



To: Hon Dr Megan Woods, Associate Minister of Finance
Hon Damien O'Connor, Minister for Land Information

ASSESSMENT REPORT: Cloudy Bay Vineyards Limited

Date	4 April 2022	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference (Report reference)	202100538 (BRF 22-309)	Deadline	30 April 2022 (contractual deadline)

Purpose

We seek your decision on an application for consent to acquire an interest in sensitive land under the Overseas Investment Act 2005 (Act).

Action sought

1. Review this report and consult with each other if desired.
2. Determine whether to grant consent and, if so, on what conditions.
3. Indicate your decision from page 3.

Commercial deadline

4. The Applicant has requested a decision by 30 April 2022 as this is the date for confirmation of the OIO consent condition in the sale and purchase agreement.

OIO Contacts

Name	Position	Contact	First contact
Michael Appleyard	Manager Applications	+64 4 830 3880	<input checked="" type="checkbox"/>
Daniel Mumford	Senior Solicitor	+64 4 830 3959	<input type="checkbox"/>
Hannah Worsley	Solicitor	+64 4 471 7353	<input type="checkbox"/>

A. Summary

1. The Applicant is a winemaker based in the Marlborough region, particularly well-known for its Sauvignon Blanc wine, that is part of the Louis Vuitton Moët Hennessy worldwide luxury goods company.
2. The Applicant seeks consent to acquire a freehold interest in approximately 46.7669 hectares of land located in Marlborough. As part of the proposed transaction, the Applicant seeks to replant approximately 5 hectares of the land with Sauvignon Blanc vines and invest in winemaking facilities in order to increase its production of Sauvignon Blanc wine, predominantly for export.
3. For the reasons set out in this report, our recommendation is to **grant consent**.

Key information

Applicant	Cloudy Bay Vineyards Limited France (66%), United Kingdom (34%)
Vendors	Giesen Group Limited New Zealand (100%)
Land	13.667 hectares of land located at 40 Alma Street North, Renwick, Marlborough. 25.5786 hectares of land located at 78 Matthews Lane, Rapaura, Marlborough 9.5213 hectares of land located at 164 Jacksons Road, Rapaura, Marlborough
Consideration	[s 9(2)(b)(ii)]
Sensitivity	Is more than 5 hectares of non-urban land
Relevant tests	Investor test: s16(1)(a) Benefit to New Zealand test – substantial and identifiable benefit (s16(1)(c)(ii) & s16A(1)(a) and (b) of the Act) Farm land offer test: s16(1)(f)

Timing

4. The Applicant has requested a decision by 30 April 2022 as this is the date for confirmation of the OIO consent condition in the sale and purchase agreement.
5. Processing days for the application are set out in the table below. The OIO's processing time is within expected timeframes as this application was received before 24 November 2021 (when statutory timeframes were introduced).

Quality Assurance	OIO Processing	Waiting for Applicant / Vendor	Third party consultation
7	31	16	67

B. Decision

Core tests

6. I determine that:

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

Relevant overseas person	Role
Cloudy Bay Vineyards Limited	Applicant
LVMH Moët Hennessy Louis Vuitton SA (LVMH)	Ultimate indirect 66% owner of the Applicant

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

Individuals with control	Role
Yang Shen	Director of the Applicant
Bertrand Francois Joseph Nicolas Steip	Director of the Applicant, President of Estates and Wines Division at LVMH

6.3 None of the relevant overseas persons and individuals with control of the relevant overseas person have established any of the factors contained in section 18A(4) of the Act.

7. I am satisfied that the investor test in section 18A has been met.

Hon Dr Megan Woods

Agree

☒

Disagree

☐

Hon Damien O'Connor

Agree

☒

Disagree

☐

8. I am satisfied, in relation to the benefit to New Zealand test, that:

8.1 the criteria for consent in sections 16 and 16A have 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);

8.3 the benefit will be, or is likely to be, substantial and identifiable; and

8.4 the farm land offer criteria have been met.

Hon Dr Megan Woods

Agree

☒

Disagree

☐

Hon Damien O'Connor

Agree

☒

Disagree

☐

National interest assessment

9. I note that the overseas investment in sensitive land is not a transaction of national interest under section 20A of the Act and the Minister of Finance has not notified it is a transaction of national interest under section 20B of the Act.

Hon Dr Megan Woods

Noted



Hon Damien O'Connor

Noted



Decision about whether to grant or decline consent

10. My ultimate decision is to:

Hon Dr Megan Woods

Grant consent subject to the conditions in the Proposed Decision in **Attachment 1**



Grant consent with amended conditions provided on:



Decline consent



Hon Dr Megan Woods

Date: 12 / 4 / 22

Hon Damien O'Connor

Grant consent subject to the conditions in the Proposed Decision in **Attachment 1**



Grant consent with amended conditions provided on:



Decline consent



Hon Damien O'Connor

Date: 10 / 4 / 22

C. Background and proposed transaction

11. Cloudy Bay Vineyards Limited (**Applicant**) seeks consent under the Act to acquire approximately 46.7669 hectares of sensitive land comprised in three parcels in Marlborough, being the land located at 40 Alma Street, Renwick; 164 Jacksons Road, Rapaura; and 78 Matthews Lane, Rapaura ("**Land**" or "**Vineyards**").
12. The three separate land parcels (coloured pink in the aerial photos below) each adjoin other vineyard land and the winery owned by the Applicant (coloured green in the aerial photos below).



Figure 1 – Aerial photos provided by the Applicant – These photos show the three land parcels comprising the Vineyards adjoining vineyard land owned by the Applicant

13. The Applicant is an established New Zealand wine brand, particularly well-known for its Sauvignon Blanc, and forms part of the Louis Vuitton Moët Hennessy (LVMH) group, a French company listed on the Euronext Paris Eurolist exchange that operates globally and specialises in luxury goods.
14. As part of the transaction, the Applicant intends to replant approximately 5.3 hectares of vines with new Sauvignon Blanc vines. The Applicant also intends to invest in new equipment and storage facilities for its winery. The investment in Sauvignon Blanc vines and equipment and storage facilities is intended to help the Applicant increase its production of wine to keep up with demand.
15. We note for completeness that part of the Land (being the 9.52 hectare parcel at 164 Jacksons Road) was previously included in an application the Ministers decided in July 2020 (case 201900453). However, the transaction did not proceed as the contract was terminated before consent was granted. The 164 Jacksons Road property was later sold to the Vendor.

