

To: Hon Dr David Clark, Associate Minister of Finance
Hon Eugenie Sage, Minister for Land Information

ASSESSMENT REPORT: Enviro Waste Services Limited

Date	1 July 2019	Classification	IN CONFIDENCE: Commercially sensitive
Resubmitted Date	25 July 2019		
OIO reference	201810134 Report Number 1457	Priority	High

Action Sought

Minister	Action	Suggested Deadline
Hon Eugenie Sage, Minister for Land Information	<ol style="list-style-type: none"> Review the attached report and decide whether to grant consent to the application Forward the report and attachments to the Associate Minister of Finance 	Consent sought by 19 August 2019 to enable settlement by 2 September 2019. Consent after that date would delay settlement to 1 October 2019.
Hon Dr David Clark, Associate Minister of Finance	<ol style="list-style-type: none"> Review the attached report and decide whether to grant consent to the application Forward the report and attachments to the Overseas Investment Office 	Consent sought by 19 August 2019 to enable settlement by 2 September 2019. Consent after that date would delay settlement to 1 October 2019.

LINZ Contacts

Name	Position	Contact number	First contact
Tyne Schofield	Principal Advisor Applications	+64 4 830 1923	<input checked="" type="checkbox"/>
Kirsty Hulena	Senior Solicitor	+64 4 496 9482	<input type="checkbox"/>

Minister's office to complete

1 = Was not satisfactory 2 = Fell short of my expectations in some respects 3 = Met my expectations
4 = Met and sometimes exceeded my expectations 5 = Greatly exceeded my expectations

Overall Quality	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
Comments					
<input type="checkbox"/> Noted	<input type="checkbox"/> Seen	<input type="checkbox"/> Approved	<input type="checkbox"/> Overtaken by events		
<input type="checkbox"/> Withdrawn	<input type="checkbox"/> Not seen by Minister		<input type="checkbox"/> Referred to:		

ASSESSMENT REPORT: Enviro Waste Services Limited

Overview

Purpose

1. We seek Ministers' decision on the application by Enviro Waste Services Limited under the Overseas Investment Act 2005 (the "Act") to acquire approximately 275.372 hectares¹ of non urban land located at 587 Ridge Road and Beaver Road, Pokeno, South Auckland.

Key information

Applicant	Enviro Waste Services Limited (Hong Kong (SAR) 70.8246853%; Hong Kong (SAR) 10.8743774%; Hong Kong (SAR) 10.8276229%; United States of America 4.0108168%; United Kingdom 1.22281%; Various 0.9521406%; China, People's Republic of 0.388422%; Canada 0.237369%; Singapore 0.208597%; Australia 0.129474%; Malaysia 0.122281%; Taiwan 0.057544%; Ireland 0.021579%; Japan 0.021579%; New Zealand 0.021579%; Philippines 0.021579%; Switzerland 0.014386%; France 0.014386%; Bermuda 0.007193%; Indonesia 0.007193%; Sweden 0.007193%; Austria 0.007193%;)
Vendors	Holcim (New Zealand) Limited (Switzerland 48%; United States of America 31%; Various 21%;)
Consideration	\$25 million
Application type	Sensitive land - (Benefit to New Zealand - S&I)
Relevant tests	Investor test Benefits test – substantial and identifiable benefits (a residential land outcome listed in the table in clause 19 of Schedule 2 applies)

2. Please refer to the **A3 in Attachment 9** for overview tables summarising the application and the Overseas Investment Office's ("OIO's") assessment.

Provisional recommendations

3. Our provisional recommendation is to **grant consent**.
4. However, we note the following issue that requires Ministerial attention:
 - a) Walking access conditions: The Walking Access Commission ("WAC") has provided recommendations on what it considers is appropriate walking access. The Applicant and WAC largely disagree on this access given the nature of the site and the unclear nature of whether any such access would likely be utilised. We have provided our view on what we consider is appropriate, however, this is ultimately a matter for the Ministers' judgement.

¹ Subject to subdivision

5. If you agree to grant consent, we recommend that you make the determinations set out in paragraphs 6 to 9 below.



Tyne Schofield

Principal Advisor Applications (Overseas Investment Office)

Date: 25 / 7 / 2019

Decision

6. I determine that:

6.1 the 'relevant overseas person' is (collectively): Enviro Waste Services Limited.

