

To: Kirsty Hulena, Principal Advisor

ASSESSMENT REPORT: Evolution Healthcare NZ Limited

Date	10 November 2023	Classification	IN CONFIDENCE: Commercially sensitive
LINZ reference	202300701	Suggested deadline	07 December 2023

Purpose

We seek your decision on an application for consent to acquire an interest in residential (but not otherwise) sensitive land under the Incidental residential use test in the Overseas Investment Act 2005 (**Act**).

This decision has been delegated to Toitū Te Whenua Land Information New Zealand (**LINZ**).¹

Action sought

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

Key information

Applicant	Evolution Healthcare NZ Limited Australia (73.3%); South Korea (17%); New Zealand (5.9%); Various (3.8%)
Vendor	ABI Rehabilitation New Zealand Limited
Land	A leasehold interest in five properties totalling approximately 5.4981 hectares in Auckland, New Zealand: <ol style="list-style-type: none"> 482 State Highway 16, Kumeū 491 State Highway 16, Kumeū 15 Tirimoana Road, Te Atatu South 544 Swanson Road, Rānui 544/2 Swanson Road, Rānui
Consideration	S9(2)(b)(ii)
Application type	Sensitive land – Incidental residential use test
Relevant tests	Investor test: s 16(1)(a) and s 18A Incidental residential use test: s 16(1)(b)(i)(D) National interest test: s 16(1)(g)

¹ All decisions where the land is residential but not otherwise sensitive are delegated to LINZ under Table A, row C, item 1 of the Designation and Delegation letter dated 24 November 2021.

Timing

4. The Overseas Investment Regulations 2005 specify the total assessment timeframe for this application is 55 working days. This application is currently on day 36, therefore a decision is due to the applicant by 07 December 2023.

A. Decision

Investor test

5. I determine that:

- a) The 'relevant overseas person' is (collectively):

Relevant overseas person	Role
Evolution Healthcare NZ Limited	Applicant and acquiring entity
NZ Healthcare Holdco Limited	100% shareholder of the Applicant

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

Individuals with control	Role
Richard Stanley Grenfell	Director of Evolution Healthcare NZ Limited and NZ Healthcare Holdco Limited
Matthew James Clarke	Director of Evolution Healthcare NZ Limited
Benedict Joseph Thynne	
Susan Marie Paterson	
Mereana Kim Ngarimu	
Paul Francis Cajetan Desouza	Director of NZ Healthcare Holdco Limited
Graeme Andrew Blair	
Thomas Duncan Hodgkinson	

- c) 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.

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

Incidental residential use test

7. I determine that the 'relevant business' is a healthcare rehabilitation business (**Relevant Business**).

8. I am satisfied that:

- a) the Land is likely to continue to be used for residential purposes but only in support of the Relevant Business and that business is not (or is only exceptionally) in the business of using land for residential purposes;
- b) having regard to that residential use of the Land, the relevant interest in the Land is likely to be acquired in the ordinary course of the business of the relevant overseas person.

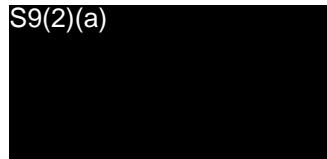
Transaction of national interest

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.

Decision

10. I am satisfied that the criteria for consent have been met (set out above). I grant consent to the Investment in the form of the Proposed Decision in **Attachment 1**.

S9(2)(a)



Kirsty Hulena

Principal Advisor (Overseas Investment -LINZ)

Date: 10 / 11 / 23

B. Background and proposed transaction

11. Evolution Healthcare NZ Limited² (the **Applicant**) seeks consent to acquire leasehold interests in sensitive land. The Applicant seeks to acquire all of the shares in healthcare provider ABI Rehabilitation New Zealand Limited (the **Target**)³.
12. The Applicant is part of the Evolution Group whose business activities involve the operation of healthcare services, including private hospitals, in New Zealand and Australia.
13. In this case, the Target delivers multi-disciplinary rehabilitation for acquired brain injury and stroke patients (the **Relevant Business**).
14. The Target has leasehold interests in residential (but not otherwise sensitive) land at five locations in Auckland (the **Land**):
 - a) 482 State Highway 16, Kumeū
 - b) 491 State Highway 16, Kumeū
 - c) 15 Tirimoana Road, Te Atatū South
 - d) 544 Swanson Road, Rānui
 - e) 544/2 Swanson Road, Rānui

