

To: Charlotte Connell, Manager Applications, Overseas Investment Office

## ASSESSMENT REPORT: James Fletcher Drive Asset Pty Ltd as trustee of the Logos James Fletcher Drive Asset Trust

Date	14 August 2020	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	202000239	Priority	High

### Action Sought

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Decision Maker	Action	Suggested Deadline
Charlotte Connell, Manager Applications, Overseas Investment Office	<ol style="list-style-type: none"><li>1. Review the attached report and decide whether to grant consent to the application</li><li>2. Forward the report and attachments to the Primary Assessor</li></ol>	14/08/2020

### LINZ Contacts

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Name	Position	Contact number	First contact
Charlotte Connell	Manager Applications	[ s 9(2)(g)(ii) ]	<input type="checkbox"/>
[ s 9(2)(g)(ii) ]	Solicitor	[ s 9(2)(g)(ii) ]	<input checked="" type="checkbox"/>

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# ASSESSMENT REPORT: James Fletcher Drive Asset Pty Ltd as trustee of the Logos James Fletcher Drive Asset Trust

## Overview

### Purpose

1. We seek your decision on the application by Logos James Fletcher Drive Asset Pty Ltd as trustee of the Logos James Fletcher Drive Asset Trust (the **Applicant**) under the Overseas Investment Act 2005 (the **Act**) to acquire sensitive land and significant business assets.
2. [ s 9(2)(b)(ii) ]
3. The Applicant is seeking to acquire a freehold interest in approximately 17.1495 hectares of land situated at James Fletcher Drive and Savill Drive, Otahuhu, Auckland (the **Property**). This transaction requires consent for the acquisition of interests in sensitive land.
4. The consideration for the Property is \$188 million. Therefore, this transaction requires consent because it is also the acquisition of interest in significant business assets, being assets with a value of greater than \$100 million.
5. This is a delegated decision because under Part A of the Designation and Delegation Letter dated 17 October 2018 (the **Letter**), all business decisions are delegated to the Regulator. Under Part C, paragraph 6 of the Letter, all land decisions where the 'substantial and identifiable' benefit criterion does not apply are delegated to the regulator. The 'substantial and identifiable' benefit criterion does not apply as the Property is not considered non-urban land.

### Key information

<b>Applicant</b>	<b>James Fletcher Drive Asset Pty Ltd as trustee of the Logos James Fletcher Drive Asset Trust</b> (Singapore 97; Various 2.097%; Canada 0.486%; Australia 0.417%)
<b>Vendors</b>	<b>Toll Networks (NZ) Limited</b> (Japan 100%)
<b>Consideration</b>	\$188,000,000 plus GST
<b>Application type</b>	Benefit to New Zealand
<b>Relevant tests</b>	Investor test (s16(1)(a), s16(2)(a)-(d), and s18(1)(a)-(d) of the Act) Benefits test (s16(1)(c)(ii) and s 16A(1)(a) of the Act)  <b>Transitional note:</b> The contract for this transaction was entered and the application for consent was received prior to commencement of the Overseas Investment (Urgent Measures) Amendment Act 2020, so the version of the Act and the regulations in force immediately before its commencement continue to apply.

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

6. Please refer to the **A3 in Attachment 6** for overview tables summarising the application and the Overseas Investment Office's (OIO's) assessment.

## **Recommendation**

7. Our recommendation is to **grant consent**.
8. If you agree to grant consent, we recommend that you make the determinations set out in paragraphs 9 to 12 below.

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

Solicitor

Date: 14/08/2020

## **Decision**

9. I determine that:

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

ROP	Role
Logos James Fletcher Drive Asset Pty Ltd as trustee of the Logos James Fletcher Drive Asset Trust	The Applicant
Reco Otago Private Limited	97% beneficial owner of the Applicant and member of the Investment Committee <sup>2</sup>
Logos NZ Sponsor Pte Limited	3% beneficial owner of the Applicant and member of the Investment Committee

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

IWC	Role
Natalie Lorraine Allen	Director of the Head Trustee and Sub Trustee Group General Counsel and Head of Corporate Development of Logos Group
John Edward Marsh	Managing Director and Co-Chief Executive Officer of Logos Group Logos Sponsor's member and alternative member of the Investment Committee Director of the Head Trustee and Sub Trustee
Trent Alexander Iliffe	Managing Director and Co-Chief Executive Officer of Logos Group Logos Sponsor's member and alternative member of the Investment Committee
[ s 9(2)(a) ]	Reco Otago's member of the Investment Committee

<sup>2</sup> The Investment Committee comprises a representative of each of Reco Otago and Logos Sponsor.

[ s 9(2)(a)]	Director of Reco Otago [ s 9(2)(b)(ii) ]
[ s 9(2)(a)]	Director of Reco Otago

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

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

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

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

10. I am satisfied that the investor test, as outlined in paragraph 9 above, has been met; and

11. I am satisfied, in relation to the benefits test, that:

11.1 the criteria for consent in section 16 have been met; and

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

12. Consent is granted to the investment in the form of the Proposed Decision in **Attachment 1**.

Charlotte Connell

Manager Applications (Overseas Investment Office)

Date: / /

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## Executive summary

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13. Logos James Fletcher Drive Asset Pty Ltd as trustee of the Logos James Fletcher Drive Asset Trust (the **Applicant**) seeks consent to acquire a freehold interest in approximately 17.1495 hectares of sensitive land situated at James Fletcher Drive and Savill Drive, Otahuhu, Auckland (the **Property**). The Applicant is also seeking consent to acquire significant business assets as the consideration for the Property is \$188 million.



Figure 1: The Property (highlighted in red)

14. The Applicant is acquiring the Property from Toll Networks (NZ) Limited (the **Vendor**). The Applicant intends to lease the **Toll Premises** back to the Vendor, which will contain the Vendor's new facility with yard area and car parking. The Property is subject to an existing and continuing lease with Air Liquide New Zealand Limited on the **Air Liquide Premises**. The Stormwater Facility processes stormwater run-off from neighbouring land. The division of the Property is as follows:

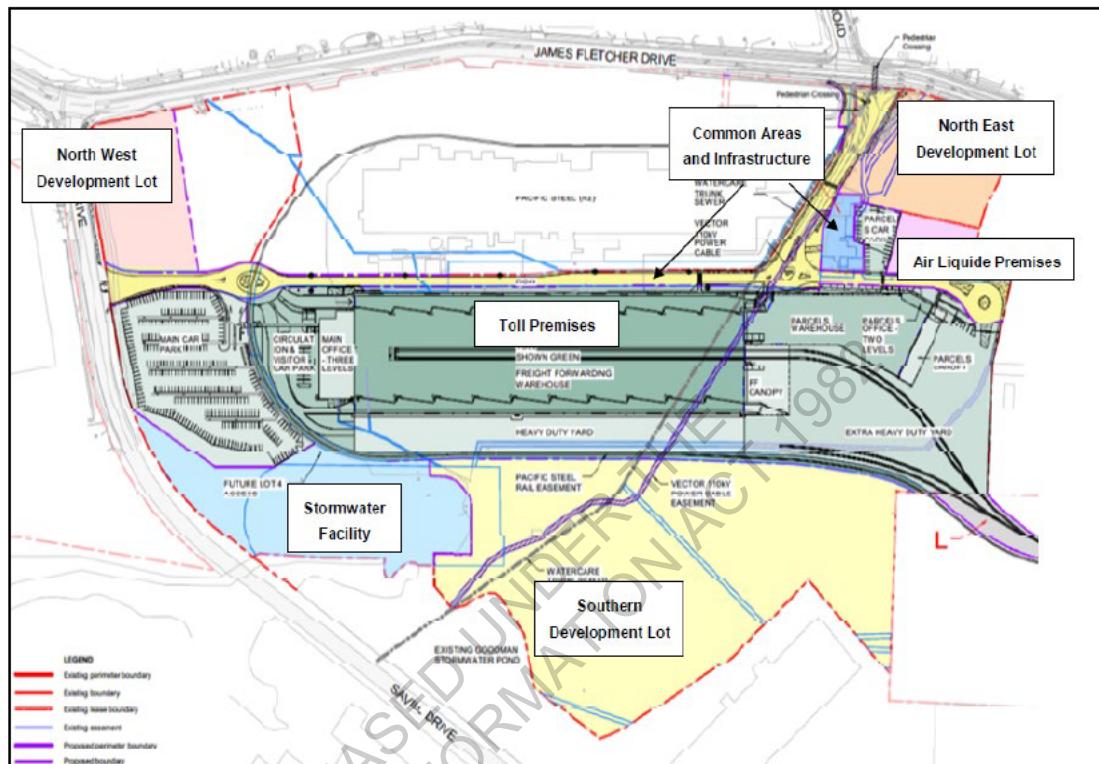


Figure 2: Property Division

15. The Applicant is proposing to create a high-quality industrial estate on the Property. The Applicant intends on developing the three bare sites on the Property into three industrial lots and construct a spec-built industrial premises for lease on each of the lots (the **Proposed Development**). The three lots are as follows:

- the North West Development Lot;
- the North East Development Lot; and
- the Southern Development Lot.

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

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

17. The benefits to New Zealand that may result from this investment include:

<b>Strong weighting</b>		<ul style="list-style-type: none"><li><b>Creation of new job opportunities</b> There will be direct and indirect employment of New Zealand based staff during and after construction of the Proposed Development.</li><li><b>Additional capital for development</b> The Proposed Development is expected to cost [ s 9(2)(b)(ii) ] which will result in significant investment for development purposes in New Zealand.</li></ul>
<b>Moderate weighting</b>		<ul style="list-style-type: none"><li><b>Added market competition and greater efficiency</b> The Applicant's entrance into Auckland's prime industrial property market will increase the number of large industrial developers in Auckland. [ s 9(2)(b)(ii) ]</li></ul>
<b>Weak weighting</b>		<ul style="list-style-type: none"><li><b>Previous investments</b> Reco Otago, a relevant overseas person for this Investment, has had previous investments in New Zealand that has been and are of benefit to New Zealand.</li></ul>

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

### **Impact of Covid-19**

19. The Applicant has advised that it has taken active steps to mitigate the effects of COVID-19 disruptions on its development timeframes. This includes engaging preliminary discussions with contractors in relation to the Proposed Development. The Applicant submits that it is conscious that the full impact of COVID-19 is not yet clear and there may be factors outside the Applicant's control, including the possibility of future lockdowns, the certainty of supply chains for building products, and the effect of COVID-19 on the wider construction industry.