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

Individual	Role
Christopher Aughton	Member of the Board of Enviro Waste Services Limited
Andrew John Hunter	Member of the Board of Enviro Waste Services Limited
Hing Lam Kam	Member of the Board of Enviro Waste Services Limited
Duncan Nicholas Macrae	Member of the Board of Enviro Waste Services Limited
Richard Clive Pearson	Member of the Board of Enviro Waste Services Limited
Pak Chung Eddy Tsang	Member of the Board of Enviro Waste Services Limited

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

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

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

6.6 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

7. I am satisfied that the investor test, as outlined in paragraph 6 above, has been met; and

Associate Minister of Finance

Minister for Land Information

Satisfied

Satisfied

Not Satisfied

Not Satisfied

8. I am satisfied that:

8.1 the criteria for consent in sections 16, 16A and 16B have been met;

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

8.3 the benefit will be, or is likely to be, substantial and identifiable.

8.4 the residential land outcome listed as item 2 in the table in clause 19 of Schedule 2, the use for non-residential purposes outcome, applies to the residential land and consent is made subject to a condition requiring this residential outcome; and

Associate Minister of Finance

Minister for Land Information

Satisfied

Satisfied

Not Satisfied

Not Satisfied

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

Associate Minister of Finance

Minister for Land Information

Grant consent subject to the conditions in the Proposed Decision

Grant consent subject to the conditions in the Proposed Decision

Grant consent with amended conditions provided on: 2/9/19

Grant consent with amended conditions provided on:

Consent declined

Consent declined

Hon Dr David Clark

Hon Eugenie Sage

Associate Minister of Finance

Minister for Land Information

Date: 11/9/19

Date: / /

6.6 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

7. I am satisfied that the investor test, as outlined in paragraph 6 above, has been met; and

Associate Minister of Finance

Minister for Land Information

Satisfied

Satisfied

Not Satisfied

Not Satisfied

8. I am satisfied that:

8.1 the criteria for consent in sections 16, 16A and 16B have been met;

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

8.3 the benefit will be, or is likely to be, substantial and identifiable.

8.4 the residential land outcome listed as item 2 in the table in clause 19 of Schedule 2, the use for non-residential purposes outcome, applies to the residential land and consent is made subject to a condition requiring this residential outcome; and

Associate Minister of Finance

Minister for Land Information

Satisfied

Satisfied

Not Satisfied

Not Satisfied

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

Associate Minister of Finance

Minister for Land Information

Grant consent subject to the conditions in the Proposed Decision

Grant consent subject to the conditions in the Proposed Decision

Grant consent with amended conditions provided on:

Grant consent with amended conditions provided on:

Consent declined

Consent declined

2/9/19 by email

E M Sage

Hon Dr David Clark
Associate Minister of Finance
Date: / /

Hon Eugenie Sage
Minister for Land Information
Date: 31 / 8 / 19

Executive summary

1. Enviro Waste Services Limited (the "**Applicant**") is seeking consent to acquire approximately 275.372 hectares² of non urban land known located at 587 Ridge Road and Beaver Road, Pokeno, South Auckland (the "**Property**").
2. The Property has been operated by the Vendor as a quarry and cleanfill business³. The quarry consists of two quarry pits (Auckland and Waikato pits) which are both now retired and the quarry business has ceased.
3. The Applicant intends to remediate the quarries on the Property and operate it as a major clean fill and recycling operation.⁴



4. The Applicant is a nationally integrated waste management business with 35 branches nationwide, offering waste-related services to industry, councils and the public via collection services, one long-life landfill and transfer stations throughout New Zealand.
5. The benefits to New Zealand that are likely to result from this investment include:

Strong weighting	<ul style="list-style-type: none"> • Jobs • Enhanced domestic services • Previous investments • Indigenous vegetation/fauna • Advance significant Government policy or strategy
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² Subject to subdivision

³ Cleanfill materials when buried will have no adverse effect on people or the environment and includes natural materials such as clay, soil and rock as well as inert materials such as concrete or brick.

⁴ The Applicant is also purchasing certain other assets located on or associated with the Property.

