

To: Hon Dr David Clark, Associate Minister of Finance

Hon Eugenie Sage, Minister for Land Information

ASSESSMENT REPORT: Mercury Agriculture Limited Partnership

Date	25 September 2019	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference (Report reference)	201810160 (Reference 1467)	Priority	High

Action Sought

Minister	Action	Suggested Deadline
Hon Eugenie Sage, Minister for Land Information	<ol style="list-style-type: none"> 1. Review the attached report and decide whether to grant consent to the application 2. Forward the report and attachments to the Associate Minister of Finance 	As soon as possible
Hon Dr David Clark, Associate Minister of Finance	<ol style="list-style-type: none"> 1. Review the attached report and decide whether to grant consent to the application 2. Forward the report and attachments to the Overseas Investment Office 	As soon as possible

LINZ Contacts

Name	Position	Contact number	First contact
Anneke Turton	Acting Manager Applications	04 830 2513	<input checked="" type="checkbox"/>
Kirsty Hulena	Senior Solicitor	+64 4 496 9482	<input type="checkbox"/>

Minister's office to complete

1 = Was not satisfactory 2 = Fell short of my expectations in some respects 3 = Met my expectations 4 = Met and sometimes exceeded my expectations 5 = Greatly exceeded my expectations					
Overall Quality	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
Comments					
<input type="checkbox"/> Noted <input type="checkbox"/> Seen <input type="checkbox"/> Approved <input type="checkbox"/> Overtaken by events <input type="checkbox"/> Withdrawn <input type="checkbox"/> Not seen by Minister <input type="checkbox"/> Referred to:					

ASSESSMENT REPORT: Mercury Agriculture LP

Overview

Purpose

1. We seek Ministers' decision on the application by Mercury Agriculture LP under the Overseas Investment Act 2005 (the "Act") to acquire a further 43.4% interest in the each of Rangitata Dairies Limited Partnership and Rangitata GP Limited, bringing its total interest in each of those entities to 68.3%.

Key information

Applicant	Mercury Agriculture Limited Partnership (Canada 88.51%; United Kingdom 11.49%)
Vendors	Rangitata Dairies Limited Partnership and Rangitata GP Limited (Canada 22.03%; New Zealand 75.11%; United Kingdom 2.8599%)
Consideration	
Application type	Sensitive land - not residential Significant Business Assets
Relevant tests	Investor test (s16(1)(a) -(d) and s18(1)(a)-(d) of the Act) Benefits test – substantial and identifiable benefits (s16(1)(e)(ii) and (iii) of the Act) Transitional note: The contract for this transaction was entered prior to commencement of the Overseas Investment Amendment Act 2018, so the version of the Act and the regulations in force immediately before its commencement continue to apply.

2. Please refer to the **A3 in Attachment 8** for overview tables summarising the application and the Overseas Investment Office's ("OIO's") assessment.

Provisional recommendation

3. Our provisional recommendation is to **decline consent**. This is based on our view that having regard to the characteristics of the land and the nature of the interest being acquired, proportionately we do not consider the benefits provided by the investment are likely to be of substantial and identifiable benefit to New Zealand. However this is ultimately a matter to be decided by Ministers and involves the exercise of their Ministerial judgement.
4. Our assessment of proportionality is discussed further at paragraphs 175-177.
5. If you agree to **decline consent**, we recommend that you make the determinations set out in paragraphs 6 to 10 below.

Anneke Turton

Acting Manager Applications (Overseas Investment Office)

Date: 25 / 9 / 2019

Decision

6. I determine that:

6.1 the 'relevant overseas person' is (collectively):

ROP	Relationship
Fiera Comox Global Agriculture Open-End Fund LP (Master Fund)	Fund established to hold the Applicant's investments
Mercury Agriculture GP Limited	General Partner of the Applicant
Mercury Agriculture LP	the Applicant
Fiera Comox Partners	the ultimate owner and controller of the Applicant

6.2 the 'individuals with control of the relevant overseas person' are:

IWC	Role
Francois Bourdon	Director of Fiera Comox Partners
Jeremy Savage	Director of the Applicant
Giovanni Valentini	Chairman of the Investment Committee; Director of Fiera Comox Partners
Jean-Guy Desjardins	Member of the Investment Committee; Director of Fiera Comox Partners
Marc-Andrew Desjardins	Director of Fiera Comox Partners
Frederic Despars	Member of the Investment Committee; Director of the Applicant; Director of Fiera Comox Partners; Director of the Applicant
Antoine Bisson-McLernon	Member of the Investment Committee; Chief Executive of Fiera Comox Partners; Director of Rangitata GP

6.3 the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment;

6.4 the relevant overseas person has demonstrated financial commitment to the overseas investment;

6.5 all the individuals with control of the relevant overseas person are of good character; and

6.6 each individual with control of the relevant overseas person is not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (which sections list certain persons not eligible for visas or entry permission under the Immigration Act); and

7. The investor test in sections 16(1)(a)-(d) and section 18, as outlined in paragraph 6 above, has been met; and

Associate Minister of Finance**Minister for Land Information**

Satisfied

☐

Satisfied

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Not Satisfied

☐

Not Satisfied

☐

8. In relation to the benefits test, that:

8.1 the criteria for consent in section 16(1)(e)(ii) has been met;

8.2 the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders).

Associate Minister of Finance**Minister for Land Information**

Satisfied

☐

Satisfied

☐

Not Satisfied

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Not Satisfied

☒

9. In relation to the benefits test, that:

9.1 the benefit will be, or is likely to be, substantial and identifiable as required by section 16(1)(e)(iii).

Associate Minister of Finance**Minister for Land Information**

Satisfied

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Satisfied

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Not Satisfied

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Not Satisfied

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10. In relation to farm land advertising, that the criteria has been met as set out in the Report.

Associate Minister of Finance**Minister for Land Information**

Satisfied

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Satisfied

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Not Satisfied

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Not Satisfied

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11. Consent is **declined** and a draft decision notice is included at **Attachment 1**

Associate Minister of Finance

Consent declined ☐

Request further information from the Overseas Investment Office ☐

Minister for Land Information

Consent declined ☒

Request further information from the Overseas Investment Office ☐

Hon Dr David Clark
Associate Minister of Finance
Date: / /

E M Sage
Hon Eugenie Sage
Minister for Land Information
Date: 17/10/19

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Associate Minister of Finance**Minister for Land Information**

Satisfied

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Satisfied

☐

Not Satisfied

☐

Not Satisfied

☐

8. In relation to the benefits test, that:

8.1 the criteria for consent in section 16(1)(e)(ii) has been met;

8.2 the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders).

Associate Minister of Finance**Minister for Land Information**

Satisfied

☒

Satisfied

☐

Not Satisfied

☐

Not Satisfied

☐

9. In relation to the benefits test, that:

9.1 the benefit will be, or is likely to be, substantial and identifiable as required by section 16(1)(e)(iii).

Associate Minister of Finance**Minister for Land Information**

Satisfied

☐

Satisfied

☐

Not Satisfied

☒

Not Satisfied

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10. In relation to farm land advertising, that the criteria has been met as set out in the Report.

Associate Minister of Finance**Minister for Land Information**

Satisfied

☒

Satisfied

☐

Not Satisfied

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Not Satisfied

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11. Consent is **declined** and a draft decision notice is included at **Attachment 1**

Associate Minister of Finance

Consent declined

☒

Request further information
from the Overseas Investment
Office

☐

Hon Dr David Clark

Associate Minister of Finance

Date: 16 / 10 / 19

Minister for Land Information

Consent declined

☐

Request further information from
the Overseas Investment Office

☐

Hon Eugenie Sage

Minister for Land Information

Date: / /

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OFFICIAL INFORMATION ACT

Executive summary

1. Mercury Agriculture Limited Partnership (the "**Applicant**") is seeking consent to increase its current holding in Rangitata Dairies Group¹ ("**Dairies Group**").
2. The Applicant currently owns the following interests in Dairies Group:
 - a) 24.9% of all A units in Rangitata Dairies Limited Partnership (**Rangitata Dairies LP**); and
 - b) 24.9% of all ordinary shares in Rangitata GP Limited (the general partner of Rangitata Dairies Limited Partnership) (**Rangitata GP**) (together the "**First Tranche**").
3. The remainder of Dairies Group is New Zealand owned.
4. The Applicant wishes to increase its holding in Dairies Group to 68.3%. This is an additional 43.4%. It will do this by acquiring additional A units in Rangitata Dairies LP² and additional ordinary shares in Rangitata GP (the "**Investment**").
5. Dairies Group is a dairy farming business with a portfolio of 8 farms across approximately 4,840 hectares in South Canterbury and Central Otago (together with dairy support farms discussed further at paragraph 51 below). Of this, 4,771 hectares is 'sensitive land' requiring consent. The picture below shows the location of the Dairies Group farms:



¹ All entities owned directly or indirectly by Rangitata Dairies Limited Partnership. The Applicant's structure diagram is included at paragraph 28

² A class units have voting rights, B class units have no voting rights and no rights to any share of profits or capital other than their face value.

6. If consent is granted Dairies Group intends to develop a 111 hectare apple orchard; install pivot irrigation on some of its farms; build worker housing and develop in-shed feeding facilities on some of its farms. Dairies Group current plans will result in a reduced effective milking area, and reduced cows, from 2021, however it has advised that the milking area may increase again in the future. No comment has been made on whether the number of cows would increase.
7. The benefits to New Zealand that may result from this investment include:

Strong weighting		
Moderate weighting		<ul style="list-style-type: none"> • Jobs; • Added market competition and increased productivity; • Consequential benefits; • Increased export receipts; • New Zealand oversight and participation
Weak weighting		<ul style="list-style-type: none"> • Increased processing; walking access

8. Guidance for applying the Act is set out in **Attachment 2**.

Timing

9. This application was received by the OIO on 28 September 2018 and was immediately referred to the OIO's enforcement team for investigation of the acquisition of the First Tranche. This is discussed further in paragraphs 39-45. The application was accepted on 26 October 2019 while enforcement was still reviewing the acquisition, but the Applicant was advised assessment would not begin until enforcement had completed their review. This occurred on 18 March 2019 and the Applicant was sent a letter advising that while the OIO considered that consent was required for the First Tranche, it acknowledged this was an area of the Act some applicants have struggled to understand (**Attachment 4**).
10. The Applicant then requested a meeting to discuss its application and subsequently asked to submit an amended application, which the OIO agreed to. The amended application was received on 12 April 2019. Assessment then began and on 30 May 2019 the Applicant was sent a letter informing it that the OIO's current assessment was that the benefit to New Zealand was unlikely to meet the substantial and identifiable threshold. We invited further submission from the Applicant to address these concerns. The Applicant requested a time extension to respond to this letter which was granted until 28 June 2019.
11. The Applicant then requested a further meeting before it prepared its response to our letter. The meeting took place on 20 June 2019 and the Applicant requested a further extension until 26 July 2019 to amend its application with new submissions. This was granted and the amended application was received on 26 July 2019.
12. Processing of the application then began again and on 29 August 2019 the Applicant requested to again amend its application documents. Again this extension was granted and the documents received on 3 September 2019.
13. Processing days for the application to date are:

Quality Assurance	OIO Processing	Waiting for Applicant / Vendor	Third party consultation
6	65	68	3

Applicant and investor test

14. This section describes the Applicant, and whether the investor test criteria in the Act are likely to be met.

Who is making the investment

The Applicant

15. The Investment is being made by the Applicant, which is a New Zealand registered limited partnership, but is wholly overseas owned³. The Applicant was established to hold the proposed investment in Dairies Group.

Dairies Group

16. Rangitata Dairies LP was established to hold Dairies Group farm portfolio. Rangitata GP is the sole general partner of Rangitata Dairies LP. Dairies Group is currently 75.1% New Zealand owned.
17. A spreadsheet and structure diagram showing the current ownership of Rangitata Dairies Limited Partnership and Rangitata GP Limited are shown in **Attachment 3**.

Reason for the Investment

18. Dairies Group was established in 2000, by New Zealand dairy farmers, who wanted to acquire land in the South Canterbury region for dairying and food production.
19. Its long term strategy is to consolidate further farms in the region and become a food producer rather than solely a dairying operation.
20. [REDACTED] are the **Founding Partners** of Dairies Group believe that to grow its business and ensure its financial viability in the future, Dairies Group requires a long-term equity partner. Further they consider Dairies Group needs to diversify its asset base and transition from being a dairy farming business to a lower emission food producer. The process Dairies Group followed to find an equity partner is discussed at paragraphs 82-87.
21. [REDACTED]
22. Dairies Group considers the resulting benefit of the Investment will be to transform a dairy business that is constrained by its lenders into a strong, New Zealand-controlled food production business with the potential to grow further in the future.