20. COVID-19 will affect market conditions in the short to medium term, but the longer-term effects will remain unclear. We note that the Applicant has, therefore, included a three-month buffer into its timeframes for the Proposed Development to account for the impact of COVID-19.

### **Timing**

21. Under the Sale and Purchase Agreement (the **SPA**) dated 2 April 2020, the Applicant does not require OIO consent until 2 April 2021. However, the Applicant's current development timeframe contemplates the Proposed Development works to commence between October and November 2020. The Applicant has, therefore, requested that the OIO provide consent prior to October 2020 to enable the Applicant to commence the Proposed Development works.

22. Processing days for the application to date are:

Quality Assurance	OIO Processing	Waiting for Applicant / Vendor	Third party consultation
9	14	51	0

23. This application for consent was received prior to the commencement of the changes introduced by the Overseas Investment (Urgent Measures) Amendment

Act 2020 and the transaction for which consent is required was also entered before commencement. Accordingly, the provisions introduced by the Overseas Investment (Urgent Measures) Amendment Act 2020, including the 'national interest' assessment, do not apply.

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## Applicant and investor test

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

### Who is making the investment

25. The investment is being made by the Applicant, James Fletcher Drive Asset Pty Ltd as trustee of the Logos James Fletcher Drive Asset Trust. As described in paragraph 16, [ s 9(2)(b)(ii) ]

### Overview of assessment: investor test

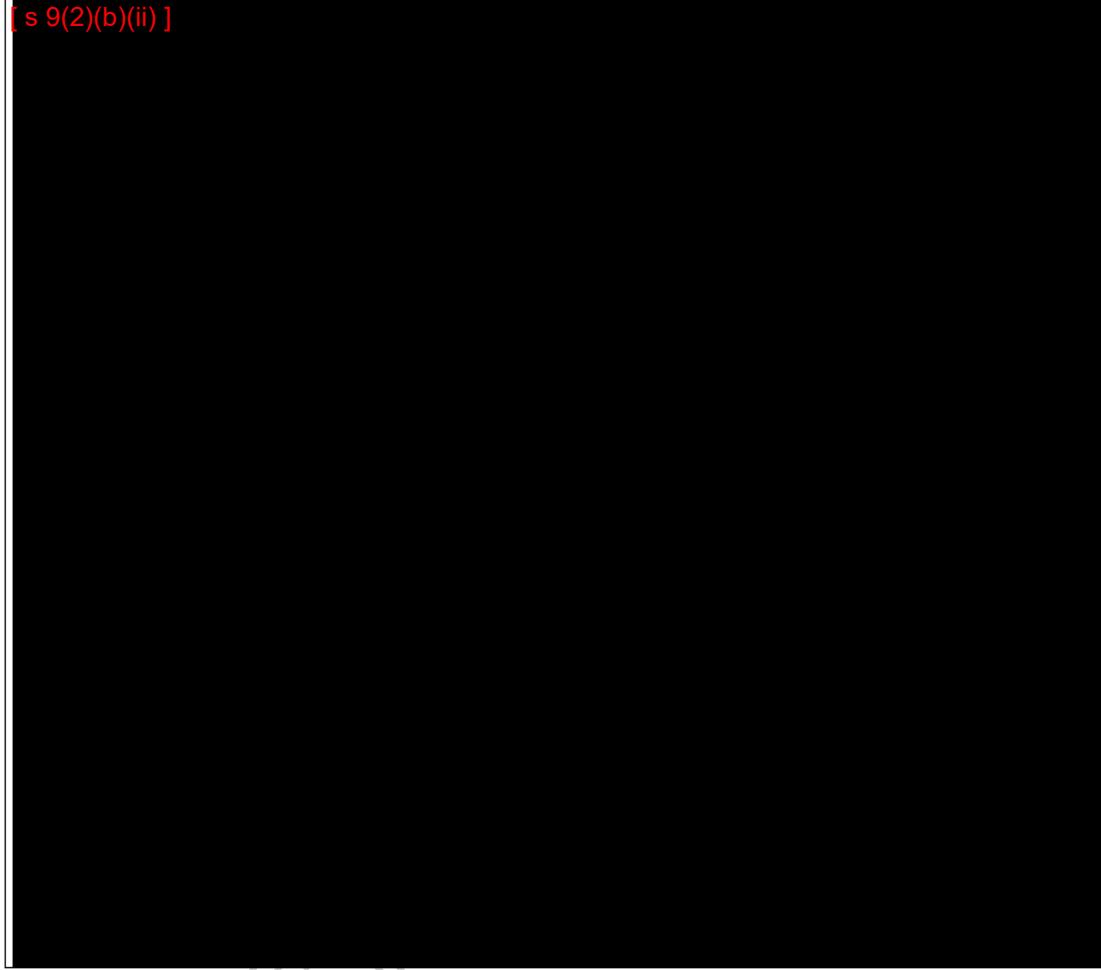
Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
Relevant overseas persons (ROP) and individuals with control (IWC) confirmed	ROP and IWC identified	ROP and IWC identified.	Paras 26-42. Section 15 of the Act.
Collectively have business experience and acumen relevant to the investment	Test met	The IWC have relevant business experience in a range of areas including investment and funds management, asset management, and international business. The Applicant seeks to contract out the development and construction works.	Paras 43-46. Sections 16(2)(a) and 18(1)(a) of the Act.
ROP demonstrated financial commitment	Test met	The Applicant has demonstrated financial commitment by paying a deposit of [ s 9(2)(b)(ii) ] for the purchase of the Property. The Applicant has incurred costs of [ s 9(2)(b)(ii) ] date, undertaking due diligence and negotiating the terms of the SPA.	Sections 16(2)(b) and 18(1)(b) of the Act.
Good character	No concerns	The Applicant has not disclosed any good character matters. Our searches have also not identified any good character matters.	Paras 47-48 Sections 16(2)(c) and 18(1)(c) of the Act.
Not an individual of the kind ineligible for a visa or entry permission under ss 15 or 16 of the Immigration Act 2009	Test met	We are satisfied that none of the IWC of the ROP are individuals of the kind referred to in ss 15 and 16 of the Immigration Act 2009.	Sections 16(2)(d) and 18(1)(d) of the Act.

### Ownership and control of the Applicant

26. As described in paragraph 16 above, [ s 9(2)(b)(ii) ] will result in the beneficial ownership of the Property being held by Reco Otago Private Limited (Reco Otago) and Logos NZ Sponsor Pte Limited (Logos Sponsor), [ s 9(2)(b)(ii) ]. Both Reco Otago and Logos Sponsor are overseas

persons for the purpose of the Act as they are incorporated outside of New Zealand. A structure diagram of the Applicant is shown below:

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



27. Reco Otago owns 97% of the units in the Head Trust, with Logos Sponsor owning the remaining 3%. The Head Trust owns 100% of the units in the Sub Trust, which will beneficially own the Property (with legal title being held by the Sub Trustee). The Head Trustee and the Applicant are wholly owned by Logos Australia.

*Reco Otago*

28. Reco Otago is a company that is incorporated in Singapore and is ultimately owned by GIC (Realty) Private Limited (**GIC Realty**), which is domiciled in Singapore. GIC Realty is wholly owned by the body corporate established by the Minister for Finance (Incorporation) Act (Cap 183)<sup>4</sup> (**MFF**) to own and administer assets of the Singaporean government.
29. GIC Private Limited (**GIC**), which is wholly owned by MFF, is the sole shareholder of GIC Real Estate Private Limited (**GIC Real Estate**). GIC Real Estate is the manager of the assets of GIC Realty and subsidiaries, including Reco Otago. GIC is a sovereign wealth fund established by the Government of Singapore in 1981 to manage Singapore's foreign reserves.

*Logos Sponsor*

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



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<sup>4</sup> This is a Singaporean Statute.

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

31.

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

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

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

## *Who controls the Applicant?*

32

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

1

33. A control structure diagram including the aforementioned agreements can be found in **Attachment 3**.

34. The initial Investment Committee comprises:

- Richard Robert Massey (as member for Reco Otago, with Sunny Tsun as alternate); and
- John Marsh (as member for Logos Sponsor, with Trent Iliffe as the alternate)

35.

[§ 9(2)(b)(ii)]

5

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

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

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

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

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

40. Based on the decision-making roles as prescribed in the Unitholders Agreement, we have determined that the '**relevant overseas person**' (ROP) is (collectively):

ROP	Role
Logos James Fletcher Drive Asset Pty Ltd as trustee of the Logos James Fletcher Drive Asset Trust	The Applicant
Reco Otago Private Limited	97% beneficial owner of the Applicant and part of the Investment Committee
Logos NZ Sponsor Pte Limited	3% beneficial owner of the Applicant and part of the Investment Committee

41. We do not consider that any of the institutional investors in paragraph 31 or [ s 9(2)(a)] should be included in the ROP as they do not have any relevant control in respect of the acquisition of the Property or the Proposed Development.