D. Application of the Act

16. This application was received prior to 24 November 2021, so the tests in place before this date apply.

17. The Land is sensitive because it is non-urban land over 5 hectares in size and also includes special land,¹ so consent is required.² The following criteria for an investment in sensitive land apply to this application:³
- The investor test must be met.⁴
 - The benefit to New Zealand test must be met.⁵
 - You must also note whether the investment is a transaction of national interest and, if so, whether the Minister of Finance has decided that the investment is contrary to New Zealand's national interest.⁶
18. In order to satisfy the benefit to New Zealand test, the decision-maker must:
- determine that the overseas investment will, or is likely to, benefit New Zealand;⁷ and
 - determine that benefit will be, or is likely to be, substantial and identifiable;⁸ and
 - determine that the farm land offer criterion is met;⁹
19. We assess the investor test in Part E, the benefit to New Zealand test in Part F, the farm land offer test in Part G, and discuss national interest matters in Part H.

E. Applicant and investor test

20. This section describes the Applicant and assesses whether the investor test is met.

Business Activities

21. The Applicant is a winemaker based in the Marlborough region, particularly well known for its Sauvignon Blanc wine which accounts for 77% of its total production. 98% of the Applicant's Sauvignon Blanc is exported, with exports evenly spread across the USA, Asia, Europe, and Australia.

Ownership

22. The Applicant is a private New Zealand-incorporated company, which forms part of the Louis Vuitton Moët Hennessy worldwide luxury goods conglomerate. The Applicant is more than 25% owned by overseas persons making it an overseas person in terms of section 7.
23. The Applicant is 100% owned by Veuve Clicquot Properties Pty, an Australian registered company, and ultimately 66% owned by a publicly listed French company LVMH Moët Hennessy Louis Vuitton SA (LVMH) and 34% owned by Diageo Plc, a publicly listed company in the United Kingdom which is an alcoholic beverage producer.
24. The shares in LVMH are widely held, other than the Arnault Family Group, which owns approximately 47.5%. The Arnault family is one of France's wealthiest families, and the family overseas a number of fashion houses and brands in addition to LVMH.

¹ Table 1, Part 1, Schedule 1 of the Act.

² Under sections 10(1)(a) and 12(1)(a)(i) of the Act.

³ Set out in section 16(1) of the Act.

⁴ Section 16(1)(a) of the Act.

⁵ Section 16(1)(c)(ii). The alternative is the relevant overseas person or each of the individuals with control is a NZ citizen or resident, which is not applicable to the proposed investment.

⁶ Section 16(1)(g) of the Act.

⁷ Section 16A(1)(a) of the Act.

⁸ Section 16A(1)(b) of the Act. This criterion applies because the Land is non-urban land over 5 hectares in size.

⁹ Section 16A(1)(f) of the Act.

25. A diagram of the intended ownership structure is in **Attachment 2**.

Control

26. The investment has been approved by the Applicant and by a subcommittee of senior executives within LVMH (the LVMH Subcommittee), as per the Applicant's standard internal capital expenditure approval process.
27. The Applicant submits that day-to-day management and control of the Applicant, including significant expenditure on its various vineyards and all creative and winemaking decisions regarding wines and wine styles, rests with the Applicant's locally-based Estate Director (Yang Shen) and the local senior management team based in Blenheim, New Zealand. The New Zealand senior management team has wide discretion to drive the Applicant's direction and management as the team sees fit.

28. [s 9(2)(b)(ii)]

29. Additional approval is only required from within LVMH, through the LVMH Subcommittee, when the New Zealand senior management team is proposing to acquire or dispose of any vineyards or major assets.

Relevant overseas person and individuals with control

30. We recommend that the '**relevant overseas person**' is (collectively): The Applicant, Cloudy Bay Vineyards Limited and LVMH Moët Hennessy Louis Vuitton SA.

Relevant overseas person	Role
Cloudy Bay Vineyards Limited	Applicant and acquiring entity
LVMH Moët Hennessy Louis Vuitton SA	Ultimate indirect 66% owner of the Applicant

31. We recommend that the '**individuals with control of the relevant overseas person**' (IWC)¹⁰ are:

Individuals with control	Role
Yang Shen	Director of the Applicant
Bertrand Francois Joseph Nicolas Steip	Director of the Applicant, President of Estates and Wines division at LVMH

32. We consider these individuals to be the IWCs for the following reasons:

- Mr Bertrand Stiep is the President of Moët Hennessy Estates & Wines, the division that includes wines from the Applicant. Mr Steip can reasonably be considered to be the individual with control of LVMH for overseas investments relating to wine;

¹⁰ Section 15.

- the acquisition of the Vineyards is part of a long-term strategy that Mr Shen, as the Applicant's Estate Director and head of the local senior management team, is required to develop, submit and report on to LVMH; and
- given the size of LVMH's business, the LMVH Subcommittee or the LMVH board are unlikely to be involved in ongoing decision making relating to an investment of this size - being the acquisition of a freehold interest in approximately 46.7 hectares of land.

Summary of investor test

33. The relevant overseas persons and individuals with control established none of the factors contained in section 18A(4) of the Act.
34. The Applicant provided information for completeness involving LVMH and pertaining to the factor under section 18A(4)(a)(iv).
35. The matter concerned the French stock exchange regulatory body (Autorité des Marchés Financiers) imposing an administrative sanction on LVMH because it considered that LVMH should have made public a transaction carried out in 2010 earlier than it did, however, the Applicant submitted that it did not consider the administrative penalty to be a civil pecuniary penalty in accordance with section 18A(4)(a)(iv).
36. We consider that the administrative sanction does not constitute a pecuniary penalty in accordance with section 18A(4)(a)(iv) because it was not imposed by a New Zealand Court or equivalent overseas body (as required under the 'investor test').
37. For the reasons set out above, our conclusion is that **the investor test has been met.**

F. Investment plan and benefit to New Zealand test

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

Investment plan

Background

39. The Applicant needs access to additional grapes to keep up with demand for its wines. The Applicant needs grapes that are grown in a small part of the Wairau Valley in Marlborough in order to be able to make its Sauvignon Blanc. There is a restricted geographical zone (shown the Figure 2 photo below) which contains the types of soils needed to provide the Applicant's distinctive Sauvignon Blanc wine flavour.