Moderate weighting		<ul style="list-style-type: none"> • Consequential benefits • Walking access
Weak weighting		<ul style="list-style-type: none"> • Historic Heritage

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

Decision timeframes

7. The processing of this application has taken longer than desirable due to consultation with the Department of Conservation and the Walking Access Commission taking a considerable amount of time. Despite the length of time spent consulting, there are still some walking access recommendations on which the parties have been unable to agree. This is addressed at paragraphs 153-163 and in Attachment 8 of our Report. We have provided our view on what we consider is appropriate, however, this is ultimately a matter for the Ministers' judgement.

8. Processing days for the application to date are:

Quality Assurance	OIO Processing	Waiting for Applicant / Vendor	Third party consultation
9	8	21	65

Released under the Official Information Act 1982

Applicant and investor test

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

Who is making the investment

10. The investment is being made by the Applicant which is a nationally integrated waste management business with 35 branches nationwide, offering waste-related services to industry, councils and the public via collection services, one long-life landfill and transfer stations throughout New Zealand.

Business Activities

11. The Applicant has three brands it operates under:
- EnviroWaste- responsible for collection, recovery, environmental remediation, disposal, gas to energy, and composting;
 - Enviroway-provides waste collection services; and
 - Chemwaste- specialises in liquid and solid waste treatment and disposal services.
12. It is the second largest waste collection and disposal business in New Zealand and works in partnership with councils and commercial entities to implement recycling and waste minimisation programmes. It operates cleanfills, where only certain type of waste is collected, being waste that can be recycled or reused in future construction projects. This is as opposed to landfills where all types of waste are collected and buried.
13. The Applicant submits it is an industry leader in employing the latest technology in landfills which avoid adversely affecting the surrounding environment and points to its having been the first to introduce colour sorted glass recycling, composting plants, landfill gas to electricity⁵ and 'three stream' kerbside collection⁶ in Australasia as evidence of this.
14. Further the Applicant submits it is a market leader in the design, build and operation of liquid waste treatment facilities for on-site processing, destruction of off-specification products that need secure handling and contaminated site remediation.

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	Test met	ROP & IWC identified	Paragraphs 15-22 Section 15 of the Act.
Collectively have business experience	Test met	The IWCs have experience relevant	Paragraphs 23-25

⁵ The Applicant was the first to use this technology in 1989 and is in the process of converting landfill methane gas into electricity.

⁶ Collection and processing of fully comingled recycling, mixed green waste and food waste.

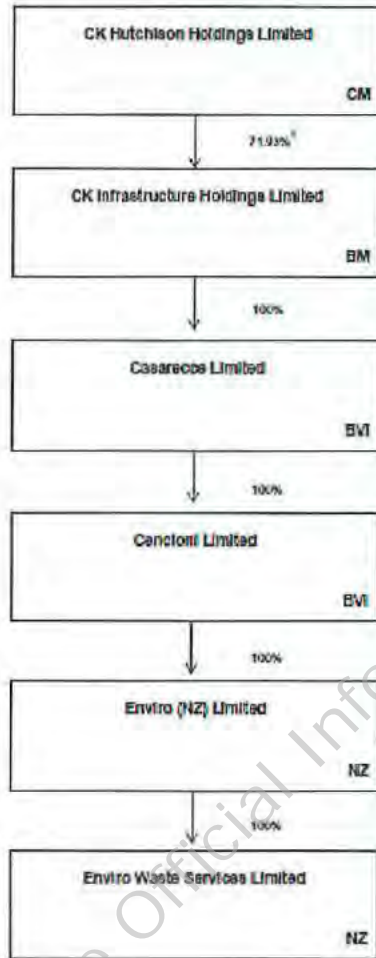
Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
and acumen relevant to the investment		to the investment.	Section 16(2)(a) of the Act.
ROP demonstrated financial commitment	Test met	The Applicant has demonstrated financial commitment by entering into an agreement for sale and purchase of the Property; having prepared plans for the operation of the site; and engaging professional advisers.	Section 16(2)(b) of the Act.
Good character	Test met	We are satisfied that the ROP/IWC are of good character.	Paragraphs 26-29 Attachment 6. Section 16(2)(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	Statutory declarations provided confirming that each individual is not of the kind referred to in ss 15 or 16 of the Immigration Act. No additional assessment required.	Paragraphs 30-31 Section 16(2)(d) of the Act.