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

IWC	Role
Natalie Lorraine Allen	Director of the Head Trustee and Sub Trustee Group General Counsel and Head of Corporate Development of Logos Group
John Edward Marsh	Managing Director and Co-Chief Executive Officer of Logos Group Logos Sponsor's member and alternative member of the Investment Committee Director of the Head Trustee and Sub Trustee
Trent Alexander Iliffe	Managing Director and Co-Chief Executive Officer of Logos Group Logos Sponsor's member and alternative member of the Investment Committee
[ s 9(2)(a) ]	Reco Otago's member of the Investment Committee Director of Reco Otago [ s 9(2)(b)(ii) ]
[ s 9(2)(a) ]	Director of Reco Otago

### **Business experience and acumen**

s16(2)(a) and 18(1)(a) of the Act. The relevant overseas person, or the individuals with control of the relevant overseas person, must have business experience and acumen relevant to the overseas investment. There is considerable flexibility in determining what is relevant and more or less specific expertise may be required depending on the nature of the investment. Business experience and acumen that contributes to an investment's success may be treated as relevant even though the investor may have to supplement its experience and acumen by utilising the experience and acumen of others to ensure the investment succeeds.

43. In this case, the **Investment** is the acquisition of an industrial property to create a high-quality industrial estate for the consideration of \$188 million.

44. We reviewed the biographical information provided by the Applicant for each of the IWCs and note that the IWCs collectively have extensive general business experience and acumen. The IWC have long-standing experience in industries that are relevant to the Investment, including investment and funds management, asset management, and international business.

45. All of the IWC have previously held senior management and executive roles at a number of different international companies. These include [ s 9(2)(b)(ii) ]. The Applicant seeks to engage external contractors and consultants for the development and construction works on the Property.
46. Having regard to the above, we are satisfied that the IWC of the ROP collectively have business experience and acumen relevant to the Investment.

### **Good character assessment**

s16(2)(c) and 18(1)(c) of the Act.

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

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

47. The Applicant has provided a statutory declaration stating that the IWCs are of good character, have not committed an offence or contravened the law, 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.
48. The Applicant did not disclose any character-related matters to the OIO. The OIO undertook an open-source search on the ROP and IWC and found no matters pertaining to the good character of the ROP and IWC.
49. We consider the good character test has been satisfied in this case.

### **Conclusion – Investor test**

50. Our conclusion is that the investor test is met.

### **Investment and benefits test**

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

#### **Summary of the proposed transaction and the Investment Plan**

##### *The proposed transaction*

52. The Applicant and the Vendor entered into a conditional SPA on 2 April 2020. The Applicant now seeks consent to satisfy the Overseas Investment Act conditions in clause 20 of the SPA.<sup>11</sup>

##### *Investment plan summary*

53. As mentioned in paragraph 14, the Property is subject to an existing and continuing lease by Air Liquide New Zealand Limited on the Air Liquide Premises. The Applicant intends to lease the Toll Premises back to the Vendor, which will contain the Vendor's new facility.

<sup>11</sup> We note that settlement of the SPA will occur following the completion of the land swap between the Vendor and the owner of the adjoining property, Pacific Steel (NZ) Limited. This land swap will re-align the property boundaries.

54. On the remainder of the Property, the Applicant is proposing to create a high-quality industrial estate. The Applicant intends on developing the three bare sites on the Property into three further industrial lots and construct a spec-built industrial premises for lease on each of the lots (the **Proposed Development**). The three lots are as follows:

- the North West Development Lot.
- the North East Development Lot.
- the Southern Development Lot.

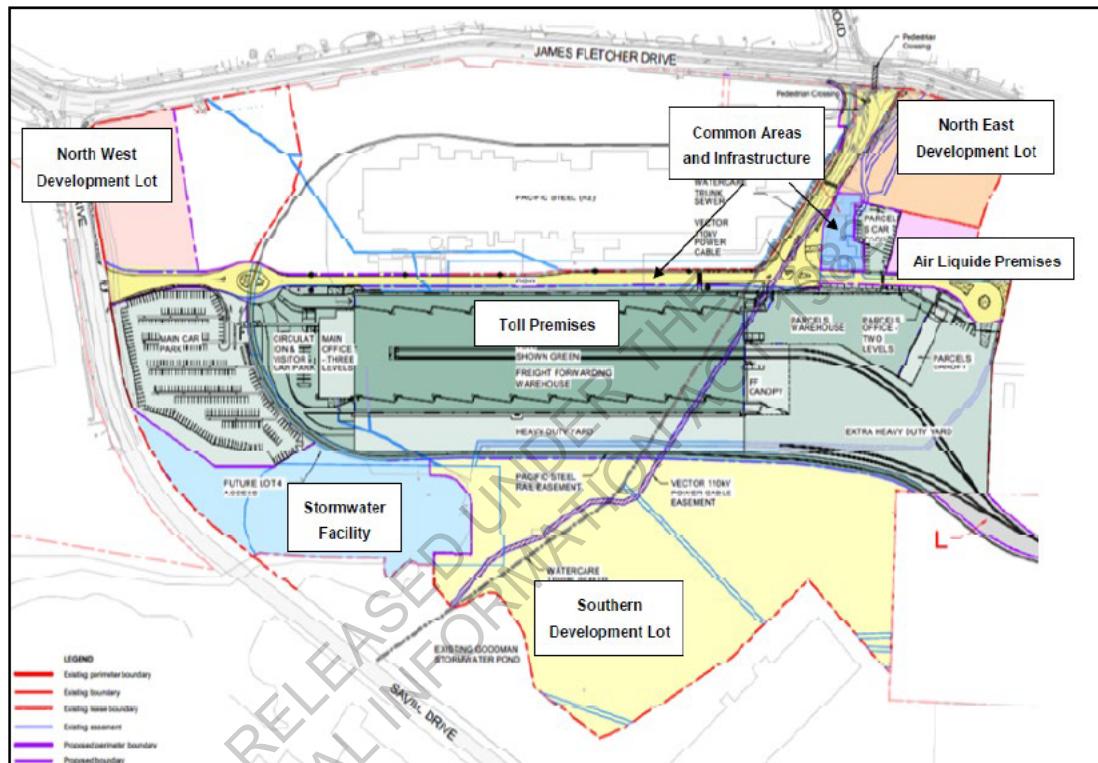


Figure 3: Property Division

55. A breakdown by size of the use of the Property is as follows:

Land use	Size (ha)
Toll Premises	7.6494
Stormwater Facility	1.4266
Air Liquide Premises	0.3139
Common Areas and Infrastructure	1.6999
North West Development Lot (Proposed)	0.7249
Southern Development Lot (Proposed)	4.5195
North East Development Lot (Proposed)	0.7973

56. The Proposed Development will be undertaken by Logos NZ Management and Logos NZ Development on behalf of the Applicant. For the North West Development Lot, the Applicant has proposed a 3,800m<sup>2</sup> warehouse with a 500m<sup>2</sup> two-level office. For the North East Development Lot, the Applicant intends to build a 3,620m<sup>2</sup> warehouse with a 500m<sup>2</sup> two-level office. For the Southern Development Lot, the Applicant is planning a 20,000m<sup>2</sup> warehouse with a 1,200m<sup>2</sup> two-level office.

57. The Proposed Development is subject to resource consent approval from Auckland Council. The Applicant has had pre-application meetings with Auckland Council,

who provided positive feedback. The Applicant expects to receive resource consent approval by September 2020, subject to the impacts of COVID-19.

58. The Applicant will also develop common areas of the Property to service the Toll Premises, Air Liquide Premises, and the three lots in the Proposed Development. The Applicant intends to lease the lots in the Proposed Development to tenants who require an industrial site.

### **What is likely to happen without the investment (Counterfactual)**

59. We have determined that the most likely counterfactual would be that an adequately funded alternative New Zealand purchaser (**ANZP**) would acquire the Property for the purpose of using it as an industrial property.

60. There are two key questions to determine what is likely to occur without the Investment:

- who is likely to own the Property?
- what is the likely use of the Property?

#### *Who is likely to own the Property?*

61. The Vendor received OIO consent to acquire the Property in June 2017<sup>12</sup>. The [ s 9(2)(b)(ii) ] The Vendor intends to use the proceeds from the sale of the Property to further develop and support its ongoing operations in New Zealand.

62. In November 2019, the Vendor engaged CBRE, a commercial real estate agency to conduct a marketing campaign for the sale and leaseback of the Property, targeting commercial investors. CBRE advertised on its website and had direct contact engagement with parties who may be potential purchasers of the Property.

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

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

65. Since the beginning of the year, the COVID-19 pandemic has had a material impact on a wide range of businesses. Due to this, we anticipate that the likely pool of ANZPs would be limited in the medium term. However, in the longer term, we consider that the Property is likely acquired by an ANZP operating in the industrial property management and development sector as this ANZP would be able to meet the Vendor's requirement for a leaseback.

<sup>12</sup> Case 201620083

<sup>13</sup> Meaning Logos China and its subsidiaries.

*What is the likely use of the Property?*

66. The Property is located within an industrial area. It is likely that an ANZP would develop the Property into a large-scale industrial premise for their own use or for rent on the open market.

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



68. Additionally, the Property is zoned by the Auckland Council as being for heavy industry uses. This similarly restricts the use of the Property to industrial purposes only.

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



70. As such, we consider that the Property would likely be developed into a large-scale industrial premise with the Vendor being able to lease back part of the Property.

*Conclusion*

71. There would be some time before the acquisition of the Property by an ANZP would take place given the lack of suitable offers, noting the Vendor's need for a leaseback, in the Vendor's initial advertising. This is likely compounded by the economic effects of COVID-19 which would discourage New Zealand investors from making large capital commitments. However, we consider the most likely counterfactual to be that the Vendor will continue to advertise the Property, and an ANZP would likely purchase the Property for the purposes of a large-scale industrial development. We consider that the presumption that the Property would be owned by an ANZP eventually has not been rebutted.

**Consultation and submissions about the investment**

72. No third party submissions were requested or received and no third party consultation was undertaken in relation to the Investment.

