

Our Ref: 201110035

30 November 2012

Chapman Tripp
PO Box 2206
AUCKLAND 1140

BY EMAIL

Attention: Bill Sandston

**Milk New Zealand Holding Limited/Pengxin New Zealand Farm
Group Limited**

1. We refer to the application for variation dated 22 November 2012.
2. Please find attached an amended notice of decision which reflects the amendments made to the consent and to the conditions of consent.

Yours sincerely



Pedro Morgan
Senior Solicitor
Overseas Investment Office

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Released under the Official Information Act 1982

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Decision Date

Original decision: 26 April 2012
Varied: 30 November 2012

Decision

Consent has been granted to **Milk New Zealand Holding Limited** (Hong Kong company 1498348) and **Pengxin New Zealand Farm Group Limited** (New Zealand company 3899677) (the "Consent Holders") giving effect to a transaction which will result in:

- An overseas investment in sensitive land, being the Applicant's acquisition of approximately 7892.5180 hectares of freehold land, comprising:
 - Plateau Road, Reporoa (323.4931ha)
 - Rawhiti Road, Reporoa (128.5889ha)
 - Pine View, Short Road, Reporoa (398.1981ha)
 - Cirenester, Short Road, Reporoa (341.3401ha)
 - Broadlands Road, Reporoa (404.5229ha)
 - Lake View, Tia Street, Atiamuri (205.9091ha)
 - Forest Park, Forest Road, Bulls (250.2879ha)
 - Glyn Park, SH 3, Maxwell (646.9861ha)
 - Karahaki Road, Waverley (206.2506ha)
 - Karangahape Road, Kuratau (627.4693ha)
 - Benneydale 1, Barryville Road, Benneydale (895.8575ha)
 - Benneydale 2, Barryville Road, Benneydale (792.1627ha)
 - Collins Road, Hamilton (393.3905ha)
 - Tiwhaiti, Tiwhaiti Road, Hawera (148.2465ha)
 - Taharua Road, Rangitaiki (1750.8204ha)
 - Ferry View, Parewanui Road, Bulls (378.9943ha)
- An overseas investment in significant business assets, being the Applicant's acquisition of property in New Zealand used in carrying on business in New Zealand including:
 - livestock;
 - shares in Fonterra Co-operative Group Limited associated with the farms;
 - two non-sensitive parcels of land (computer registers WN45D/325 and SA38B/238); and
 - chattels and machinery on the farms;for consideration exceeding \$100m.

("the Investment")

Consent is granted subject to the following conditions:

Statutory Conditions of Consent

Section 28 of the Overseas Investment Act 2005 ("the Act") provides that it is a condition of every consent, whether or not it is stated in the consent, that

- (a) The information provided by each applicant to the regulator or the relevant Minister or Ministers in connection with the application is true and correct at the time it was provided; and
- (b) Each Consent Folder must comply with 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 is granted, unless compliance should reasonably be excused.

For the purposes of section 28, the Overseas Investment Office has taken into account the following information:

- (a) Milk New Zealand Holding Limited's application letter dated 12 April 2011;
- (b) Wildland Consultants Limited reports 2618a-2618d dated February and March 2011, and report 2441e dated June 2010;
- (c) Chapman Tripp's email dated 22 June 2011 at 10.54am;
- (d) Chapman Tripp's letter dated 20 July 2011;
- (e) The Perrin Ag Consultants Limited report dated September 2011;
- (f) Chapman Tripp's letter dated 29 September 2011;
- (g) Chapman Tripp's letter dated 25 October 2011;
- (h) PricewaterhouseCooper's email dated 15 December 2011 at 4.28pm;
- (i) Chapman Tripp's letter dated 20 December 2011;
- (j) Paragraph 5.2 of Chapman Tripp's letter dated 19 January 2012;
- (k) Chapman Tripp's email dated 19 January 2012 at 11.15am;
- (l) Chapman Tripp's letter dated 31 January 2012;
- (m) The Farm Management Agreement and Property Management Agreement entered into with Landcorp Farming limited;
- (n) Chapman Tripp's email dated 14 February 2012 at 2.57pm;
- (o) Chapman Tripp's letter dated 16 February 2012;
- (p) Landcorp Memorandum dated 16 February 2012;
- (q) Chapman Tripp's letter dated 17 February 2012;
- (r) Landcorp Memorandum dated 22 February 2012;
- (s) Chapman Tripp's email dated 23 February 2012 at 4.38pm;
- (t) Chapman Tripp's letter dated 23 February 2012;
- (u) Chapman Tripp's email dated 6 March 2012 at 11.11am;
- (v) Chapman Tripp's email dated 8 March 2012 at 10.35am;
- (w) Chapman Tripp's email dated 12 March 2012 at 12.52m;
- (x) Chapman Tripp's email dated 13 March 2012 at 1.57pm;
- (y) Chapman Tripp's email dated 13 March 2012 at 1.53pm;
- (z) Chapman Tripp's email dated 13 March 2012 at 6.16pm;
- (aa) Chapman Tripp's email dated 16 March 2012 at 4.46pm;

