

To: Lael Kim, Manager Applications Residential, Overseas Investment Office

From: Hannah Worsley, Solicitor, Overseas Investment Office

ASSESSMENT REPORT: Metlifecare Limited – Regulator initiated variation

Date	11 August 2022	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	202100626	Deadline	As soon as possible

A. Proposal to vary consent

1. Metlifecare Limited was granted a standing consent on 20 July 2022 to acquire residential (but not otherwise sensitive) land.
2. Under special condition 3 (milestones), Metlifecare must submit resource consent applications for each development within [s 9(2)(b)] of completing the transaction.
3. At the time of consulting with Metlifecare on the conditions of consent, special condition 3 allowed [s] years to submit the resource consent applications, however the decision maker subsequently reduced this condition to [s 9(2)(b)].
4. On 27 July, the lawyer for Metlifecare requested that special condition 3 be changed back to allow [s] years to submit resource consent applications. They explained that the reduction was unexpected and Metlifecare had not had the opportunity to explain why the longer time period was required. The reduction in time was problematic because:

(a) Metlifecare’s consenting strategy is to ensure that [s 9(2)(b)(ii)]

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

[Redacted content]

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

[Redacted content]

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

[Redacted content]

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

[Redacted content]

5. Metlifecare also requested several minor changes to the wording of the consent to correct drafting errors. These had not been raised during the consultation period.
6. We propose to vary the consent to allow [s] years to submit the resource consents under special condition 3 and correct the drafting errors. The variation is regulator initiated; we have not received an application to this effect from Metlifecare.

B. How to approach the decision

7. Section 27 of the Overseas Investment Act 2005 provides that conditions of consent may be:
 - (a) varied with the agreement of the Consent Holder, or
 - (b) revoked
8. Conditions which the Act required to be imposed (for example in relation to residential outcomes) may be varied but may not be revoked.
9. The Act does not spell out what the decision-maker must take into account in considering whether to vary a consent. Applying general principles of administrative law, the discretionary power should be exercised reasonably, and consistently with the purpose of the Act:

3 Purpose

- (1) The purpose of this Act is to acknowledge that it is a privilege for overseas persons to own or control sensitive New Zealand assets by—
 - (a) requiring overseas investments in those assets, before being made, to meet criteria for consent; and
 - (b) imposing conditions on those overseas investments
- (2) This Act also has the purpose of managing certain risks, such as national security and public order risks, associated with transactions by overseas persons

C. Our assessment

10. We consider it reasonable to vary the conditions of consent. There appears to be a clear rationale behind Metlifecare seeking [s] years under special condition 3 rather than [s]. Had the reduction to [s 9(2)(b)] been tested at consultation it is likely that Metlifecare would have raised these concerns then, or if further consultation had occurred post review by the decision maker
11. It makes sense to rectify the drafting errors identified by Metlifecare at the same time as varying special condition 3 to ensure the consent is correct going forward.
12. Metlifecare has agreed to the changes being made

D. Recommendation

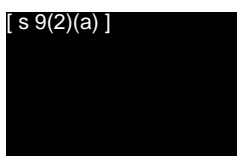
13. We recommend varying the Consent as set out in **Attachment 1**.

E. Decision

14. I agree to vary the conditions of the Consent as set out in Attachment 1

Agree / Disagree

[s 9(2)(a)]



Lael Kim

Manager Applications Residential

Date: 11 August 2022

ATTACHMENT 1 – REVISED CONSENT AND CONDITIONS

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Standing Consent for Overseas Person to Acquire Residential (but not otherwise sensitive) New Zealand Land

Read this standing 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.

1. Consent

Decision date:

The following people have been given this **Standing Consent**:

Case	202100626
Consent	The Consent Holder(s) may acquire residential (but not otherwise sensitive) land subject to the limits and conditions set out below.
Consent type	Standing consent under section 23A (Increased Housing, Non-Residential Use, Incidental Residential Use)
Consent Holders	<p>The Consent Holders are:</p> <ul style="list-style-type: none"> (a) Metlifecare Limited (company no. 237544); (b) Any wholly-owned subsidiary or holding entity in which Metlifecare Limited has a 95% or more ownership or control interest; and (c) Any joint venture with a non-overseas person, whether incorporated or not, in which Metlifecare Limited holds at all times at least a 50% ownership <u>or</u> control interest <p>We will also refer to the Consent Holders as you.</p>
Entry Date	20 July 2025
Completion date	20 July 2027

2. Conditions

Your Standing 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 the Consent may be revoked, you

may be subject to fines or other penalties, and you may also be required to dispose of land acquired under this standing consent

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

In the Consent **Transaction** means:

- (a) the sale or transfer of property
- (b) the entering into, or the giving effect to a provision in, a contract or arrangement
- (c) the arriving at, or the giving effect to, an understanding.