Figure 2 – Aerial photo provided by the Applicant – This restricted geographical zone photo from where the Applicant need to source its grapes (outlined in green)

40. There are no additional grapes available for purchase in this area due to the tight supply and restricted vineyard area. The Applicant submits that sourcing grapes from other areas would drastically alter the flavour profile and characteristics of Cloudy Bay Sauvignon Blanc.
41. The Land is comprised of three separate vineyards, each of which directly adjoin existing vineyards owned by the Applicant. The three vineyards are currently used for grape growing, and comprise approximately 38.9 hectares of planted vines consisting of approximately:
 - 37.42 hectares of Sauvignon Blanc;
 - 1.3 hectares of Pinot Gris; and
 - 0.18 hectares of Semillon.

Investment

42. The Applicant will replant the 1.3 hectares of existing Pinot Gris vines with Sauvignon Blanc on the Jacksons Road vineyard in 2025 (the earliest available date due to a shortage of available vines).
43. The Applicant will also replant the 4.05 hectares of existing Sauvignon Blanc vines (and 0.18 hectares of Semillon vines) with new Sauvignon Blanc vines on the Matthews Lane vineyard in 2025 (the earliest available date due to a shortage of available vines), due to poor wine quality caused by poor vine genetics.



Figure 3 – Aerial photo provided by the Applicant – This photo shows the two land parcels where the vine replanting will occur (coloured dark purple)

44. The Applicant will also undertake additional investment (likely to be in excess of [s 9(2)(b)(ii)]) to accommodate the additional grape supply from the Land, including:
- purchasing a new grape press [s 9(2)(b)(ii)]
 - purchasing new stainless steel tanks [s 9(2)(b)(ii)]
 - vineyard equipment [s 9(2)(b)(ii)] and
 - constructing a new cellar building to store the new tanks [s 9(2)(b)(ii)]
45. If the transaction proceeds, most of the additional development will occur on the adjoining winery (coloured green in the Figure 3 photo above), including the new stainless steel tanks and new cellar building.
46. All of the grapes grown and harvested from the Land will be used to make Sauvignon Blanc [s 9(2)(b)(ii)]. In the year ending 30 June 2021, the Applicant's export price per bottle was [s 9(2)(b)(ii)] which is [s 9(2)(b)(ii)] times higher than the average New Zealand export bottle price which (when taking bottled and bulk exports into account) sits at just \$4.80 per bottle. This average price is calculated using recent New Zealand Winegrowers statistics published online for May 2021¹¹, and confirmed by the Applicant

¹¹ <https://www.nzwine.com/media/19853/nzwine-kpis-may-2021.jpg> (last accessed on 28/3/2022).

and an investment report prepared by Alistair King (a business consultant with over 22 years' experience in the viticultural and wine industries of New Zealand).

47. The investment is likely to result in increased export receipts of approximately [s 9(2)(b)(ii)]. As noted further in paragraphs 66-67, the Ministry of Primary Industries (MPI) also consider the investment is likely to result in increased export receipts.
48. The investment is also likely to increase employment on the Land due to the replanting and more intensive viticulture. [s 9(2)(b)(ii)]
[s 9(2)(b)(ii)]
[s 9(2)(b)(ii)] This approach helps create a premium wine product that is distributed through the Applicant's distribution network for luxury goods.
49. The investment is also likely to result in improved public walking access to the Gibsons/Ruakanakana Creek, with the creation an access strip and an esplanade strip over the Land from Alma Street to an existing esplanade strip along the Gibsons/Ruakanakana Creek (this is detailed further in paragraph 64 below). The investment is also likely to result in the acquisition of special land, being the bed of the Gibsons/Ruakanakana Creek that adjoins the Land.

What is likely to happen without the investment (Counterfactual)

50. We consider the most likely counterfactual is that the vendor is likely to retain the Land in the short-term but would look to sell the Land in due course to an alternative New Zealand purchaser (ANZP).
51. A potential ANZP is likely to be either:
- an established, existing vineyard operator with its own winery and looking to expand its supply of grapes;
 - an investor looking to buy vineyard assets, selling grapes, or leasing the Land to another wine producer; or
 - a new entrant to the market looking for a lifestyle property or new business.
52. We consider the most likely ANZP is an established, existing vineyard operator with its own winery and looking to expand its supply of grapes in order to increase its wine production. This position is supported by an investment report prepared by Alistair King (a leading wine industry consultant as noted above in paragraph 46). The ANZP would likely be a 'Category 3' winery – a winery with annual sales exceeding \$4,000,000 litres (that will have the capacity to process the additional supply of grapes from the Land).
53. As a result of the advertising for the sale of the Land, most of the parties expressing an interest were existing vineyard operators with their own wineries. This includes a number of wineries that are Category 3 wineries (eg Saint Clair, Booster Wine group, Whitehaven, and Wairau River).

Assessment of key benefits

54. We consider the investment is likely to result in an increase in the amount of the Applicant's Sauvignon Blanc wine that is exported around the world. The investment is also likely to lead to the creation of new jobs (for replanting, viticultural management, and vineyard operations), additional investment for development purposes (at least [s 9(2)(b)(ii)] for replanting, new grape press and vineyard equipment, new tanks, and new cellar building), and increased export receipts, as well as the improved walking

access in the area. These benefits are likely to occur over and above what would occur under the counterfactual.