- (bb) Chapman Tripp's email dated 22 November 2012 at 11.49am;
- (cc) The Consent Holders' variation application letter dated 22 November 2012;
- (dd) Chapman Tripp's email dated 26 November 2012 at 16:44pm;
- (ee) Chapman Tripp's email dated 27 November 2012 at 12.11pm;
- (ff) Chapman Tripp's email dated 27 November 2012 at 12.12pm;
- (gg) Chapman Tripp's email dated 28 November 2012 at 11.02am; and
- (hh) Chapman Tripp's email dated 28 November 2012 at 12.45pm.

Special Conditions

When the Investment may be acquired

1. The consent will lapse if:
 - (a) the Investment has not been acquired by the Consent Holders by 25 April 2013; or
 - (b) the "Property Management Agreement" and "Farm Operation Agreement" (together "the Agreements") entered into with Landcorp Farming Limited ("Landcorp") are terminated or materially changed prior to the Investment being acquired by the Consent Holders.

Good character

2. The individuals with control of the relevant overseas person must:
 - (a) continue to be of good character; and
 - (b) not become individuals of the kind referred to in ss 15 or 16 of the Immigration Act 2009.
3. If an individual with control of the relevant overseas person ceases to be of good character, or becomes an individual of the kind referred to in ss 15 or 16 of the Immigration Act 2009, the Consent Holders must either ensure that individual immediately ceases to be an individual with control of the relevant overseas person, or dispose of the Investment in accordance with condition 28.

Special conditions

4. The Consent Holders must introduce into New Zealand NZD \$16m of additional investment for development purposes.
 - (a) For the avoidance of doubt, the NZD \$16m excludes the cost of acquiring shares in Fonterra Co-operative Group Limited; and the cost of any other work that is not for development purposes.
 - (b) If the additional investment for development purposes has not been introduced into New Zealand, or the work arising from the additional investment for development purposes has not been completed by 31 May 2018, the Consent Holders must dispose of the Investment in accordance with condition 28.
5. The Consent Holders must establish an on-farm training facility for dairy farm workers in accordance with clause 5(c) of the Property Management Agreement.
 - (a) The Consent Holders must contribute a minimum of NZD \$1.1m towards the capital cost of establishing this facility.

- (b) The Consent Holders must apply for any consents required to establish the facility by 31 August 2014, and subject to those consents being available, the facility must be established by 30 June 2015.
- (c) The Consent Holders must dispose of the Investment in accordance with condition 28 if the on-farm training facility has not been established by 30 June 2015, unless the Consent Holders can establish to the Overseas Investment Office's satisfaction that the construction of the facility was materially delayed by the unavailability of a required consent and that it has taken and continues to take all reasonable steps to obtain that consent.
6. The Consent Holders must give two scholarships of not less than NZD \$5,000 each year to students of the on-farm training facility. The first two scholarships are to be awarded by 28 February 2016.
7. The Consent Holders must use reasonable endeavours to assist Landcorp to extend Landcorp's farm consultancy services in China, and to market Landcorp's food and animal products in China.
8. At least one of the Consent Holders must maintain a contractual relationship with Landcorp in materially the same terms as contained in the Agreements.
- (a) The Consent Holders must dispose of the property in accordance with condition 28 if:
- (i) the Agreements are terminated (other than termination at the expiry of the Agreements) and not replaced with new agreements that are materially the same as those that were terminated; or
 - (ii) the Agreements are varied in a material way.
- (b) To avoid doubt:
- (i) The novation of the Agreements by the Consent Holders and Landcorp is neither a termination nor a material variation of the Agreements, provided that no change is made to the Agreements other than changing the parties and incorporating the "variations and clarifications" described in condition 8(b)(ii) below.
 - (ii) Subject to conditions 8(b)(iii)-(v), the variations and clarifications contained in schedule 5 of the shareholders' agreement dated 28 November 2012 are not material variations to the Agreements.
 - (iii) The termination of Landcorp's provision of financial services to the Consent Holders will not be a material variation of the Agreements provided that the financial services continue to be provided in New Zealand.
 - (iv) The termination of Landcorp's management of any one or more of the farms is deemed to be a material variation of the Agreements.
 - (v) The Consent Holders giving notice to Landcorp that they will perform the "owners responsibilities" themselves is deemed to be a material variation of the Agreements.