Tranche One and Tranche Two

23. On 28 March 2018 the Applicant entered into a subscription agreement ("**Subscription**") with Rangitata Dairies LP and Rangitata GP. The Subscription allowed for two tranches of investment into Dairies Group by the Applicant:
- a) the First Tranche which has been acquired by the Applicant; and

³ 88.51% Canada and 11.49% United Kingdom

- b) additional A units in Rangitata Dairies LP⁴ and ordinary shares in Rangitata GP⁵ bringing the Applicants interests in Dairies Group to 68.3% (43.4% increase) (the "Second Tranche").

24. Consent is required for the Second Tranche as this will lead to the Applicant, as an overseas person, having a 25% or more interest in Dairies Group, which is worth over \$100 million and owns and controls sensitive land.

Overview of assessment: investor test

Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
Relevant overseas persons (ROP) and individuals with control (IWC) confirmed	ROP/IWC Identified	ROP & IWC identified	Paragraphs 30-31 Section 15 of the Act.
Collectively have business experience and acumen relevant to the investment	Test met	The IWC's have experience relevant to the investment.	Paragraphs 35-37 Section 16(1)(a) of the Act.
ROP demonstrated financial commitment	Test met	The Applicant has demonstrated financial commitment by entering into the Subscription and engaging professional advisors.	Section 16(1)(b) of the Act.
Good character	Test met	We are satisfied that the ROP/IWC are of good character.	Paragraphs 38-45 Attachment 7 Section 16(1)(c) of the Act.
Not an individual of the kind ineligible for a visa or entry permission under ss 15 or 16 of the Immigration Act 2009	Test met	As our recommendation is to decline this application, we have not sought statutory declarations from the individuals with control stating that they are not individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.	Section 16(1)(d) of the Act.

Ownership and control of the Applicant

Who owns the Applicant

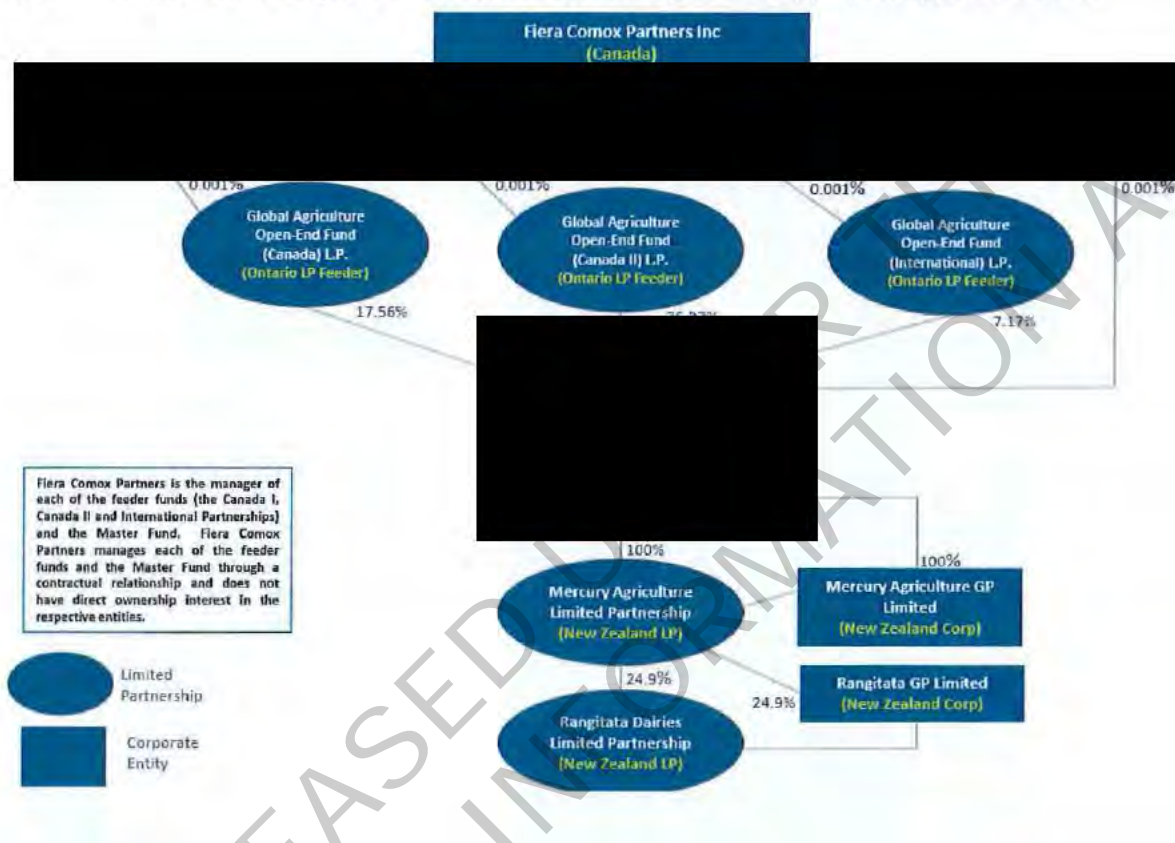
25. The General Partner of the Applicant [REDACTED]
Limited Partner is [REDACTED]
26. [REDACTED]

⁴ 61,579,930 additional A units

⁵ 61,579,930 ordinary shares

⁶ <https://www.fieracomox.com/en/>

27. The Feeder Funds are largely owned by institutional investors such as pension funds, banks and private wealth companies. Fiera Comox Partners Inc only have minor interests in the Feeder Funds as shown in the diagram in the paragraph below.
28. A structure diagram showing the ownership of the Applicant appears below:



Who controls the Applicant

29. The investment committee of Fiera Comox Partners ("Investment Committee") approved the Investment and will be responsible for making any decision to divest it.
30. We have therefore determined that the 'relevant overseas person' ("ROP") is (collectively):

ROP	Relationship
Fiera Comox Global Agriculture Open-End Fund LP (Master Fund)	Fund established to hold the Applicant's investments
Mercury Agriculture LP	the Applicant
	General Partner of the Applicant
Fiera Comox Partners	the ultimate owner and controller of the Applicant

31. We have determined that the 'individuals with control of the relevant overseas person' (IWC) are:

IWC	Role
-----	------

IWC	Role
Francois Bourdon	Director of Fiera Comox Partners
Jeremy Savage	Director of the General Partner
Giovanni Valentini	Chairman of the Investment Committee; Director of Fiera Comox Partners
Jean-Guy Desjardins	Member of the Investment Committee; Director of Fiera Comox Partners
Marc-Andrew Desjardins	Director of Fiera Comox Partners
Frederic Despars	Member of the Investment Committee; Director of Fiera Comox Partners; Director of the General Partner
Antoine Bisson-McLernon	Member of the Investment Committee; Chief Executive of Fiera Comox Partners; Director of Rangitata GP

Business Activities

The Fiera Comox Group

32. The Applicant states that Fiera Comox Partners:
- seeks to identify and acquire farmland that presents strong fundamental characteristics or is well positioned to generate strong and stable returns over time;
 - looks to have local partners because its intention is to operate as a long-term participant in the markets in which it invests; and
 - core philosophy is to undertake investments alongside local partners with the best operational expertise and management in agriculture (such as Dairies Group) and in regions that have a strong industry ecosystem and long-term, sustainable agricultural practices.
33. The Master Fund was established by Fiera Comox Partners to invest in agricultural land and rural producing assets in New Zealand, Australia, Canada and the USA. It invests primarily in row crops, permanent crops, dairy, beef, sheep and timberland. The perpetual nature of the Master Fund allows it to invest with a very long term horizon.
34. Fiera Comox Partners currently has approximately \$1.7 billion in land based New Zealand investments.

Business experience and acumen

s16(1)(a) and 18(1)(a) of the Act.

The relevant overseas person, or the individuals with control of the relevant overseas person, must have business experience and acumen relevant to the overseas investment. There is considerable flexibility in determining what is relevant and more or less specific expertise may be required depending on the nature of the investment. Business experience and acumen that contributes to an investment's success may be treated as relevant even though the investor may have to supplement its experience and acumen by utilising the experience and acumen of others to ensure the investment succeeds.

35. In this case, the Investment can be described as the acquisition of up to 68.3%% interest in Dairies Group, a company with an interest in 4,840 hectares of land used for dairy farming, 4,771 hectares of which is sensitive.
36. We have reviewed the biographical information provided by the Applicant for each of the individuals with control and note that collectively they have experience in investing in and managing agricultural investments.

37. Having regard to the above, we are satisfied that the individuals with control of the relevant overseas persons collectively have business experience and acumen relevant to the overseas investment.

Good character assessment

s16(1)(c) and 18(1)(c) of the Act.

The decision maker must be satisfied that the individuals with control are of good character. Section 19 of the Act specifies that the decision maker must take the following factors into account (without limitation):

- offences or contraventions of the law by A, or by any person in which A has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not);
- any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

Statutory Declarations

38. As our recommendation is to **decline this application**, we have not sought statutory declarations from the individuals with control stating they are of good character, have not committed and offence or contravened the law as described above and know of no other matter that reflects adversely on their fitness to have the Investment. Should the Ministers decide to grant consent to this application the OIO will obtain such declarations.

The Two Tranche investment

39. In August 2018 the Applicants legal advisers and representatives from Dairies Group had a pre-application meeting with the OIO. At that meeting the OIO advised that when it receives an application where close to a 25% interest will be acquired (such as the First Tranche here) the OIO will generally request its enforcement team to consider that initial interest. The Applicant acknowledges this in its application⁷.
40. The Applicant considers that its acquisition of the First Tranche did not give effect to a transaction regulated under the Act. The OIO's enforcement team reviewed the Applicant's acquisition of the First Tranche and disagreed. A copy of their letter is included in this report as **Attachment 4**.
41. The enforcement team considered that acquisition of the First Tranche gave the Applicant a level of control beyond its 24.9% interest, and a level of voting control it considered the Act required consent for. Further it expressed concern at the manner in which the Applicant structured the acquisition in two tranches. The enforcement team considered that the First tranche and the Second Tranche were "*treated by the parties and in particular Mercury as ...one transaction*". Nor could the enforcement team "*identify any commercial explanation for the splitting of the transaction into two tranches rather than seeking consent for the entire transaction at one time*".
42. Despite the above, the enforcement team conceded that this was an area where some applicants had struggled to understand the requirements of the Act and given their strategic enforcement priorities decided not to progress to a full investigation.
43. We consider that the Applicant's acquisition of the First Tranche does not impact on the good character of the individuals with control of the relevant overseas person as it is a technical area and the Applicant relied on their legal advisers for advice.
44. We have also conducted open source background checks on the relevant overseas person and individuals with control and found a single matter that we discuss further in **Attachment 7**. After further investigation and consideration of this matter, we do not consider it substantially impacts on the good character of the individuals with control of the relevant overseas person.

⁷ Paragraph 20 of the Application form.

45. Therefore, we are satisfied that the individuals with control are of good character

Provisional conclusion – Investor test

46. Our provisional conclusion is that the investor test is **met**.

Investment and benefits test

47. This section describes the proposed investment, and our assessment of whether it is likely to meet the benefit criteria in the Act.

The Investment Plan

Dairies Group current situation

The Farms

48. Dairies Group owns 8 dairy farms in South Canterbury which are shown in the table below:

Name of Farm	Hectares
Rangitata One	519 ⁸
Rangitata Two	704 ⁹
Shelbron	146
Longstream	544
Clonmel	313
Makaiwai	436
Mowata One	247
Mowata Two	207

together the “**Farms**”.

⁸ Part of which is used as dairy support land.

⁹ Part of which is used as dairy support land,

49. The diagram below shows the proximity of the Farms to each other:



View: The Rangitata Dairies support farms located in Clonmel, Rangitata, Clonmel, Rangitata and Mawawhi (Longstream) Dairies and Clonmel Dairies.

50. Dairies Group submits it has invested [REDACTED] in land and farm development since 2000 but investment in its assets is becoming increasingly difficult (discussed further below).

Support Farms

51. Dairies Group also owns Bendigo Terrace, a support farm in Otago, which it uses as a young stock grazing facility. It also leases approximately 595 hectares of additional land in South Canterbury as support farms to provide security of feed supply which are detailed in **Attachment 6**.

The Herd & Milk Production

52. The Canterbury-Marlborough region is home to more than 20% of New Zealand's dairy cattle. Dairies Group total herd is approximately 10,800 cows, with 10,100 peak cows milked.
53. Dairies Group has provided its production figures for financial years 2017-2019:

Year	Effective milking area (ha) ¹	Production (kgMS)	Peak cows milked	kgMS/ha	kgMS/cow
FY17	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
FY18	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
FY19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

54. The Applicant submits the Farms' kgMS¹⁰/cow is above the average for the Canterbury region (392 kgMS/cow) and the New Zealand average (368kgMS/cow).

Fonterra and milk price

55. The milk price paid to New Zealand farmers is ultimately dependent on the price of global dairy products and foreign exchange rates. Fonterra pays a "farmgate milk price" to its suppliers based on prices it can achieve in the international market.

¹⁰ Kilograms of milk solids.

Dividends are then paid in addition. Accordingly, the total "payout" to farmers supplying Fonterra comprises the farmgate milk price and dividend.

