

Decision required under the Overseas Investment Act 2005: CDL Land New Zealand Limited

Date	17 April 2019
Security Level	Commercial: In Confidence
Priority	High
Case Number	201810232
Decision Required By	26 April 2019

Contact for Telephone Discussion

Name	Position	Telephone (wk)	Cellphone	First Contact
Charlotte Connell	Manager Applications	04 462 4407	[s 9(2)(g)(ii)]	
Llinos Morgan	Senior Solicitor	04 460 2720		✓

Executive Summary:

1. CDL Land New Zealand Limited is a New Zealand incorporated company which has been acquiring and developing undeveloped land in New Zealand for two decades.
2. CDL Land New Zealand is seeking consent to acquire approximately 8.4299 hectares of land at Arataki Road, Havelock North (the "**Land**") from a New Zealand owned company.
3. The Applicant plans to develop the Land into a subdivision of approximately [REDACTED] residential sections of various sizes and then sell the sections on the open market. The Applicant will need to rezone the Land to an appropriate urban residential use to facilitate doing so.
4. We consider the Investment is likely to result in substantial and identifiable benefit to New Zealand, including:
 - (a) the creation of four full time equivalent roles to facilitate the development plan of the Land;
 - (b) oversight and participation by New Zealanders;
 - (c) additional investment into New Zealand;
 - (d) added efficiency due to the Applicant's plans to develop the Land in the short to medium term;
 - (e) the Applicant's previous investments in New Zealand having been of benefit to New Zealand; and
 - (f) advancing the National Policy Statement on Urban Development Capacity by creating sections available for additional residential housing.
5. We therefore recommend that consent be granted to this application, subject to the conditions set out in **Appendix 1**.

Transitional note

6. 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 to this application as if the Overseas Investment Amendment Act 2018 had not been enacted.

Instructions

7. Please see **Appendix 2** for instructions on how to make a decision and guidance on the relevant factors and criteria for consent.

Decision:

8. I have determined that:
 - (a) the '**relevant overseas person**' is (collectively):

Entity	Relationship
CDL Land New Zealand Limited	Applicant
CDL Investments New Zealand Limited	Parent company of the Applicant

- (b) the '**individuals with control of the relevant overseas person**' are:

Individual	Role
Boo Keng Chiu	Director of the Applicant and Director of CDL Investments New Zealand Limited
Jason Craig Adams	Director of the Applicant
Joo Boon Pua	Director of the Applicant and CDL Investments New Zealand Limited
Colin Sim	Director of CDL Investments New Zealand Limited
Roy James Austin	Director of CDL Investments New Zealand Limited
John Heath Henderson	Director of CDL Investments New Zealand Limited
Kian Seng Tan	Director of CDL Investments New Zealand Limited
Vincent Wee Eng Yeo	Director of CDL Investments New Zealand Limited

9. I am satisfied that the criteria for consent in section 16 have been met:
- (a) the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment; and
 - (b) the relevant overseas person has demonstrated financial commitment to the overseas investment; and
 - (c) all the individuals with control of the relevant overseas person are of good character; and
 - (d) 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; and
 - (e) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders) ; and
 - (f) the farm land or the securities to which the overseas investment relates have been offered for acquisition on the open market to persons who are not overseas persons in accordance with the procedure set out in regulations.

10. Consent is granted to the overseas investment in the form of the Proposed Decision in Appendix 1 and subject to the conditions set out in the Proposed Decision.



Charlotte Connell – Manager Applications

Date 17-Apr-2019

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Report of the Overseas Investment Office
on the application for consent by
CDL Land New Zealand Limited
Case: 201810232

Contents

WHAT IS THE INVESTMENT?	6
WHO IS MAKING THE INVESTMENT	7
INVESTMENT PLAN	9
WHAT IS LIKELY TO HAPPEN WITHOUT THE INVESTMENT	11
DOES THE APPLICANT MEET THE INVESTOR TEST CRITERIA?	12
BENEFITS THAT ARE LIKELY TO OCCUR WITH THE INVESTMENT	14
BENEFIT TO NEW ZEALAND TEST - S16(1)(E)(II)	19
BENEFITS NOT LIKELY TO OCCUR.....	20
HAS THE FARM LAND BEEN OFFERED ON THE OPEN MARKET?	22
CONSENT CRITERIA.....	22
THIRD PARTY SUBMISSIONS.....	22
APPENDIX 1 - PROPOSED DECISION.....	24
CONSENT FOR OVERSEAS PERSON TO ACQUIRE SENSITIVE NEW ZEALAND LAND	24
CONSENT	24
CONDITIONS	24
SPECIAL CONDITIONS.....	24
STANDARD CONDITIONS.....	26
REPORTING CONDITIONS.....	31
APPENDIX 2 - INSTRUCTIONS.....	32
APPENDIX 3 - SENSITIVE LAND	34
APPENDIX 4 - STRUCTURE DIAGRAM	35

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

What is the Investment?

Applicant	CDL Land New Zealand Limited (Singapore 43.4667%, New Zealand 38.897%, Various 11.0858%, United Kingdom 3.2788%, United States of America 3.2717%)
Vendors	Christine Margaret Hawley & James Christopher Hawley & Martin Graham Speeden as Trustees of the Hawley Family Trust (New Zealand 100%) Carolyn Elizabeth Wallis (New Zealand 100%)
Application Type	Sensitive land
Relevant tests	Investor Test (s 16(1)(a)-(d)); Benefit to New Zealand test – Substantial and identifiable benefit (s 16(1)(e)(ii) and (iii)); [Farmland offer criterion (s 16(1)(f)).] <i>*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 to this application as if the Overseas Investment Amendment Act 2018 had not been enacted.</i>
Consideration	Total Consideration for all three lots = \$8,767,108.00
Recommendation	Grant Consent

Description of the Investment

1. CDL Land New Zealand Limited (**Applicant**) seeks consent to acquire approximately 8.4299 hectares of land located at Arataki Road, Havelock North (**Land**) for the purpose of creating a residential land subdivision.
2. The Land is currently made up of 3 separate lots which the Applicant intends to subdivide into approximately 5 residential lots.
3. The Land is made up of the following lots:
 - (a) Lot 1 – approximately 2.9390 hectares which currently contains two residential homes and a number of outbuildings;
 - (b) Lot 2 – approximately 2.6415 hectares which is currently used as a grazing paddock; and
 - (c) Lot 3 – approximately 2.8494 hectares which currently contains one residential home.