9. The Consent Holders and their associates must not acquire an ownership or control interest in a milk processing facility in New Zealand unless a 50% or more ownership or control interest in that facility is held by non-overseas persons. If the Consent Holders or their associates acquire an ownership or control interest in a milk processing facility in New Zealand in breach of this condition, the Consent Holders must dispose of the Investment in accordance with condition 28.
10. The Consent Holders must:
 - (a) deal with the Crown in accordance with the Overseas Investment Regulations 2005 as if the Consent Holders were the party offering the special land to the Crown; and
 - (b) be bound by any arrangement that the previous owner entered into with the Crown in relation to the special land and, if required by the Crown, enter into an encumbrance or other instrument with the Crown to be so bound.

Walking access

11. The Consent Holders must provide public walking access over Benneydale 1, Benneydale 2 and Taharua Station, in consultation with the Department of Conservation ("DOC") and New Zealand Walking Access Commission ("WAC").
 - (a) Required access:
 - (i) The Consent Holders must provide public walking access at the southern end of Benneydale 1, from Maraeroa Road to the Pureora Forest Park.
 - (ii) The Consent Holders must provide public walking access at the north-eastern end of Benneydale 2, between State Highway 30 (Scott Road) and the Waipapa Ecological Area.
 - (iii) The Consent Holders must provide public walking access along or adjacent to the Taharua River and to the Te Rere Falls. The Consent Holders must also provide reasonable vehicle access for maintenance and for those with limited mobility, if required by DOC or WAC.
 - (b) Access routes:
 - (i) The required walking access routes in respect of conditions 11(a)(i) and (ii) are shown in the maps attached to these conditions. Nothing in condition 11(b)(i) prevents the Consent Holders and DOC (in the case of Benneydale 1 and Benneydale 2) agreeing an alternative means of satisfying condition 11(a)(i) and (ii).
 - (ii) The walking and vehicle access routes in respect of condition 11(a)(iii) are to be agreed between the Consent Holders and WAC.
 - (c) Public walking access to Benneydale 1, Benneydale 2 and Taharua Station is to be available by 30 November 2014.
 - (d) Consultation with DOC and WAC must commence by 30 November 2013.

- (e) If required by DOC or WAC, the Consent Holders must register an easement, or other suitable instrument, to secure the access required by condition 11(a). The Consent Holders must meet the cost of registering the instrument, including the cost of any survey required to support the instrument. The Consent Holders must register the relevant instrument within two years of being required to do so by DOC or WAC.
- (f) The Consent Holders must meet the cost of forming and maintaining walking tracks, if reasonably required by DOC or WAC.
- (g) Dispute resolution:
 - (i) Any dispute, difference or claim between the Consent Holders and DOC or WAC will be referred to and finally resolved by arbitration (unless otherwise agreed by the Consent Holders and DOC or WAC). The tribunal will consist of a sole arbitrator appointed by agreement between the parties or if the parties cannot agree by the President of the New Zealand Law Society. The place of arbitration will be Wellington, the language of the arbitration will be English. The Consent Holders will share the cost of any such arbitration equally with the other parties to the arbitration.
 - (ii) The Consent Holders must provide a copy of any award made by an arbitrator, or evidence of the outcome of any other dispute resolution process, to the Overseas Investment Office within 14 days of the dispute being resolved.