Debt levels and Bank lending

56. Dairies Group claims its current debt to equity ratio is [REDACTED], with the average New Zealand dairy farm 49.4% debt funded ¹¹.
57. The Applicant submits that a number of New Zealand's larger (Australian owned) banks, including BNZ which is Dairies Group banker, have started to reduce their exposure to the New Zealand dairy sector by requiring farmers to deleverage.
58. The Applicant has pointed out the Reserve Banks' 2018 Financial Stability Report,¹² which stated the importance of debt reduction in the farming sector and that "dairy farms should manage their borrowing carefully and banks should lend prudently".
59. [REDACTED]
60. [REDACTED] It considers the Applicant's investment will enable it to reduce its debt to equity ratio [REDACTED] and enable further developments to be made to the Farms.

Plans if consent is obtained

61. The Investment will enable the Dairies Group to:
- a) convert approximately 111 hectares, of which 100 hectares will be planted, into permanent crops, specifically apples ("the **Orchard**");
 - b) make improvements to the Farms as discussed in paragraphs 73-79 below; and
 - c) reduce its debt level by [REDACTED]
62. The Applicant submits that it is only due to the Applicant's experience with both dairy and other food production industries, its global connections, and its long-term investment horizons, that these proposals are possible. It submits that they would not occur without the Investment.
63. The Applicant submits that repayment of part of Dairies Group's debt (reducing its overall debt ratio from [REDACTED]) will enable it to operate more effectively going forward in an industry heavily affected by factors beyond its control such as changes in exchange rates, weather, milk pricing and interest rate changes.

The Orchard

64. The Orchard will be planted on 49 hectares of Rangitata One and 62 hectares of Rangitata Two. The land to be used is currently used as dairy support land. The Applicant considers this conversion to be to a higher and better use.
65. The Orchard conversion is estimated to cost [REDACTED], the costs incurred as follows:
- a) preparation of the land;
 - b) planting of the Orchard and tree establishment;

¹¹ Dairy NZ Economic Survey 2016-2017, pages 3-5.

¹² <https://www.rbnz.govt.nz/-/media/ReserveBank/Files/Publications/Financial%20stability%20reports/2018/fsr-may-2018.pdf>. See also press coverage, for example: <https://www.odt.co.nz/business/reserve-bank-has-eye-dairy-sector-debt>

¹³ [REDACTED]

- c) planting support structures;
 - d) installing drip irrigation infrastructure;
 - e) installing hail netting; and
 - f) purchase of machinery
66. Currently 65% of New Zealand's apples and pears are grown in the Hawkes Bay with 25% in the Nelson-Tasman region¹⁴. Dairies Group considers that Canterbury is a suitable land for horticultural developments and submits development of the Orchard may inspire others in the region to consider similar conversions from dairy to horticulture.
67. Once the Orchard is mature the Applicant expects the revenue derived from it to be approximately [REDACTED] of Dairies Group's total revenue (total revenue of [REDACTED] million with \$13 million in Orchard revenue). Further the Applicant expects half its employees to be focused on apple production at the Orchard's maturity. Development of the Orchard will also see Dairies Group become Canterbury's largest apple producer and one of the top 10 in the South Island.
68. The soils on Canterbury properties are free draining, and some have high nitrogen leaching risk. Planting some of those areas with crops is likely to decrease the amount of nitrogen leaching that occurs (a potential reduction of up to 90%)¹⁵.

Varietals grown

69. The Applicant proposes that Dairies Group plant higher value rare varieties of apple such as honeycrisp and ambrosia (both pictured below).



Honeycrisp apple



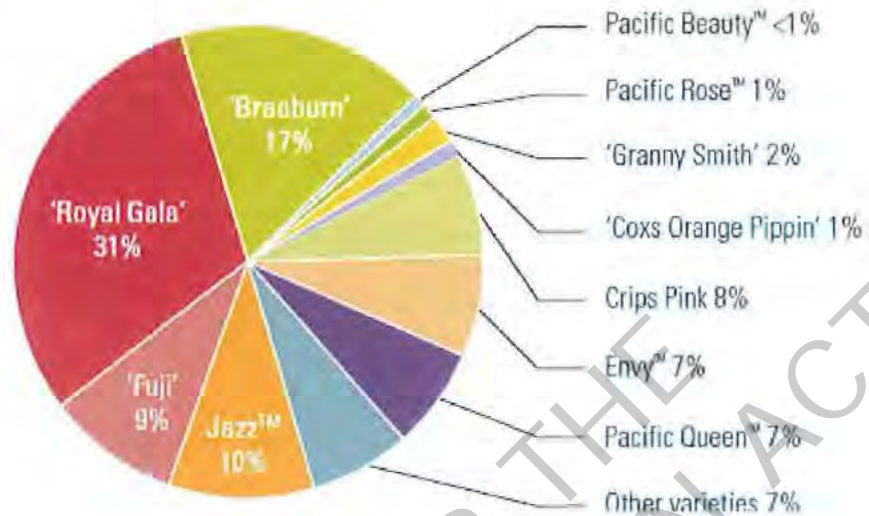
Ambrosia apple

70. It is proposed that approximately 41.5 hectares are planted in Honeycrisp varietal and these will be destined for export to North America. It would need to confirm rootstock orders by October 2019 to ensure there would be sufficient availability of these varieties for planting in winter 2021.
71. The diagram below shows the varieties currently most commonly exported from New Zealand, and demonstrates the Applicant has chosen uncommon varieties:

¹⁴ Ministry for Primary Industries Situation and Outlook for Primary Industries, June 2019, page 40.

¹⁵ <https://www.fruition.net.nz/2016/05/resource-title-4/>

Apple exports by variety



16

72. Dairies Group is also considering planting cherries and grapes at Bendigo Terrace, its support farm in Otago, as well as additional apples and blueberries on other of the Farms. However its plans are not yet sufficiently advanced to provide any certainty regarding timing or area to be planted in the future.

Upgrades to the Farms

Irrigation

73. The Applicant intends to upgrade the irrigation on 5 of the Farms from linear irrigators, irrigation guns and rototrainers to pivot irrigation within the first 5 years of the Investment at an approximate cost of [REDACTED]. It submits pivot irrigators are more efficient as they tend to use water more efficiently and require less labour to operate.
74. The Applicant states pivot irrigation enables an even dispersal of water (like fine, steady rainfall), which applies water to the soil more efficiently and effectively, retaining more nutrients in the soil (compared to applying direct streams of water in a shorter timeframe). This in turn increases the likely grass output, and is better for the environment, as it reduces nutrient leaching. The grass can absorb nutrients as it grows, rather than the nutrients being leached into the soil because of over-watering. The irrigation improvements alone are likely to lead to a reduction in Nitrogen leaching by 20-30% on the upgraded areas according to the Applicant.

In-shed feeding

75. The Applicant intends to install in-shed feeding systems in 4 of the Farms by the end of the first quarter of 2021.
76. The Applicant considers in-shed feeding systems allow for the efficient use of high nutritional value feeds by providing accurate rationing with minimal wastage. It considers standard feeding systems are less practical and less efficient. It submits in-shed feeding systems result in higher milk production from similar levels of feed inputs (ie, greater productivity).
77. Barley grain is commonly used in such systems (it is currently used on the Dairies Group farms that already have in-shed feeding systems in place and will be used in the new in-shed feeding systems). Barley grain has a lower protein content (and

¹⁶ New Zealand Apples & Pears Inc. (year ending Dec. 2018)

less nitrogen) than other feeds, such as grass silage, which results in a lower risk of surplus nitrogen being excreted by the cow (and therefore a lower risk of nitrogen leaching).

Staff housing

78. [REDACTED]

79. The table below shows the cost of proposed developments by farm:

Farm	Proposed developments	Estimated cost
Rangitata One	49 hectare conversion to apple orchard	[REDACTED]
Rangitata One	Irrigation upgrade-from rototrainers to pivot irrigation	[REDACTED]
Rangitata Two	62 hectare conversion to apple orchard	[REDACTED]
Rangitata Two	Installation of in-shed feeding	[REDACTED]
Rangitata Two	Irrigation upgrade-from rototrainers to pivot irrigation	[REDACTED]
Mowata Two	Installation of in-shed feeding	[REDACTED]
Longstream	Irrigation upgrade to pivot irrigation	[REDACTED]
Longstream	Construction of a new house for employee's use	[REDACTED]
Longstream	Installation of in-shed feeding	[REDACTED]
Clonmel	Construction of a new house for employee's use	[REDACTED]
Clonmel	Irrigation upgrade-from rototrainers to pivot irrigation	[REDACTED]
Makaiwai	Irrigation upgrade-from rototrainers to pivot irrigation	[REDACTED]
Makaiwai	Installation of in-shed feeding	[REDACTED]

Farmland advertising

s16(1)(f) of the Act.

The Regulations require farm land or farm land securities to be offered for acquisition on the open market to non-overseas persons for at least 20 working days (or longer if the advertisement states or implies that offers will be accepted for that longer period). The purpose of such advertising is to ensure non-overseas persons have reasonable notice that they are available for acquisition. The Regulations do not require that the vendor accept any alternative offer made by a non-overseas person.

80. We have reviewed the advertising of the Investment, and consequently the interest in the land, and are satisfied that it complies with the advertising procedure set out in the Regulations.
81. The advertising is discussed below, as is the process Dairies Group undertook to locate Fiera Comox Partners as an investor via the Applicant.

Search for an Equity Partner

82. In August 2016 Dairies Group engaged PwC to identify a suitable investor to raise capital for its business. [REDACTED]

- a) [REDACTED]
- b) [REDACTED]
- c) [REDACTED]

83. [REDACTED]

Reasons Fiera Comox was selected

84. Dairies Group considered Fiera Comox Partners to be a suitable investor due to their extensive experience in the farming and horticulture industries including a partnership with one of the world's leading commodity trading companies and investments in:
- a) a world leading bovine monitoring technology company;
- b) a pioneering firm in the maize industry;
- c) food services company in Japan; and
- d) carbon banking project.
85. The Applicant states that Fiera Comox Partners also has relationships with major fruit retailers and marketers in North America such as Wal-Mart and Trader-Joe's which would assist Dairies Group to enter that market strongly.
86. In August this year Fiera Comox Partners entered into a partnership with Auvil Fruit¹⁷, which is a top 20 producer of apples and cherries in the USA. One of the varieties Auvil Fruit grows is honeycrisp and it sells approximately 70% of its apples in the United States with the balance exported. The Applicant submits Fiera Comox's partnership with Auvil Fruit will open a logical channel through which the apples produced by Dairies Group could be marketed in the United States.
87. Fiera Comox Partners has a team which evaluates and studies food production and consumption trends, in all sectors of the industry.

Advertising

88. [REDACTED]
89. PwC, on behalf of Dairies Group, conducted advertising of the Investment after the Subscription was entered into, ie after the First Tranche was acquired. The agreement between the Applicant and Dairies Group allowed Dairies Group to cancel the Second Tranche in order to accept offers received from other parties if it wished to accept another offer.

¹⁷ <http://www.auvilfruit.com/>

90. Both online and print advertising was undertaken during July and August 2018 in order to comply with the procedure in the Regulations. PwC received [REDACTED] enquiries, but ultimately no offers were received.

What is likely to happen without the investment (Counterfactual)

91. If the Applicant did not make the Investment we consider that in the short to medium term Dairies Group would continue to operate the Farms and continue to advertise for investors for the 43.4% share in it ("**Share**"). In the long term we consider an alternative New Zealand purchaser ("**ANZP**") or ANZPs would invest in the Share thereby owning an interest in the Farms.
92. There are two key questions to determine what is likely to occur without the Investment:
- (a) who is likely to own the Land? and
 - (b) what is the likely use of the Land?

Who is likely to own the Land

93. The Applicant claims that the Founding Partners do not want to exit the Investment and sell the Farms and that there is no other purchaser for the Share. [REDACTED]

[REDACTED] The Applicant considers that without outside investment it cannot continue to grow the business.

94. In reaching its assumed counterfactual the Applicant has considered the below scenarios:

Multiple smaller investors

95. The Applicant has considered whether multiple small investors could purchase the Share between them and discounted this as a viable possibility. This is because:
- (a) it considers such capital raising would be subject to the Financial Markets Conduct Act 2013 and would require product disclosure statements and would be a costly process;
 - (b) smaller investors are likely to want the ability to easily enter and exit an investment at any time;
 - (c) it would be extremely difficult to find enough smaller investors to invest a total of [REDACTED] and
 - (d) the "cost and administrative and value efficiency" of a syndicated investment such as this would be materially less favourable to Dairies Group than the proposed investment by the Applicant.
96. The Applicant claims the apples are only expected to start generating profit approximately [REDACTED] and any capital expenditure is not expected to be recovered until almost [REDACTED]

Cropping Investor

97. The Applicant has also considered whether a cropping entity would invest in the Share. The Applicant considers a business such as this would be unlikely to invest in a minority interest in what is currently solely a dairying business.