4. All three lots are adjoining as shown below:



Vendors

5. The Applicant is acquiring the land from two separate vendors, the first vendor Carolyn Elizabeth Wallis owns Lot 1. The homes located on Lot 1 are currently used as rental properties and have been owned by the Ms Wallis for a number of years.
6. Lot 2 and 3 are currently owned by Christine Margaret Hawley & James Christopher Hawley & Martin Graham Speeden as Trustees of the Hawley Family Trust. Christine and James Hawley currently live on the land at Lot 3.
7. The agreement for sale and purchase to acquire Lot 3, contains a condition that approximately 0.2550 hectares of land is subdivided out and retained by the family trust. This is the area containing the family home.

Sensitive Assets

8. The Applicant is acquiring sensitive land as the combined area of the land is greater than 5 hectares of non urban land. See **Appendix 3**.
9. The Land is 'rural land' as defined in the Ministerial Directive Letter issued by the Minister of Finance on 28 November 2017 (**Ministerial Directive Letter**).
10. Therefore:
- (a) we have treated the 'jobs', 'new technology or business skills', 'increased export receipts', 'increased processing of primary products' and 'oversight and participation by New Zealanders' factors as being of high relative importance.
 - (b) to the extent that the 'consequential benefit' factor relates to the sponsorship of community projects and donations, we have treated this factor as being of low relative importance.

Who is making the Investment

Applicant

11. The Applicant is a New Zealand incorporated company which has 3 directors:

- (a) Boo Keng Chiu;
 - (b) Jason Craig Adams; and
 - (c) Joo Boon Pua.
12. Jason Craig Adams has been appointed as a director of the Applicant since the Applicant last obtained consent in December 2018.

Ownership of the Applicant

13. The Applicant's ownership is complex. The full corporate structure can be found in **Appendix 4**.
14. The Applicant is wholly owned by CDL Investments Limited ("**CDL**"), an NZX listed company. CDL is majority owned (up to 66.42%) by Millennium & Copthorne Hotels New Zealand Limited.
15. Millennium & Copthorne Hotels New Zealand Limited is an NZX listed and is ultimately majority owned by City Developments Limited (a publicly listed company) of Singapore. City Developments Limited's website notes '*it is an international real estate operating company with a global presence spanning 100 locations in 28 countries*'.

Control of the Applicant

16. The Proposed Development was unanimously approved by formal written resolution by CDL's Board of Directors ("**Board**"). Any divestment of the Property would require the unanimous approval of both the Board and the Applicant's Board of Directors. Approval was not required by the shareholders of CDL.

Relevant Overseas Person

17. We have determined that the '**relevant overseas person**' is (collectively):-

Entity	Relationship
CDL Land New Zealand Limited	Applicant
CDL Investments New Zealand Limited	Parent company of the Applicant

Individuals with Control

18. We have determined that the '**individuals with control of the relevant overseas person**' are:

Individual	Role
Boo Keng Chiu	Director of the Applicant and Director of CDL Investments New Zealand Limited
Jason Craig Adams	Director of the Applicant
Joo Boon Pua	Director of the Applicant and CDL Investments New Zealand Limited
Roy James Austin	Director of CDL Investments New Zealand Limited
Individual	Role
John Heath Henderson	Director of CDL Investments New Zealand Limited

	Zealand Limited
Kian Seng Tan	Director of CDL Investments New Zealand Limited
Vincent Wee Eng Yeo	Director of CDL Investments New Zealand Limited

Business Activities

19. The Applicant's core business is the acquisition and development of undeveloped land. The Applicant submits it has a proud track record of acquiring and developing residential sections in New Zealand.
20. Over the past twenty years, the Applicant has made significant other land purchases and has completed numerous subdivision projects in Auckland, Hamilton, Tauranga, Hastings, Taupo, Nelson, Christchurch, Rolleston (Canterbury) and Queenstown.
21. The Applicant was recently granted consent to acquire approximately 20 hectares of land in Hamilton in 2018.
22. The map below shows the locations of the Applicant's current sub-division projects:



Investment Plan

Proposal for the Land

23. The Applicant intends to develop the land to create approximately [s 9(2)] fee simple sections ranging in size between [s 9(2)] and [s 9(2)] across the three sites.

24. Once developed, the Applicant intends to sell the sections on the open market. The Applicant does not intend to build dwellings on the Land, instead focusing on the development of sections.

Zoning of the Land

25. The Land is currently zoned as "plains zone" and "plains production zone" within the Hastings District Council's (**HDC**) district plan.
26. The area adjacent to the Land is currently used for residential purposes as illustrated by the below image.



27. The Applicant notes that the Land is zoned by the regional Heretaunga Plains Urban Development Strategy as a "future greenfield area".
28. The greenfield growth requirements have identified the Land as a possible growth area between 2015-2045 as a part of the "Arataki Extension".
29. To undertake the proposed Investment, the Applicant will need to apply under the Resource Management Act 1991 (**RMA**) to rezone the Land to an appropriate urban residential zone status. This would require a change to the HDC district plan
30. The Applicant intends to undertake the rezoning process prior to lodging additional resource consent applications to develop the Land such as earthworks and subdivision consents.

Te Mata Mushrooms

31. The Land is located next to the Te Mata Mushroom factory which grows and processes mushrooms.
32. Te Mata Mushrooms have recently been fined in the Environment Court for breaches to its resource consent in relation to odour discharges from the factory.