Environmental protection and enhancement

- 12. The Consent Holders must implement the recommendations in Wildland Consultants Limited reports 2618a-2618d (dated February and March 2011), and 2441e (dated June 2010) (together the "Wildland Reports") by 31 May 2017.
- 13. The Consent Holders must consult with DOC before implementing the recommendations in the Wildland Reports. Consultation with DOC must begin by 30 November 2013.
- 14. If DOC considers that formal protection is required for any of the areas identified in the Wildland Reports, the Consent Holders must formally protect those areas (for example with the QEII National Trust or via a land management agreement with the relevant Council).
- 15. Of the conservation management options set out on page 11 of Wildland report 2618a, the Consent Holders must implement the option preferred by DOC.
- 16. The Consent Holders must undertake a survey of mudfish in the Mangemange Stream by 31 May 2015.
- 17. The dispute resolution procedure in condition 11(g) (excluding references to WAC) shall apply to any dispute, difference or claim between the Consent Holders and DOC.

Protection or enhancement of historic heritage

- 18. The Consent Holders must undertake an archaeological survey, in consultation with local Iwi, on Benneydale 1, Benneydale 2, Taharua and Tiwhaiti, by 31 May 2014.

19. The Consent Holders must register a heritage covenant, in the form appearing in appendix S of the application for consent, in respect of the Te Ruaki pa site on computer register TNC1/383 by 31 May 2014.
20. The Consent Holders must, if requested by the New Zealand Historic Places Trust, write a letter supporting the registration of the Te Ruaki pa site as a wahi tapu under the Historic Places Act 1993.
21. If required by the Office of Treaty Settlements ("OTS"), the Consent Holders must transfer the Nga Herenga pa site (approximately 1.6ha located on Benneydale 1) to the Crown for nil consideration.
 - (a) The transfer must be completed within 12 months of OTS's requirement being communicated in writing to the Consent Holders.
 - (b) The Consent Holders must meet the cost of any survey required to support the transfer of the Nga Herenga pa site to the Crown.
 - (c) Within three months of the Investment being acquired, the Consent Holders must retire the Nga Herenga pa site from grazing and ensure that adequate fencing is in place to protect the site.
 - (d) The dispute resolution procedure in condition 11(g) (replacing references to DOC and WAC with references to OTS) shall apply to any dispute between the Consent Holders and OTS.
22. The Consent Holders must allow access to wahi tapu to those with a legitimate interest in the relevant wahi tapu.
 - (a) The right of access may be exercised by foot over any reasonably convenient routes specified by the Consent Holders.
 - (b) The Consent Holders may require a person intending to exercise the right of access to give the Consent Holders reasonable notice in writing of his or her intention to exercise that right.
 - (c) The Consent Holders may limit the right of access to reasonable times and during daylight hours.
 - (d) The Consent Holders may require a person exercising the right of access to observe reasonable conditions relating to the time, location, or manner of access as are reasonably required:
 - (i) for the safety of people; or
 - (ii) for operational reasons; or
 - (iii) for the protection of land, improvements, flora and fauna, plant and equipment, or livestock.
 - (e) In consultation with local iwi, the Consent Holders must register an easement, or other suitable instrument to make the access under conditions 22(a)-(d) permanent in respect of the Nga Herenga pa site. The Consent Holders must meet the cost of registration, and the cost of any survey required to support the registration of an instrument. The Consent Holders must register the relevant instrument by 30 November 2014. The dispute resolution procedure in condition 11(g) (replacing references to DOC and WAC with references to local iwi) shall apply to any dispute between the Consent Holders and local iwi.

Reporting to the Overseas Investment Office

23. The Consent Holders must report to the Overseas Investment Office in writing within one month of acquiring the Investment. The report must include:

- (a) the date of settlement;
 - (b) final consideration paid;
 - (c) where applicable, copies of transfer documents and settlement statements; and
 - (d) any other information that would aid the Overseas Investment Office in its function to monitor conditions of consent.
24. The Consent Holders must notify the Overseas Investment Office within 20 working days if:
- (a) the Consent Holders;
 - (b) a relevant overseas person;
 - (c) an individual with control of a relevant overseas person; or
 - (d) any person in which the Consent Holders, a relevant overseas person or an individual with control of a relevant overseas person has, or had at the time of the offence or contravention, a 25% or more ownership or control interest;

commits an offence or contravenes the law (whether convicted or not) apart from any minor offence or contravention where such offence or contravention would not be regarded by a reasonable person as indicating that any individual with control of the relevant overseas person is not of good character.