## Overview of assessment: investment and benefit test

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Job opportunities	The Applicant estimates that the Proposed Development will require 20 to 30 FTE professional consultants for the first six months, beginning March 2020. The Applicant estimates that the Proposed Development is likely to sustain 200 FTE employees throughout the site activation and construction period. In terms of the development of a management team, the Applicant anticipates that it will require an additional one to two FTE employees in New Zealand. Once the Proposed Development has completed, the Applicant anticipates that it will require an additional New Zealand-based asset manager.	An ANZP is likely to also create indirect jobs for the development and construction of the Property. However, being a New Zealand-based entity already, an ANZP is unlikely to be creating any new full time equivalent (FTE) roles for the management of the Property post-completion of the Proposed Development.	Strong	There will be indirect jobs created for the development and construction of the Proposed Development. There will be one to three direct FTE roles created post-completion of the Proposed Development, for the management of the Property. These direct FTE roles would not be offered by the ANZP.	Proposed special conditions on creating one direct FTE.  Reporting on the number of indirect and direct jobs created and their salaries.	Paras 75-88 s17(2)(a)(i)
Additional investment for development purposes	The Applicant intends on spending an additional [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] on the development and construction of the Property, [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] for the Proposed Development.	An ANZP is likely to spend money for the development of the Property, but it is unlikely that it would be spent in a timeframe that is as short as the Applicant's.	Strong	On top of the purchase price of \$188 million, the Applicant intends on spending [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] on the development and construction on the Property. The Applicant would be able to introduce this	Proposed special condition on spending [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ]	Paras 106-111 s17(2)(a)(v)

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
				capital into New Zealand in a relatively short timeframe as compared to the ANZP.		
Added market competition, increased productivity, efficiency, and enhanced domestic services	There is a limited number of large competitors in Auckland's prime industrial property market. The Investment will be Logos Group's first direct investment in New Zealand, via the Applicant. Logos Group intends to grow [ s 9(2)(b)(ii) ]	An ANZP would not add market competition as it is already an existing entity in New Zealand. Additionally, an ANZP is likely to create a general-use type of warehouse for the tenants, which is unlikely to increase efficiency.	Moderate	The Investment will be Logos Group's first direct investment in New Zealand, increasing the number of large entities competing in Auckland's prime industrial property market. The Applicant will draw from the wider Logos Group's experience [ s 9(2)(b)(ii) ]	Propose special condition on [ s 9(2)(b)(ii) ] [REDACTED]. Reporting on the resource consents applied for and received.	Paras 89-105 s17(2)(a)(iv)
Previous investments	In 2015, the OIO granted consent for Reco Otago to acquire significant business	N/A	Weak	One of the entities comprising relevant overseas person,	N/A	Paras 112-117 reg28(e)

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
	assets and sensitive land. At the time of the acquisition, the consideration that was attributed to 50% of the shares as stated in the Umbrella Share Purchase Agreement with the Vendor dated 6 November 2014 was \$1 billion. The OIO granted Reco Aotearoa two previous consents which introduced significant capital into New Zealand, created indirect jobs, encouraged further development, and allowed for the ownership and participation by New Zealanders.			Reco Otago has undertaken a previous investment in New Zealand that has been beneficial to New Zealand. Reco Aotearoa, a company related to Reco Otago, has also undertaken previous investments in New Zealand that have been beneficial.		

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

## Job opportunities

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

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

75. We consider that the Investment will likely result in new job opportunities that will be introduced in New Zealand. The Applicant will be seeking work force for the construction and management work required for their Proposed Development, and for management of the Property post-completion of the Proposed Development.
76. The Applicant submits that new job opportunities will be created through:
  - the indirect employment of New Zealand based employees during the construction of the Proposed Development; and
  - the direct employment of additional New Zealand based staff to oversee the Proposed Development and manage the completed development.
77. In addition, the Applicant submits that the Proposed Development is likely to create opportunities for employment, allowing local companies to retain existing staff. These opportunities would be by way of indirect jobs created by the Proposed Development will include the following roles:
  - consultants across a few areas, including traffic engineers, geotechnical engineers, and civil engineers.
  - head contractor for the Proposed Development.
  - subcontractors across a few areas, including transport engineers, civil engineers, and construction workers.
  - suppliers for building construction materials.
78. The Applicant estimates that the Proposed Development will require 20 to 30 full-time equivalent (**FTE**) professional consultants for the first six months, beginning March 2020. This will reduce to 10 FTE employees for the duration of the construction works, due to commence in the fourth quarter of 2020.
79. The Applicant estimates that the Proposed Development is likely to sustain 200 FTE employees throughout the site activation<sup>14</sup> and construction period. This is expected to commence in the third quarter of 2020 and will last approximately 12 months.
80. The Applicant expects to have selected a lead contractor for the Proposed Development by September 2020. The Applicant has spent [ s 9(2)(b)(i)] consultants to date.
81. In terms of the development of a management team, the Applicant anticipates that it will require an additional one to two FTE employees in New Zealand. Once the

<sup>14</sup> Preparation of a worksite for construction, including but not limited to assembly of personnel and installation of equipment.

Proposed Development has completed, the Applicant anticipates that it will require an additional New Zealand-based asset manager.

82. The table below summarises the new job opportunities that are likely to occur with Investment:

	FTEs created 2020 FY	FTEs created 2021 FY	Continuing beyond 2021
<b>Consultants</b>	25	5	-
<b>Contractors</b>	150	50	-
<b>Logos employees</b>	1-2	1	3
<b>Total</b>	177	56	3

*Counterfactual*

83. We consider that an ANZP would likely develop the Property into an industrial premise as well, either for their own use or for rental in the open market. However, this development would be realised later compared to that of the Applicant's, thus delaying the creation of jobs. The Applicant, on the other hand, intends to commence the Proposed Development in the fourth quarter of 2020.

*Our Assessment*

84. Treasury's Economic Report dated 15 May 2020 forecasts New Zealand's unemployment rate to reach almost 10% by September 2020, before easing gradually to around 6% by early 2022. This forecast is a rise from the 2019 unemployment rate of 4%. Therefore, we consider that given the current impact of COVID-19 on the job market in New Zealand, it is beneficial to New Zealand that the job opportunities from the Investment are realised as soon as possible.

85. Furthermore, an ANZP would already have an established a property development and management team in New Zealand. The Applicant will be required to establish its own property development and management team in New Zealand, being Logos NZ Development and Logos NZ Management. This would create an additional two to three FTE employees, likely above what an established ANZP would offer.

86. The Applicant has shown that this Investment is likely to provide new job opportunities that are additional to those which are likely to occur without the Investment.

87. We have rated this benefit factor 'strong' as the Applicant will be creating new job opportunities, both indirect and direct through the works required for the Proposed Development. These job opportunities are likely to be realised sooner than what an ANZP could offer, which could help with New Zealand's employment market that has been negatively impacted by COVID-19. The Applicant would also need to establish a new team in New Zealand for property development and management, creating new FTE employee positions unlikely to be offered by an ANZP.

*Proposed Condition*

88. We recommend imposing conditions that require the Applicant to introduce at least one FTE job associated with the management of the Property. We also recommend that this role be based in New Zealand. We recommend the Applicant report on the number or of FTE(s) employed on the Land (whether temporary or ongoing), their roles, and their salaries.

## Added market competition and greater efficiency or productivity

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

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

89. We consider that the Investment is likely results in added market competition and greater efficiency in New Zealand. Logos Group, via the Applicant, will be a new entrant into Auckland's prime industrial property market. The Proposed Development will be a [ s 9(2)(b)(ii) ]

### *Added Market Competition*

90. The Applicant submits that the Investment represents Logos Group's first direct investment into New Zealand. The Applicant submits that this market entrance will increase market competition by increasing the number of large developers and investors in Auckland's prime industrial property market (the **Market**)<sup>15</sup>.

91. The Applicant submits that currently, Goodman Property Trust (**Goodman**) is the dominant player in the development of the Market, currently holding a \$2.6 billion property portfolio exclusively invested in the Market.

92. The Applicant considers that Logos Group's entry will have a noticeable effect on competition in the Market. Logos Group's entry will result in industrial tenants having a wider range of quality developers or lessors to choose from when looking to construct or lease prime industrial premises. The Applicant submits that Logos Group has wide experience in developing modern and efficient logistics facilities, being a significant industry entity in the Asia Pacific region. The Applicant considers Logos Group an industry leader and [ s 9(2)(b)(ii) ]

93. We consider that an ANZP will likely be an existing player in the Market who can afford the purchase price of the Property of \$188 million as well as meet the requirements of the Vendor for the Toll Premises.

94. There is a limited number of large-scale industrial property developers and lessors in the Market, with one being Goodman, as submitted by the Applicant, and another being Property For Industry (**PFI**). In 2019, PFI held a \$1.48 billion property portfolio. Of PFI's properties in New Zealand, 84% are in Auckland.

95. Logos Group [ s 9(2)(b)(ii) ] and is experienced in developing industrial properties overseas. Logos Group has also had indirect investments in New Zealand, having facilitated the acquisition of 22.5 hectares of land at Wiri, South Auckland by the Australian Super Fund. Logos Group is also currently managing the development of this site. We, therefore, consider that Logos Group's entrance into the Market would add competition that would not otherwise happen if the Property is acquired by an ANZP, who would be an existing Market entity.

<sup>15</sup> Prime industrial property is generally high-grade industrial property that are typically close to main urban centres and transport links.

### Greater efficiency

96. The Proposed Development is aimed at creating a logistics hub comprising the Toll Premises, Air Liquide Premises and the Proposed Development, to be leased to high-quality logistics businesses. The Applicant intends for the Property to be a logistics hub with spec-built logistic facilities.