A transaction may involve the acquisition of one or more parcels of land

3. Special Conditions

You must comply with the following **Special conditions.** These apply specifically to this Consent:

Details	Required date
Special Condition 1: Nature of land to be acquired	
Number of transactions	
You may enter into up to 25 transactions of residential (but not otherwise sensitive) land.	By the Entry Date.
When you may acquire the land	
<p>You may complete up to 25 transactions of residential (but not otherwise sensitive) land.</p> <p>Any transaction entered into pursuant to this Standing Consent must be completed by the Completion date</p> <p>In these conditions, a transaction is completed when you become the registered owner of all the estates or interests in residential (but not otherwise sensitive) land being acquired under the transaction.</p>	By the Completion date
Land size	
You may obtain interests in land up to a total of:	

<p>(a) 300 hectares (in total); and (b) 20 hectares per transaction.</p>	
<p>Geographic area</p>	
<p>There are no geographic restrictions to this consent.</p>	
<p>Disposal</p>	
<p>If you do not comply with this Special condition, Standard condition 5 will apply and we may require you to dispose of land acquired in breach of this condition.</p>	
<p>Special Condition 2: Increased housing, non-residential use, incidental residential use outcomes</p>	
<p>You may use the land acquired under this Standing Consent for one or more of the three purposes referenced below:</p> <ol style="list-style-type: none"> 1. Increased Housing Outcome 2. Non-Residential Use Outcome 3. Incidental Residential Use Outcome <p>If you do not comply with this special condition, standard condition 5 will apply and we may require you to dispose of the land acquired under the Standing Consent.</p>	<p>At all times</p>
<p>Outcome</p>	
<p>If using the land for increased housing, you must use the land:</p> <ol style="list-style-type: none"> (a) to construct, or increase the number of dwellings in, a long-term accommodation facility for each development. (b) or for development works to support such construction. 	<p>At all times</p>

Outcome	
<p>If using the land for non-residential use, you must:</p> <p>(a) use the land for non-residential purposes in the ordinary course of business for the relevant business; and</p> <p>(b) not use nor hold for future use, for any residential purposes.</p>	At all times
Outcome	
<p>If using the land for incidental residential use, you must:</p> <p>(a) use the land for residential purposes only in support of the relevant business, where the relevant business is not (or is only exceptionally) in the business of using land for residential purposes</p>	At all times
Special condition 3: Milestones	
You must complete the following milestones for <u>each</u> development :	
<u>Milestone</u>	<u>Timeframe</u>
<p><i>Milestone 1</i></p> <p>Submit relevant resource consent application for the development within the timeframe</p>	Within 5 years after the date of completing the transaction for the relevant land
<p><i>Milestone 2</i></p> <p>Begin first stage of development works within the timeframe</p> <p>(To avoid doubt, resource consent(s) for each development can be obtained in stages)</p>	Within 5 years of receiving relevant resource consents
<p><i>Milestone 3</i></p> <p>Begin operating a long-term accommodation facility on the land within the timeframe</p> <p>(To avoid doubt, this includes operating one or more stages of a long-term accommodation facility on the land acquired under the Standing Consent)</p>	Within 5 years of Milestone 2 occurring