25. The Consent Holders must notify the Overseas Investment Office in writing within 20 working days if they dispose of the Investment or cease to be overseas persons.
26. The Consent Holders must provide an annual report in writing to the Overseas Investment Office. The purpose of the report is to provide information with which the Overseas Investment Office can monitor conditions of consent.
- (a) Unless the Overseas Investment Office waives this requirement (in full or in part), each report must:
 - (i) detail the introduction into New Zealand of additional investment for development purposes, must include evidence that the additional investment was introduced into New Zealand, and must detail any developments started, completed or in progress, including:
 - a description of the developments;
 - the cost of the developments; and
 - (where appropriate) photographs of the developments;
 - (ii) detail progress towards establishing the on-farm training facility, and when the facility is established, a summary of the facility's operations including the number of students enrolled;
 - (iii) provide the name and a brief biography of the individuals who have been awarded scholarships;
 - (iv) detail the extent to which the Consent Holders have complied with 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, including:

- the number of new and retained jobs, including the location and nature of each job;
 - copies of any business plans or budgets prepared under the Agreements since the previous report;
 - copies of any management reports provided to the Consent Holders by Landcorp or any other related entity; and
 - a description of the extent to which the Landcorp "Farmpride QA" and "Work Safe" programmes have been complied with;
- (v) detail the extent to which the Consent Holders have complied with conditions 7-10:
- (vi) detail the extent to which the Consent Holders have provided public walking access over Benneydale 1, Benneydale 2 and Taharua, including:
- copies of any agreements entered into with DOC, WAC, OTS, local iwi or others;
 - copies of any documents registered on the titles of Benneydale 1, Benneydale 2 and Taharua;
 - whether any dispute resolution process has been used, and copies of any documents used in that process;
- (vii) detail the extent to which the Consent Holders have implemented the recommendations in the Wildland Reports, including:
- copies of any documents registered on the titles of the properties;
 - whether any dispute resolution process has been used, and copies of any documents used in that process;
- (viii) detail the extent to which the Consent Holders have complied with the conditions 18-22, including:
- a summary of the progress towards completion of the archaeological survey;
 - if the archaeological survey is complete, a copy of the archaeological survey report;
 - whether OTS has required the Nga Herenga pa site to be transferred to the Crown, and copies of any agreements entered into with OTS;
 - details of the walking access arrangements made in respect of the Nga Herenga pa;
 - copies of any documents registered on the titles of Benneydale 1, Benneydale 2, Taharua or Tiwhaiti;
 - whether any dispute resolution process has been used, and copies of any documents used in that process;
- (ix) provide evidence of compliance with condition 2 (good character); and