Ownership and control of the Applicant

15. The Applicant is indirectly 100% owned by CK Infrastructure Holdings Limited ("CKI"), through two holding companies in addition to Enviro (NZ) Limited. CKI is a public infrastructure company incorporated in Bermuda and listed on the Main Board of the Stock Exchange of Hong Kong.
16. CKI is 71.93% owned by CK Hutchison Holdings Limited ("CKHH"). The remainder of the shares in CKI are widely held. CKHH is a multinational conglomerate listed on the Hong Kong Stock Exchange with interests in retail, infrastructure, ports, energy and telecommunications.
17. JP Morgan holds 5.106% holding in CKHH and two Hong Kong citizens⁷ hold approximately 30.17% both directly and indirectly, via trusts. The balance is widely held.

⁷ Mr Li Ka-shing and Mr Li Tzar Kuoi, Victor

18. A simplified ownership structure of the Applicant is included below:



Who controls the Applicant

19. The Applicant's board of directors (the "**Board**"), listed in the table below at paragraph 22, approved the proposed purchase of the Property and it is the Board who have the authority to approve the divestment of the Property. Further, the Applicant has authority to approve significant capital and operating expenditures.
20. None of the intermediate holding companies in the Applicant's ownership structure, nor CKI or CKHH, will exercise any control over the day to day operation of the Applicant or the clean fill business.
21. We have therefore determined that the '**relevant overseas person**' (ROP) is Enviro Waste Services Limited.
22. We have determined that the '**individuals with control of the relevant overseas person**' (IWC) are:

Individual	Role	Citizenship
Christopher Aughton	Member of the Board of the Applicant	[s 9(2)(a)]
Andrew John Hunter	Member of the Board of the Applicant	
Hing Lam Kam	Member of the Board of the Applicant	
Duncan Nicholas Macrae	Member of the Board of the	

Individual	Role	Citizenship
	Applicant	s 9(2)(a)
Richard Clive Pearson	Member of the Board of the Applicant	
Pak Chung Eddy Tsang	Member of the Board of the Applicant	

Business experience and acumen

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.

23. In this case, the Investment can be described as the purchase of approximately 275.372 hectares of non urban land on which the Applicant will operate major clean fill and recycling operation.
24. We have reviewed the biographical information provided by the Applicant for each of the individuals with control and note that:
 - a) collectively, the directors of the Applicant have extensive experience in investment and infrastructure project management, including waste management; and
 - b) the directors of the Applicant have accumulated experience in managing diversified investments in energy infrastructure, transportation infrastructure, water infrastructure, waste management, waste-to-energy, household infrastructure and infrastructure related businesses.
25. Having regard to the above, we are satisfied that the individuals with control of the relevant overseas persons collectively have business experience and acumen relevant to the overseas investment.

Good character assessment

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.

26. The Applicant has provided a statutory declaration stating that the individuals with control are of good character, have not committed an offence or contravened the law as described above and know of no other matter that reflects adversely on their fitness to have the Investment. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957.
27. The Applicant disclosed certain matters that we have previously considered in the Applicant's earlier applications.⁸ Those matters were considered not to impact on

⁸ 201720100.

the good character of the individuals with control of the relevant overseas person. We discuss these matters at **Attachment 6**.

28. We have also conducted open source background checks on the relevant overseas person and individuals with control and found various matters that we discuss further in **Attachment 6**. After further investigation and consideration of these matters, we do not consider the matters impact on the good character of the individuals with control of the relevant overseas person. Our searches also found certain matters in relation to entities in the Applicant's ownership structure that we do not consider are relevant overseas persons for the purposes of this application. For completeness, we have included these matters in **Attachment 6** too.
29. Therefore, we are satisfied that the individuals with control are of good character

Immigration Act

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

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

Provisional conclusion – Investor test

32. Our provisional conclusion is that the investor test is met.

Investment and benefits test

33. 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 Transaction

34. The Applicant and the Vendor entered into an agreement for sale and purchase for the Property on 21 December 2018 ("**SPA**"). As part of the SPA the Applicant will acquire certain other assets located on or associated with the Property, however purchase of these assets do not require consent under the Overseas Investment Act 2005 (the "**Act**").