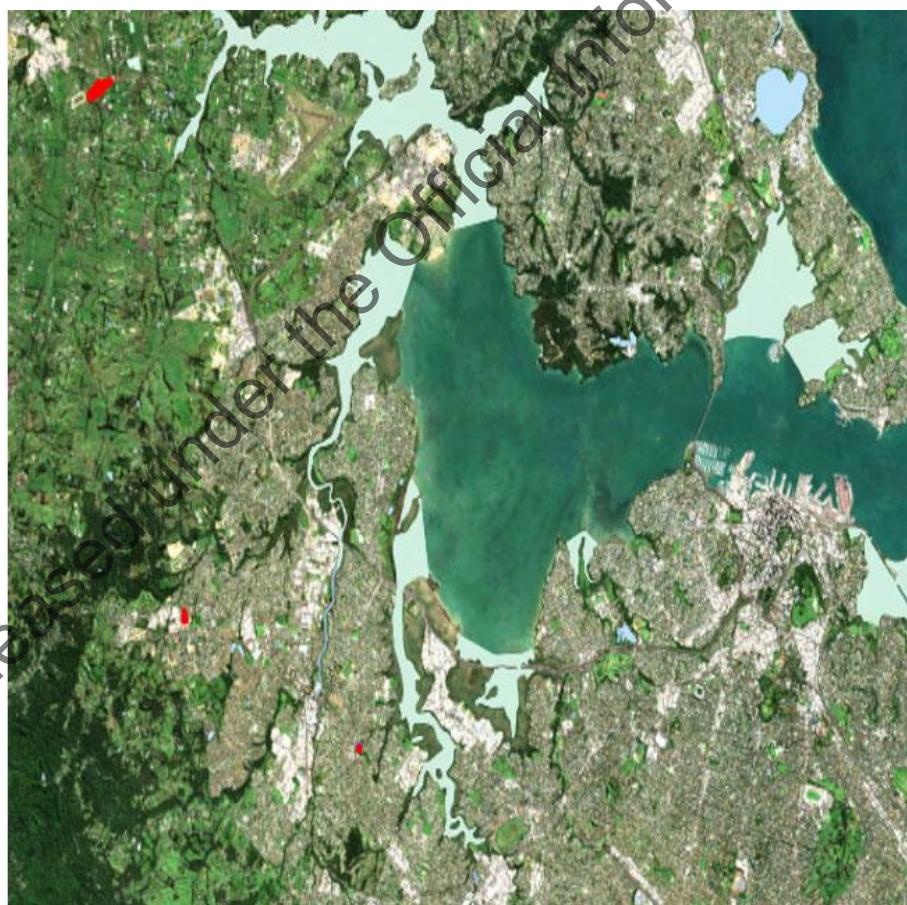


Figure 1: Aerial map showing Land highlighted in red.

15. Aerial photos of the Land can be found in **Attachment 1**.

² New Zealand company number 415017

³ Consent under the Act is not required for the acquisition of the shares.

C. Application of the Act

16. The Land is sensitive because it is residential (but not otherwise sensitive) land,⁴ so consent is required.⁵ Because the application is being made under the Incidental residential use test, the following criteria apply to this application:⁶
 - a) The investor test must be met.⁷
 - b) The Incidental residential use test must be met.⁸
 - c) 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.⁹
17. In order to satisfy the Incidental residential use test, the decision-maker must be satisfied that the following outcomes are met:¹⁰
 - a) the relevant indirect interest in the Land (through the acquisition of shares in the land-leasing Target) is likely to be acquired in the ordinary course of the business of the relevant overseas persons;
 - b) the Land is likely to continue to be used for incidental residential purposes in the ordinary course of business for the relevant business.
18. We assess the investor test in Part D, the Incidental residential use test in Part E, and discuss national interest matters in Part F.