Our conclusion

98. We consider that Dairies Group will continue to own the Farms and the Share in the short to medium term but will continue to seek investors for the Share. We accept this is likely to lead to some capital constraints on Dairies Group but these are unlikely to severely affect the current operation of the dairy farms. In the long term we consider an ANZP or ANZP's are likely to invest in the Share, thereby gaining an interest in the Farms.

What is the likely use of the Land

99. The Applicant considers the land will continue to be used as dairy farms as it will be owned by Dairies Group who will not have the capital to undertake any of the developments the Investment would enable such as installing pivot irrigation, developing the Orchard and installing in-shed feeding. Further the Founding Partners do not wish to sell the Farms.

Our Conclusion

100. We agree the Farms are likely to be retained and the land used for dairy farming. We consider that the Orchard would not be developed and due to the high capital cost, and the pivot irrigation would not be installed. However in shed feeding is relatively common with 1/3 of New Zealand farms using in shed feeding so we consider this is likely to be installed under the counterfactual and due to its relatively low cost we also consider the housing is likely to be built to attract staff.

Consultation and submissions about the investment

Consultation with New Zealand Walking Access Commission

101. Please see paragraphs 147-150.

Consultation with Department of Conservation

102. DOC did not identify any significant areas or habitats on the properties but suggested the applicant maintain waterway fencing and tidy some marginal strips on the properties.

Consultation with Heritage New Zealand

103. Heritage New Zealand did not identify any areas requiring protection on the land. However they did recommend consulting with Ngai Tahu in relation to Bendigo Farm. As we are recommending consent be declined, we have not proceeded with further consultation.

Submissions

104. No third party submissions were received.

Overview of assessment: investment and benefit test

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Job opportunities (high relative importance)	Develop the Orchard and create additional 55 FTE associated with running the Orchard	The Orchard is unlikely to be developed so no additional FTE	Moderate weighting	The application form is unclear but it seems likely that at least 17 additional FTE are likely to be created. The additional 38 'FTE' represent a high number of seasonal roles each year between February and April, but are not permanent FTE roles. [REDACTED]	Because our provisional recommendation is that you decline this application, we have not recommended any special conditions. If you propose to grant consent, we can prepare draft special conditions and consult on these with the Applicant.	Paragraphs 107-117 s17(2)(a)(i)
Added market competition, increased productivity, efficiency, and enhanced domestic services	The Orchard will lead to added market competition for apples and an increase in the output of apples in the Canterbury region. The introduction of pivot irrigation will lead to an increase in production of milk solids and greater efficiencies on the Farms.	Pivot irrigation would not be installed and the Orchard would not be developed so no apples would be grown and milk production from the Land wouldn't increase	Moderate weighting	The apples grown on the Orchard will lead to increased market competition with other growers in the region and increased apple production. The pivot irrigation will result in increased production of milk solids and Farm efficiencies.		Paragraphs 126-139 s17(2)(a)(iv)

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Increased export receipts <i>(high relative importance)</i>	Development of the Orchard will lead to an increase in export receipts of approximately \$13 million per annum. Increase in milk solid means a corresponding increase in exports as most of New Zealand's dairy products are exported.	Pivot irrigation would not be installed and the Orchard would not be developed so there would be no apples exported and no increase in milk production.	Moderate weighting	development of the Orchard is likely to lead to an increase in export receipts of approximately \$13 million per annum.		Paragraphs 118-125 s17(2)(a)(iii)
Increased processing of primary products <i>(high relative importance)</i>	The Applicant claims its proposed developments will lead to a ■ increase in milk solid production, which accordingly will need to be processed.	In-shed feeding is likely to be introduced in any case, but the pivot irrigation is not. As such there will be some increase in milk solid production, although it is unclear in what volume, but it is likely to be less than the ■ increase claimed by the Applicant.	Low weighting	We consider that Applicant's installation of pivot irrigation is likely to lead to an increase in milk solid production and the subsequent processing of the milk solids, although the exact amount is unclear and likely to be below ■.		Paragraphs 140-146 s17(2)(a)(vi)
Oversight and participation by New Zealanders <i>(high relative importance)</i>	The Applicant will increase its ownership interest to 68.3% but the shareholders agreement will ensure New Zealand interests retain 60% control of the board of Dairies Group.	There would be New Zealand oversight and participation	Moderate weighting	New Zealanders will have a significant level of oversight and participation in the investment.		Paragraphs 165-167 reg28(j)

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Walking access	Comply with DOC's recommendations to create public access alongside the Rangitata and Clutha Rivers.	No public access will be created.	Low weighting	We consider that the Investment is likely to create public access alongside the Rangitata River and the Clutha River.		Paragraphs 147-150 s17(2)(e)
Consequential benefits	The Applicant made a number of claims discussed in paragraphs 150-165	Please see paragraphs 150-165	Moderate weighting	We consider that there will be some consequential benefit provided to New Zealand through the resulting environmental benefits of development the Orchard and introduction of pivot irrigation, made possible by the Applicant's Investment.		Paragraphs 151-164 reg28(a)

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105. The section below sets out our discussion in relation to factors under which we consider the proposed investment is likely to result in benefit to New Zealand.
106. Factors that we considered were either not relevant to the investment, or the benefit to New Zealand was not sufficient to be relied on, are discussed in **Attachment 4**.

Job opportunities (high relative importance factor)

There are three key elements to this factor (s17(2)(a)(i) of the Act):

- The "new job opportunities" must be **new**, or if existing jobs are being "retained", the existing jobs **would or might** otherwise be lost if the investment does not proceed;
- The new job opportunities or retained jobs must be **in New Zealand**;
- The new job opportunities or retained jobs that are **likely to result** from the overseas investment must be **additional** to those which are likely to occur **without the overseas investment**.

107. We consider that the development of the Orchard is likely to result in the creation of roles as well as the retention of the existing roles employed by Dairies Group.
108. Dairies Group currently employs [REDACTED] full time equivalent ("FTE") on-farm workers, approximately 1 farm worker to each [REDACTED] cows. It employs a further [REDACTED] FTE in its contracting and grazing business units and 6 contractor FTE management and administration roles¹⁸. We calculate this to be [REDACTED] FTE or [REDACTED] FTE excluding the [REDACTED] contractors.
109. The Applicant submits it will create an additional 55 FTE on-farm roles, as well as 3 FTE off farm staff as follows:

Job Title	Number	Approximate salary/wage
Orchard Manager	1	[REDACTED]
Assistant Managers	2	[REDACTED]
Leading Hands	4	[REDACTED]
Full time Orchard Hands	10	[REDACTED]
Seasonal Labour	38 ²⁰	[REDACTED]
Supervisor/Operations Manager	1	[REDACTED]
HR and Administration staff	2	[REDACTED]

110. The Applicant states that an additional 20-25 non-permanent FTE roles will be required for 3 years largely due to the development of the Orchard.
111. The 38 'FTE' referred to in the table above, actually refers to a much larger number of short term roles between February and April each year (up to around 111 at peak time in March). We accept that these roles are likely to be created, but do not

¹⁸ Contractors via Wilfarm Enterprises

²⁰ The Applicant states this figure is the total number of seasonal FTE required averaged over a 12 month period.

consider that they should be characterised as FTE given their short-term seasonal nature. Rather, these are recurring seasonal roles.

112. The Applicant has stated in its investment plan that the 55 FTE will be retained or created. It appears that the Applicant has made an error in stating this and that these FTE are all created. Further, the Applicant has not directly addressed whether the loss of some milking platform for the Orchard would result in a reduction of dairying roles.

Counterfactual

113. [REDACTED]
114. We do not consider that an ANZP would develop the Orchard so the FTE created due to this development would not occur.

Our Assessment

115. We consider that new roles would be created in relation to the Orchard that would not be created without the Investment. It is unclear whether all of the claimed roles would be created, or if some are 'retained' [REDACTED]
116. Of the roles created we note that the majority are seasonal workers. Dairies Group currently employs 6 FTE in management and administration roles. It is not clear to us why a further 3 management and administration roles off farm roles would be required in addition to these existing roles. As such we do not accept the additional 3 management and administration FTE roles as likely to occur.
117. Despite the confusion created by the Applicant in its application, and while we are unable to satisfy ourselves as to the number of FTE created, we consider that the development of the Orchard is likely to result in the creation of additional FTE [REDACTED] We have accorded this factor a **moderate weighting**.

Increased export receipts (high relative importance factor)

There are two key elements to this factor:

- **Export receipts** must be likely to be **increased**.
- The increased export receipts that are **likely to result** from the overseas investment must be **additional** to those which are likely to occur **without the overseas investment**.

118. We consider that the development of the Orchard is likely to lead to an increase in export receipts of approximately \$13 million per annum.

Apple Exports

119. The Applicant intends to grow Honeycrisp and Ambrosia apples. At maturity the Applicant claims the Orchard will produce [REDACTED] tonnes of apples ([REDACTED] cartons) per annum for export which equates to export receipts of \$13 million per annum. The Applicant states that \$7.2 million of this will come from growing Honeycrisp,

which equates to 8% of the North American export market (New Zealand apple exports to North America being \$90 million).²¹

120. The apples will be exported to North America, due to Fiera Comox Partners existing distributor relationships there. Further Fiera Comox Partners new partnership with Auvil Fruit will open another channel for distribution and marketing in the USA.

Milk production

121. The Applicant considers the Investment will allow Dairies Group milk solid production to be increased by approximately [REDACTED] equating to approximately [REDACTED] per annum. Dairies Group production figures for the last 3 years appear in the table below:

Year	Effective milking area (ha) ¹	Production (kgMS)	Peak cows milked	kgMS/ha	kgMS/cow
FY17	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
FY18	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
FY19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

122. Fonterra Co-Operative exports 95% of the milk production it processes, so the Applicant considers that 95% of Dairies Group milk production, both current and future, are exported.

Counterfactual

123. We do not consider that an ANZP would develop the Orchard so the export receipts generated due to this development would not occur.
124. Further we consider the introduction of pivot irrigation is unlikely to occur under the counterfactual, so export receipts generated as a result of increase in milk production are unlikely to occur.

Our Assessment

125. We consider that the development of the Orchard will provide an increase in the export of apples from New Zealand of approximately \$7.2 million. There will also be an increase in milk production due to installation of the pivot irrigation. However, we consider the increase in milk solid production to be relatively minor in the context of the investment. We consider the benefit created to be of **moderate weighting**.

Added market competition, greater efficiency or productivity, enhanced domestic services

There are three key elements to this factor (s17(2)(a)(iv) of the Act):

- The overseas investment must be likely to result in one or more of:
 - (i) **added market competition;**
 - (ii) **greater efficiency or productivity; or**
 - (iii) **enhanced domestic services.**
- The added market competition, greater efficiency or productivity, or enhanced domestic services must occur in NZ.
- The added market competition, greater efficiency or productivity, or enhanced domestic services that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur without the overseas investment.

²¹ For the year ended 30 June 2018, New Zealand Institute for Plant and Food Research Ltd Fresh Facts: New Zealand Horticulture, 2018

126. We consider that development of the Orchard is likely to lead to added market competition for apples in the Canterbury region and an increase in the output of apples in the region. Further we consider the introduction of pivot irrigation is likely to result in greater production in milk solids and greater efficiencies on the Farms.

Added market competition

127. The Applicant claims development of the Orchard will result in added market competition in the New Zealand apple market. Currently, the majority of New Zealand grown apples are grown in the Hawkes Bay and Nelson²², with only 312 hectares in Canterbury. The addition of 100 planted hectares would be a substantial increase in planted apples for the region.
128. The Applicant submits that Canterbury has soil which is well suited to growing apples and is currently underutilised for fruit production.

Counterfactual

129. The Applicants considers that the Orchard would not be developed and as such there would be no added market competition. While we consider that in the long term an ANZP or ANZP's are likely to invest in Dairies Group, we do not think their investment is likely to enable development of the Orchard so there would be no added market competition.

Our Assessment

130. We consider that the Applicant's investment in Dairies Group will enable the development of the Orchard which will markedly increase the volume of apples produced in the Canterbury region (by almost 1/4).

Greater productivity

131. Once the Orchard has reached maturity, the Applicant submits it will be producing 6,025 tonnes of apples each year.
132. Further the Applicant claims the introduction of in-shed feeding and pivot irrigation systems will result in an increase in production of milk solids in the amount of [REDACTED] kgMS by financial year 2022. The Applicant states this increase will occur despite a 7% reduction in the milking area of the Farms. The Applicant claims pivot irrigation will lead to an increase in productivity as it will help grow more grass of a consistent higher quality on the Farms.

Counterfactual

133. We do not consider that an ANZP would develop the Orchard or install pivot irrigation, although they may develop in-shed feeding systems. A DairyNZ report found that in 2013²³, one third of farmers used such feeding systems. Given that they in-shed feeding seems to be relatively common, we consider that while Dairies Group may not introduce this development in the short to medium term, an ANZP in the long term may do so.