97. The Applicant submits that the Property will include multimodal road-rail capabilities, including within the Toll Premises and the addition of a rail siding<sup>16</sup> to service the Southern Development Lot, with the options for this shown in orange below:

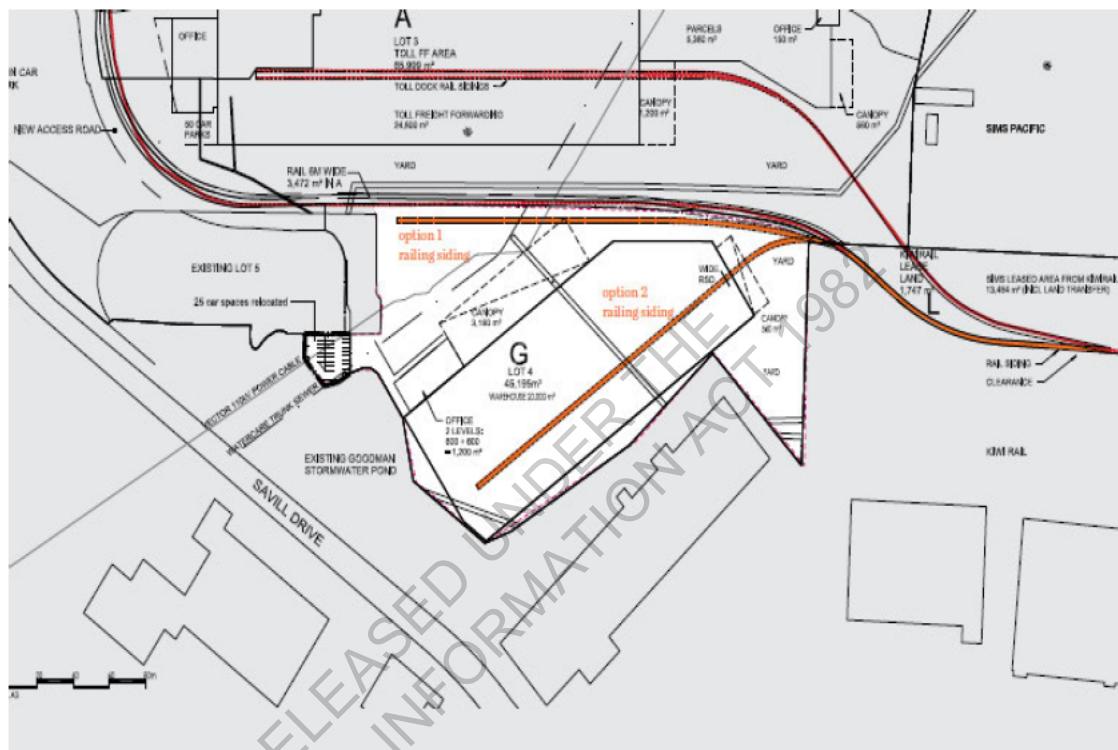


Figure 4: Options for Rail Siding Servicing the Southern Development Lot

98. However, the Applicant notes that the provision of a rail siding to the Southern Development Lot will depend on tenant requirements. The Applicant considers the rail access to the Southern Development Lot a unique opportunity and is in ongoing discussion with prospective tenants who are interested in having rail connectivity.

99. The Applicant will draw upon Logos Group's international experience, specialising in logistics developments and will apply this to construct facilities that increase efficiencies for logistics operators. The Proposed Development will include the construction of three spec-built logistics facilities with offices and warehouses as described in paragraph 56.

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>16</sup> A short, slow-speed section of a rail track that can be used to store rolling stock.

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

101. The Applicant also notes that many of Auckland's commercial buildings are of low quality, with only 40% of Auckland's industrial market considered "prime".
102. Considering the current major entities in the Market, we consider that an ANZP is unlikely to have the same international reach as the Logos Group. Thus, an ANZP would be unlikely to draw on as much experience as the Applicant would be able to (via Logos Group) in constructing a logistics estate that could meet the specific needs of the tenants. An ANZP would likely create a more traditional type of industrial estate that would have a more general usage. It is not likely to contain specific features that could increase efficiency.
103. The CBRE Marketview Report on Auckland for the fourth quarter of 2019 forecasts that while there will still be strong demand for industrial properties in 2020, the leasing of some backfill vacancies, especially in lower quality properties could take longer than in recent years. We consider that the Applicant's ability to create a prime logistics estate that could meet the specific needs of tenants, resulting in an increase in efficiency to be a benefit that an ANZP would be unlikely to offer with a standard industrial estate. There is likely to be less operational effectiveness if an ANZP were to acquire the Property.

#### *Conclusion*

104. The Investment is likely to result in greater market competition and greater efficiency in New Zealand. The Investment would be Logos Group's first direct investment in New Zealand, allowing it to become another entity competing in the Market. We also consider that the experience and specific features that the Applicant offers for the development of the Property could result in greater efficiency.
105. We rate this benefit factor 'moderate'. While we recognise the added competition in the Market, it is currently confined to Auckland only. The Applicant warehouses will also include features that could improve efficiency, but these are not confirmed as it would be subject to the need of the tenants. The provision of the rail siding to service the Southern Development Lot also has not been confirmed.

#### **Additional investment for development purposes**

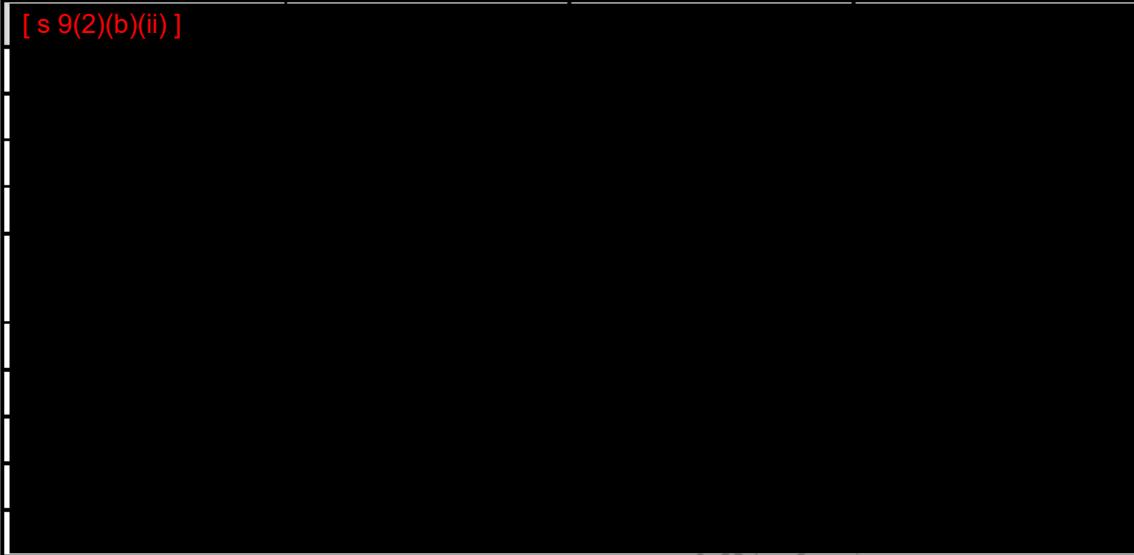
There are four key elements to this factor (s17(2)(a)(v) of the Act):

- 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**.

106. We consider that the Investment is likely to result in additional capital being introduced into New Zealand for development purposes. The purchase price for the Property is \$188 million. Additionally, the Applicant intends to spend an estimated [ s 9(2)(b)(ii) ] on the Proposed Development.

107. The Applicant's estimated expenditure on the Proposed Development will be in the form of costs incurred in the planning and development stage. The following table outlines the proposed expenditure:

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



108. [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ]. These are further described in paragraph 56. The Applicant expects to incur these costs within the first 12 to 15 months of settlement of the SPA.

*Counterfactual*

109. An ANZP is likely to develop the Property into an industrial estate. An ANZP is also likely to spend significant additional capital on developing the Property given the bare sections that are available for development on the Property. However, we are of the view that an ANZP would unlikely have the depth of resources that the Applicant has to spend on development in the timeframe that the Applicant can.

*Our Assessment*

110. We have rated this benefit factor 'strong'. The Applicant will be introducing significant capital into New Zealand for development purposes, being approximately [ s 9(2)(b)(ii) ] in addition to the purchase price of \$188 million for the Property. The Applicant will also be in a position to be able to introduce the capital into New Zealand in a shorter timeframe as compared to an ANZP. We are of the view that the introduction of significant capital into New Zealand in a shorter timeframe is an important boost to the economy, especially considering the impacts of COVID-19 on the economy.

*Proposed Condition*

111. We recommend conditions requiring the introduction of at least [ s 9(2)(b)(ii) ] into New Zealand for development purposes, associated with the [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] in the Proposed Development.

## Previous investments

There are two key elements to this factor (reg28(e) of the Regulations):

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

112. We consider that Reco Otago, a relevant overseas person, has previously undertaken investments which have been and are of benefit to New Zealand. As mentioned in paragraphs 28 and 29, Reco Otago is owned by GIC. GIC's wholly-owned subsidiary, Reco Aotearoa Private Limited (**Reco Aotearoa**) has previously undertaken investments which have been, or are, of benefit to New Zealand.

113. In 2015, the OIO granted consent for Reco Otago to acquire significant business assets and sensitive land.<sup>17</sup> Reco Otago acquired up to 100% of the shares in the following:

- Albany Shopping Centre (No. 2) Limited and Albany Shopping Centre Limited.
- Manukau City Centre Limited (Westfield Manukau);
- St Lukes Group (No. 2) Limited.<sup>18</sup>
- Riccarton Shopping Centre (1997) Limited.

114. At the time of the acquisition, the consideration that was attributed to 50% of the shares was \$1 billion. This is significant capital that was introduced into New Zealand.