Summary of benefits

55. The benefits to New Zealand that are likely to result from this investment and our assessment of the relative weight to be given to each are set out in the table below.
56. 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 noted in **Attachment 3**.
57. In applying the benefit to New Zealand criteria, you are required to consider each of the benefit factors and determine which of them are relevant. The weight and relative importance to be given to each factor is a matter to be determined by you as the decision-maker. This report sets out our assessment to guide your consideration, however, it is not determinative.
58. Under the terms of the Ministerial directive letter,¹² the 'rural land directive' applies to this investment.¹³ The benefit factors Ministers have directed should be given high relative importance are noted in the table below.¹⁴
59. Consultation undertaken in our assessment is discussed following the table.

¹² Dated 28 November 2017, paragraphs 13-17.

¹³ Because the investment involves the acquisition of non-urban land over 5 hectares in size (excluding any associated land) and excludes 'forest land'.

¹⁴ The factors that we have given high relative importance are jobs and increased export receipts.

Summary assessment: benefit to New Zealand test

60. This table assesses the benefits to New Zealand likely to result from the investment and the relative weight to be given to each.

Relevant benefit factors	Applicant's claims: what they intend to do	Without the Investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
Previous investments	The Applicant has a track record of investment in New Zealand that has resulted in benefits, including the creation of new jobs, increased export receipts, and capital investment for development purposes.	Not applicable	Strong	<p>The Applicant has made a number of investments in New Zealand which have resulted in significant benefit to New Zealand as well as its wine industry. The Applicant directly employs 77 full-time employee (FTE) positions (as at June 2021) and generated [s 9(2)(b)(ii)] and [s 9(2)(b)(ii)] in New Zealand. The Applicant has also made capital investments of [s 9(2)(b)(ii)] in New Zealand. The Applicant has created a strong brand for its wine, which is well-recognised internationally.</p>	Not applicable.

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
Increased export receipts (high relative importance)	<p>The investment is likely to result in increased export receipts of approximately [s 9(2)(b)(ii)]</p> <p>[s 9(2)(b)(ii)]</p> <p>production - predominantly due to the high export price of its Sauvignon Blanc wine.</p>	<p>Export receipts are likely to be approximately \$1.7 million per year (based on volume of grapes and average export rate).</p>	Moderate	<p>The investment is likely to result in increased export receipts of [s 9(2)(b)(ii)] [s 9(2)(b)(ii)] the counterfactual due to the higher than average export value for its Sauvignon Blanc wine, being a premium wine product that is distributed through the Applicant's distribution network for luxury goods. This is supported by advice received from the Ministry for Primary Industries (MPI).</p>	<p>We propose requiring the Applicant to provide details of its export receipts as part of the reporting conditions.</p>

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
Additional investment for development purposes – s17(2)(a)(v)	<p>The investment will result in additional investment of at least [s 9(2)(b)(ii)] per hectare on:</p> <ul style="list-style-type: none"> replanting 5.3 hectares of vines [s 9(2)(b)(ii)] purchasing a new grape press [s 9(2)(b)(ii)] purchasing new stainless steel tanks [s 9(2)(b)(ii)] purchasing new vineyard equipment [s 9(2)(b)(ii)] and constructing a new cellar building to store the new tanks [s 9(2)(b)(ii)] 	<p>The ANZP would be unlikely to replant vines or need a new grape press and new tanks (as it likely has sufficient capacity for the grapes currently being produced).</p>	Moderate	<p>The investment is likely to lead to the introduction of at least [s 9(2)(b)(ii)] more than the counterfactual (to be spent in the [s 9(2)(b)(ii)] period) on replanting vines, a new grape press and vineyard equipment, new tanks, and new cellar building.</p>	<p>We propose a special condition requiring at least [s 9(2)(b)(ii)] on:</p> <ol style="list-style-type: none"> replanting at least 5 hectares of vines; purchasing a new grape press; purchasing new stainless steel tanks; purchasing new vineyard equipment; and constructing a new cellar building to store the new tanks by 31 May 2026.
Walking access	<p>The Applicant has agreed to the recommendations by the Walking Access Commission (WAC) to create an access strip and an esplanade strip from Alma Street to an existing esplanade strip along the Gibsons/Ruakanakana Creek.</p>	<p>The ANZP would be unlikely to create additional walking access across the Land.</p>	Moderate	<p>The investment is likely to result in improved public walking access to the Gibsons/Ruakanakana Creek.</p>	<p>We propose a special condition requiring the Applicant to implement WAC's recommendations and create an access strip and an esplanade strip.</p>

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
Enhance viability of other investments	The investment will provide additional grape supply that will enhance the viability of the Applicant's winery, including the prospective upgrades of its bottling operation and cellar door.	Without the investment the Applicant's other investments would not be enhanced.	Moderate	The proximity of the Land to the Applicant's existing vineyard and winery will be of greater benefit to the Applicant than for an alternative winemaker.	Not applicable.
Job opportunities (high relative importance)	<p>The investment is likely to result in:</p> <ul style="list-style-type: none"> 3 ongoing FTE jobs (vineyard operators and supervisor); 7.6 ongoing FTE contract jobs (viticultural management); and 1-2 temporary contract FTE jobs (from 2024-2026) for vine removal, replanting, trellis and irrigation replacement vine planting, and training. 	Without the investment an ANZP would likely employ the same number of workers to maintain and harvest the Land as present, namely 6 FTE contract workers.	Weak	<p>The Investment is likely to create more permanent and contract FTE jobs than the counterfactual due to the replanting and more intensive viticulture, being</p> <ul style="list-style-type: none"> 3 ongoing FTE jobs (vineyard operators and supervisor); 1.6 ongoing FTE contract jobs (viticultural management); and 1-2 temporary contract FTE jobs for replanting <p>We consider the number of new jobs is low in relation to the size of the land.</p>	We propose a special condition requiring the Applicant to create at least 3 permanent FTE jobs (for vineyard operators and a vineyard supervisor) by 31 May 2024.