Our Assessment

134. We consider that the development of the Orchard will result in greater productivity by increasing the volume of apples grown. We do not consider enough evidence has been provided by the Applicant to evidence the increase in milk solids will occur as a result of the in-shed feeding.
135. We consider that there will be greater productivity on the farms due to the apples grown on the Orchard and the installation of the pivot irrigation.

²² Statement and Outlook for Primary Industries, June 2019, pg 40

²³ <https://www.dairynz.co.nz/news/latest-news/is-there-value-in-individual-cow-feeding/>

Greater efficiency

136. The Applicant has claimed that the irrigation changes on the Farms will lead to efficiencies with the regularity and consistency of water application and thereby reduce the nutrient leaching of the Farms operations.
137. Further the Applicant considers the introduction of in-shed feeding will lead to greater efficiencies in feeding the cattle.

Counterfactual

138. Due to the high capital cost of the introduction of pivot irrigation we consider that Dairies Group is unlikely to introduce it without the Applicant's investment, nor is an ANZP likely to introduce it.
139. As regards the introduction of in-shed feeding, we consider that in the long term an ANZP investor would do so.

Our Assessment

140. We consider that the introduction of the pivot irrigation on the Farms is likely to lead to greater efficiency of water application and result in a reduction of nutrient leaching into the soil.

Overall conclusion

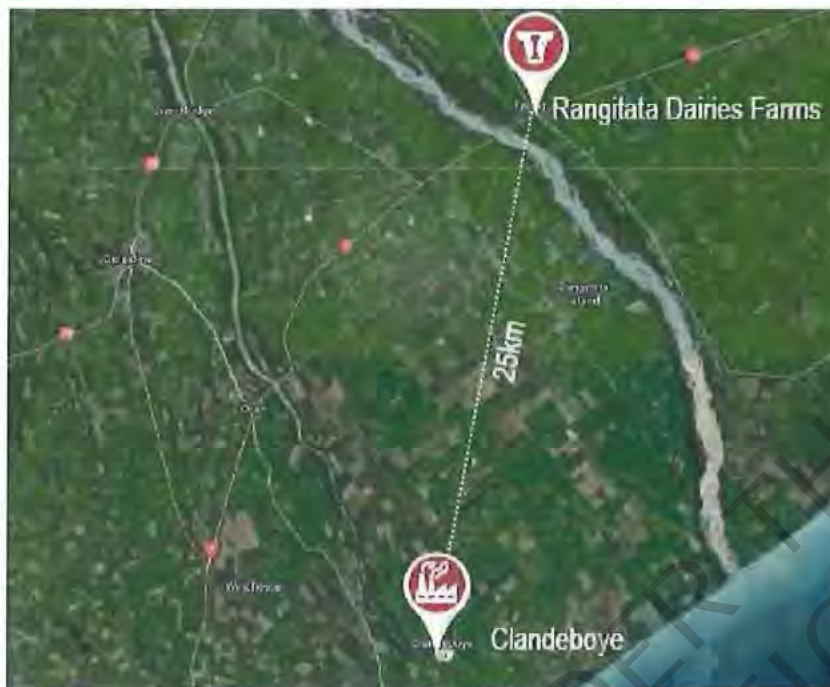
141. We consider that overall the benefit to New Zealand created under this factor should be given a **moderate weighting**.

Increased processing of primary products (high relative importance factor)

There are three key elements to this factor (s17(2)(a)(vi) of the Act):

- Processing of primary products must be likely to increase.
- The increased processing of primary products must occur in **New Zealand**.
- The increased processing must be of **New Zealand's primary products**.
- The increased processing that is likely to result from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

142. We consider the Investment is likely to lead to an increase in milk processing.
143. The Applicant claims its proposed developments will lead to a [REDACTED] increase in milk solid production, which accordingly will need to be processed.
144. All of Dairies Group milk is collected by Fonterra and most of it is processed at the nearby Clandeboye facility, which is one of Fonterra's largest milk processing facilities with capacity of 12.4 million litres a day. The proximity of the Farms to Clandeboye is shown in the picture below:



145. The Applicant submits that Clandeboyne is known for producing higher value export products such as mozzarella cheese, and that therefore the Applicant's product is likely to be processed into these more expensive products. There is however no certainty that this would occur.
146. The Applicant has made no claims that the apples grown on the Orchard will be processed into anything.

Counterfactual

147. We consider the in-shed feeding is likely to be introduced, but the pivot irrigation is not. As such there will be some increase in milk solid production, although it is unclear in what volume, but it is likely to be less than the [REDACTED] increase claimed by the Applicant which we do not consider to be a large increase in any event.

Our Assessment

148. We consider that Applicant's installation of pivot irrigation is likely to lead to an increase in milk solid production and the subsequent processing of the milk solids. We consider this benefit should be accorded a **low weighting** due to the relatively small increase.

Walking access

There are four key elements to this factor (s17(2)(e) of the Act):

- There must be **adequate mechanisms** in place or proposed to **provide, protect or improve walking access**.
- The walking access must be over the **relevant land**.
- The walking access must be **available to the public** or any section of the public.
- The provision, protection or improvement of walking access that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

149. We consider that the Investment is likely to create public access alongside the Rangitata River and the Clutha River.
150. The Applicant consulted directly with the Walking Access Commission ("**WAC**") who recommended the following:

- a) Creating a marginal strip or an esplanade strip alongside the Rangitata River;
- b) Erect a sign advising the public that walking access to the Rangitata River is available;
- c) Ensure access to the public is available from Rangitata Island Road to the Rangitata River; and
- d) Creating an esplanade strip alongside the Clutha River.

Counterfactual

151. Public walking access is unlikely to be made available.

Our Assessment

152. We consider that the investment will enable public access to the Rangitata and Clutha rivers, and accord it a **low weighting**.

Consequential benefits

There are three key elements to this factor (reg28(a) of the Regulations):

- There must be a **consequential benefit to New Zealand**.
- The benefit must not have been considered under another factor, it must be **another** consequential benefit.
- The consequential benefit that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

153. We consider that there will be some consequential benefit provided to New Zealand through the capital expenditure by Dairies Group and the resulting environmental benefits of development the Orchard and introduction of pivot irrigation, made possible by the Applicants Investment.

154. The Applicant has made a number of claims under this benefit factor, discussed further below.

Environmental benefits and reduced nitrogen loss

155. The Applicant claims that development of the Orchard will convert areas currently used for dairy into permanent crops. It considers this will stabilise the land and will have a flow on effect to soil and water quality. Further the lack of cattle on the Orchard will reduce nutrient losses.

156. It submits that soils on Canterbury properties are free draining, and some have high Nitrogen leaching risk. Planting some of those areas with crops is likely to decrease the amount of Nitrogen leaching that occurs (a potential reduction of up to 90%).

157. The Applicant states installation of pivot irrigation on 5 of the Farms will also lead to reduced nitrogen loss. It claims pivot irrigation enables an even dispersal of water to the soil more efficiently and effectively, which leads to more nutrients being retained in the soil than with traditional rototrainer irrigation. This in turn increases the likely grass output, reduces nutrient leaching and is therefore better for the environment, the grass is able to absorb nutrients as it grows, rather than the nutrients being leached into the soil as a result of over-watering. The Applicant claims the change to pivot irrigation on 5 of the Farms alone is likely to lead to a reduction in nitrogen leaching by 20-30% on the upgraded areas.

158. When Nitrogen levels in soil reach a saturation point, the Nitrogen leaches out, and takes out calcium and magnesium, which acidifies the soil. The bulk of human Nitrogen release (which itself is the greatest contributor to the global Nitrogen cycle) comes from agriculture. Accordingly, the Applicant submits that reducing Nitrogen on the farms is a benefit to New Zealand.

159. Environment Canterbury Regional Council's ("ECAN") website contains a mapping tool which demonstrates whether ECAN's water quality outcomes have been met on land in the region. According to this site²⁴ water quality outcomes are not met on 3 of the Farms to be converted to pivot irrigation²⁵ and also not met on 3 other Farms²⁶.

Counterfactual

160. The Applicant considers that there would be no reduction in nitrogen loss under the counterfactual as the Orchard would not be developed, pivot irrigation would not be installed and nor would in-shed feeding. We agree with this counterfactual, except we consider in-shed feeding is likely to be developed.

Our Assessment

161. We consider that development of the Orchard and installation of pivot irrigation is likely to result in a reduction in nitrogen loss, however we consider that pivot irrigation may be required to be installed on the 3 Farms where water quality outcomes for the region have not been met in any case, which reduces the benefit to the introduction of pivot irrigation on Rangitata One (where water outcomes are largely met) and Makaiwai (where water quality outcomes are entirely met).

Creation of a new horticultural hub

162. The Applicant claims development of the Orchard will form the foundation for a fruit industry in Canterbury. While we acknowledge that fruit growing in Canterbury is on a small scale²⁷ we do not consider that development of a 100 hectare orchard is of a sufficient scale to consider it likely to spark a significant change and create any benefit to New Zealand.

Benefit to regional communities

163. The Applicant claims the fruit industry in Canterbury is underdeveloped. It considers this diversification into horticulture will open opportunities to partner with local education institutes and provide paid summer internships and work experience opportunities. Further the Applicant believes development of the Orchard lead to a \$23.77 million lift in the regional economy per annum. While we acknowledge that there is likely to be some benefit to the local community, we consider there is insufficient evidence to be able to assess the level of such benefit at this stage.

Positive signalling of responsible investment for New Zealand

164. The Applicant considers the Government is signalling the need for change in the dairy sector and this Investment will deliver change and serve as a model to others. The Applicant points to the Ministerial Directive Letter as evidence of this. We acknowledge that the Applicant is taking an initial first step to convert its business, however, do not consider the scale of the Orchard or the evidence provided to be enough to consider whether any consequential benefit would occur because of the Investment.

Other claims

165. The applicant also made other various claims including the sale of its milk products to Fonterra; Dairies Group being made a flexible and resilient business because of the Investment; access to expertise via Fiera Comox Partners; access to technology and innovation via Fiera Comox Partners. We do not consider sufficient arguments have been raised by the Applicant to assess whether any benefit occurs.

²⁴ <https://eplan.ecan.govt.nz/eplan/#/Property/2464024000>

²⁵ Clonmel, Longstream and Rangitata Two

²⁶ Mowata, Shelbron and McNab.

²⁷ <https://teara.govt.nz/en/stone-fruit-and-the-summerfruit-industry/page-2>

Overall conclusion

166. We consider that the consequential benefits created by the Investment are overall of **a moderate weighting**.

Oversight and participation by New Zealanders

There are three key elements to this factor (reg28(j) of the Regulations):

- There must be persons who are not overseas persons (**New Zealanders**);
- The New Zealanders must be **likely** to be able to **oversee or participate** in the overseas investment or any relevant overseas person;
- The overseeing or participation must be in the **overseas investment** or **any relevant overseas** person.

This factor is relevant to all overseas investments in sensitive land.

167. We consider that New Zealanders will have oversight and participation in the Investment.
168. If consent is granted, the Applicant will increase its total interest in Dairies Group to 68.3% and the existing New Zealand interests in Dairies Group will retain a 31.7% interest. In addition, the shareholders' agreement will be amended such that the New Zealand interests will have the ability to control the appointment of 60% of the board of Dairies Group. The Applicant submits this represents a material ownership or control interest even after the Investment is completed.

Our Assessment

169. We consider that the Investment will result in New Zealanders maintaining oversight and participation in Dairies Group as it will control the board of that entity. We consider the benefit to be of **moderate weighting**.

Provisional conclusion – benefits test

Benefit test

170. For consent to be granted, the Applicant must demonstrate:
- a) that the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
 - b) that the benefit will be, or is likely to be, substantial and identifiable.
171. We have assessed the benefit likely to result from this Investment in accordance with the rural land directive contained in the Ministerial Directive Letter.
172. We have undertaken our assessment having regard to the characteristics of the land and the nature of the interest being acquired (reflecting the proportional nature of the benefit test). Here the Applicant is acquiring an additional 43.4% in Dairies Group, increasing its ownership in Dairies Group to 68.3%, and thereby acquiring an interest in 4,840 hectares of land, 4,771 hectares of which is sensitive.

Ministerial discretion

173. Determining whether the investment is likely to result in substantial and identifiable benefit is ultimately a matter to be decided by Ministers and involves the exercise of Ministerial judgement. Ministers also have discretion under section 17(1)(c) of the Act to determine the relative importance to be given to each relevant factor (or part).

Rural land directive

174. In relation to rural land, the Ministerial Directive Letter states:

"The primary sector, and the rural land it is based on, forms a particularly important part of the New Zealand economy.

The Act acknowledges the privilege associated with the ownership or control of rural land is greater than for non-rural land by requiring the benefits resulting from the overseas investment to be substantial and identifiable (a higher threshold).

The merits of overseas investment in the primary sector can be less compelling given that we are already world leaders in this area. The Government is therefore concerned to ensure that the benefits from overseas investments in rural land are genuinely substantial and identifiable."