D. Applicant and investor test

Relevant overseas person

19. Evolution Healthcare NZ Limited is a New Zealand registered company incorporated in November 1988. The Applicant's parent company, NZ Healthcare Bidco Limited, is solely owned by NZ Healthcare Holdco Limited¹¹ (**Holdco**). Holdco was incorporated in November 2021.
20. The Applicant and Holdco are both part of the Evolution Group. Evolution Group has previously been granted LINZ consent for the acquisition of the land located at Wakefield, Bowen and Royston hospitals (case 201710137); at Boulcott Hospital (case 201610006) and associated with Endoscopy New Zealand¹² (case 202200348).
21. Evolution Group has also been granted consent¹³ for the acquisition of significant business assets and land belonging to Healthcare New Zealand, the largest domestic provider of wellbeing, community nursing and disability services.¹⁴
22. The ultimate beneficial owners of the Applicant and Holdco predominantly belong to two Australian investment fund groups which hold the following approximate shareholding:
 - S9(2)(b)(ii) - Queensland Investment Corporation Group entities (**QIC Group**)

⁴ Table 1, Part 1, Schedule 1 of the Act.

⁵ Under sections 10(1)(a) and 12(a)(i) of the Act.

⁶ Set out in sections 16(1) of the Act.

⁷ Section 16(1)(a) and 18A of the Act.

⁸ Section 16(1)(b)(i)(B) of the Act.

⁹ Section 16(1)(g) of the Act.

¹⁰ Schedule 2, Part 3 of the Act.

¹¹ New Zealand company number 8266451

¹² A facility dedicated to the investigation and treatment of gastrointestinal tract issues.

¹³ Case 202100783

¹⁴ <https://www.healthcarenz.co.nz>

- S9(2)(b)(ii) Australian Retirement Trust entities (**ART**)¹⁵
23. The balance of shareholding is held by Horizon Infra No1 Pty Ltd with 15% shareholding; Te Pūia Tāpapa (an iwi investment fund) with 5% shareholding and the remainder held by executives of Evolution Group.

QIC Limited (QIC – formerly known as the Queensland Investment Corporation)

24. QIC was established in 1991 by the Queensland State Government to serve its long-term investment responsibilities. QIC is a global alternative investment manager with over S9(2)(b)(ii) in assets under management (as at 30 June 2022), focusing on infrastructure, real estate, liquid strategies, private capital and multi-asset solutions.
25. S9(2)(b)(ii)
[REDACTED]

ART

26. ART is one of Australia's largest superannuation funds, managing over A\$240 billion in retirement savings for more than 2.2 million members. ART was formed through a merger of Sunsuper¹⁶ and QSuper,¹⁷ in February 2022.

Horizon Infra No1 Pty Ltd (Horizon)

27. Horizon¹⁸ is an Australian holding entity for the beneficial interest S9(2)(b)(ii)
S9(2)(b)(ii)
[REDACTED]

Ownership of investment

28. A diagram of the proposed ownership structure is in **Attachment 2**.
29. The decision to acquire the Target was made by the directors of the Applicant and the board of its ultimate holding company, Holdco only.
30. S9(2)(b)(ii)
[REDACTED]
31. For these reasons, we recommend that the '**relevant overseas person**' is (collectively):

Relevant overseas person	Role
Evolution Healthcare NZ Limited	Applicant and acquiring entity
NZ Healthcare Holdco Limited	100% shareholder of the Applicant

Control

32. The directors of the Applicant are S9(2)(a) Richard Grenfell and Matthew Clarke. The directors of Holdco are S9(2)(a) Richard Grenfell, Mereana Ngarimu, Susan Paterson and Graeme Blair and S9(2)(a) Thomas Hodgkinson, Benedict Thynne and Paul Desouza.

¹⁵ S9(2)(b)(ii)
[REDACTED]

¹⁶ An Australian superannuation fund owned by its members.

¹⁷ A Queensland state public sector superannuation scheme.