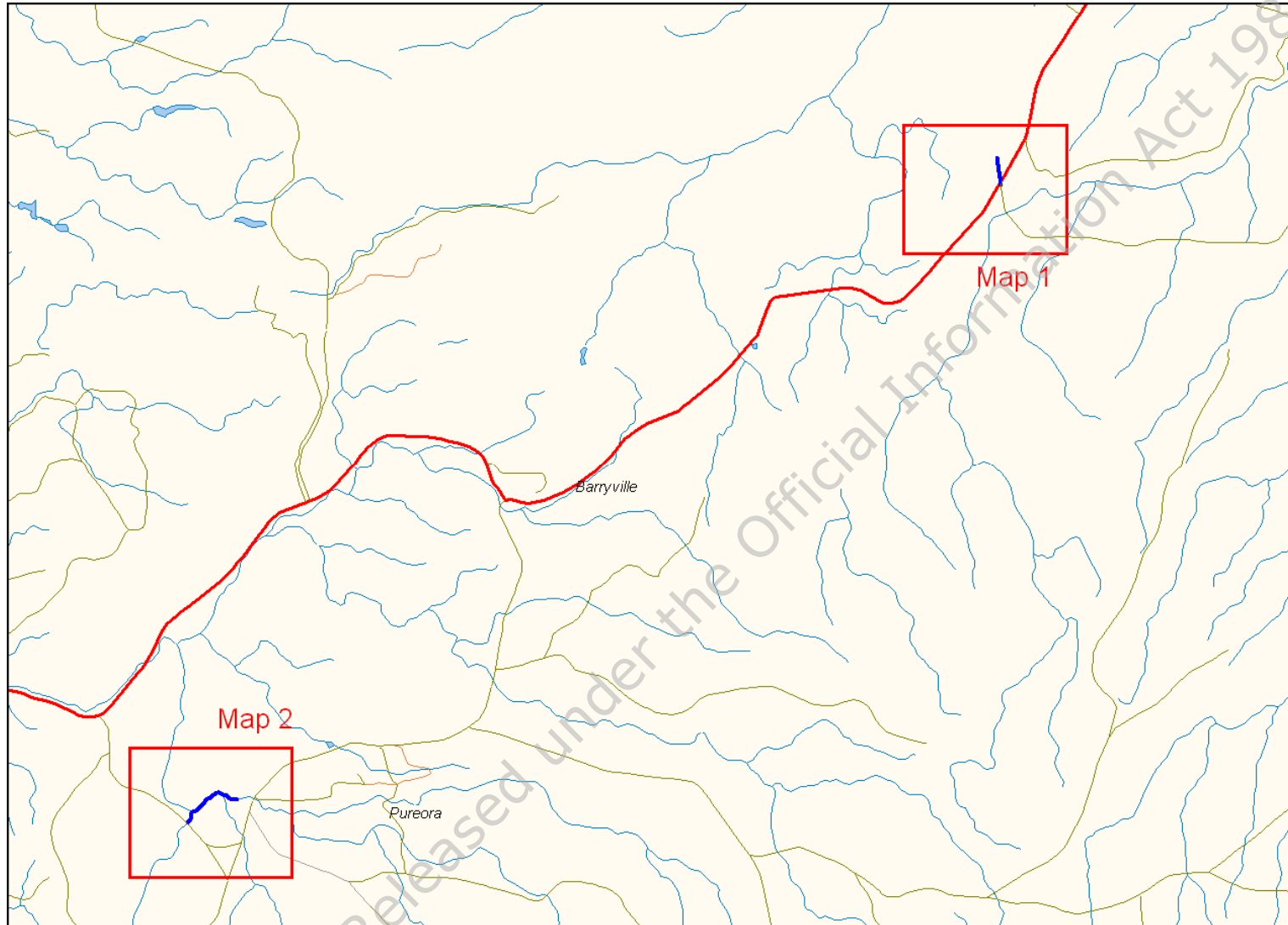
- (x) if required by the Overseas Investment Office, include police certificates for each individual deemed by the Overseas Investment Office to be an individual with control of the relevant overseas person.
- (b) The Consent Holders must report:
 - (i) by 31 August 2013, for the period ended 31 May 2013; and
 - (ii) annually thereafter until advised by the Overseas Investment Office that no further reports are required (it is anticipated that a *minimum* of five annual reports will be required); and
 - (iii) at such other times as required by the Overseas Investment Office.