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

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

Proposed Development Schedule

35. The Applicant has proposed three development times based on how long they anticipate the structure plan, zoning change and resource consent process to take.
36. The Applicant has outlined the following scenarios for the Land:
- short-term scenario: rezoning processes to commence in [s 9(2)(b)(ii)] with work of stage one to start [s 9(2)(b)(ii)];
 - medium term scenario 1: rezoning processes to commence in [s 9(2)(b)(ii)] with work of stage one to start [s 9(2)(b)(ii)]; and
 - medium term scenario 2: rezoning processes to commence in [s 9(2)(b)(ii)] with work of stage one to start [s 9(2)(b)(ii)] .
37. The main reason for the delay in the initiation of the resource consent processes is:
- to recognise that the Land will need to go through a structure plan application, a rezoning application which will require a change to the regional plan and a resource consent process; and
 - [s 9(2)(b)(ii)]
38. In all three scenarios, the Applicant anticipates that the development will take [s 9(2)(b)(ii)] years and will be sold in 5 stages of approximately [s 9(2)(b)(ii)] sections per year. [s 9(2)(b)(ii)]

What is likely to happen without the Investment

Counterfactual

As a result of *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147 ("*Tiroa E*"), the OIO and relevant Ministers must apply a "counterfactual test" when assessing whether an overseas investment will, or is likely to benefit New Zealand. This test, which was described by the Court as a "with and without" test, requires a comparison of what is likely to happen with the investment, and what is likely to happen without the investment (the counterfactual).

39. In summary, from the information provided, we consider that the most likely counterfactual scenario in the **long term is that an alternative New Zealand purchaser would acquire the Land to develop for residential purposes**. We note, however, that in the short to medium term it is likely that the status quo would be maintained with the vendors retaining ownership of the Land.
40. There are two key questions to determine what is likely to occur without the Investment:
- who is likely to own the Land?; and
 - what is the likely use of the Land?

Who is likely to own the Land

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

¹ All refer to the calendar year.

42. Due to the farmland advertising requirements under the Act, the Land was advertised. This occurred after the agreements for sale and purchase were entered into as is permitted by the Act.
43. The Land was advertised as a collective, with all three lots being advertised in tandem.
44. The Applicant has made two counterfactual submissions in relation to this:
 - (a) the Vendors will retain the Land and continue to the Land for lifestyle block purposes;
 - (b) an adequately funded New Zealand purchaser will acquire the Land for the purpose of developing the Land into residential housing.
45. The Applicant submits that the mostly likely use of the land is that the status quo is maintained as outlined in paragraph 44(a) [s 9(2)(b)(ii)]

What is the likely use of the Land

46. The Land is currently not zoned for high density residential housing; however, is on the city fringes and is ear marked as a future growth zone.
47. Due to the Land's location on the city fringe, adjacent to already established high density housing it is likely that in the long term the Land will be developed for residential purposes.
48. The Land's location and current use as lifestyle properties makes it unlikely that it will be used for any higher land use other than residential housing.

OIO assessment

49. While the Vendors may retain the Land in the short to medium term, the counterfactual is forward looking and must be assessed for the long term use of the Land.
50. The Land's location on the fringes of a developing community makes it unlikely that the Land will be held by the Vendors in the long term.
51. We consider that the most likely long term outcome is that the Land is acquired by an adequately funded New Zealand purchaser for the purpose of developing residential sections on the Land.
52. [s 9(2)(b)(ii)]
53. We consider that the majority of the benefits associated with the Investment arise as a result of the Applicant rezoning the Land and facilitating the development to occur in an expedited timeframe.

Does the Applicant meet the Investor Test criteria?

Business Experience s16(1)(a)

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.

54. In this case, the Investment can be described as the acquisition of land for the purpose of developing residential properties.

55. The relevant overseas person in this case has experience developing land for residential purposes all over New Zealand.
56. We have reviewed the biographical information provided by the Applicant for each of the individuals with control and note:
- (a) the individuals with control of the Applicant together have extensive general business experience including experience in the property investment and development industries in New Zealand; and
 - (b) the individuals with control of CDL together have extensive general business experience including the business development, hospitality, finance and property development industries.
57. 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.

Financial Commitment s16(1)(b)

The financial commitment criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the overseas investment.

58. The 'financial commitment' criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the Investment (intentions are not sufficient).
59. In this case we are satisfied that the relevant overseas person has demonstrated financial commitment by:
- (a) undertaking due diligence on the Land and engaging professional advice as a consequence; and
 - (b) undertaking research into the Hastings District Council's future zoning plans.

Good Character s16(1)(c)

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):

- (a) 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);
- (b) any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

60. While processing Application 201710094, we became aware of a breach of the Overseas Investment Act 2005 (the "**Act**") by the Applicant. The Applicant had increased its shareholding in Millennium & Copthorne Hotels Plc from approximately 59.349% to approximately 65.2%, which required consent under the Act². We investigated this breach and a compliance letter was sent to City Developments Limited.
61. This breach occurred as a result of an international transaction by a parent of the relevant overseas person in this application, well upstream from the Applicant. It appears the legal advisors in that international transaction inadvertently failed to consider the New Zealand implications of the transaction. We consider that this breach does not involve the relevant overseas person in relation to this application and does not affect the good character of the individuals with control of the relevant overseas person in this application given the remoteness of this breach to the individuals with control here.

² Being an increase of an existing 25% or more ownership or control interest in a company that owns or controls an interest in sensitive land.

62. The Applicant has provided a statutory declaration stating that the individuals with control are of good character, have not committed an offence or contravened the law as described above and know of no other matter that reflects adversely on their fitness to have the Investment. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957.
63. We have also conducted open source background checks on the individuals with control and note that neither the information located as a result of these searches nor the matters disclosed by the Applicant adversely affect the character of the Applicant.
64. Therefore, we are satisfied that the individuals with control are of good character.

Immigration Act s16(1)(d)

Section 15 of the Immigration Act specifies that certain convicted or deported persons are not eligible for a visa or permission to enter or be in New Zealand. Section 16 provides a power to deny a visa or permission to enter New Zealand for other specified reasons, such as if the individual is likely to be a threat or risk to security or public order.

65. The Applicant has provided a statutory declaration stating that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957. We have also conducted open source background checks on those individuals and found nothing relevant to this criterion.
66. Therefore, we are satisfied that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.