¹⁸ Australian company number 608 395 875

33. The day-to-day management of the Relevant Business and thus the utilisation of the Land will be controlled by the Target's management team and overseen by the Applicant.
34. Thus, we recommend that the '**individuals with control of the relevant overseas person**' (IWC)¹⁹ are:

Individuals with control	Role
Richard Stanley Grenfell	Directors of Evolution Healthcare NZ Limited and NZ Healthcare Holdco Limited
Matthew James Clarke	Director of Evolution Healthcare NZ Limited
Benedict Joseph Thynne	
Susan Marie Paterson	
Mereana Kim Ngarimu	
Paul Francis Cajetan Desouza	Directors of NZ Healthcare Holdco Limited
Graeme Andrew Blair	
Thomas Duncan Hodgkinson	

Summary of investor test

35. The relevant overseas persons and individuals with control established none of the factors contained in section 18A(4) of the Act, therefore our conclusion is that **the investor test has been met**.

E. Investment plan and Incidental residential use test

36. This section describes the proposed investment and our assessment of whether it is likely to meet the Incidental residential use test criteria in the Act.

Investment

37. The Applicant seeks to acquire 100% shareholding in the Target.²⁰ The Target advertises itself as "*the leading provider of rehabilitation for people with TBI*" (traumatic brain injury). It provides treatment to stroke and acquired brain injury patients, in community-based and in-patient settings.
38. The Applicant signed a sales and purchase agreement to acquire 100% shareholding in the Target on 12 May 2023. The agreement includes a leasehold interest in 18 properties, in the Auckland and Wellington regions, and contracts with providers such as Accident Compensation Corporation (ACC) to provide ongoing funding for treatment.
39. The Target leases the Land for the purpose of live-in rehabilitation for patients that need support to maximise their independence or transition to independent living. The

¹⁹ Section 15 of the Act.

²⁰ Consent is not required under the Act for the shareholding acquisition as it does not meet the threshold for a significant business assets acquisition.

Applicant plans to continue using the Land in the same way, following its acquisition of the Target.

40. Consent²¹ is required to lease the Land because it is residential (but not otherwise sensitive) land under the Act:

Residential land	
Address: 482 State Highway 16, Kumeū (record of title NA21B/1165)	S9(2)(b)(ii)
Landowner: New Blue Sky Investment Limited	
Address: 491 State Highway 16, Kumeū (record of title 598302)	
Landowner: ABI Property Limited	
Address: 15 Tirimoana Road, Te Atatū South (record of title NA99A/463)	
Landowner: ABI Property Limited	
Address: 544 Swanson Road, Rānui (record of title NA38D/458)	
Landowner: Housing Corporation of New Zealand	
544/2 Swanson Road, Rānui (record of title NA38D/458)	
Landowner: Housing Corporation of New Zealand	

41. Further details relating to the sensitive land

Submissions

42. LINZ checked in with the Commerce Commission whether it considered there are any aggregation issues. They confirmed no clearance had been sought for this acquisition and provided a range of clearances of predecessor entities to the Applicant. None of the previous acquisitions related to brain injury rehabilitation.

Incidental residential use test

43. In this case, the Applicant seeks consent to acquire Land on the basis of the incidental use test set out in clause 14 of Schedule 2 of the Act.

²¹ s16(1)(b)

²² s12(1)(ii)(B)

²³ It is unclear if consent is required for periodic leases in accordance with schedule 3, clause 2 of the Act. LINZ has considered eligibility for consent because it has been requested.

44. In order to be satisfied this test, the sensitive land must:
- be used in the ordinary course of the Applicant's relevant business;
 - that business must be likely to continue for a reasonable period of time, given the circumstances and nature of the business.
45. We consider that the Relevant Business in this case is the Target's healthcare rehabilitation business for stroke and brain injury patients.
46. The Land is used for in-patient rehabilitation of acquired brain injury patients. The Applicant plans to continue the Relevant Business.
47. We are therefore satisfied that the Relevant Business is likely to continue, and the incidental residential use outcome is met.

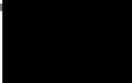
F. Not a transaction of national interest

48. The transaction is **not** a transaction of national interest as the residential (but not otherwise sensitive) land exemption under regulation 3D(2)(a) of the Overseas Investment Amendment Regulations 2020 applies.
49. We also consider that this should not be a discretionary national interest call up under s20B of the Act, as the proposed investment:
- will not pose a risk to NZ's national security or public order;
 - will not grant the relevant overseas person significant market power within an industry or result in vertical integration of a supply chain;
 - does not involve a non-NZ government investor which would gain disproportionate access to or control of the sensitive assets;
 - will not have outcomes that are significantly inconsistent with or would hinder the delivery of other Government objectives.