Disposal of the Investment

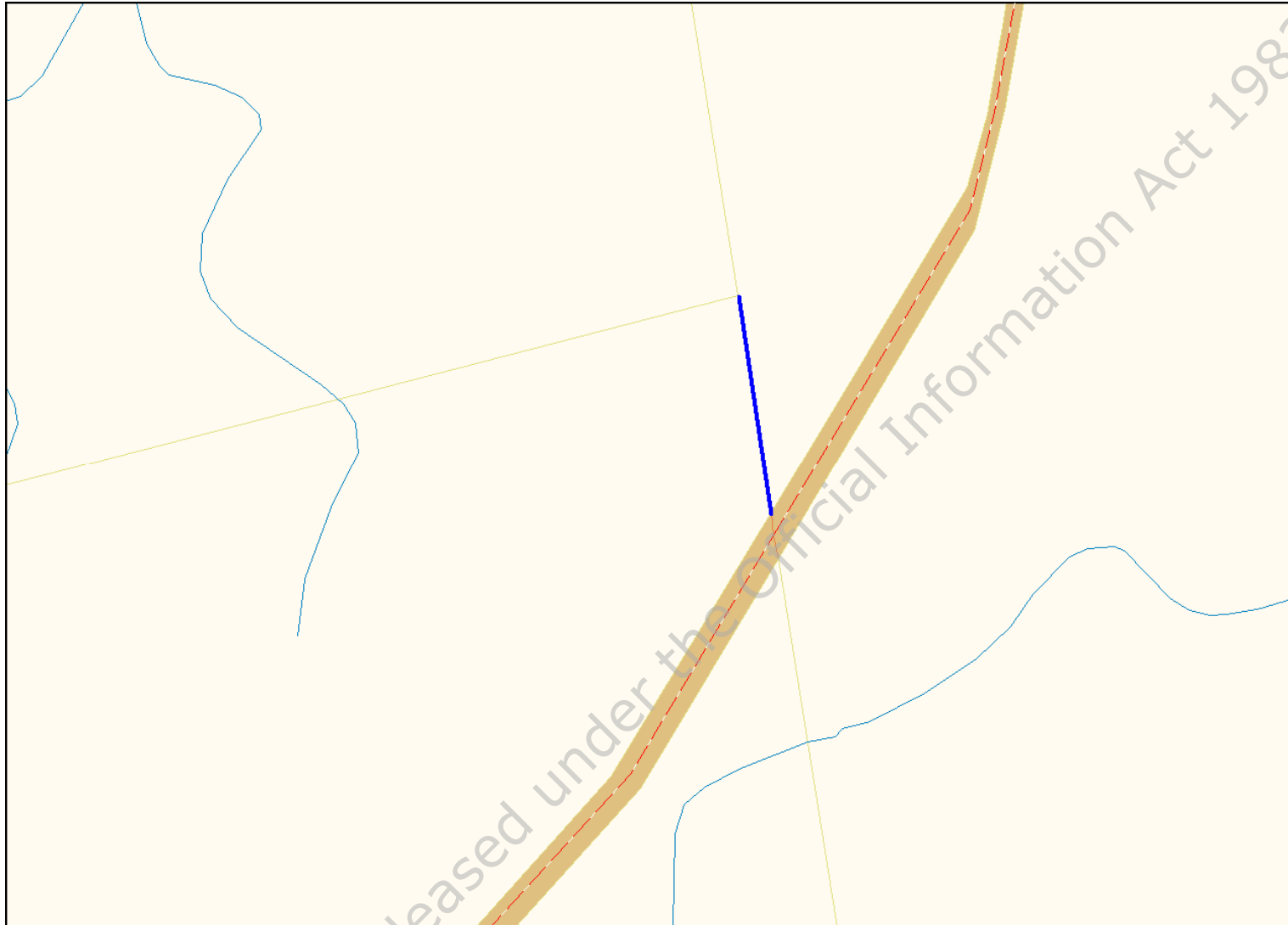
- 27. The Consent Holders must not dispose of any part of the Investment (whether under condition 28 or otherwise) unless:
 - (a) they have complied with conditions 10, 11, 18-21, and 22(e) to the extent that conditions 10, 11, 18-21, and 22(e) apply to the part of the investment being disposed of; and
 - (b) they have completed any riparian fencing work identified in the Wildland Reports, to the extent that riparian fencing work applies to the part of the investment being disposed of.
- 28. If these conditions require the Consent Holders to dispose of the Investment:
 - (a) The Consent Holders must, within six weeks:
 - (i) procure from an independent registered valuer, and provide to the Overseas Investment Office, a written market valuation of the Investment; and
 - (ii) appoint licensed real estate agents to actively market and appropriately advertise the Investment for sale on the open market; and
 - (b) The Consent Holders must dispose of the Investment within two years. If the Consent Holders have not disposed of the Investment at the expiry of the two year period, the Consent Holders must offer the Investment for sale by auction or tender within a further three months (with no reserve price or minimum bid set for the auction or tender).
 - (c) The Consent Holders must provide a written report to the Overseas Investment Office quarterly (by the last day of March, June, September and December) about the marketing activities undertaken and offers received for the Investment. The Consent Holders must also report at any other time if required by the Overseas Investment Office.
 - (d) The Consent Holders must provide a written report to the Overseas Investment Office within one month of the Investment being disposed of, providing evidence that:
 - (i) the Consent Holders have disposed of the Investment (including copies of any sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor); and
 - (ii) evidence that the purchaser is not an associate of the Consent Holders.

Maps referred to in condition 11(b)