Benefits that are likely to occur with the Investment

67. We **are satisfied** that the Investment is likely to benefit New Zealand in regard to the **following factors**:

Jobs – s17(2)(a)(i) - high relative importance

There are three key elements to this factor:

- 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**.

68. We consider that this Investment is likely to result in the creation of approximately 4 full time equivalent (**FTE**) jobs on the Land in the short term.

Creation of jobs

69. The Applicant submits that it will require [s 9(2)(b)(ii)] to undertake the Investment in the short term. They estimate that the requirements of these roles will equate to the equivalent of 4 FTEs across four years.
70. The Applicant also submits that it will require contract workers and consultant workers to develop the property. Whilst we agree with the Applicant that these roles will be required we consider that they are unlikely to be new roles created and are likely to use the capacity of the existing work force in the area.

Our assessment

71. We consider that the Applicant will create roles to facilitate the initial development of the Land and the change in zoning. This is likely to require a large amount of administration.
72. We consider that the proposed 4 FTE's will unlikely occur without the Investment in the short term as we are not of the view that an alternative New Zealand purchaser would work to rezone the Land in the short term.
73. There may also be additional roles for construction workers created in future but it is unclear how many roles will be required and when. We, therefore, cannot determine whether these roles would likely occur without the Investment. Due to this lack of certainty, we have only considered the roles to be created in the short term in assessing this benefit factor.

Recommended conditions

74. We recommend that the Applicant is conditioned to undertake the development in particular the rezoning of the Land. Conditioning this outcome, will ensure that the Applicant has to employ the requisite employees.
75. We also recommend the Applicant is required to report on the jobs created as a result of the investment.

Added market competition, greater efficiency or productivity, enhanced domestic services – s17(2)(a)(iv)

There are three key elements to this factor:

- 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 **New Zealand.**
- 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.

76. We consider this Investment is likely to result in increased efficiency as a result of the Applicant developing the Land as a whole in the short to medium term.

Greater Efficiencies

77. The Applicant submits that their ability to acquire all three lots will enable them to gain development efficiencies [s 9(2)].
78. This will be achieved by designing the section plans for the properties to maximise the usage of all three of the sites and ensuring that [s 9(2)(b)(ii)].
79. The Applicant also notes that by developing all three lots at the same time, they will be in a position to achieve economies of scales and would likely [s 9(2)(b)(ii)].

Our assessment

80. We consider the Applicant's acquisition of the Land will result in a more efficient use of land [s 9(2)(b)(ii)].
81. We consider that the development of the Land together is likely to lead to efficiencies in timeframes [s 9(2)(b)(ii)].

Additional investment for development purposes – s17(2)(a)(v)

There are four key elements to this factor.

- The investment must be **additional investment**.
- The additional investment must be **introduced into New Zealand**.
- The additional investment must be **for development purposes**.
- The additional investment that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

82. The Applicant submits that it will introduce approximately [s 9(2)(b)(ii)] into New Zealand for the purpose of capital developments as a result of this Investment.

Applicant's submissions

83. The Applicant submits that it intends to spend approximately [s 9(2)(b)] per lot on the structure plan and resource consent applications. This equates to a total spend of approximately [s 9(2)(b)(ii)] to progress the development plans.
84. The Applicant submits that it will fund its developments [s 9(2)(b)(ii)].
85. The Applicant notes that should it be granted consent to develop the Land it anticipates that it will invest approximately [s 9(2)(b)(ii)] on developing the sections.

Our assessment

86. We consider that the Applicant is likely to introduce approximately [s 9(2)(b)(ii)] to for development purposes to progress their rezoning application and structure plan for the Land. We consider that these funds are unlikely to be introduced without Investment.
87. We also note the Applicant is likely to introduce much larger sums of additional investment for development purposes in the long run, however there is uncertainty as to the timing of this.

Recommended condition

88. We recommend the Applicant is conditioned to apply to rezone the Land and for resource consents. We also recommend the Applicant is conditioned to report on their progress accordingly.

Previous investments – r28(e)

There are two key elements to this factor:

- The **relevant overseas person** must have **previously undertaken investments**;
- The previous investments must have been, or are, of **benefit to New Zealand**.

89. The Applicant submits that it has been developing land in New Zealand since 1994 and has received consent under the Act for a number of developments.

Prestons Park

90. The Applicant has received a number of consents under the Act for this development, including the Applicant acquiring:
- (a) approximately 13.7163 hectares, 11.0937 hectares and 5.47 hectares of land located at Prestons Road, Christchurch; and
 - (b) approximately 18.5068 hectares, 10.9265 hectares, 7.1048 hectares and 8.2 hectares of land located at Mairehau Road, Christchurch.

91. These parcels of land were amalgamated in 2015 to form one development. The Applicant has obtained various consents from Christchurch City Council and Environment Canterbury and made investments in infrastructure to the above land to create the Prestons Park subdivision. This will yield approximately [s 9(2)] residential sections of various sizes and price ranges (over the life of the project). Sections at various stages of Prestons Park have been offered for sale since 2015 and will continue to be sold over the medium term.
92. The Applicant submits that approximately [s 9(2)(b)] jobs have been created or sustained as a result of Prestons Park. The Applicant also submits that through its development of Prestons Park, Christchurch City Council was able to secure additional land for community recreation activities, including increasing the size of "The Domain", a recreation reserve located adjacent to Prestons Park and containing junior football fields, tennis courts, a playground and various small local community clubrooms together with associated car parking.³
93. The Applicant worked with Christchurch City Council reserves and stormwater departments to create pedestrian walking/cycling links integrated with stormwater facilities and landscaped areas within reserves through Prestons Park.
94. The Applicant submits it has introduced [s 9(2)(b)(ii)] of investment into New Zealand for the purposes of the development of Prestons Park.