G. Conclusion and recommendation

50. We recommend you grant consent to the investment as we consider all of the relevant criteria have been met.
51. The conditions we recommend are set out in the Proposed Decision (**Attachment 4**). These conditions include all required mandatory conditions and additional discretionary conditions.

S9(2)(a)



Heidi Hughes
Advisor
Overseas Investment -LINZ

Date: 10/11/2023

H. List of Attachments

1. Proposed Decision and Conditions
2. Intended ownership structure
3. Sensitive Land Details and Aerial Maps

Released under the Official Information Act 1982

Attachment 1: Proposed Decision and Conditions

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: 13 November 2023

The following people have been given the following consent:

Case	202300701
Consent	The Consent Holder may acquire the interest in the Land subject to the Conditions set out below.
Consent holder/s	Evolution Healthcare NZ Limited (company number 415017) We will also refer the Consent holder as you .
Land	A leasehold interest in a total of approximately 5.5081 hectares at: a) 482 State Highway 16, Kumeū (record of title NA21B/1165) b) 491 State Highway 16, Kumeū (record of title 598302) c) 544 Swanson Road and 544/2 Swanson Road, Rānui (record of title NA38D/458) d) 15 Tirimoana Road, Te Atatū South (record of title NA99A/463)
Timeframe	You have until 30 November 2024 to acquire the Land.

Definitions

Act means Overseas Investment Act 2005.

Approved Incidental Residential Use means patient accommodation and rehabilitation services in the ordinary course of the Relevant Business.

Regulations means Overseas Investment Regulations 2005.

Relevant Business means the rehabilitation health service operated by ABI Rehabilitation New Zealand Limited (company number 806138).

Any term or expression that is defined in the Act or Regulations and used, but not defined, in this consent has the same meaning as in the Act or Regulations.

Special conditions

You must comply with the following **special conditions**. These apply specifically to this Consent and include conditions that we must impose under the Act:

Details	Required date
Special condition 1 – Use for the Land for Incidental Residential Use Purpose	
You must use the Land for the Incidental Residential Use Purpose in support of the Relevant Business. If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.	At all times.

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 You must acquire the Land: 1. 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, and 2. using the acquisition, ownership, and control structure you described in your application. Note, only you - the named Consent Holder - may acquire the Land, not your subsidiary, trust, or other entity.	As stated in the Consent
Standard condition 2: Tell us when you acquire the Land You must tell us in writing when you have acquired the Land. Include details of: 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.	As soon as you can, and no later than two months after Settlement
Standard condition 3: Allow us to inspect the Land Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions. We will give you at least two weeks' written notice if we want to do this. You must then: 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	At all times

Details	Required date
<p>out the Inspection.</p> <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>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 to Invest in New Zealand	
<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. 	At all times
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 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 Asset. 3. Your New Zealand Service Address changes. This is the address you provided us in your application as the 	Within 20 working days after the change

Details	Required date
address which we will send any legal document we need to serve on you.	
Standard condition 6: Dispose of your leasehold interest in the Land if you do not comply with key special conditions	
<p>If all or part of this Standard Condition 6 applies to a special condition, we have said so in that special condition.</p> <p>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 your leasehold interest in the Land.</p> <p>We will give you written notice if we require you to dispose of your leasehold interest in the Land. After we have given you notice, you must:</p>	
<p>Dispose of the interest in Land: dispose of your leasehold interest in the Land to a third party who is not your associate.</p>	Within six months of our notice
<p>Report disposal to us: send us, in writing, evidence of the following:</p> <ol style="list-style-type: none"> <li data-bbox="250 1028 1029 1096">a. that you have disposed of your leasehold interest in the Land, and <li data-bbox="250 1096 1029 1123">b. that the purchaser is not your associate. 	Within one month after your leasehold interest in the Land has been disposed of

Reporting conditions

We need information from you about how your investment plan is tracking so we can monitor your progress against the Conditions.