175. The Ministerial Directive Letter provides that the following factors will generally be of high relative importance:
- a) the 'jobs' factor;
 - b) the 'new technology or business skills' factor;
 - c) the 'increased exports receipts' factor;
 - d) the 'increased processing of primary products' factor; and
 - e) the 'oversight and participation by New Zealanders' factor.
176. We do not consider that any other factor should be given high relative importance in the context of this Investment.

Provisional conclusion

177. After careful consideration of the application, we are satisfied that the Investment is likely to result in the benefits outlined in the table at paragraph 7 of the executive summary and **Attachment 8**.
178. Our provisional view is that the Applicant has **not met** the benefits test. On balance, we consider that, taking into account the size and nature of the Land and the interests being acquired, the Investment is **unlikely** to result in substantial and identifiable benefit to New Zealand.
179. In this regard, we note the size of the Investment being up to a 68.3% interest in 4,771 hectares which is a substantial area of existing dairy farms balanced against the benefits created by the Investment which largely result from the planting of 111 hectares in apples. The key benefits include
- a) creation of 55 FTE (38 of which are seasonal non permanent roles);
 - b) increased production of apples in the Canterbury region as well as a small increase in production of milk solids;
 - c) export receipts of \$13 million from the apple production;
 - d) oversight and participation by New Zealanders and
 - e) a reduction in nitrate leaching on the Farms resulting from the change to pivot irrigation.
180. Overall, when examined together, we consider that the benefits resulting from the the investment are **unlikely to be substantial and identifiable** in the context of the acquisition of up to 68.3% interest in 4,771 hectares of existing farm land.

Provisional recommendation

181. Our provisional recommendation is to **decline consent**, as while we consider that the investor test has been met, we do not consider the benefits test has been met.
182. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and to paragraphs 7 to 10 of the overview of this Assessment Report to record your decision.

List of Attachments

1. Proposed Decision
2. Guidance for applying the Act
3. Ownership of Rangitata Dairies Partnership & Rangitata Dairies GP
4. Enforcement letter to the Applicant
5. Other benefit factors
6. Sensitive land details
7. Good character
8. Overview tables

List of other documents in the Bundle

- A. Application
- B. Investment Plan (Appendix 1 of the Application)
- C. Founding Partners Letter

ATTACHMENT 1 – DRAFT PUBLIC DECISION NOTICE

Notice of Decision Case: 201810160

Decision Date

[]

Decision

Consent is declined under the Overseas Investment Act 2005 to Mercury Agriculture Ltd Partnership to give effect to an overseas investment in sensitive land and significant business assets, being the acquisition of up to a 68.3% interest in Rangitata Dairies Limited Partnership and Rangitata GP Limited which has:

- a freehold interest in approximately 519 hectares of land at 907 Arundel-Rangitata road, Rangitata, Geraldine; and
- a freehold interest in approximately 704.1969 hectares of land at 208 Lewis Road, Rangitata, Geraldine; and
- a freehold interest in approximately 0.8498 hectares of land at 24 Taylor Street, Rangitata, Geraldine; and
- a freehold interest in approximately 454.1339 hectares of land at 486 Seaward Road, Rangitata, Geraldine; and
- a freehold interest in approximately 211.8009 hectares of land at 153 Rangitata Island Road, Temuka; and
- a freehold interest in approximately 144.2414 hectares of land at 397 Old Main South Road, hinds, Ashburton; and
- a freehold interest in approximately 544.1672 hectares of land at 469 Ealing Road, Ealing, Ashburton; and
- a freehold interest in approximately 313.2035 hectares of land at 500 Coldstream Road, Hines, Ashburton; and
- a freehold interest in approximately 816.4275 hectares of land at Ardgour Road, Bendigo, Cromwell; and
- a freehold interest in approximately 234.0012 hectares of land at 710 Arundel Rangitata Road, Rangitata, Geraldine; and
- a leasehold interest in approximately 12.5 hectares of land located at Rangitata-Orari Bridge Highway; and
- a leasehold interest in approximately 108 hectares of land located at 189 Rangitata Island Road, Temuka; and
- a leasehold interest in approximately 2.0234 hectares of land located at Old Main South Road, Ashburton; and
- a leasehold interest in approximately 317.4326 hectares of land at 551 Barford Road, Ashburton; and
- a leasehold interest in approximately 172.7095 hectares of land at 65 Anama Station Road, Anama, Ashburton.

Minister Sage and Associate Minister Clark were not satisfied that all of the criteria in section 16 of the Overseas Investment Act 2005 were met.

ATTACHMENT 2 - GUIDANCE FOR APPLYING THE ACT

1. The contract for this transaction was entered prior to the commencement of the Overseas Investment Amendment Act 2018 (**Amendment Act**), so the version of the Overseas Investment Act and the Overseas Investment Regulations in force immediately before its commencement continue to apply to this application as if the Amendment Act had not been enacted.
2. Ministers must grant consent to this overseas investment if they are satisfied that all of the criteria in sections 16 and 18 of the Overseas Investment Act are met. They must decline to grant consent if they are not satisfied that all of the criteria in sections 16 and 18 are met. Ministers must not take into account any criteria or factors other than those identified in sections 16, 17 and 18, and regulation 28 of the Overseas Investment Regulations.
3. Where the criteria under sections 16 and 18 are the same, Ministers need only consider each criterion once.
4. In the attached Report the Overseas Investment Office identifies each of the criteria and factors under sections 16, 17 and 18, and regulation 28 that Ministers are required to consider in this case.

“Benefit to New Zealand criteria”

5. In this case, section 16 requires Ministers to decide, among other things, whether they are satisfied in relation to the following “benefit to New Zealand” criteria:
 - (a) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined under section 17 (section 16(1)(e)(ii)); and
 - (b) that benefit will be, or is likely to be, substantial and identifiable (section 16(1)(e)(iii)).
6. The application of the benefit to New Zealand criteria involves the exercise of Ministerial judgement. The fact that responsibility for making this decision has been conferred on Ministers confirms that this is a high-level decision with significant policy content. That is also apparent from the language and content of the factors that must be considered, many of which require a high degree of evaluative judgement and are not capable of quantification or calculation.
7. In applying the benefit to New Zealand criteria, Ministers are required to consider each of the factors in section 17(2), determine which of the factors are relevant to the investment, and have regard to the relevant section 17(2) factors. The relative importance to be given to each factor is a matter to be determined by Ministers. In particular, the Act does not require economic factors to be given more weight than non-economic factors, or vice versa. It is a matter for you, in carrying out your overall evaluation, to decide what weight to give to each factor.
8. The decision concerning whether the benefit to New Zealand, or any part of it or group of New Zealanders, is substantial and identifiable under section 16(1)(e)(iii), involves a collective assessment of the relevant factors.

Justice Miller's "with and without test"

Economic factors

9. The High Court in *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147 ("*Tiroa E*") requires the "economic benefit" factors in section 17(2)(a) to be assessed on the basis of a "counterfactual test". That is, Ministers must consider with respect to each section 17(2)(a) factor whether the overseas investment is likely to result in a benefit to New Zealand over and above any benefit that will or is likely to result even if the investment does not proceed. It is only the additional benefit from the overseas investment that is relevant when applying the "benefit to New Zealand" criteria.

Non-economic factors

10. Although the position is not free from doubt, the better view is that the same question – will this benefit be achieved even if the overseas investment does not occur – should be asked in relation to the other "non-economic" factors listed in section 17(2)(b)-(e). The High Court judgment suggested²⁸ that there could be a benefit in respect of the non-economic factors even if the same benefit would be achieved in the absence of the investment. But as the Court noted²⁹, it is not easy to see how a benefit that will happen anyway could be regarded as substantial for the purposes of section 16(1)(e)(iii). We consider that Ministers should not treat benefits that are likely to be achieved in any event as contributing to the "substantial and identifiable benefit" criterion.

Regulation 28 factors

11. With regard to the factors in regulation 28 of the Overseas Investment Regulations 2005, Miller J noted that:

*The criteria listed in reg 28 deal, for the most part, with benefits that only an overseas buyer could provide or what may be loosely described as strategic considerations, so they do not require a counterfactual analysis.*³⁰

12. Many of the factors in regulation 28 are incapable of having a counterfactual analysis applied to them. However, as recognised by Miller J, there are some factors that may require a counterfactual analysis. The Overseas Investment Office has applied a counterfactual analysis where appropriate.

"Rural Land" Directive

13. The overseas investment involves the acquisition of 'rural land' being land that is non-urban and over 5 hectares in size (excluding any associated land) but excludes 'forest land'. Therefore, in accordance with directions from Ministers, we have treated the following factors as being of high relative importance:³¹
 - (a) the "jobs" factor (section 17(2)(a)(i));
 - (b) the "new technology or business skills" factor (section 17(2)(a)(ii));
 - (c) the "increased exports receipts" factor (section 17(2)(a)(iii));
 - (d) the "increased processing of primary products" factor (section 17(2)(a)(vi)); and

²⁸ *Tiroa E* at [36].

²⁹ *Tiroa E* at [38].

³⁰ *Tiroa E* at [36].

³¹ Ministerial Directive letter date 28 November 2017, paras 13-17.

- (e) the “oversight and participation by New Zealanders” factor (regulation 28(j)).

Conditions

14. Conditions may be imposed on any consent that is granted, under section 25. As we have recommended that you decline consent to the overseas investment, we have not proposed any conditions of consent
15. If you propose to grant consent, the Overseas Investment Office may propose conditions of consent which you may consider imposing. If, in the exercise of your discretion, you are satisfied that the criteria in section 16 are met, please advise the Overseas Investment Office so that conditions can be drafted and provided to the Applicant for comment before you make a final decision.

Decision

16. The decision that you are required to make should be based on information available to you that you consider is sufficiently reliable for that purpose. The information that the Overseas Investment Office has taken into account in making its recommendation is summarised in the attached Report.
17. If you propose to disagree with the decision of the other Minister, you should discuss your proposed decision with the Overseas Investment Office and the other Minister.
18. If, in the exercise of your discretion, you are satisfied that the criteria in section 16 are met, please inform the Overseas Investment Office. We will then request a statutory declaration from the applicant regarding the truth and correctness of the application and material supplied in subsequent correspondence. We will also prepare a report including a proposed notice of decision and proposed consent conditions for your consideration.
19. If required, staff from the Overseas Investment Office are available to brief you on the Office’s recommendations.

Good character criterion

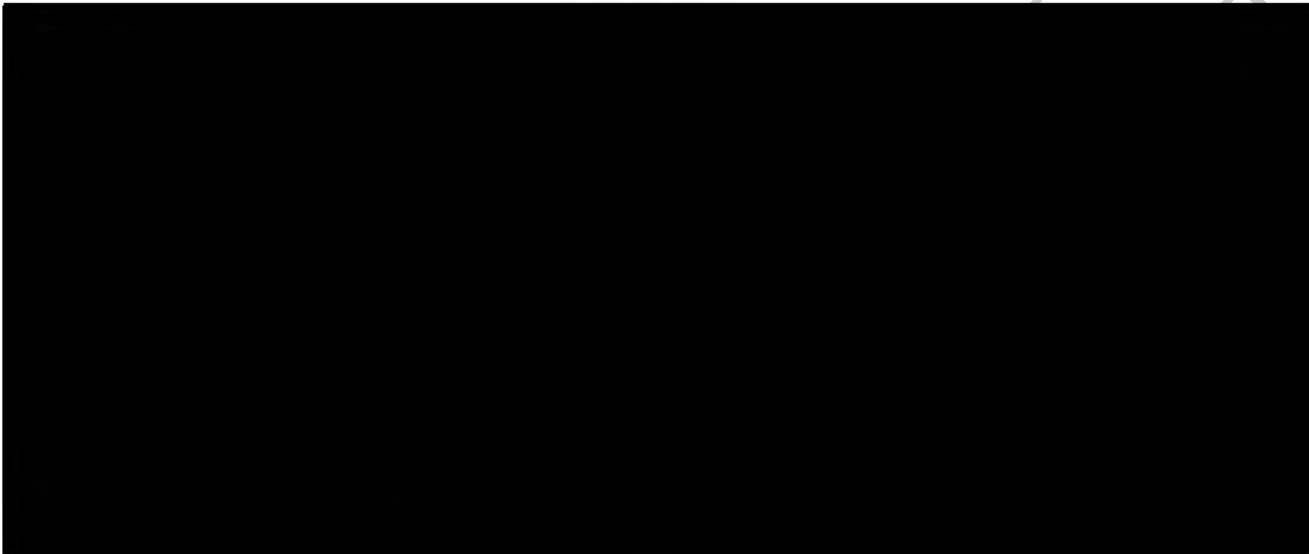
20. Section 16(1)(c) of the Act requires that Ministers be satisfied that the relevant overseas person or, (if that person is not an individual) all the individuals with control of the relevant overseas persons are of good character.
21. The term “good character” is not defined in the Act. The majority of the Select Committee reporting back on the Bill in 2005 confirmed that the “good character” test was needed as it is important to ensure that all persons investing in New Zealand are people unlikely to act inappropriately and bring New Zealand into disrepute.
22. When undertaking the good character assessment, Ministers must be satisfied that the character of all the individuals with control of the relevant overseas person is sufficient so that they should be granted the privilege of owning or controlling sensitive New Zealand assets.
23. The good character test is applicable to individuals, not entities such as body corporates. However, where the investment is to be carried out by a body corporate, the character of the relevant individuals who control the body corporate will need to be considered. Where an offence or contravention is committed by a person to which an individual had a 25% or more ownership or control interest, this is a mandatory consideration. Where the individual’s interest in the person is less than this, there generally must be other grounds to reasonably infer participation by the individual in the alleged wrongdoing.