115. The Applicant also mentions the previous investments undertaken by Reco Aotearoa. In January 2015, the OIO granted consent for Reco Aotearoa to acquire significant business assets, being an interest in the Air New Zealand Building and Fonterra Building at Fanshawe Street, Auckland.<sup>19</sup> This acquisition was by way of joint venture with Goodman Nominee (NZ) Limited. The consideration for this acquisition was \$157.6 million and this is significant capital that has been introduced into New Zealand.

116. In December 2015, the OIO granted consent for Reco Aotearoa to acquire a leasehold interest in Wynyard Precinct No. 6 Limited which is sensitive land.<sup>20</sup> The Applicant submits that this investment was realised in 2019. The benefits to New Zealand from this previous investment include the indirect creation of jobs for the development, consequential benefit of encouraging development in the Auckland central business district, and the partial oversight and participation in the investment by New Zealanders.

117. We consider that Reco Otago, a relevant overseas person in this Investment, has previously undertaken investments that have been of benefit to New Zealand by introducing significant capital into New Zealand. While we recognise the benefits of previous investments undertaken by Reco Aotearoa, we do not consider Reco Aotearoa or its parent companies as relevant overseas persons in this Investment. We, therefore, give this benefit factor a 'weak' rating.

<sup>17</sup> Case 201420047.

<sup>18</sup> This is the property that is sensitive land.

<sup>19</sup> Case 201420078.

<sup>20</sup> Case 201510070.

## Conclusion – benefits test

118. In order for consent to be granted, the Applicant must demonstrate that the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders).
119. We assessed the characteristics of the land and the nature of the interest being acquired (reflecting the proportional nature of the benefit test). Here the Applicant is acquiring a freehold interest in approximately 17.1495 hectares of land, to be developed into a high-quality industrial estate.
120. After careful consideration of the application, we are satisfied that the Investment is likely to result in the benefits outlined in the table at paragraph 17 of the executive summary and **Attachment 6**.
121. Our view is that the Applicant has met the benefits test.

## Recommendation

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122. Our recommendation is to **grant consent**, as we consider that the investor test and the benefits test have been met.
123. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and to paragraphs 9 to 12 of this Assessment Report to record your decision.

## List of Attachments

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1. Proposed Decision
2. Guidance for applying the Act
3. Control Structure Diagram
4. Other Benefit Factors
5. Sensitive Land Details
6. Overview Tables

## List of other documents in the Bundle

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- A. Application
- B. Investment Plan (Appendix 1 of the Application)

## ATTACHMENT 1 - PROPOSED DECISION

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### Consent for Overseas Person to Acquire Sensitive New Zealand Land

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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.

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#### Consent

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Decision date: 14 August 2020

The following people have been given the following consent:

<b>Case</b>	202000239
<b>Consent</b>	James Fletcher Drive Asset Pty Ltd in its capacity as trustee of the Logos James Fletcher Drive Asset Trust may acquire the Land subject to the Conditions set out below.
<b>Consent holder/s</b>	James Fletcher Drive Asset Pty Ltd in its capacity as trustee of the Logos James Fletcher Drive Asset Trust  We will also refer to each Consent holder and the Consent holders together as <b>you</b> .
<b>Asset</b>	Significant business assets comprising of freehold interest in sensitive land, being approximately 17.1495 hectares at James Fletcher Drive and Savill Drive, Otahuhu, Auckland, comprised in Record of Title 904394 (pre-allocated) (the <b>Land</b> ).
<b>Timeframe</b>	You have until 14 August 2021 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
<b>Special condition 1: Construct the industrial premises</b>  You must develop [ s 9(2)(b)(ii) ]  If you do not, standard condition 6 will apply and we may require you to dispose of the Land.	31 December 2022.
<b>Special condition 2: Apply for resource consent(s)</b>  You must apply for the necessary resource consent(s) for the development and construction in special condition 1.  If you do not, standard condition 6 will apply and we may require you to dispose of the Land.	31 March 2021.
<b>Special condition 3: Introduce capital into New Zealand</b>  You must introduce at least [ s 9(2)(b)(ii) ] of additional capital into New Zealand, associated with the development and construction [ s 9(2)(b)(ii) ] specified in special condition 1.  If you do not, standard condition 6 will apply and we may require you to dispose of the Land.	31 December 2022.
<b>Special condition 4: Create 1 FTE job</b>  You must create at least 1 FTE job associated with the management of the Land. This role must be based in New Zealand.	31 December 2021.

## 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
<b>Standard condition 1: acquire the Land</b>	
You must acquire the Land: <ol style="list-style-type: none"><li>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</li><li>1. using the acquisition, ownership and control structure you described in your application.</li></ol> <p>Note, only you – the named Consent holder - may acquire the Land, not your subsidiary, trust or other entity.</p>	As stated in the Consent
<b>Standard condition 2: tell us when you acquire the Land</b>	
You must tell us in writing when you have acquired the Land. Include details of: <ol style="list-style-type: none"><li>1. the date you acquired the Land (<b>Settlement</b>),</li><li>2. consideration paid (plus GST if any),</li><li>3. the structure by which the acquisition was made and who acquired the Land, and</li><li>4. copies of any transfer documents and Settlement statements.</li></ol>	As soon as you can, and no later than two months after Settlement
<b>Standard condition 3: allow us to inspect the Land</b>	
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: <ol style="list-style-type: none"><li>1. Allow a person we appoint (<b>Inspector</b>) to:<ol style="list-style-type: none"><li>(a) enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (<b>Inspection</b>),</li><li>(b) remain there as long as is reasonably required to</li></ol></li></ol>	At all times

<p>conduct the inspection,</p> <p>(c) gather information,</p> <p>(d) conduct surveys, inquiries, tests and measurements,</p> <p>(e) take photographs and video records, and</p> <p>(f) do all other things reasonably necessary to carry out the Inspection.</p> <p>2. Take all reasonable steps to facilitate an Inspection including:</p> <p>(a) directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection,</p> <p>(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> <p>3. During an Inspection:</p> <p>(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,</p> <p>(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.</p>	
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#### Standard condition 4: remain of good character

<p>You and the Individuals Who Control You:</p> <p>1. must continue to be of good character, and</p> <p>2. must not become an individual of the kind referred to in <u>section 15</u> or <u>section 16</u> of the Immigration Act 2009.</p> <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> <p>(a) are members of your governing body,</p> <p>(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</p>	<p>At all times</p>
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<p>(c) are members of the governing body of the people referred to in paragraph (b) above.</p>	
<p><b>Standard condition 5: tell us about changes that affect you, the people who control you, or people you control</b></p>	
<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"> <li>1. 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 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.</li> <li>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 <u>section 15</u> or <u>16</u> of the Immigration Act 2009 (see standard condition 4).</li> <li>3. You cease to be an overseas person or dispose of all or any part of the Land.</li> <li>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: <ul style="list-style-type: none"> <li>(a) becomes bankrupt or insolvent</li> <li>(b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or</li> <li>(c) becomes subject to any form of external administration.</li> </ul> </li> </ol>	<p>Within 20 working days after the change</p>
<p><b>Standard condition 6: dispose of the Land if you do not comply with key special conditions</b></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>If all or part of this standard condition 6 applies to a special condition, we have said so in that condition.</p>	

We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:	
<b>Value the Land:</b> obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.	Within six weeks of the date of our notice.
<b>Market the Land:</b> instruct a licensed real estate agent to actively market the Land for sale on the open market.	Within six weeks of the date of our notice.
<b>Dispose of the Land:</b> dispose of the Land to a third party who is not your associate.	Within six months of our notice.
<b>Offer without reserve:</b> if you have not disposed of the Land within six months of our notice, offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.	Within nine months of our notice.
<b>Report to us about marketing:</b> tell us in writing about marketing activities undertaken and offers received for the Land.	By the last day of every March, June, September and December after our notice or at any other time we require.
<b>Report disposal to us:</b> send us, in writing, evidence: <ul style="list-style-type: none"> <li>(d) that you have disposed of the Land,</li> <li>(e) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor),</li> <li>(f) the purchaser is not your associate.</li> </ul>	Within one month after the Land has been disposed of.

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## Reporting conditions

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

You must lodge an **annual report**. It must:

1. be sent to **oiomonitoring@linz.govt.nz** by these dates:
  - (a) Year one: 31 July 2021
  - (b) Year two: 31 July 2022
  - (c) Year three: 31 July 2023
2. contain information about:
  - (a) your progress in implementing the special conditions,
  - (b) details of any construction undertaken, permits applied for, or resource consents granted (including copies of any resource consents obtained); and
  - (c) the amount of FTE(s) employed on the Land (whether temporary or ongoing), their roles, and their salaries;
3. follow the format of the template annual report published on our website at <https://www.linz.govt.nz/overseas-investment/enforcement/how-we-take-action>
4. If requested in writing by the OIO, the Consent Holder(s) must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
  - (a) The representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the content was granted or
  - (b) The conditions of this consent.

## ATTACHMENT 2 - GUIDANCE FOR APPLYING THE ACT

1. You<sup>21</sup> must grant consent to this overseas investment if you are satisfied that all of the applicable criteria in the Overseas Investment Act 2005 (Act) and the Overseas Investment Regulations 2005 (Reg) are met. You must decline to grant consent if you are not satisfied that all of the applicable criteria are met. You must not take into account any criteria or factors other than those identified as applying to this application in the table below.
2. The type of application you are considering is an application under the Benefit to New Zealand pathway.
3. The following table sets out the criteria and factors that apply to this application:

Pathway	Criteria and factors (post-October 2018)
Benefit only	Investor test – s16(1)(a) and 16(2) and Benefit test – s16(1)(c)(ii) and 16A(1)(a) and Benefit factors – s17 and Reg 28

4. The application for consent was received prior to commencement of the Overseas Investment (Urgent Measures) Amendment Act 2020 and the transaction for which consent is required was also entered before commencement. The version of the Act and Regulations in force prior to 16 June 2020 therefore applies to this application. In particular, the provisions relating to 'national interest' do not apply.
5. In the attached report the Overseas Investment Office identifies each of the relevant criteria and factors under sections 16, and 17, and regulation 28 that you are required to consider in this case.
6. Following is guidance in relation only to the criteria and factors that apply to this application.