Relevant benefit factors	Applicant's claims: what they intend to do	Without the Investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
Offer to sell riverbed to the Crown	The Applicant has offered the riverbed on the land to the Crown in accordance with the Regulations.	The riverbed would not otherwise be offered to the Crown.	Weak	We consider the Applicant has shown benefit under this factor, although the size of the riverbed is low in relation to the size of the land. The Government places a high value on special land where it is in the public interest for the Crown to own it.	We propose a special condition requiring the Applicant to comply with a special land agreement.

Consultation and submissions about the investment

61. No third-party submissions were sought or received in relation to this application.
62. In undertaking our assessment, we consulted with the Walking Access Commission (WAC) and MPI.

Walking Access Commission

63. The Applicant consulted with WAC prior to submitting its application for consent to the OIO. WAC provided the Applicant with recommendations, which were submitted along with the application.
64. WAC recommended:
 - enduring public access along the Gibsons/Ruakanakana Creek (on 40 Alma Street North) is created by way of a new access strip (approximately located by an arrow in the image below) allowing public access from Alma Street North to the existing esplanade strip (marked in yellow in the image below); and
 - enduring public access is created by way of a new esplanade strip along the Gibsons/Ruakanakana Creek (approximately marked in pink and with the words "New Esplanade Strip" in the image below) allowing a continuation of the existing access strip on the adjoining land (marked in yellow in the image below) through the Land.

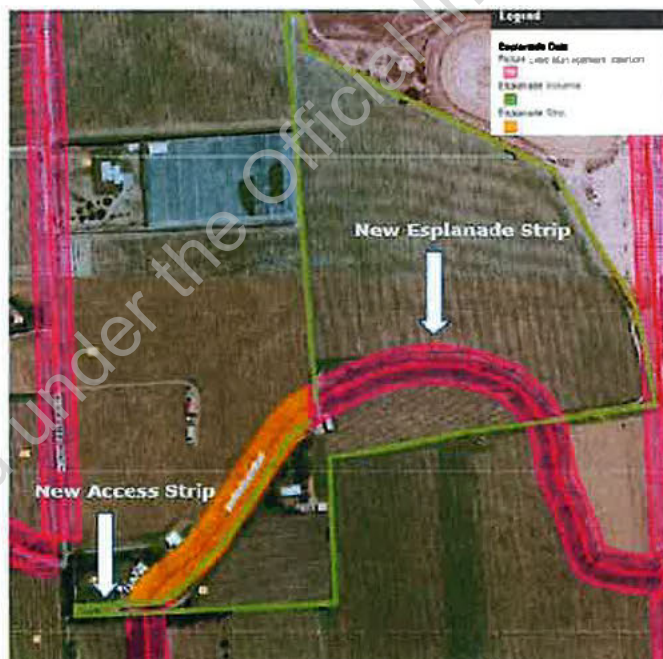


Figure 4 – Aerial photo with markings provided by WAC – This photo shows the two areas recommended for enduring public access along the Gibsons/Ruakanakana Creek



Figure 5 – Aerial photo provided by WAC – This photo shows the wider area around the two areas recommended for enduring public access along the Gibsons/Ruakanakana Creek (the 40 Alma Street property is outlined in red)

65. We have proposed a special condition requiring the Applicant to implement the access relating to 40 Alma Street.

Ministry of Primary Industries

66. In undertaking our assessment, we consulted with [s 9(2)(g)(i)] at MPI about the application and the proposed investment. MPI advised that they consider the investment is likely to result in increased export receipts due to the high export price of its Sauvignon Blanc wine that is distributed through the Applicant's distribution network for luxury goods.
67. MPI also noted that existing labour shortages and a lack of seasonal staff would make it difficult to secure the additional jobs that would be created as a result of the investment.

Proposed conditions and rationale

68. In order to adequately secure the key benefits resulting from the investment, we recommend imposing a special condition requiring the Applicant to invest at least [s 9(2)(b)(ii)] on specific development works by [s 9(2)(b)(ii)]
69. We also recommend imposing a special condition requiring the Applicant to create at least 3 permanent FTE jobs on the Land by 30 April 2024.
70. We also recommend imposing the special condition mentioned in paragraph 65 relating to improving public walking access.

Conclusion – benefit to New Zealand test

71. 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 to New Zealand test. In this case, the investment consists of acquiring approximately 46.7669 hectares of vineyard land comprised of three parcels in Marlborough.
72. After considering the application, we are satisfied that the investment is likely to result in the benefits considered above. Taking into account the size of the Land and the limited benefits under the counterfactual compared to the investment, we consider the overseas investment is likely to benefit New Zealand and that the benefits are substantial and identifiable.
73. 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).
74. If you consider the weighting of particular benefit factors or the high relative importance should be altered in the circumstances, this may impact the overall assessment of the benefits.

G. Farm land offer test

75. The Land is farm land,¹⁵ and was advertised for sale on the open market with the required information for a period exceeding 20 working days on the internet (Trade Me, Bayleys, and Realestate.co.nz websites)¹⁶ and in the Marlborough Property Express¹⁷.
76. We are, therefore, satisfied the regulations requiring the farm land to be offered for acquisition on the open market have been complied with.¹⁸

H. Not a transaction of national interest

77. The investment does not involve a transaction of national interest under the mandatory criteria of the Act.¹⁹ This is because the investment does not involve a non-New Zealand government investor, or an investment in a strategically important business (as defined in the Act).
78. We have not referred this transaction to the Minister of Finance for him to call it in for a national interest assessment on a discretionary basis.²⁰ He has therefore not declined consent to the transaction.
79. We are directed²¹ that the starting point is the assumption that overseas investment is in New Zealand's national interest and that we should only seek the Minister of Finance to exercise his discretion for a national interest assessment if the proposed investment:
 - could pose risks to New Zealand's national security or public order
 - would grant an investor significant market power within an industry or result in vertical integration of a supply chain

¹⁵ Currently being used primarily for horticultural purposes (growing grapes) - see the definition of farm land in s 6 of the Act.

¹⁶ From 22 June 2021 until 23 July 2021.

¹⁷ On 8 July 2021 and 10 July 2021.

¹⁸ Overseas Investment Regulations 2005, regulations 5 to 10.

¹⁹ Under s 20A of the Act.