In addition to Settlement reporting (as set out in Standard Condition 2), you must provide LINZ with reports detailing the progress of the investment. The reports must:

1. be submitted via our [Webform](#) by these dates:
 - a. 31 December 2024
2. contain information about your progress in implementing the special conditions (which can include photographs, maps or aerial imagery as evidence of compliance with relevant conditions),
3. follow the format of the template annual report published on our website

If requested in writing by LINZ, 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.

Power to vary reporting date

The dates on which reports are due to be provided may be changed by agreement between LINZ and the Consent Holder, provided that this power may not be used to give a time extension for an individual report.

Power to narrow scope of reports

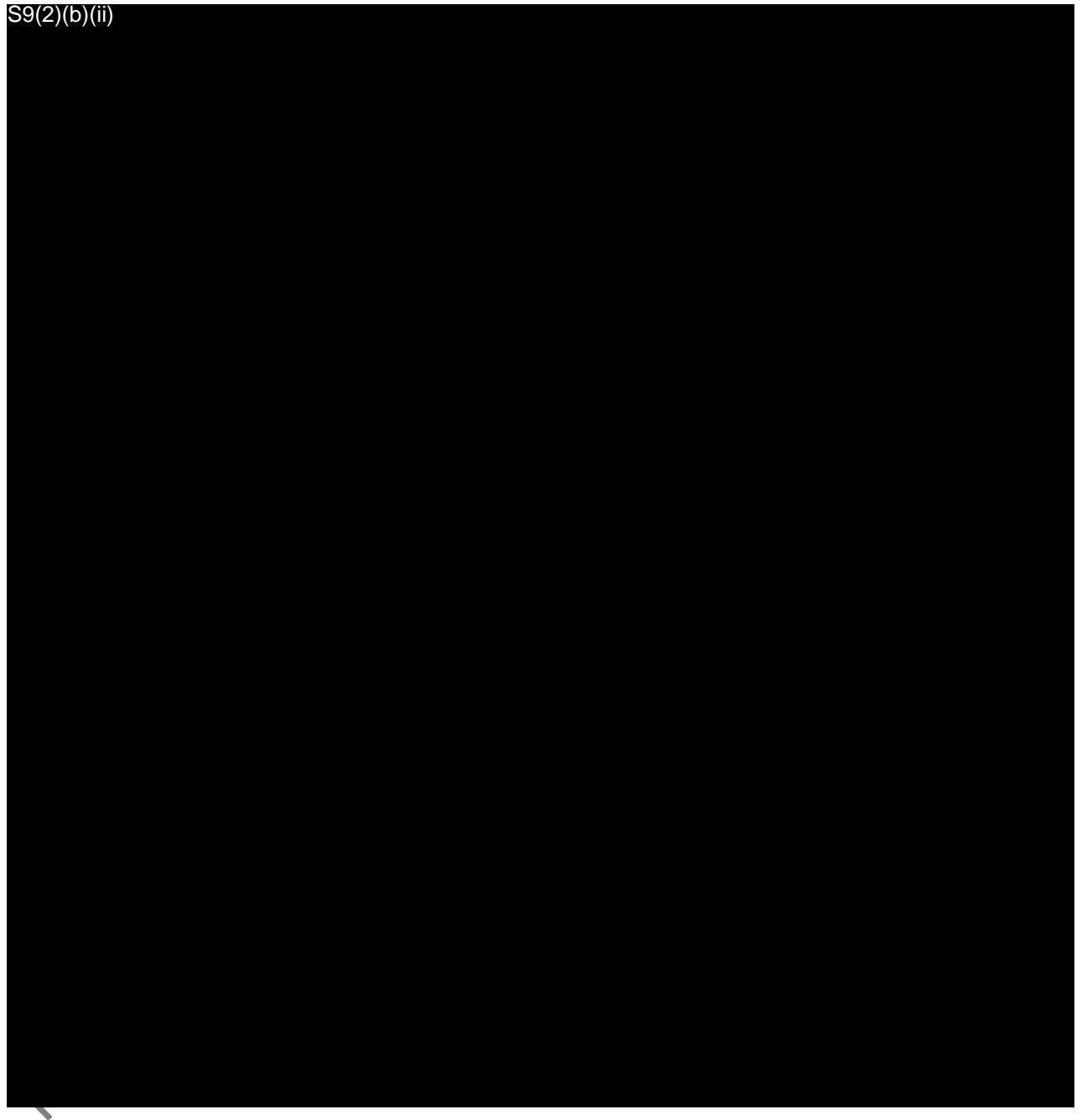
LINZ may temporarily or permanently waive the requirement to report on a particular matter.