Overview map

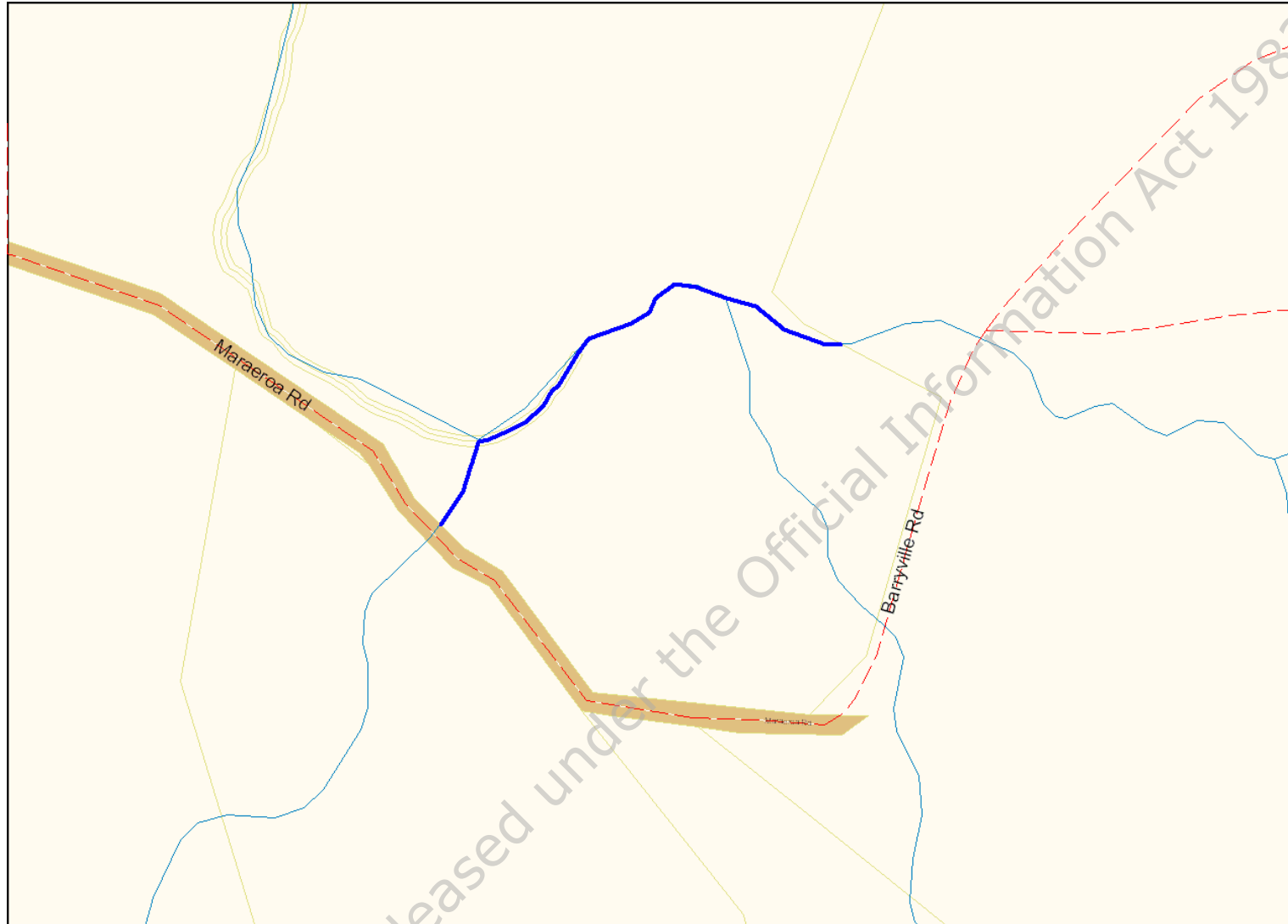


Map 1 – Benneydale 2 – Conditions 11(a)(ii) and 11(b)(i)



The required access route for public walking access between State Highway 30 (Scott Road) and the Waipapa Ecological Area is along the north-eastern boundary of Benneydale 2, as shown in blue on map 1.

Map 2 – Benneydale 1 - Conditions 11(a)(i) and 11(b)(i)



The required access route for public walking access between Maraeroa Road and the Pureora Forest Park is along or adjacent to the Te Kakaho Stream, and along the existing marginal strips, shown in blue on map 2.

Monitoring Conditions of Consent

For the purpose of monitoring conditions of consent, the Overseas Investment Office may, under section 38 of the Act, require the Consent Holders to provide information or documents, or both, that are specified in the notice. Under section 40 of the Act, the Overseas Investment Office may also require the Consent Holders to provide a statutory declaration verifying the extent to which the Consent Holders have complied with the conditions of consent, and, if the Consent Holders are in breach of a condition or conditions, the reasons for the breach and the steps the Consent Holders intend to take to remedy the breach.

Sanctions

The Act provides for civil and criminal sanctions for breaching the Act, failing to comply with conditions of consent and failing to provide information required by the Overseas Investment Office. The Overseas Investment Office has an obligation to investigate and act upon alleged and suspected breaches of the Act.

General

A reference to the "Overseas Investment Office" in this Notice includes a reference to the regulator (as defined by the Act).



Pedro Morgan – Senior Solicitor
Overseas Investment Office