²⁰ Section 20B of the Act

²¹ Ministerial Directive Letter dated 24 November 2021.

- has foreign government or associated involvement that was below the 10 per cent threshold for automatic application of the national interest test, but granted that government (and/or its associates) disproportionate levels of access to or control of sensitive New Zealand assets
 - would have outcomes that were significantly inconsistent with or would hinder the delivery of other Government objectives
 - raises significant Treaty of Waitangi issues, or
 - relates to a site of national significance (e.g. significant historic heritage).
80. We do not consider that this investment engages any of these risk factors.

I. Conclusion

81. After considering the application, our view is that:
- the investor test has been met; and
 - the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
 - the benefit will be, or is likely to be, substantial and identifiable;
 - the farm land offer test has been met; and
 - the transaction is not considered to be a transaction of national interest.
82. Therefore, we consider that the criteria for consent in section 16 have been met and our recommendation is to **grant consent**.
83. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and from page 3 of this Assessment Report to record your decision.



Michael Appleyard
Manager, Applications
Overseas Investment Office

Date: 04 / 04 / 2022

J. List of Attachments

1. Proposed Decision
2. Intended ownership structure
3. Other benefit factors

ATTACHMENT 1 PROPOSED DECISION

Consent for Overseas Person to Acquire Sensitive New Zealand Land

Read this consent carefully - you must comply with all the conditions. If you do not, you may be required to dispose of the land and/or be subject to fines or other penalties.

Consent

Decision date: date

The following people have been given the following consent:

Case	202100538
Consent	The Consent holder may acquire the Land subject to the Conditions set out below.
Consent holder/s	Cloudy Bay Vineyards Limited (Company number 271895) We will also refer to each Consent holder and the Consent holders together as you .
Land	<p>A freehold interest in 13.6670 hectares of land located at 40 Alma Street North, Renwick, Marlborough contained in Record of Title MB3D/879 (Marlborough).</p> <p>A freehold interest in 9.5213 hectares of land located at 164 Jacksons Road, Rapaura, Marlborough contained in Record of Title 776679 (Marlborough).</p> <p>A freehold interest in 23.5786 hectares of land located at 78 Matthews Lane, Rapaura, Marlborough contained in Records of Title MB5B/855, MB5B/862, and MB6B/1466 (Marlborough).</p>
Timeframe	You have until 30 April 2023 to acquire the Land.

Conditions

Your Consent is subject to the Special conditions, Standard conditions and Reporting conditions (Conditions) set out below. You must comply with them all. Be aware that if you do not comply with the Conditions you may be subject to fines or other penalties, and you may also be required to dispose of the Land.

In the Consent and the Conditions, we refer to the Overseas Investment Office as **OIO, us or we**.

Act means the Overseas Investment Act 2005.

Special Land means the bed of Gibsons Creek, as defined further in the Special Land Offer.

Special Land Offer means the offer of Special Land to the Crown by Cloudy Bay Vineyards Limited and Giesen Group Limited.

Special conditions

You must comply with the following **special conditions**. These apply specifically to this Consent and were considerations that particularly influenced us to give consent:

Details	Required date
Special condition 1: Additional investment for development purposes	
<p>You must introduce into New Zealand at least [s 9(2)(b)(ii)] to be spent for development purposes, including the following:</p> <ul style="list-style-type: none">(a) replanting at least 5 hectares of Sauvignon Blanc vines;(b) purchasing a new grape press;(c) purchasing new stainless steel tanks;(d) purchasing new vineyard equipment; and(e) constructing a new cellar building to store the new tanks. <p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	[s 9(2)(b)(ii)]
Special condition 2: Replant vines	
<p>You must replant at least 5 hectares of the Land currently planted in Sauvignon Blanc and Pinot Gris with new Sauvignon Blanc vines.</p> <p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	31 May 2026

Special condition 3: Create new jobs

You must create at least 3 permanent FTE jobs (for vineyard operators and a vineyard supervisor) on the Land.

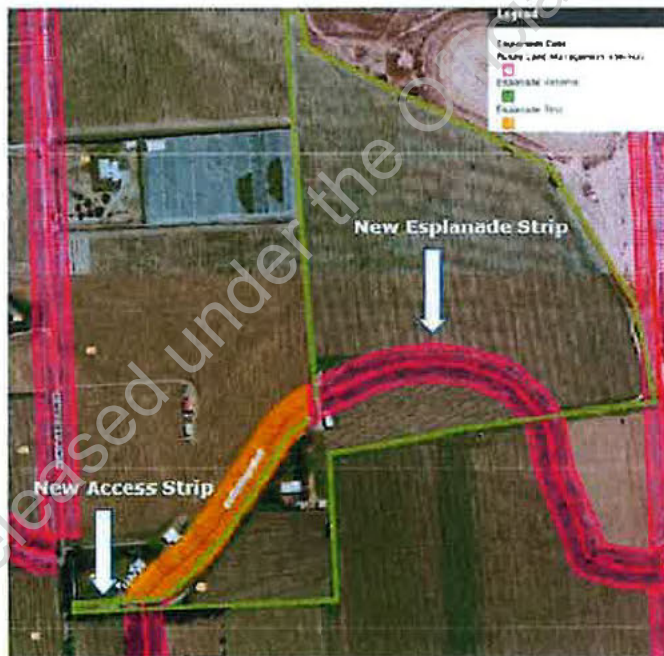
31 May 2024

Special condition 4: Create public walking access

1. You must prepare and register (at your cost) an access strip (approximately located by an arrow in the image below and with the words "New Access Strip") over Record of Title MB3D/879 that allows enduring public walking access from Alma Street North in Renwick to the existing esplanade strip (marked in yellow in the image below).
2. You must prepare and register (at your cost) an esplanade strip (approximately marked in pink in the image below and with the words "New Esplanade Strip") over Record of Title MB3D/879 that allows enduring public walking access along part of the Gibsons/Ruakanakana Creek, creating continued public walking access from the existing access strip on the adjoining land (marked in yellow in the image below).