<p><i>Milestone 4</i></p> <p>Complete construction of the development</p>	<p>Within 5 years of receiving all of the relevant resource consents</p>
<p>In this special condition:</p> <p>(a) development means project associated with the land being acquired through one or more transactions which is, or will be, used for the purpose of carrying out development works and/or construction to meet the increased housing outcome (special condition 2, Outcome)</p> <p>(b) timeframe means the time period in specified in the right column of this special condition in the same row as each relevant requirement.</p>	
<p>Disposal</p>	
<p>If you do not comply with this Special condition, Standard condition 5 will apply and we may require you to dispose of land acquired under the Standing Consent.</p>	
<p>Special condition 4: Non-occupation outcome</p>	
<p>None of the following people may occupy the land acquired under the Standing Consent:</p> <p>(a) You</p> <p>(b) Any overseas person with a 25% or more ownership or control interest in any of the people in (a)</p> <p>(c) Any overseas person who occupies the land other than on arm's length terms¹</p> <p>(d) Any overseas person who has a beneficial interest in, or beneficial entitlement to, the relevant interest in the land</p> <p>If any such persons do occupy land acquired under the Standing Consent for residential purposes, Standard condition 5 will apply and we may require you to dispose of that land.</p>	<p>While you, or any of the people outlined in paragraphs (b) to (d), has any relevant interest in the land</p>
<p>Special condition 5: Notice of acquisitions</p>	

¹ 'At arms length terms' has the meaning in clause 17, Part 5, Schedule 2 of the Overseas Act 2005. In summary it means terms, for example under a lease (or other contract), that are on a reasonable commercial basis.

<p>You must notify us of each transaction settled under this Standing Consent (Notice).</p> <p>The Notice must contain the information specified in this special condition.</p>	<p>As soon as you can, and no later than one month after settlement</p>
<p>Standing consent-specific details</p>	
<p>Each Notice must report on compliance with special condition 1 (number of transactions, land size, and geographic area), including:</p> <ul style="list-style-type: none"> (a) details of each transaction entered into; (b) total number of transactions (per year and aggregated); (c) total land size acquired (per region and aggregated). 	
<p>Transaction specific details</p>	
<p>Each Notice must identify the land being acquired and the land that comprises or is intended to comprise the relevant development</p> <p>Each Notice must also include:</p> <ul style="list-style-type: none"> (a) the date you acquired the land (i.e. the date of settlement), (b) consideration paid (plus GST if any), (c) the structure by which the acquisition was made and who acquired the land, (d) copies of any transfer documents and settlement statements, (e) a current and historical copy of the record of title for each parcel of land acquired, and (f) a land status certificate including a map of the location, cadastral map, and aerial photo identifying the land 	

<p>You will separately provide us a development plan for the land (identifying the stages of development and the areas which are intended to be used for increased housing) as soon as reasonably practicable but not later than three months from the date of settlement.</p>	
<p>In this special condition, year means each 12-month period from the Decision date.</p>	

4. 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
<p>Standard condition 1: acquire the land under this standing consent</p>	
<p>You must acquire any land under this Standing Consent:</p> <p>(a) by the Completion date stated in the Standing Consent.</p> <p>If you do not, your Standing Consent will lapse or become invalid and you must not acquire any land in reliance upon it, and</p> <p>(b) using the acquisition, ownership and control structure you described in your application</p> <p>Note, only you – the named Consent holder – may acquire any land, not your subsidiary, trust or other entity.</p>	<p>As stated in the Consent</p>
<p>Standard condition 2: allow us to inspect any land acquired under this standing consent</p>	
<p>Sometimes it will be helpful for us to visit land acquired under this Standing Consent, 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>	<p>At all times</p>

1. Allow a person we appoint (**Inspector**) to:
 - (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:
 - (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
3. During an Inspection:
 - (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.

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Standard condition 3: remain not unsuitable to invest in New Zealand

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

At all times

The Individuals Who Control You are individuals who:

- (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.

Standard condition 4: 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:

Within 20 working days after the change

- (a) 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.
- (b) You cease to be an overseas person or dispose of all or any part of the Land.
- (c) 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.

Standard condition 5: dispose of 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

<p>If all or part of this standard condition 5 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 relevant 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: 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.</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> <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>

5. Reporting conditions

We need information from you so we can monitor your progress against the Conditions.

You must:

1. notify us of each transaction settled under this Standing Consent as set out in special condition 5 as soon as you can, and no later than one month after Settlement; and
2. report to us annually (by **1 July each year**) about your progress on implementing the milestones set out in special condition 3 for each development
3. If requested in writing by the OIO, the Consent Holder 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 consent was granted; or
 - (b) the conditions of this consent

In these reporting conditions:

- (a) **year** means each 12 month period starting on the Decision date;
- (b) **development** means project associated with the land being acquired through one or more transactions which is, or will be, used for the purpose of carrying out development works and/or construction to meet the increased housing outcome (Special condition 2, Outcome).

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