Northwood

95. The Applicant received consent under the Act to acquire approximately 7.4621 hectares at 1317 Pakowhai Road, Hastings. This was developed into the Applicant's Northwood subdivision, which overall will yield [s 9(2)] residential sections within Hastings. The Applicant has developed and sold [s 9(2)] sections in this subdivision to the New Zealand public since 2007.
96. The Applicant submits that approximately [s 9(2)] jobs have been created or retained as a result of this subdivision.
97. The Applicant further submits that as part of this development, there was approximately 10,000m³ of surplus topsoil to remove from the site. During its investigations into topsoil removal options, the Applicant became aware that the Clifton Country Cricket Club ("Cricket Club"), located in Te Awanga, Hawkes Bay, were looking to redevelop their existing cricket ground ready for a World Cup Cricket Charity event (The Legends of Cricket Art Deco Match) they were hosting in February 2015. During discussions with the Cricket Club, the Applicant became aware that the Cricket Club had a very limited budget, and as such the Applicant agreed to obtain all necessary resource consents, and to transport the surplus topsoil to the Cricket Club, reshape the cricket ground and form embankments for spectator viewing (at no cost to the Cricket Club). The cost to the Applicant for this component of the Northwood project, which benefited the Cricket Club, its members and wider community, was [s 9(2)(b)(ii)] plus GST.
98. The Applicant submits it has introduced [s 9(2)(b)(ii)] into New Zealand [s 9(2)(b)(ii)] for the purposes of the development of Northwood.

Hobsonville/Westgate

³ The Applicant submits that through the master planning of Prestons Park, 0.75 hectares of additional reserve land was provided to increase the size of The Domain, from 2.0234 hectares to 2.7812 hectares.

99. The Applicant received consent under the Act to acquire approximately 5.5775 hectares of land located at 4 Hobsonville Road, Hobsonville, Auckland. The Applicant submits that this land is to be developed into residential sections once the Whenuapai Plan Changes is approved and infrastructure issues can be agreed and concluded with Watercare and New Zealand Transport Authority.
100. The Applicant submits it has incurred [s 9(2)(b)(ii)] as at July 2018 on the initial phase of this project and approximately [s] direct and indirect FTE jobs have been created or sustained as a result of the initial planning phase for the Hobsonville development. [s 9(2)(b)(ii)]

OIO assessment

101. In light of the above, we are satisfied that the Applicant has undertaken significant previous investment in New Zealand that has created benefit to various communities.

Advance significant government policy or strategy – r28(f)

There are three key elements to this factor:

- The overseas investment **must give effect to or advance** a specific **Government policy or strategy**.
- The Government policy or strategy must be **significant**.
- The effect or advancement that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

National Policy Statement on Urban Development Capacity

102. The Applicant has submitted that the Proposed Development will likely give effect to or advance the National Policy Statement on Urban Development Capacity 2016 (“**NPS**”). The Ministry for the Environment (“**MFE**”) website⁴ states that the NPS directs local authorities to provide sufficient development capacity in their resource management plans for housing and business growth to meet demand. Further, the MFE website notes the NPS ‘*is about recognising the national significance of... providing sufficient development capacity to meet the needs of people and communities and future generations in urban environments*’. Accordingly, we are satisfied that the NPS is a significant Government policy.
103. The NPS recognises that sufficient opportunities for development for both housing and business are needed to provide for the well-being of a community, especially in growth areas and has forced councils to think carefully about facilitating development by developers who have the track record, capability and capacity to actually deliver on the residential development objectives. The Applicant believes that it meets the criteria as such a developer.
104. We note that the Hastings district is set out as a medium growth urban area within the NPS.

OIO Assessment

105. We consider that while this policy is primarily directed towards local authorities, if the Applicant can assist the local authorities with this policy, the Applicant expediting the rezoning process for the Land will likely give effect to or advance this Government policy.

⁴ <http://www.mfe.govt.nz/node/21486>

Oversight and participation by New Zealanders – r28(j) - high relative importance

There are three key elements to this factor:

- 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.

106. We consider control of both the Proposed Development and the relevant overseas person resides largely with overseas persons. The Applicant submits that the current directors of the Applicant are New Zealand citizens and residents, however, there is no requirement for this to stay this way (other than the legal obligations set out in the Companies Act 1993).
107. At an ownership level, two of the Applicant's parent companies (CDL and Millennium & Copthorne Hotels New Zealand Limited) are listed on the NZX so there is participation by New Zealanders. As these are listed companies, this ownership changes daily, making exact ownership by nationality figures difficult to determine. However, we are satisfied that via these two listed companies, there is a large proportion of New Zealand ownership at approximately 38%. There is also, via these two companies, a considerable opportunity for New Zealanders to participate in the investment. Accordingly, we consider that New Zealanders are likely able to participate in the overseas investment.

OIO assessment:

108. The OIO considers that ownership or control of the overseas investment will largely lie with overseas interests but there will be participation by New Zealanders via CDL, and its majority shareholder Millennium & Copthorne Hotels New Zealand Limited, being publically listed on the NZX.

Benefit to New Zealand Test - s16(1)(e)(ii)

Benefit to New Zealand

109. In order 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.
110. We have assessed the benefit likely to result from this Investment in accordance with the rural land directive contained in the Ministerial Directive Letter.
111. 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). In this case the Applicant is acquiring 8.4299 hectares of land in Havelock North that is currently used for lifestyle purposes.

Rural land directive

112. 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.”

113. We note that the rationale for the Ministerial Directive Letter applies directly to this type of investment as it concerns horticultural land currently in New Zealand ownership. 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.
114. We do not consider that any other factor should be given high relative importance in the context of this Investment.

Benefits from the Proposed Development

115. After careful consideration of the application, we are satisfied that the Investment is likely to result in the following benefits in the short to medium term beyond the counterfactual as follows:
- (a) additional job opportunities to facilitate rezoning and developing the Land;
 - (b) oversight and participation by New Zealanders - there will be participation by New Zealanders via CDL, and its majority shareholder Millennium & Copthorne Hotels New Zealand Limited, being publically listed on the NZX;
 - (c) additional investment into New Zealand for the structure plan and rezoning applications for the Land;
 - (d) added efficiency due to the Applicant's plans to develop the Land simultaneously;
 - (e) the Applicant's previous investments in New Zealand having been of benefit to New Zealand; and
 - (f) advancing the National Policy Statement on Urban Development Capacity 2016 by creating additional residential housing.
116. We consider that, when viewed collectively, the benefit to New Zealand that is likely to occur as a result of the Proposed Development is substantial and identifiable

Benefits not likely to occur

117. We considered that the factors below were either not relevant to the Investment or a benefit to New Zealand was unlikely to arise with regard to those factors. The Applicant made submissions in relation to some of these factors. However, we were **not** satisfied that the evidence provided showed that these benefits were likely to result from the Investment.