By 31 May 2025

By 31 May 2025



Special condition 5: Special land

Should the Crown decide to accept the Special Land Offer, you must, upon becoming the registered proprietor of the Land, adopt and be bound by any offer or agreement that the Vendor has made or entered into with the Crown in relation to the Special Land that forms part of the Land.

Within 10 working days of being requested to do so by the Crown.

1. If the Crown decides to accept the Special Land Offer within the timeframe as set out in clause 2.1 of each agreement for sale and purchase (**Special Land Agreement**), you must:
 - (a) deal with the Crown in accordance with the requirements of the Act as if you were the party making the initial Special Land Offer to the Crown;
 - (b) transfer the Special Land for the benefit of the Crown and on terms acceptable to the Crown as outlined in the Special Land Agreement; and
 - (c) except in the case of Special Land which is marine and coastal area, agree to an encumbrance or covenant in gross being registered to protect the Crown's interest upon the Crown's request.
2. If the relevant Ministers make a decision to waive the Special Land Offer in accordance with regulation 15(1), this special condition will be deemed to have been complied with.
3. The Crown reserves the right to caveat the Land until an encumbrance or covenant has been registered or, in the case of Special Land which is marine and coastal area, until the transfer of the Special Land has been completed.
4. You will be responsible for all of your own costs incurred as a result of the transfer of the Special Land.

If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.

Standard conditions

You must also comply with the **standard conditions** set out below. These apply to all overseas people who are given consent to acquire sensitive New Zealand land, including you:

Details	Required date
Standard condition 1: acquire the Land	
<p>You must acquire the Land:</p> <ol style="list-style-type: none">by the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Land, andusing the acquisition, ownership and control structure you described in your application. <p>Note, only you – the named Consent holder – may acquire the Land, not your subsidiary, trust or other entity.</p>	As stated in the Consent
Standard condition 2: tell us when you acquire the Land	
<p>You must tell us in writing when you have acquired the Land. Include details of:</p> <ol style="list-style-type: none">the date you acquired the Land (Settlement),consideration paid (plus GST if any),the structure by which the acquisition was made and who acquired the Land, andcopies of any transfer documents and Settlement statements.	As soon as you can, and no later than two months after Settlement
Standard condition 3: allow us to inspect the Land	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions.</p> <p>We will give you at least two weeks' written notice if we want to do this.</p> <p>You must then:</p> <ol style="list-style-type: none">Allow a person we appoint (Inspector) to:<ol style="list-style-type: none">enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (Inspection),	At all times

<ul style="list-style-type: none"> (b) remain there as long as is reasonably required to conduct the inspection, (c) gather information, (d) conduct surveys, inquiries, tests and measurements, (e) take photographs and video records, and (f) do all other things reasonably necessary to carry out the Inspection. <p>2. Take all reasonable steps to facilitate an Inspection including:</p> <ul style="list-style-type: none"> (a) directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection, (b) being available, or requiring your employees, agents, tenants or other occupiers to be available, at all reasonable times during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required. <p>3. During an Inspection:</p> <ul style="list-style-type: none"> (a) we will not compel you and your employees, agents, tenants or other occupiers to answer our questions or to let us look at, copy or take away documents, (b) our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection. 	
Standard condition 4: remain not unsuitable	
<p>You, and to the extent that you are not an individual, the Individuals Who Control You must remain not unsuitable to own or control the Assets in accordance with section 18A(1) of the Act.</p> <p>The Individuals Who Control You are individuals who:</p> <ul style="list-style-type: none"> (a) are members of your governing body, (b) directly or indirectly, own or control more than 25% of you or of a person who itself owns or controls more than 25% of you, and (c) are members of the governing body of the people referred to in paragraph (b) above. 	<p>At all times</p>

Standard condition 5: tell us about changes that affect you, the people who control you, or people you control

You must tell us in writing if any of the following events happens to any of the Consent holders:

1. You become aware that you and/or any Individual Who Controls you establishes any of the investor test factors listed in section 18A(4) of the Act.
2. You cease to be an overseas person or dispose of all or any part of the Land.
3. Your New Zealand Service Address changes. This is the address you provided us in your application as the address which we will send any legal document we need to serve on you.

Within 20 working days after the change

Standard condition 6: dispose of the Land if you do not comply with key special conditions

Some of the special conditions were key to the decision to give consent. If we consider you have failed to comply with one of those Special conditions in a material way we may require you to dispose of the Land.

If all or part of this standard condition 6 applies to a special condition, we have said so in that condition.

We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:

Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.

Within six weeks of the date of our notice.

Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.

Within six weeks of the date of our notice.

Dispose of the Land: dispose of the Land to a third party who is not your associate.

Within six months of our notice.

Offer without reserve: if you have not disposed of the Land within six months of our notice, offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.

Within nine months of our notice.

<p>Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.</p>	<p>By the last day of every March, June, September and December after our notice or at any other time we require.</p>
<p>Report disposal to us: send us, in writing, evidence:</p> <ul style="list-style-type: none"> (a) that you have disposed of the Land, (b) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor), (c) the purchaser is not your associate. 	<p>Within one month after the Land has been disposed of.</p>

Released under the Official Information Act 1982

Reporting conditions

We need information from you about how your Investment Plan is tracking so we can monitor your progress against the Conditions and so we can measure the benefits you have brought to New Zealand through your investment.