### Investor test – good character criterion

7. You must be satisfied that the relevant overseas person or (if that person is not an individual) all the individuals with control of the relevant overseas persons are of good character.
8. The term "good character" is not defined in the Act. The majority of the Select Committee reporting back on the Bill in 2005 confirmed that the "good character" test was needed as it is important to ensure that all persons investing in New Zealand are people unlikely to act inappropriately and bring New Zealand into disrepute.
9. When undertaking the good character assessment, you must be satisfied that the character of all the individuals with control of the relevant overseas person is sufficient so that they should be granted the privilege of owning or controlling sensitive New Zealand assets.

<sup>21</sup> 'You' here refers either to the decision-maker, being the relevant Minister(s) for a Ministerial application or the delegated decision-maker for a delegated application

10. The good character test is applicable to individuals, not entities such as body corporates. However, where the investment is to be carried out by a body corporate, the character of the relevant individuals who control the body corporate will need to be considered. Where an offence or contravention is committed by a body corporate to which an individual had a 25% or more ownership or control interest, this is a mandatory consideration. Where the individual's interest in the body corporate is less than this, there generally must be other grounds to reasonably infer participation by the individual in the alleged wrongdoing.

11. Section 19(1) of the Act states that the following factors must be taken into account (without limitation) in assessing whether or not a person is of good character:

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

12. All relevant matters must be weighed up before you make a decision that an individual is of good character. If you wish to rely on a matter to which the applicant has not had an opportunity to respond, then such an opportunity to respond needs to be given in order to meet the requirements of natural justice.

13. How much weight should be given to a particular matter depends on a number of factors, including how closely linked the particular matter is with the investment being made. While submissions on weighting given by the relevant overseas person or individual with control may be considered, the ultimate decision as to the weighting to be given to relevant matters is for you.

14. Matters which might be relevant include:

- (a) credible allegations of offending or contraventions of the law (assessing whether the allegation is sufficiently linked to an individual with control or relevant overseas person);
- (b) investigations, prosecutions or other enforcement action by regulatory or professional bodies;
- (c) track record in New Zealand.

15. Matters which are unlikely to be relevant include:

- (a) adverse information that does not relate to an individual with control (for example, offences or contraventions by a relevant overseas person which occurred before the particular individual became involved with the relevant overseas person);
- (b) where the decision maker is satisfied that allegations about a relevant overseas person or individual with control have been fully investigated by the relevant regulatory or other authority and the person or individual has been cleared of any wrongdoing;
- (c) adverse information that does not impact on the character of a relevant overseas person or individual with control.

16. Briefly, some of the things we consider when weighing up "good character" include:

- (a) the seriousness of the matter, which may include considerations of: what the matter was and the level of actual or potential harm; whether the matter was established by a relevant regulator or the Court and attributed to an Individual with Control (IWC) or Relevant Overseas Person (ROP); what the penalty or other sanction was (if any); whether the matter was a one-off event or repeated breaches, including a pattern of non-compliance across a range of regulatory regimes; whether what occurred was inadvertent, negligent, reckless or deliberate; whether what occurred was legal in New Zealand but illegal in the jurisdiction in which it occurred, in which case we consider the culture and context of that country;
- (b) relevance to this investment: we assess how relevant the particular matter is to the nature of this particular investment. For example, a dangerous driving conviction by an IWC would have low relevance in connection with the acquisition of a dairy farm, whereas a conviction for discharging farm effluent into a waterway would have a high relevance to the acquisition of a dairy farm;
- (c) if a matter is an allegation, the credibility of the allegation including the reliability of the source and credibility of the information raised. Generally, if an allegation is reported in a number of sources and is not simply 'copy and pasted' it is likely to be regarded as having credibility;
- (d) connection to the Individuals with Control (IWCs) or Relevant Overseas Person (ROP): we assess the level of control between any of the IWCs of the ROP and the particular matter. For example, a breach of safety rules by an employee of subsidiary company where the company was fined would likely have a low (or no) connection with an IWC who was an executive director of the parent company, whereas an executive decision by a company to illegally collude with a competitor would likely have a high connection with that IWC;
- (e) what actions, if any, were taken to remedy the situation and reduce the chances of it reoccurring.

17. The onus is on the applicant to satisfy the decision maker that all the individuals with control are of good character.

18. If you have doubts about the character of an individual with control which result in it not being satisfied that the test for good character has been met, then the application for consent must be declined.

### **Benefit to New Zealand criteria**

19. In this case, section 16 and 16A require you to decide, among other things, whether you are satisfied in relation to the following "benefit to New Zealand" criteria 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.

20. The application of the benefit to New Zealand criteria involves the exercise of judgement. The fact that responsibility for making this decision has been conferred on Ministers and their delegates confirms that this is a high-level decision with significant policy content. That is also apparent from the language and content of the factors that must be considered, many of which require a high degree of evaluative judgement, and are not capable of quantification or calculation.

21. In applying the benefit to New Zealand criteria, you are required to consider each of the factors in section 17(2), determine which of the factors are relevant to the investment, and have regard to the relevant section 17(2) factors. The relative importance to be given to each factor is a matter to be determined by you as the decision-maker. In particular, the Act does not require economic factors to be given more weight than non-economic factors, or vice versa. It is a matter for you, in carrying out your overall evaluation, to decide what weight to give to each factor.

### **Justice Miller's "with and without test"**

#### *Economic factors*

22. 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, you must consider with respect to each section 17(2)(a) factor whether the overseas investment is likely to result in a benefit to New Zealand over and above any benefit that will or is likely to result even if the investment does not proceed. It is only the additional benefit from the overseas investment that is relevant when applying the "benefit to New Zealand" criteria.

#### *Non- economic factors*

23. 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 suggested<sup>22</sup> that there could be a benefit in respect of the non-economic factors even if the same benefit would be achieved in the absence of the investment. But as the Court noted<sup>23</sup>, it is not easy to see how a benefit that will happen anyway could be regarded as substantial for the purposes of section 16(1)(e)(iii). We consider that you should not treat benefits that are likely to be achieved in any event as contributing to the "substantial and identifiable benefit" criterion.

#### *Regulation 28 factors*

24. 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.<sup>24</sup>

25. 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.

### **Conditions**

26. Conditions may be imposed on any consent that is granted, under section 25(A) of the Act<sup>25</sup>. The attached Report recommends some conditions that you may wish to consider imposing in this case.

<sup>22</sup> *Tiroa E* at [36].

<sup>23</sup> *Tiroa E* at [38].

<sup>24</sup> *Tiroa E* at [36].

## **Decision**

27. 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.

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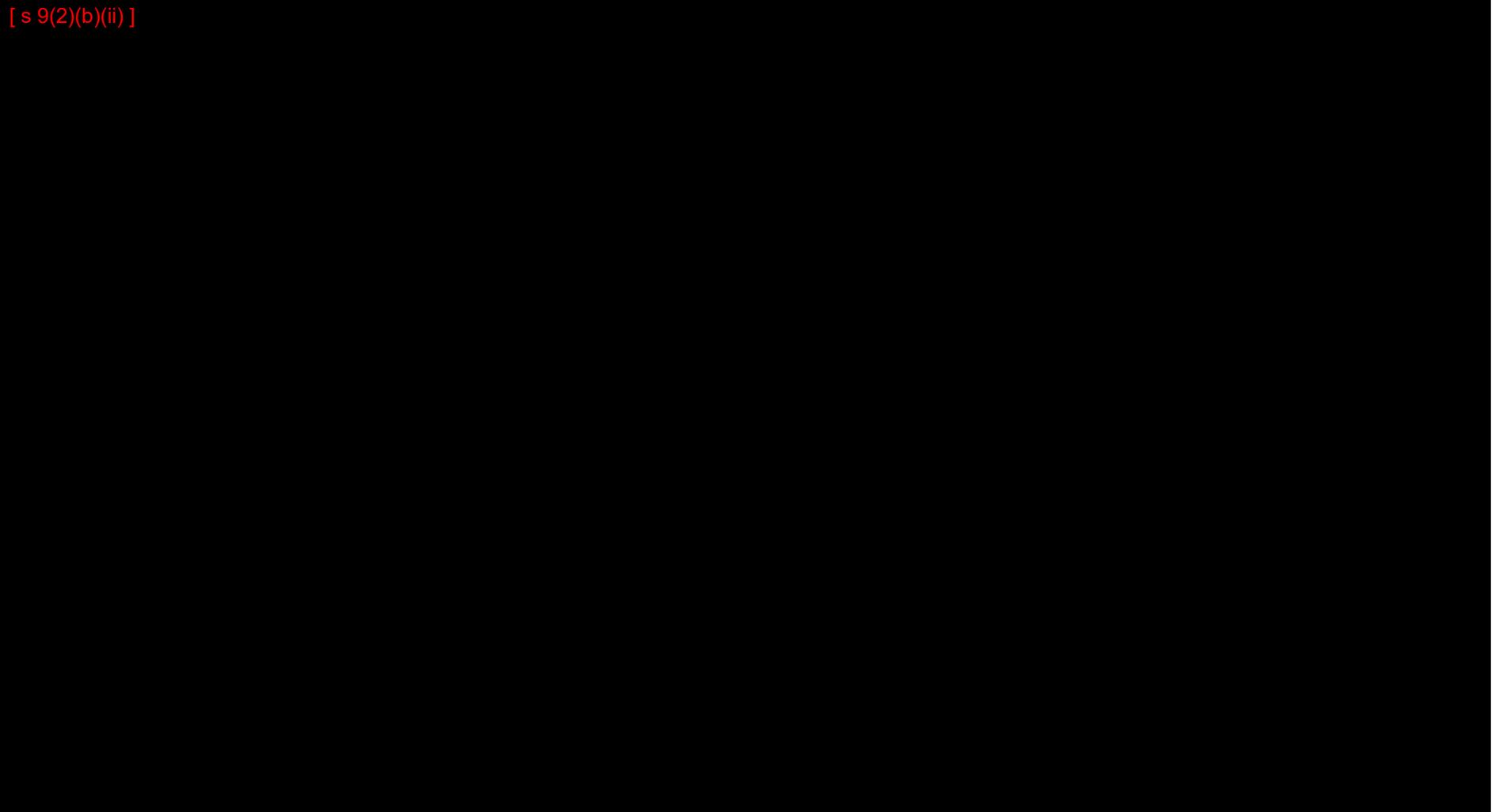
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<sup>25</sup> Section 25 of the Act prior to the Amendment Act.

