliberately or accidentally disclosing the information to a third party, or acting on the information itself, and
- the Treasury's proposed approach for monitoring the companies relies on regular engagements with other shareholders and interested parties such as equity market analysts. Unless there is complete separation between the staff who have access to the "inside information" and those monitoring the companies (which is unlikely to be practical) these engagements are risky while the Crown is in possession of "inside information" on any of the three electricity companies.

Treasury's preference is that:

- the companies should avoid giving Ministers or officials "inside information" unless it is strictly necessary to do so
- any "inside information" should only be provided after the Crown and the company have signed a confidentiality agreement, and

- the length of time in which the Crown is in possession of “inside information” should be kept to a minimum². This will require the Crown to form a view on any proposed transaction as soon as possible, so that the company can announce it³.

An example of where it may be necessary to involve the Crown would be an equity raising by one of the companies. Because the Crown must continue to hold at least 51% of the shares in the companies, an equity raising may not be able to occur unless the Crown participates.

For company transactions where the Crown’s participation is not required, the Treasury would strongly prefer that the Crown is informed at the same time as all shareholders, as part of a public announcement. An example would be on-market share buybacks, which can proceed without the Crown’s participation.

On the rare occasions where the Crown’s involvement as a shareholder is required for a particular company transaction, the Treasury’s expectation is that:

- the Chair or company management will approach Ministers or the Treasury to advise that the company has a specific proposal that they wish to discuss with the majority shareholder, but without providing any details of the proposal
- the Crown and the company will sign a confidentiality agreement
- the company will, under the confidentiality agreement, provide Ministers and officials with details of the proposal
- officials will provide advice to Ministers on the proposal. This may include engaging expert external advice
- Ministers will make a decision on the Crown’s position regarding the transaction. This may require Ministers seeking approval from Cabinet, e.g. if an appropriation is required
- Ministers will advise the company of the Crown’s position
- if the company decides to proceed with the transaction, it will announce it to the market, along with the details of the Crown’s position

In the rare situations where the Crown is in possession of “inside information” the Treasury will set up appropriate protocols to ensure that the information is managed appropriately (e.g. limited to those who need to know) and not disclosed to unauthorised persons.

² Bearing in mind that the Crown needs to have an appropriate length of time to properly consider the proposed transaction. This can include having the proposal considered by Cabinet. The length of time required will depend on the circumstances of the proposed transaction, but we expect it should be weeks, rather than months.

³ One risk is that companies give the Crown “inside information” in relation to transactions that for whatever reason do not proceed, leaving the Crown fixed with the information for an unknown period of time.

Cabinet Office circular on "inside information"

In 2012 the Cabinet Office issued a circular that sets out guidance agreed to by Cabinet for Ministers and officials dealing with "inside information" relating to public issuers. The circular can be found at: <http://www.dpmc.govt.nz/cabinet/circulars/co12/7>

The circular relates to "inside information" on all public issuers, not just the companies, and it also covers "inside information" created by the Government (e.g. policy decisions) as well as information provided to the Government by the companies themselves.

The Treasury and Ministers will follow the guidance in this circular in any situations when they are in possession of "inside information" on the companies.

Engagement with the companies while the Crown has "inside information"

The Crown is the majority owner of three listed companies that are directly competing with each other. The Treasury is likely to wish to continue routine engagements with the other two companies, their shareholders, and equity analysts, while also discussing the specific transaction with the first company. The Treasury will ensure that it carefully manages the risk of continuing with these engagements in the rare situations where the Crown is in possession of "inside" information.

3. Regulatory or market issues

Companies should not engage with shareholding Ministers on regulatory or market issues. For the electricity companies, the Electricity Authority, the Minister of Energy and his officials would usually be the first point of contact (or the relevant policy Minister if it is not an energy policy issue).

For Air New Zealand, the current practice should continue, i.e. regulatory discussions are with the Minister and Ministry of Transport, not with the shareholding Minister.

This is on the assumption that issues in this category do not require disclosure to all shareholders (category 1 above) and don't require the Crown's involvement as majority shareholder (category 2 above).

Public Finance Act Information

The companies will continue to supply the Treasury with monthly actual financials and four-year financial forecasts, which are necessary to meet Treasury's legislative obligation to prepare the Crown accounts and forecasts of the Crown's financial position.

As was explained in the offer documents for Mighty River Power, Meridian Energy and Genesis Energy, this information is supplied by the companies to the Treasury subject to a confidentiality agreement, under which it can only be used for these specific purposes. Similar arrangements apply in relation to Air New Zealand. Individual company information will not be identifiable in the published Crown accounts and forecasts.

Strict arrangements are in place to ensure that only a limited number of staff within the Treasury have access to the information, and only for the specific purpose of preparing the Crown accounts and forecasts. These staff have agreed not to hold or trade in the shares in the companies as a condition of their employment. All other Treasury staff, including those involved in monitoring the companies, do not have access to the data. Ministers also do not have access to this data.

This approach ensures that in the normal course of events, the staff monitoring the companies, and the Ministers as shareholders, will only have access to information that is available to all other shareholders or potential shareholders.

Official Information

As you know, the companies are not subject to the Official Information Act (OIA). However the Treasury and Ministers are subject to the OIA. This means that any information given to the Treasury or shareholding Ministers automatically becomes official information, and may be released to the public if requested.

The OIA provides grounds under which information that is requested can be withheld from release. These withholding grounds include:

- commercial sensitivity ("to protect the commercial position of the person who supplied the information, or who is the subject of the information"; "to enable the Crown to carry out commercial activities without disadvantage or prejudice" and "to enable the Crown to negotiate without disadvantage or prejudice")
- confidentiality ("to protect information which is subject to an obligation of confidence ... where the making available of the information ... would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied"), and
- legal privilege

The Treasury expects that any commercially sensitive information provided to Ministers and officials by the companies or other market participants (for example, significant shareholders, or equity analysts) will continue to be able to be withheld under the OIA, subject to public interest considerations. In deciding to withhold specific information that has been requested, the Treasury and Ministers need to assess the public interest in the material being released, and bearing in mind the principle that official information should generally be made available to the public.

Other Crown organisations regularly have access to commercially sensitive information, including information from or regarding listed companies, and are able to manage their obligations under the OIA with respect to this information.

Conclusion

As representatives of your majority shareholder, we look forward to continuing to engage constructively with you, your board and management of your companies.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Chris White". The signature is fluid and cursive, with the first name "Chris" and the last name "White" clearly distinguishable.

Chris White
Director, Commercial Operations Group