118. The following factors were therefore not met:

Factor	Reason not met / not relevant
New technology or business skills – 17(2)(a)(ii) - high relative importance	The Applicant submits that this factor is not relevant to the Investment and we agree.
Increased export receipts – 17(2)(a)(iii) - high relative importance	The Applicant submits that this factor is not relevant to the Investment and we agree.
Increased processing of primary products – 17(2)(a)(vi) - high relative importance	The Applicant submits that the developments would likely result in the use of timber to complete development. While we note that building materials often include primary products, the Applicant will not be processing primary products and will not be constructing the houses itself therefore this claim is insufficiently connected to the investment to be relevant to this factor.
Indigenous vegetation/fauna – 17(2)(b)	The Applicant submits that this factor is not relevant as the Land does not contain any significant indigenous flora and fauna and we agree.
Trout, salmon, wildlife and game – 17(2)(c)	The Applicant submits that this factor is not relevant as there is no trout, salmon, wildlife or game on the Land and we agree.
Historic heritage – 17(2)(d)	The Applicant submits that this factor is not relevant as there is no historic heritage on the Land and we agree.
Walking access – 17(2)(e)	The Applicant submits that this factor is not relevant in the context of a housing development and we agree.
Offer to sell seabed/foreshore/riverbed to the Crown – 17(2)(f)	The Applicant submits that this factor is not relevant as the Land does not include any special land and we agree.
Consequential benefits – 28(a)	The Applicant has not made any submissions in relation to this factor and therefore we agree that it is not relevant.
Key person in a key industry – 28(b)	The Applicant has not made any submissions in relation to this factor and therefore we agree that it is not relevant.
Affect image, trade or international relations – 28(c)	The Applicant submits that this factor is not relevant to the Investment and we agree.
Owner to undertake other significant investment – 28(d)	The Applicant submits that this factor is not relevant to the Investment and we agree.

Factor	Reason not met / not relevant
Enhance the viability of other investments – 28(g)	<p>The Applicant claims this is relevant as [s 9(2)(b)(ii)] [s 9(2)(h)] [s 9(2)(b)(ii)]</p> <p>The Applicant has failed to identify [s 9(2)(b)(ii)] will enhance the viability of other investments.</p>
Strategically important infrastructure – 28(h)	The Applicant submits that this factor is not relevant to the Investment and we agree.
Economic interests – 28(i)	The Applicant submits that this factor is not relevant to the Investment and we agree.

Has the farm land been offered on the open market?

Farm land advertising - s16(1)(f)

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.

119. We have reviewed the advertising of the Land and are satisfied that it complies with the advertising procedure set out in the Regulations.

Consent criteria

120. As detailed above, we are satisfied that the criteria in section 16 are met, and therefore consent should be granted to the Investment.

Third Party Submissions

121. No third party submissions were received.

Appendices

APPENDIX 1 - PROPOSED DECISION.....	24
APPENDIX 2 - INSTRUCTIONS.....	32
APPENDIX 3 - SENSITIVE LAND	34
APPENDIX 4 - STRUCTURE DIAGRAM.....	35

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Appendix 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: 18 April 2019

The following people have been given the following **consent**:

Case	201810232
Consent	CDL Land New Zealand Limited may acquire the Land subject to the Conditions set out below.
Consent holder	CDL Land New Zealand Limited We will also refer to each Consent holder as you .
Land	Approximately 8.4299 hectares of freehold land at 108, 122 and 160 Arataki Road, Havelock North (contained in records of title HBM2/265, 677140 and 677141)
Timeframe	You have 12 months from the date of consent 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**.

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: Rezoning and Resource Consent	
<p>You must work with the relevant authorities to ensure that:</p> <p>(a) An application to rezone the Land to an appropriate Urban Residential Zone for residential use is lodged with the relevant local authority;</p> <p>(b) An application for the necessary resource, subdivision and any other consents required to allow the Land to be developed for residential purposes is lodged with the relevant local authority; and</p> <p>(c) You obtain the necessary resource, subdivision and any other consents required to allow the Land to be developed for residential purposes.</p> <p>If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.</p>	<p>[s 9(2)(b)(ii)]</p> <p>[s 9(2)(b)(ii)]</p> <p>[s 9(2)(b)(ii)]</p>
Special condition 2: Development of the Land	
<p>You must:</p> <p>(a) start stage 1 construction within [s 9(2)(b)(ii)] of receiving all of the approvals set out in special condition 1 above; and</p> <p>(b) complete 5 stages of construction [s 9(2)(b)(ii)] of starting stage 1 construction (these stages being set out in Appendix 12 of your application).</p> <p>You must:</p> <p>(a) ensure at least [s 9(2)(b)(ii)] residential sections are made available for sale to the New Zealand public per</p>	<p>[s 9(2)(b)(ii)]</p> <p>Stage 1 [s 9(2)(b)(ii)]</p> <p>Stage 2 [s 9(2)(b)(ii)]</p> <p>Stage 3 [s 9(2)(b)(ii)]</p> <p>Stage 4 [s 9(2)(b)(ii)]</p> <p>Stage 5 [s 9(2)(b)(ii)]</p> <p>Stage 1 [s 9(2)(b)(ii)]</p>

<p>annum for [s 9(2)] years with at least [s 9(2)] residential sections being made available in the [s 9(2)] year. [s 9(2)(b)(ii)] after construction as outlined in 2(a) has begun.</p> <p>If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.</p>	<p>[s 9(2)(b)(ii)]</p> <p>Stage 2 [s 9(2)(b)(ii)]</p> <p>Stage 3 [s 9(2)(b)(ii)]</p> <p>Stage 4 [s 9(2)(b)(ii)]</p> <p>Stage 5 [s 9(2)(b)(ii)]</p>
---	--