## ATTACHMENT 3 – CONTROL STRUCTURE DIAGRAM

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



## ATTACHMENT 4 - OTHER BENEFIT FACTORS

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

Factor	Reason not relevant or insufficient
New technology or business skills – s17(2)(a)(ii)	There are no new technology or business skills offered by this Investment.
Increased export receipts – s17(2)(a)(iii)	There is no increase in export receipts from this Investment.
Increased processing of primary products – s17(2)(a)(vi)	There is no increase in processing of primary products from this Investment.
Indigenous vegetation/fauna – s17(2)(b)	Factor not applicable as no indigenous vegetation/fauna is found on the Property.
Trout, salmon, wildlife and game – s17(2)(c)	Factor not applicable as none found on the Property.
Historic heritage – 17(2)(d)	Factor not applicable as none found on the Property.
Walking access – s17(2)(e)	Factor not applicable. The Property is leased to industrial tenants for which public access may not be suitable.
Offer to sell seabed/foreshore/riverbed to the Crown – s17(2)(f)	Factor not applicable as none of these features are found on the Property.
Consequential benefits – reg 28(a)	There are no consequential benefits as a result of this Investment.
Key person in a key industry – reg 28(b)	There are no key people involved in this Investment.
Affect image, trade or international relations – reg 28(c)	This Investment does not affect New Zealand's image, trade, or international relations.
Owner to undertake other significant investment – reg 28(d)	The Vendors have no immediate plans to undertake other significant investments using the consideration from the sale of the Property.
Advance significant government policy or strategy – reg 28(f)	The Applicant claims that their proposed multimodal logistics estate advances the Government's strategy in relation to land transport. The Applicant refers to the Draft New Zealand Rail Plan and the Draft Government Policy Statement on Land Transport 2021. However, these draft plans have not been enacted. Furthermore, the Applicant's proposed rail siding to service the Southern Development Lot has not been confirmed, as it would depend on the needs of the tenant. We do not consider that this claim has been made.
Enhance the viability of other investments – r28(g)	This Investment will not enhance the viability of other investments.
Strategically important infrastructure – reg 28(h)	There is no strategically important infrastructure involved in the Investment.
Economic interests – reg 28(i)	This Investment does not impact New Zealand's economic interest.

<b>Factor</b>	<b>Reason not relevant or insufficient</b>
<b>Oversight and participation by New Zealanders – reg 28(j)</b>	This Investment does not involve any oversight and participation by New Zealanders.

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## **ATTACHMENT 5 - SENSITIVE LAND DETAILS**

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### 1. James Fletcher Drive

<b>Land Interest</b>	Freehold Interest (approximately 17.194 hectares)
<b>Record(s) of Title</b>	740502 (North Auckland)
<b>Sensitivity</b>	Adjoins land that is over 0.2 hectares that adjoins marine and coastal area.

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**ATTACHMENT 6 - OVERVIEW TABLES FOR JAMES FLETCHER DRIVE ASSET PTY LTD AS TRUSTEE OF THE LOGOS JAMES FLETCHER DRIVE ASSET TRUST 202000239**

	<b>Application</b> <ul style="list-style-type: none"> <li>James Fletcher Drive Asset Pty Ltd as trustee of the Logos James Fletcher Drive Asset Trust (the <b>Applicant</b>) seeks consent to acquire freehold interest in sensitive land, being approximately 17.1495 hectares of land situated at James Fletcher Drive and Savill Drive, Otahuhu, Auckland (the <b>Property</b>).</li> <li>The Applicant also seeks consent to acquire significant business assets as the consideration for the Property is \$188 million.</li> <li>The vendors are Toll Networks (NZ) Limited.</li> </ul> 	<b>Recommendation</b> <ul style="list-style-type: none"> <li>Our recommendation is to grant consent.</li> <li>Relevant tests for this transaction: <ul style="list-style-type: none"> <li>Investor Test (s16 and s18)</li> <li>Benefits Test (s 16(1)(c) and s16A(1)(a))</li> </ul> </li> <li>The application for consent was received prior to commencement of the Overseas Investment (Urgent Measures) Amendment Act 2020 and the transaction for which consent is required was also entered before commencement. The version of the Act and Regulations in force prior to 16 June 2020 therefore applies to this application.</li> </ul>
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**Overview of assessment: Investor test**

Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
Relevant overseas persons (ROP) and individuals with control (IWC) confirmed	ROP and IWC identified	ROP and IWC identified.	Paras 26-42. Section 15 of the Act.
Collectively have business experience and acumen relevant to the investment	Test met	The IWC have relevant business experience in a range of areas including investment and funds management, asset management, and international business. The Applicant seeks to contract out the development and construction works.	Paras 43-46. Sections 16(2)(a) and 18(1)(a) of the Act.
ROP demonstrated financial commitment	Test met	The Applicant has demonstrated financial commitment by paying a deposit of \$9.4 million for the purchase of the Property. The Applicant has incurred costs of \$750,000 to date, undertaking due diligence and negotiating the terms of the SPA.	Sections 16(2)(b) and 18(1)(b) of the Act.
Good character	No concerns	The Applicant has not disclosed any good character matters. Our searches have also not brought up any good character matters.	Paras 47-48 Sections 16(2)(c) and 18(1)(c) of the Act.
Not an individual of the kind ineligible for a visa or entry permission under ss 15 or 16 of the Immigration Act 2009	Test met	We are satisfied that none of the IWC of the ROP are individuals of the kind referred to in ss 15 and 16 of the Immigration Act 2009.	Sections 16(2)(d) and 18(1)(d) of the Act.

## Overview of assessment: Investment and benefit test

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Job opportunities	The Applicant estimates that the Proposed Development will require 20 to 30 FTE professional consultants for the first six months, beginning March 2020. The Applicant estimates that the Proposed Development is likely to sustain 200 FTE employees throughout the site activation and construction period. In terms of the development of a management team, the Applicant anticipates that it will require an additional one to two FTE employees in New Zealand. Once the Proposed Development has completed, the Applicant anticipates that it will require an additional New Zealand-based asset manager.	An ANZP is likely to also create indirect jobs for the development and construction of the Property. However, being a New Zealand-based entity already, an ANZP is unlikely to be creating any new full time equivalent (FTE) roles for the management of the Property post-completion of the Proposed Development.	Strong	There will be indirect jobs created for the development and construction of the Proposed Development. There will be one to three direct FTE roles created post-completion of the Proposed Development, for the management of the Property. These direct FTE roles would not be offered by the ANZP.	Proposed special conditions on creating one direct FTE.	Paras 75-88 s17(2)(a)(i)
					Reporting on the number of indirect and direct jobs created and their salaries.	
Additional investment for development purposes	The Applicant intends on spending an additional [ s 9(2)(b)(ii) ] on the development and construction of the Property, including the improvement of common areas and the spec-built warehouses for the Proposed Development.	An ANZP is likely to spend money for the development of the Property, but it is unlikely that it would be spent in a timeframe that is as short as the Applicant's.	Strong	On top of the purchase price of \$188 million, the Applicant intends on spending [ s 9(2)(b)(ii) ] on the development and construction on the Property. The Applicant would be able to introduce this capital into New Zealand in a relatively short timeframe as compared to the ANZP.	Proposed special condition on spending [ s 9(2)(b)(ii) ]	Paras 106-111 s17(2)(a)(v)
Added market competition, increased productivity, efficiency, and enhanced domestic services	There is a limited number of large competitors in Auckland's prime industrial property market. The Investment will be Logos Group's first direct investment in New Zealand, via the Applicant. [ s 9(2)(b)(ii) ]	An ANZP would not add market competition as it is already an existing entity in New Zealand. Additionally, an ANZP is likely to create a general-use type of warehouse for the tenants, which is unlikely to increase efficiency.	Moderate	The Investment will be Logos Group's first direct investment in New Zealand, increasing the number of large entities competing in Auckland's prime industrial property market. The Applicant will draw from the wider Logos Group's experience to [ s 9(2)(b)(ii) ]	Propose special condition on [ s 9(2)(b)(ii) ]	Paras 89-105 s17(2)(a)(iv)
					Reporting on the resource consents applied for and received.	
Previous investments	In 2015, the OIO granted consent for Reco Otago to acquire significant business assets and sensitive land. At the time of the acquisition, the consideration that was attributed to 50% of the shares as stated in the Umbrella Share Purchase Agreement with the Vendor dated 6 November 2014 was \$1 billion. The OIO granted Reco Aotearoa two previous consents which introduced significant capital into New Zealand, created indirect jobs, encouraged further development, and allowed for the ownership and participation by New Zealanders.	N/A	Weak	One of the entities comprising relevant overseas person, Reco Otago has undertaken a previous investment in New Zealand that has been beneficial to New Zealand. Reco Aotearoa, a company related to Reco Otago, has also undertaken previous investments in New Zealand that have been beneficial.	N/A	Paras 112-117 reg28(e)