Power not to require further reporting

LINZ may waive the requirement to submit a report and may waive the requirement for future reporting.

A

S9(2)(b)(ii)



Attachment 3: Sensitive Land Details and Aerial Maps

1. 482 State Highway 16, Kumeū



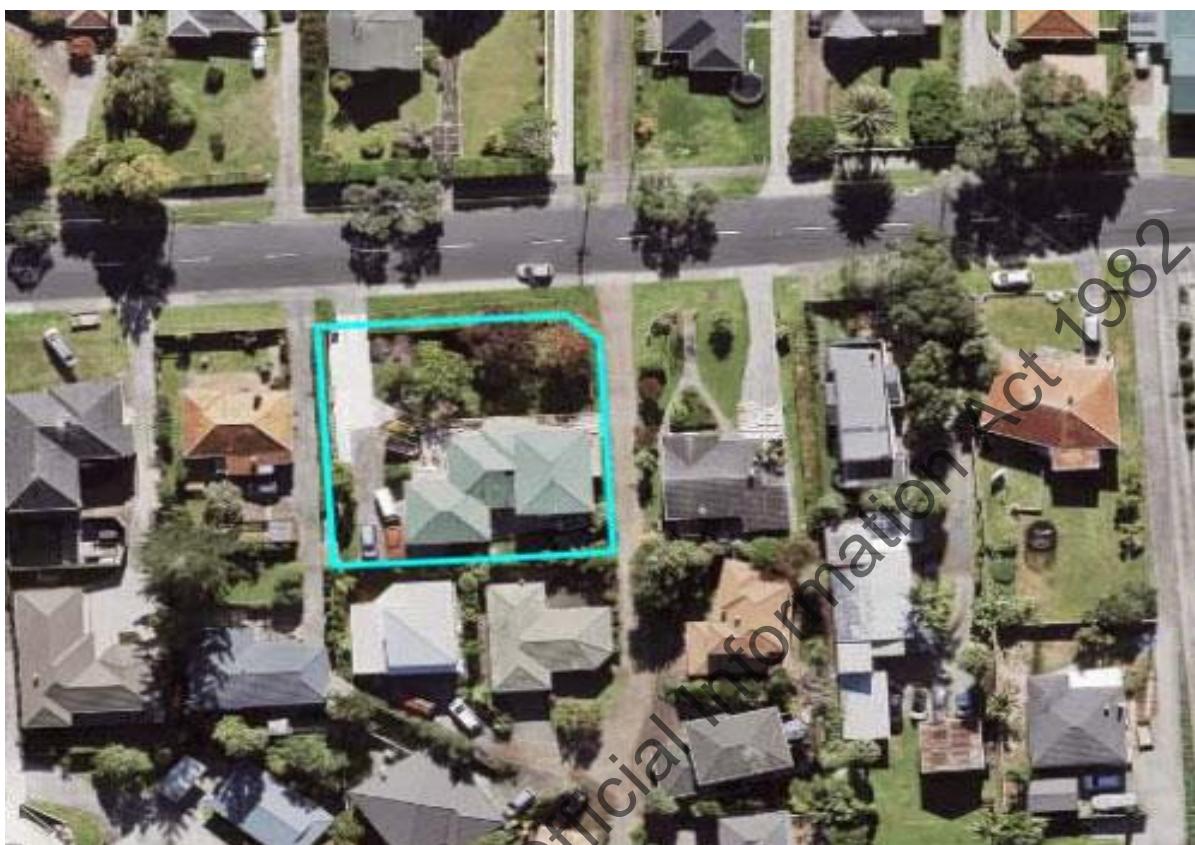
Land interest	Leasehold interest (approximately 4.0721 hectares)
Record(s) of Title	NA21B/1165
Sensitivity	Includes residential land