<p>Special condition 3: Ownership</p>	
<p>You must not retain an ownership interest in any part of the Land including any subsequent subdivided records of title.</p> <p>If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.</p>	<p>As soon as practicable and no later than [s 9(2)(b)]</p>

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:

<p>Details</p>	<p>Required date</p>
<p>Standard condition 1: acquire the Land</p>	
<p>You must acquire the Land:</p> <ol style="list-style-type: none"> by the date stated in the Consent. <p>If you do not, your Consent will lapse or become invalid and you must not acquire the Land, and</p> <ol style="list-style-type: none"> using 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>	<p>As stated in the Consent</p>

Standard condition 2: tell us when you acquire the Land	
<p>You must tell us in writing when you have acquired the Land.</p> <p>Include details of:</p> <ol style="list-style-type: none"> 1. the date you acquired the Land (Settlement), 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the Land, and 4. copies of any transfer documents and Settlement statements. 	<p>As soon as you can, and no later than two months after Settlement</p>
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"> 1. Allow a person we appoint (Inspector) to: <ol style="list-style-type: none"> (a) enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (Inspection), (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. 2. Take all reasonable steps to facilitate an Inspection including: <ol 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 	<p>At all times</p>

<p>across the Land. This includes providing transport across the Land if reasonably required.</p> <p>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 of good character	
<p>You and the Individuals Who Control You:</p> <ol style="list-style-type: none"> 1. must continue to be of good character, and 2. must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009. <p>In summary, these sections describe convicted or deported people who are not eligible for visa or entry permission to enter or be in New Zealand and people who are considered likely to commit an offence or to be a threat or risk to security, public order or the public interest.</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 25% or more of you or of a person who itself owns or controls 25% or more 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	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <ol style="list-style-type: none"> 1. You, any Individual Who Controls You, or any person in which you or any individual who 	<p>Within 20 working days after the change</p>

<p>controls you hold (or at the time of the offence held) a 25% or more ownership or control interest commits an offence or contravenes the law anywhere in the world. This applies whether or not you or they were convicted of the offence. In particular, please tell us about any offences or contraventions that you are charged with or sued over and any investigation by enforcement or regulatory agencies or professional standard bodies.</p> <p>2. An Individual Who Controls You ceases to be of good character; commits an offence or contravenes the law (whether they were convicted or not); becomes aware of any other matter that reflects adversely on their fitness to have the Land; or becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (see standard condition 4).</p> <p>3. You cease to be an overseas person or dispose of all or any part of the Land.</p> <p>4. You, any Individual Who Controls You, or any person in which you or any Individual Who Controls You hold (or at the time of the event held) a 25% or more ownership or control interest:</p> <p>(d) becomes bankrupt or insolvent</p> <p>(e) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or</p> <p>(f) becomes subject to any form of external administration.</p>	
<p>Standard condition 6: dispose of the Land if you do not comply with key Special conditions</p>	
<p>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.</p> <p>We may also require you to execute a security deed before you may acquire the Land. The security deed:</p> <ol style="list-style-type: none"> 1. must be in the form we require, 2. must be executed and delivered to us before 	

<p>you acquire the Land,</p> <p>3. gives us power to appoint a receiver to dispose of the Land if you do not do that as required by this Standard condition 6,</p> <p>4. will provide, among other things, that if we appoint a receiver, the receiver may dispose of the Land, deduct his or her costs from the proceeds of sale, and pay the remainder to you.</p> <p>If all or part of this Standard condition 6 applies to a Special condition, we have said so in that condition.</p> <p>We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:</p>	
<p>Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.</p>	<p>Within six weeks of the date of our notice.</p>
<p>Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.</p>	<p>Within six weeks of the date of our notice.</p>
<p>Dispose of the Land: dispose of the Land to a third party who is not your associate.</p>	<p>Within six months of our notice.</p>
<p>Offer without reserve: offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.</p>	<p>Within nine months of our notice.</p>
<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> <p>(a) that you have disposed of the Land,</p> <p>(b) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor),</p> <p>(c) the purchaser is not your associate.</p>	<p>Within one month after the Land has been disposed of.</p>

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.

Every year, you must lodge an **annual report**. It must:

2. be sent to **oiomonitoring@linz.govt.nz** by 31 December every year starting 2020 until 2030 or such other date as agreed with the Overseas Investment Office in writing.
3. contain information about:
 - (a) your progress in implementing the special conditions;
 - (b) the rezoning application;
 - (c) the necessary resource, subdivision and any other consents required to allow the Land to be developed for residential purposes;
 - (d) The number of full time equivalent jobs created as a result of the investment; and
 - (e) the Applicant's progress towards completing the stage 1 to 5 construction (as outlined in Appendix 12 of the Application) and progress in releasing sections to market, as set out in the Investment Plan, with such construction being adjusted to start within 6 months of receiving the consents set out in the special conditions.
4. follow the format of the template annual report published on our website.

Appendix 2 - Instructions

1. The references in this Appendix and the attached Report to the relevant sections of the Overseas Investment Act 2005 ("the Act") are to section references in the version of the Act that was in force at the time that the Applicant entered into the contract for the transaction (i.e. prior to the Overseas Investment Amendment Act 2018). This is consistent with the transitional provisions in clause 1 of Schedule 1AA of the Act.
2. The regulator must grant consent to this overseas investment if it is satisfied that all of the criteria in section 16 of the Overseas Investment Act 2005 ("the Act") are met. It must decline to grant consent if it is not satisfied that all of the criteria in section 16 are met. The regulator must not take into account any criteria or factors other than those identified in sections 16 and 17, and regulation 28 of the Overseas Investment Regulations 2005 ("the Regulations").
3. In the attached Report the Overseas Investment Office identifies each of the criteria and factors under sections 16 and 17, and regulation 28 that the regulator is required to consider in this case.