24. Section 19(1) of the Act states that the following factors must be taken into account (without limitation) in assessing whether or not a person is of good character:
- (a) offences or contraventions of the law by the person, or by any person in which the individual has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not);
 - (b) any other matter that reflects adversely on the person's fitness to have the particular overseas investment.
25. All relevant matters must be weighted up before making a decision that an individual is of good character. If the decision-maker wishes to rely on a matter to which the applicant has not had an opportunity to respond, then such an opportunity to respond needs to be given to the applicant.
26. How much weight should be given to a particular matter depends on a number of factors, including how closely linked the particular matter is with the investment being made. While submissions on weighting given by the relevant overseas person or individual with control may be considered, the ultimate decision as to the weighting to be given to relevant matters is for the decision-makers.
27. Matters which might be relevant include:
- (a) Credible allegations of offending or contraventions of the law (assessing whether the allegation is sufficiently linked to an individual with control or relevant overseas person);
 - (b) Investigations, prosecutions or other enforcement action by regulatory or professional bodies;
 - (c) Track record in New Zealand.
28. Matters which are unlikely to be relevant include:
- (a) Adverse information that does not relate to an individual with control (for example, offences or contraventions by a relevant overseas person which occurred before the particular individual became involved with the relevant overseas person);
 - (b) Where the decision maker is satisfied that allegations about a relevant overseas person or individual with control have been fully investigated by the relevant regulatory or other authority and the person or individual has been cleared of any wrongdoing;
 - (c) Adverse information that does not impact on the character of a relevant overseas person or individual with control.
29. Briefly, some of the things we consider when weighing up "good character" include:
- (a) connection to the Individuals with Control (IWCs) or Relevant Overseas Person (ROP): we assess the level of control between any of the IWCs of the ROP and the particular matter. For example, a breach of safety rules by an employee of subsidiary company where the company was fined would likely have a low (or no) connection with an IWC who an executive director of the parent company was, whereas an executive decision by a company to illegally collude with a competitor would likely have a high connection with that IWC.
 - (b) relevance to this investment: we assess how relevant the particular matter is to the nature of this particular investment. For example, a dangerous driving conviction by an IWC would have low relevance in connection with the acquisition of a dairy farm, whereas a conviction for discharging farm effluent into a waterway would have a high relevance to the acquisition of a dairy farm.

- (c) what actions, if any, were taken to remedy the situation and reduce the chances of it reoccurring.
- 30. The onus is on the applicants to satisfy the decision maker that all the individuals with control are of good character.
- 31. If the decision maker has doubts about the character of an individual with control which result in it not being satisfied that the test for good character has been met, then the application for consent must be declined.

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**ATTACHMENT 3 – CURRENT OWNERSHIP OF:
RANGITATA DAIRIES LIMITED PARTNERSHIP; AND
RANGITATA GP LIMITED**



Rangitata GP Limited

THE PARTNERS	
Partner	Units
Te Māria South Limited	2,476
Willomere Limited	1,890
Claybrook South Limited	1,890
T Shirt Trustees Limited and J K Hamilton Trustee Company 2009 Limited as trustees of the T Shirt Trust	1,203
Dunvegan South Limited	786
Brian Digby Gallichan and Joanne Sophia Gallichan	1,462
M & K Parkes Limited	152
Demeter Capital Limited	151
Mercury Agriculture Limited Partnership	3,319
	13,329

ATTACHMENT 4 –ENFORCEMENT LETTER TO THE APPLICANT

OVERSEAS INVESTMENT OFFICE



Overseas Investment Office
Radio New Zealand House
155 The Terrace
PO Box 5501
Wellington 6145
New Zealand
+64 4 460 0110
www.linz.govt.nz

Our Ref: 201810197

18 March 2019

susie.kilty@buddlefindlay.com/hannah.lee@buddlefindlay.com

BY EMAIL

Attention: Susie Kilty/Hannah Lee

Dear Susie/Hannah

Mercury Agriculture Limited Partnership – acquisition of interest in Rangitata Dairies Limited Partnership and Rangitata GP Limited

1. Thank you for your letter of 10 December 2018 which we have now had an opportunity to consider.
2. Having reviewed the information provided, we advise that we do not agree with Mercury's submission as to the interpretation of s 6(4)(c) of the Overseas Investment Act (the Act).

Application of s 6(4)(c) to of the Overseas Investment Act 2005 to the Tranche 1 transaction

3. In your 10 December letter you stated Mercury's position is that the Tranche 1 transaction does not fall within s 6(4)(c) of the Act (and therefore did not require consent) for the following reasons:
 - (a) section s 6(4)(c) refers to *the right to exercise or control the exercise of...voting power* rather than *negative control and veto*;
 - (b) Mercury does not have any right or ability to direct other shareholders at a meeting of Rangitata GP on how to vote; and
 - (c) requiring a Minority Holder to be part of an approval is not equivalent to controlling how other shareholders exercise their votes. Mercury does not control the exercise of the remaining 75.1% of the voting power at a meeting of Rangitata GP shareholders and therefore does not have a *controlling voice* in respect of key decisions.
4. Having reviewed the information provided, we advise that we do not agree with Mercury's submission on this point.
5. The Act clearly requires consent to be sought when an overseas person obtains a certain level of control over a significant business asset and/or sensitive land.
6. In our view a court is likely to find the interpretation argued for by Mercury is, in the context of the Act, too narrow and is inconsistent with the purpose of the Act, namely the acknowledgment that it is a privilege for overseas persons to own or control sensitive New Zealand assets.

7. In our view the Tranche 1 investment most likely resulted in both an overseas investment in significant business and an overseas investment in sensitive land.
8. The Tranche 1 investment gave Mercury a level of control beyond its 24.9% ownership interest, and a level of control over voting outcomes we say the Act requires consent for. At the same time Mercury acquired its approximately 24.9% interest in Rangitata and Rangitata GP, it acquired the ability to control the outcome of all decisions on Reserved matters as set out in Schedule 3 of the Shareholders Agreement. In particular as Minority Holder, through the requirement that it must form part of the 75.1% majority for any Reserved matters to pass, it acquired the ability to control the outcome of any vote on key matters which are at the heart of the management of the significant business assets, including approval of the budget and business plan for the Group each year and milk supply contracts in excess of \$100,000.
9. We reject Mercury's argument that it does not have control for s 6(4)(c) purposes because it does not have the power to direct others on how to vote – Mercury does not need to have this power as they have an outright veto power on key matters.

Division of the Transaction into two Tranches

10. In addition to our view that the Tranche 1 transaction gave Mercury a level of control beyond its 24.9% ownership interest, we have concerns about the manner in which Mercury chose to structure this investment. While Mercury's acquisition of the shares was structured as two investments, our view is that it was treated by the parties and in particular Mercury as (and in fact is) one transaction in substance as:
 - (a) The transactions were provided for at the same time and within the same agreement;
 - (b) It appears the trigger for and rationale behind the two investments was the same – namely the lowering of Rangitata's debt to BNZ and acquisition of funding in an environment where BNZ (and likely other banks) were restricting lending;¹
 - (c) The Subscription Agreement itself explains Mercury (as the Subscriber) had agreed to invest in Rangitata and Rangitata GP. It defines "Transaction" as the "Subscriber's subscription for the Rangitata Interests and the Subscription Shares pursuant to the terms of this Agreement." There is no division between the two investments; and
 - (d) Whilst the payments by Mercury in relation to each Tranche were directed to separate matters, they were all broadly directed to repaying debt by Rangitata.
11. We could not identify any commercial explanation for the splitting of the transaction into two Tranches rather than seeking consent for the entire transaction at one time.

¹ Investment Plan, Appendix 1 of Application for Tranche Two consent, [1] – [20].

Outcome

12. Whilst we consider Mercury required consent for the Tranche 1 investment, we are mindful that this is an area where some applicants have struggled to understand the requirements of the Act and, given our current strategic enforcement priorities, do not intend to progress to a full investigation. Instead, we are using this letter to put your clients on notice as to our concerns with such transactions. Please note we will carefully look at any other splitting of transactions or negative control closely in any future dealings. We also intend to make a general public warning about such transactions.

Yours sincerely



Danielle Consedine
Senior Solicitor
Overseas Investment Office

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Email: dconsedine@linz.govt.nz

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ATTACHMENT 5 - OTHER BENEFIT FACTORS

1. The table **below** lists other factors in the Act and regulations for assessing the benefit of overseas investments.
2. We considered that the factors below were either not relevant to the Investment, or the benefit to New Zealand was not likely or sufficient to be relied on for purposes of our assessment.

Factor	Reason not relevant or insufficient
New technology or business skills – s17(2)(a)(ii) (high relative importance factor)	The Applicant considers that the grant of consent to this investment may lead to the introduction of new technology and business skills, due to its new association with Auvil Fruit. As the Applicant does not detail any specific introductions, this factor is not met.
Additional investment for development purposes – s17(2)(a)(v)	The Applicant considers that the subscription price paid by the Applicant should be considered additional investment for development purposes. This subscription price will be used partially to pay down debt, while the rest will be used to fund the Applicant's planned developments. While we acknowledge this money will be introduced into New Zealand, it is not separate from the acquisition price for the investment. It is not therefore "additional" investment as required by this factor.
Indigenous vegetation/fauna – s17(2)(b)	DOC did not identify any significant areas or habitats on the properties but suggested the applicant maintain waterway fencing and tidy some marginal strips on the properties.
Trout, salmon, wildlife and game – s17(2)(c)	DOC did not identify any significant areas of trout, salmon, wildlife or game on the properties.
Historic heritage – 17(2)(d)	The Applicant contacted Heritage New Zealand who proposed, if consent was granted, conditions that the Applicant be aware of the Heritage New Zealand Pouhere Taonga Act 2014 and consult with Ngai Tahu in relation to the presence, significance and protection measures for Maori heritage values. Should the Ministers disagree with our recommendation to decline consent, conditions requiring consultation with Ngai Tahu and reasonable protection measures could be imposed on the Applicant.
Offer to sell seabed/foreshore/riverbed to the Crown – s17(2)(f)	While the Applicant's property contains special land, the special land offer back provisions are not triggered as the registered owner of the special land is not changing as a result of this transaction.
Key person in a key industry – reg 28(b)	The relevant overseas persons are not key persons in key industries which New Zealand would benefit from having improved relations with.
Affect image, trade or international relations – reg 28(c)	This Investment is unlikely to not affect New Zealand's image, trade or international relations.
Owner to undertake other significant investment – reg 28(d)	Dairies Group will be undertaking investment as a result of the Investment, however this has been considered elsewhere under other benefit factors.
Previous investments – reg 28(e)	This factor is not relevant due to the structure of the proposed acquisition of the Investment.

Factor	Reason not relevant or insufficient
Advance significant government policy or strategy – reg 28(f)	The Applicant claims that the Investment aligns with the Government's aim for a sustainable future as well as the Ministerial Directive Letter. Neither of these are a significant Government policy or strategy and we do not consider the Investment aligns with any other significant Government policy or strategy.
Enhance the viability of other investments – r28(g)	The Applicant does not have other investments this Investment will enhance the viability of.
Strategically important infrastructure – reg 28(h)	The Investment will not assist New Zealand to maintain control of strategically important infrastructure.
Economic interests – reg 28(i)	This investment will not affect New Zealand's economic interests.