2. 491 State Highway 16, Kumeū



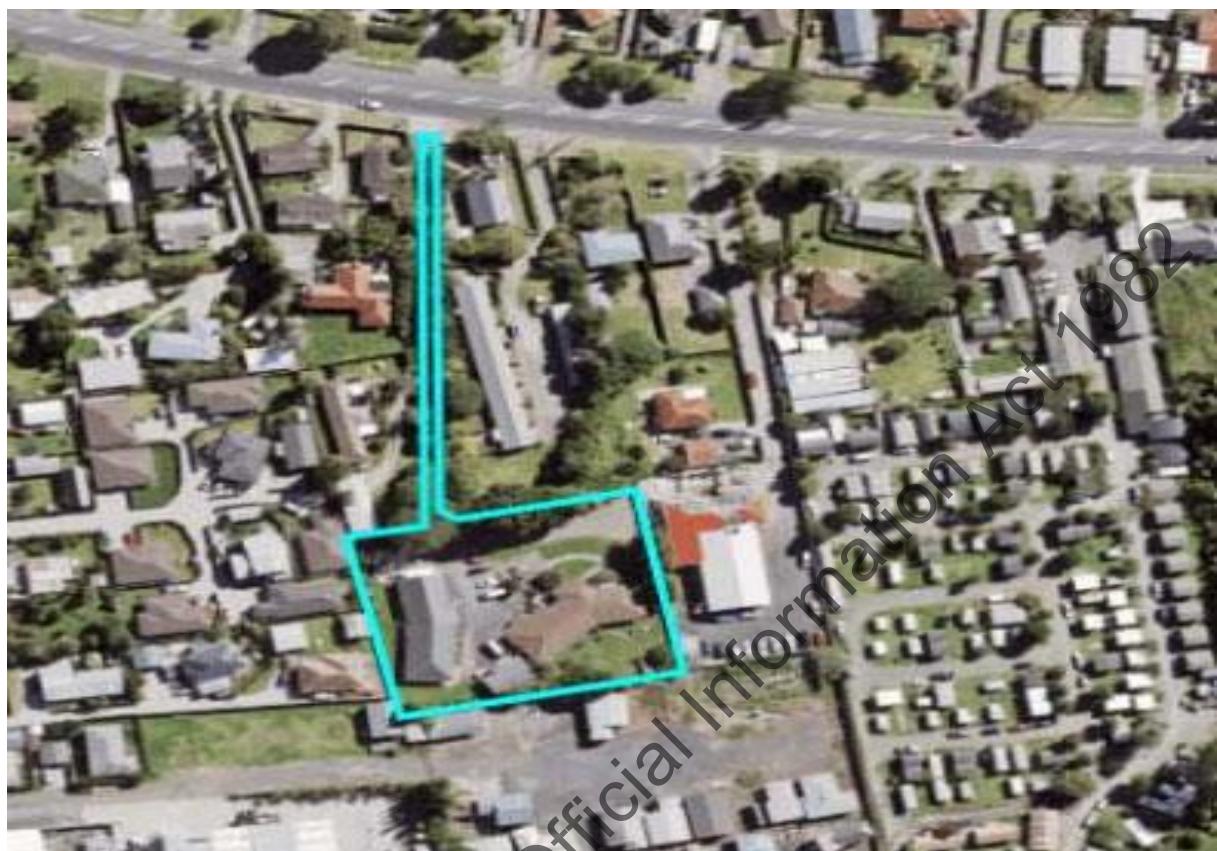
Land interest	Leasehold interest (approximately 0.9364 hectares)
Record(s) of Title	598302
Sensitivity	Includes residential land

3. 15 Tirimoana Road, Te Atatu South



Land interest	Leasehold interest (approximately 0.1001 hectares)
Record(s) of Title	NA99A/463
Sensitivity	Includes residential land

4. 544 Swanson Road and 544/2 Swanson Road, Rānui



Land interest	Leasehold interest (approximately 0.3895 hectares)
Record(s) of Title	NA38D/458
Sensitivity	Includes residential land