"Benefit to New Zealand criteria"

4. In this case, section 16 requires the regulator to decide, among other things, whether it is satisfied that 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)).
5. The application of the benefit to New Zealand criteria involves the exercise of judgement and is a high-level decision with significant policy content. This is 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.
6. In applying the benefit to New Zealand criteria, the regulator is 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 the regulator⁵. 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 the regulator, in carrying out its overall evaluation, to decide what weight to give to each factor.

Justice Miller's "with and without test"

Economic factors

7. 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, the regulator 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.

⁵ In this case, the Regulator is not required to treat the factors identified in paragraphs 16 and 19 of the 28 November 2017 Directive Letter as being of high relative importance, as the overseas investment does not involve the acquisition of non-urban land that is over 5 hectares in size.

Non- economic factors

8. 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 suggested⁶ 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. However, we consider that the regulator should not give weight to benefits that are likely to result in any event.

Regulation 28 factors

9. 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.⁷

10. 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

11. 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:⁸

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

Conditions

12. Conditions may be imposed on any consent that is granted, under section 25. The attached Report recommends some conditions that you may wish to consider imposing in this case.

Decision

13. 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.

⁶ *Tiroa E* at [36].

⁷ *Tiroa E* at [36].

⁸ Ministerial Directive letter date 28 November 2017, paras 13-17.

Appendix 3 - Sensitive Land

Lot 1 - 108 Arataki Road

Land Interest	Freehold Interest (approximately 2.9390 hectares)
CTs	HBM2/265 (Hawkes Bay)
Sensitivity	Is more than 5 hectares of non-urban land

Lot 2 - 122 Arataki Road

Land Interest	Freehold Interest (approximately 2.6415 hectares)
CTs	677141 (Hawkes Bay)
Sensitivity	Is more than 5 hectares of non-urban land

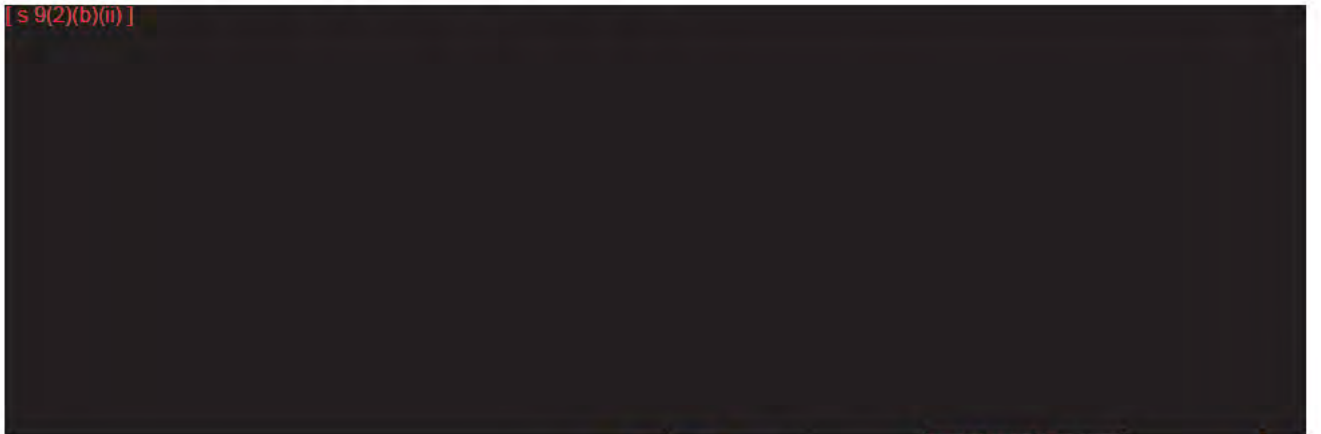
Lot 3 - 160 Arataki Road

Land Interest	Freehold Interest (approximately 2.8494 hectares)
CTs	677140 (Hawkes Bay)
Sensitivity	Is more than 5 hectares of non-urban land

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Appendix 4 – Structure Diagram

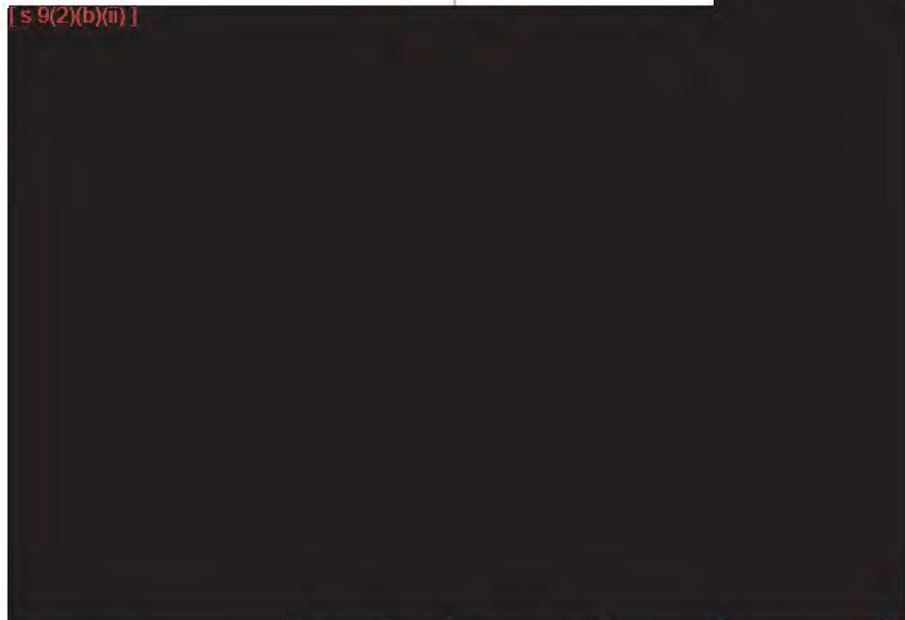
[s 9(2)(b)(ii)]



Milnerum & Co
Kapitane Fiskus pte
1000 shares
100%

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

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



Milnerum & Co
Kapitane Fiskus
New Zealand Limited
1111 shares
100%

Admiral
100%

COI Investments via New
Zealand Limited
2764 shares
100%

COI Land New
Zealand Limited
1 share
100%

RE
OFFICI