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ATTACHMENT 6 - SENSITIVE LAND DETAILS

1. Rangitata One

Address	907 Arundel-Rangitata Road, Rangitata, Geraldine 7992
Approximate Area	519 hectares
Record(s) of Title	CB23F/1228 CB454/175 CB331/77 Part of 601960 Part of 743102
Sensitivity	Non-urban land greater than 5 hectares <u>Special land-bed of Rangitata River</u>

2. Rangitata Two

Address	208 Lewis Road, Rangitata, Geraldine 7992
Approximate Area	704.1969 hectares
Record(s) of Title	CB27F/83: Section 33 Reserve 349 CB27F/84:RS 36066 CB27F/85:RS 35932 CB759/11: Lot 1 and Lot 3 DP 19835 CB8B/714: Part Lot 2 DP 19835 CB10K/1336:RS 39909 CB16A/961: Part RS 22497 CB5C/386: Lot 1 DP 24316 601961:Lot 3 DP459906 and Lot 1-2 DP13504 CB37/59: Part RS 22482 CB20F/882: RS 23927 CB60/90: Section 29160 Block III Geraldine Survey District
Sensitivity	Non-urban land greater than 5 hectares <u>Special land-bed of Rangitata River</u>

3. Rangitata Residential Farm Houses

Address	24 Taylor Street, Rangitata, Geraldine, 7992
Approximate Area:	0.8498 hectares
Record(s) of Title	CB656/45
Sensitivity	None

4. Mowata

Address	486 Seaward Road, Rangitata, Geraldine 7992
Approximate Area	454.1339 hectares
Record(s) of Title	664167 CB13A/616
Sensitivity	Non-urban land greater than 5 hectares Adjoins s37 land

5. Makaiwai

Address	153 Rangitata Island Road, Temuka 7986
Approximate Area	211.8009 hectares
Record(s) of Title	CB26B/866 CB25K/904
Sensitivity	Non-urban land greater than 5 hectares Includes land that is held for conservation purposes under the Conservation Act 1987 <u>Special land</u> -bed of Rangitata River

6. Shelbron

Address	397 Old Main Road South, Hinds, Ashburton 7773
Approximate Area	144.2414 hectares
Record(s) of Title	CB37B/495 CB33A/854
Sensitivity	Non-urban land greater than 5 hectares

7. Longstream

Address	469 Ealing Road, Ealing, Ashburton 7773
Approximate Area	544.1672 hectares
Record(s) of Title	CB3A/735 CB44A/871 CB44A/872 79835
Sensitivity	Non-urban land greater than 5 hectares

8. Clonmel

Address	500 Coldstream Road, Hines, Ashburton 7773
Approximate Area	313.2035 hectares
Record(s) of Title	CB32B/1225 CB17K/632 CB21F/917
Sensitivity	Non-urban land greater than 5 hectares

9. Bendigo

Address	Ardgour Road, Bendigo, Cromwell 9383
Approximate Area	816.4275
Record(s) of Title	371457 621996
Sensitivity	Non-urban land greater than 5 hectares

10. McNab

Address	710 Arundel Rangitata Road, Rangitata, Geraldine 7992
Approximate Area	234.0012 hectares
Record(s) of Title	700299 729092 839485 729091
Sensitivity	Non-urban land greater than 5 hectares

LEASED LAND

11. Rangitata-Orari Bridge Highway

Record(s) of Title	CB60/90
Approximate area leased	12.5 hectares
Leased from	Timaru District Council
Sensitivity	Non-urban land greater than 5 hectares

12. 189 Rangitata Island Road, Temuka 7986

Record(s) of Title	CB24B/1179 CB24B/1181 CB3A/791
Approximate area leased	108 hectares
Leased from	Strath Isle Farms Limited
Sensitivity	Non-urban land greater than 5 hectares and adjoins land held for conservation purposes. <u>Special land:</u> bed of the Rangitata river
Known as	Makawai:Stoddart Lease

13. Old Main South Road

Record(s) of Title	NZG1874 P35
Approximate area leased	2.0234 hectares
Leased from	Ashburton District Council
Sensitivity	Includes land that a district plan or proposed district plan under the Resource Management Act 1991 provides is to be used as a reserve, public park, for recreation purposes, or as an open space (reserve for Gravel Pit)
Known as	Shelbron Lease

14. 551 Barford Road, Ashburton

Record(s) of Title	666111 702294
Approximate area leased	317.4326 hectares
Leased from	Hackthorne Farm Limited
Sensitivity	Non-urban land greater than 5 hectares <u>Special land:</u> bed of the Hinds river
Known as	Tait Lease

15. 65 Anama Station Road, Anama, Ashburton

Record(s) of Title	CB 7B/1298 CB 7A/84
Approximate area leased	172.7095
Leased from	Cerf Farming Company Limited
Sensitivity	Non-urban land greater than 5 hectares

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ATTACHMENT 7 - GOOD CHARACTER SEARCHES AND ANALYSIS

The OIO undertook an open-source search of the relevant overseas persons (ROPs) and individuals with control (IWCs).

The searches of the International Consortium of Investigative Journalists (ICIJ) database, United Nations Security Council (UNSC) Terrorist Entities List, and Interpol Red Notice List did not produce any relevant results.

Two of the things we consider when weighing up 'good character' include:

- **connection to the Individuals with Control (IWCs) or Relevant Overseas Person (ROP):** we assess the level of control between any of the IWCs of the ROP and the particular matter. For example, a breach of safety rules by an employee of subsidiary company where the company was fined would likely have a low (or no) connection with an IWC who an executive director of the parent company was, whereas an executive decision by a company to illegally collude with a competitor would likely have a high connection with that IWC.
- **relevance to this investment:** we assess how relevant the particular matter is to the nature of this particular investment. For example, a dangerous driving conviction by an IWC would have low relevance in connection with the acquisition of a dairy farm, whereas a conviction for discharging farm effluent into a waterway would have a high relevance to the acquisition of a dairy farm.

When making our assessment of character we also look at:

- How reliable is the allegation? For example a conviction would be a highly reliable, whereas a report in a tabloid newspaper or an internet forum would be less reliable.
- Is the explanation provided by the Applicant persuasive? Is it internally consistent and does it adequately address the concerns?
- Is there a pattern of similar allegations or offences? Do common themes emerge?
- How serious is the allegation? What actions, if any, were taken to remedy the situation and reduce the chances of it reoccurring?

The table below summarises the various allegations. For full details of the allegations, responses and our assessment, please refer to the pages following the table.

Our assessment of the connection to the IWCs is shown as the first coloured bar on the table.

Our assessment of the relevance to this investment is shown as the second coloured bar on the table.

Our ultimate assessment of the risk of each matter is shown as the third coloured bar on the table.

Direct quotes appear in italic font.

Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment	
		Low	Med	High	Low	Med	High			
Jeremy John Savage- Claim against Mr Savage in his capacity as director of Macfarlane Rural Business (MRB)	An ex-employee of MRB made 4 claims against both MRB and its directors. The allegations are refuted by MRB and its directors. The allegations are: a) breached the shareholders' agreement, causing Mr Bradley to lose shareholding and income; b) breached the terms of the settlement contract between MRB and the former director, drawn up by mediators; c) unjustly enriched by transferring assets, staff, work in progress, and client information to its new company at a profit; and d) the directors failed to act in good faith and exercised their powers for an improper							Mr Savage's advisors have requested that Mr Bradley discontinue three of the causes of action. If Mr Bradley proceeds with his claims, the directors of MRB intend to file a strike out application in respect of allegations 3 claims and consider that the fourth claim is frivolous and vexatious. The dispute is essentially a commercial one, involving divergent views about each party's rights, roles, and obligations. Such disputes are, unfortunately, a feature of business. This dispute reflects that disappointed or disaffected persons are entitled to test their views in court. In view of the above, Mr Savage, and the		The allegations are against an IWC in his capacity as a member of part of the board of an unrelated company. Allegation is not made against the IWC directly, but against the board as a whole (and its directors). There is nothing in the allegation that suggests a finding of good character could not be found on the part of Mr Savage individually.

Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment	
		Low	Med	High	Low	Med	High			
	purpose.							Applicant, do not consider that the matter has any impact on his good character in relation to this investment.		

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ATTACHMENT 8 - OVERVIEW TABLES FOR MERCURY AGRICULTURE LP 201810160

	Application	Provisional recommendation
	<p>Mercury Agriculture LP seeks consent to increase its holding in Rangitata Dairies Limited Partnership and Rangitata GP Limited (Dairies Group) to 68.3%. This is an increase of 43.4%. It will do this by acquiring additional A units in Rangitata Dairies LP and additional ordinary shares in Rangitata GP.</p> <p>The Applicant currently owns the following interests in Dairies Group:</p> <ul style="list-style-type: none"> *24.9% of all A units in Rangitata Dairies LP; and *24.9% of all ordinary shares in Rangitata GP <p>The remainder of Dairies Group is New Zealand owned. The Vendors are Rangitata Dairies Limited Partnership and Rangitata GP Limited (Dairies Group).</p> <p>Dairies Group is a dairy farming business with a portfolio of 8 farms across approximately 4,840 hectares in South Canterbury.</p> <p>The Applicant intends to operate most of the portfolio as dairy farms with some infrastructure improvements, and to convert 100 hectares to an apple orchard.</p>	<p>Our provisional recommendation is to decline consent.</p> <p><u>Relevant Tests</u></p> <ul style="list-style-type: none"> Investor test (s16(1)(a) -(d) and s18(1)(a)-(d) of the Act) Benefits test – substantial and identifiable benefits (s16(1)(e)(ii) and (iii) of the Act) Transitional note: The contract for this transaction was entered prior to commencement of the Overseas Investment Amendment Act 2018, so the version of the Act and the regulations in force immediately before its commencement continue to apply.

Overview of assessment: Investor test

Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
Relevant overseas persons (ROP) and individuals with control (IWC) confirmed	ROP/IWC Identified	ROP & IWC identified	Paragraphs 30-31 Section 15 of the Act.
Collectively have business experience and acumen relevant to the investment	Test met	The IWC's have experience relevant to the investment.	Paragraphs 35-37 Section 16(1)(a) of the Act.
ROP demonstrated financial commitment	Test met	The Applicant has demonstrated financial commitment by entering into the Subscription and engaging professional advisors.	Section 16(1)(b) of the Act.
Good character	Test met	We are satisfied that the ROP/IWC are of good character.	Paragraphs 38-45 Attachment 7 Section 16(1)(c) of the Act.
Not an individual of the kind ineligible for a visa or entry permission under ss 15 or 16 of the Immigration Act 2009	Test met	As our recommendation is to decline this application, we have not sought statutory declarations from the individuals with control stating that they are not individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.	Section 16(1)(d) of the Act.

Overview of assessment: investment and benefit test

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Job opportunities (high relative importance)	Develop the Orchard and create additional 55 FTE associated with running the Orchard	The Orchard is unlikely to be developed so no additional FTE	Moderate weighting	The application form is unclear but it seems likely that at least 17 additional FTE are likely to be created. The additional 38 'FTE' represent a high number of seasonal roles each year between February and April, but are not permanent FTE roles. [REDACTED]	Because our provisional recommendation is that you decline this application, we have not recommended any special conditions. If you propose to grant consent, we can prepare draft special conditions and consult on these with the Applicant.	Paragraphs 107-117 s17(2)(a)(i)
Added market competition, increased productivity, efficiency, and enhanced domestic services	The Orchard will lead to added market competition for apples and an increase in the output of apples in the Canterbury region. The introduction of pivot irrigation will lead to an increase in production of milk solids and greater efficiencies on the Farms.	Pivot irrigation would not be installed and the Orchard would not be developed so no apples would be grown and milk production from the Land wouldn't increase	Moderate weighting	The apples grown on the Orchard will lead to increased market competition with other growers in the region and increased apple production. The pivot irrigation will result in increased production of milk solids and Farm efficiencies.		Paragraphs 126-139 s17(2)(a)(iv)
Increased export receipts (high relative importance)	Development of the Orchard will lead to an increase in export receipts of approximately \$13 million per annum. Increase in milk solid means a corresponding increase in exports as most of New Zealand's dairy products are exported.	Pivot irrigation would not be installed and the Orchard would not be developed so there would be no apples exported and no increase in milk production.	Moderate weighting	development of the Orchard is likely to lead to an increase in export receipts of approximately \$13 million per annum.		Paragraphs 118-125 s17(2)(a)(iii)
Increased processing of primary products (high relative importance)	The Applicant claims its proposed developments will lead to a [REDACTED] increase in milk solid production, which accordingly will need to be processed.	In-shed feeding is likely to be introduced in any case, but the pivot irrigation is not. As such there will be some increase in milk solid production, although it is unclear in what volume, but it is likely to be less than the [REDACTED] increase claimed by the Applicant.	Low weighting	We consider that Applicant's installation of pivot irrigation is likely to lead to an increase in milk solid production and the subsequent processing of the milk solids, although the exact amount is unclear and likely to be below [REDACTED]		Paragraphs 140-146 s17(2)(a)(vi)
Oversight and participation by New Zealanders (high relative importance)	The Applicant will increase its ownership interest to 68.3% but the shareholders agreement will ensure New Zealand interests retain 60% control of the board of Dairies Group.	There would be New Zealand oversight and participation	Moderate weighting	New Zealanders will have a significant level of oversight and participation in the investment.		Paragraphs 165-167 reg28(j)
Walking access	Comply with DOC's recommendations to create public access alongside the Rangitata and Clutha Rivers.	No public access will be created.	Low weighting	We consider that the Investment is likely to create public access alongside the Rangitata River and the Clutha River.		Paragraphs 147-150 s17(2)(e)
Consequential benefits	The Applicant made a number of claims discussed in paragraphs 150-165	Please see paragraphs 150-165	Moderate weighting	We consider that there will be some consequential benefit provided to New Zealand through the resulting environmental benefits of development the Orchard and introduction of pivot irrigation, made possible by the Applicant's Investment.		Paragraphs 151-164 reg28(a)