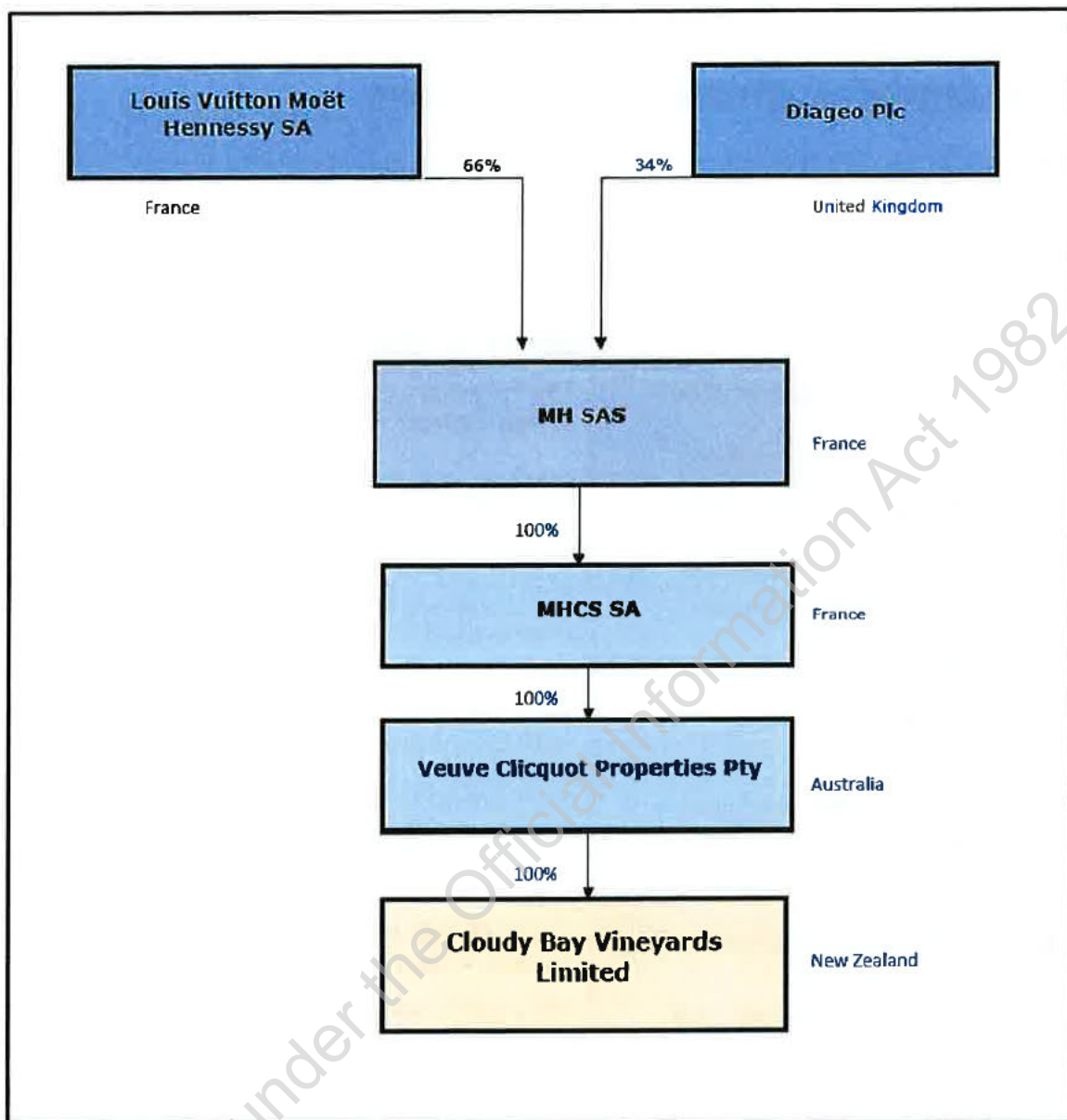
You must lodge a **report**. This must:

1. be sent to **oiomonitoring@linz.govt.nz** by 31 May 2026;
2. contain information about:
 - (a) your progress in implementing the Special conditions;
 - (b) the amount of additional investment expended to date under each of the categories in Special condition 1;
 - (c) the number and type of new jobs created under Special condition 3;
 - (d) the exports created from the use of the Land, including total wine export numbers and total export receipts; and
 - (e) your progress with the preparation and registration of legal instruments to improve public walking access; and
3. follow the format of the template report published on our website (see <https://oio.linz.govt.nz/oio-consent-monitoring>).

If requested in writing by the OIO, the Consent Holder(s) must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:

- (a) the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the content was granted or
- (b) the conditions of this consent..

ATTACHMENT 2 – INTENDED OWNERSHIP STRUCTURE



ATTACHMENT 3 OTHER BENEFIT FACTORS

The table below lists other factors in the Act and regulations for assessing the benefit of overseas investments.

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 the purposes of our assessment.

Factor	Reason not relevant or insufficient
New technology or business skills – s17(2)(a)(ii) (high relative importance factor)	The investment is unlikely to result in the introduction to New Zealand of new technology or business skills.
Added market competition, greater efficiency or productivity, or enhanced domestic services – s17(2)(a)(iv)	The investment is unlikely to result in increased market competition, efficiency, or enhanced domestic services.
Increased processing of primary products – s17(2)(a)(vi) (high relative importance factor)	The investment is unlikely to result in increased processing when compared to the counterfactual.
Indigenous vegetation/fauna – s17(2)(b)	There are no areas of significant indigenous vegetation or significant habitats of indigenous fauna on the Land.
Trout, salmon, wildlife, and game – s17(2)(c)	There are no trout, salmon, wildlife, and game habitats identified on the Land.
Historic heritage – 17(2)(d)	There are no historic heritage sites identified on the Land.
Offer to sell seabed/foreshore/riverbed to the Crown – s17(2)(f)	The Land does not include seabed, foreshore, riverbed, or lakebed.
Consequential benefits – reg 28(a)	Any benefits have been considered under other benefit factors.
Key person in a key industry – reg 28(b)	The investment does not involve a key person in a key industry.
Affect image, trade, or international relations – reg 28(c)	New Zealand's image would not be affected by a well-reasoned decision to decline.
Owner to undertake other significant investment – reg 28(d)	The use of the sale proceeds by the vendor of the Land is unlikely to result in a significant investment.
Advance significant government policy or strategy – reg 28(f)	The investment is unlikely to advance any Government policy or strategies when compared to the counterfactual.
Strategically important infrastructure – reg 28(h)	There is no strategically important infrastructure on the Land.
Economic interests – reg 28(i)	The investment is unlikely to have any material effect on New Zealand's economic interests.
Oversight and participation by New Zealanders – reg 28(j) (high relative importance factor)	The investment is unlikely to result in New Zealand oversight and participation