The Vendor

35. The Vendor is a New Zealand limited liability company controlled by overseas persons which is a subsidiary of a leading global construction materials and solutions company that produces cement, aggregates and ready-mix concrete for use in building projects.

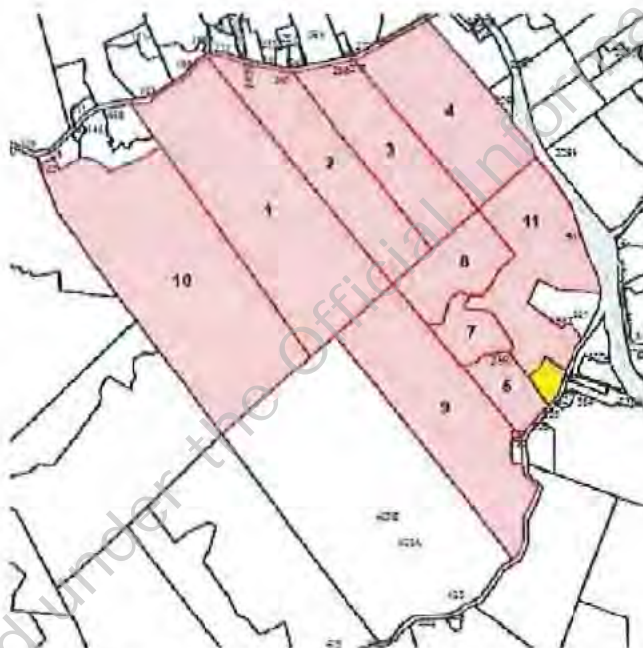
36. The Vendor intends to sell the quarry as it has reached the end of its life with the rock resource being extinguished and it is currently operating it at a loss. Further the Vendor wishes to focus its business interests in the cement and concrete industry going forward instead of running the current cleanfill operation.

Subdivision

37. The SPA provides for two small sections of the Property to be subdivided off (approximately 4 hectares) and sold to third parties ("**Sale Sites**"). However, depending on timing, this subdivision may not be able to occur prior to settlement under the SPA. As such the Applicant has sought consent to acquire the whole 275.372 hectares comprising the Property (which includes the Sale Sites) but consent is sought on the basis that either or both of the Sale Sites may be excluded from the final sale.

Residential Land Outcome

38. The Property contains approximately 1.7453 hectares of residential land (coloured yellow in the diagram below) ("**Residential Site**").



39. There is one dwelling on the Residential Site currently occupied during the week by an employee of the Vendor. The Applicant does not intend to use the dwelling for staff accommodation and intends to leave it vacant.
40. The Applicant proposed that residential land outcome 8 "any other case" was appropriate, however, we consider that residential land outcome 2 "non-residential use outcome"⁹ is more appropriate in these circumstances for the Residential Site. We have recommended a condition of consent requiring non-occupation of the Residential Site.

The Waste Industry in New Zealand

41. Responsibility for managing waste disposal is largely controlled by local authorities who manage landfills, refuse collections, sewerage and stormwater systems. Sometimes the local authorities undertake these tasks themselves and sometimes private contractors such as the Applicant are involved. It is estimated by the Ministry

⁹ Schedule 2, clause 19 of the Overseas Investment Act 2005

for the Environment that district and city councils manage 87% of landfills in New Zealand.

42. The Ministry for the Environment considers that cleanfills in the Auckland region receive more construction and demolition waste than other regions.

The Investment Plan

43. The Applicant intends to continue with the cleanfill operation on the Property as well as developing a recycling operation on the Property. It also intends to fully remediate the two quarry pits on the site, as well as the fill areas, storm-water ponds, roads and all other supporting infrastructure.
44. The Applicant has previously operated a cleanfill site in East Tamaki, Auckland ("Greenmount"). This facility closed in December 2016 and returned to Auckland Council as it was full. Greenmount received approximately [s 9(2)(b)] tonnes of soil based waste per annum, [s 9(2)(b)] of which was cleanfill. The Applicant claims that the closure of Greenmount has left approximately [s 9(2)(b)] tonnes per annum of cleanfill requiring disposal and for which the Applicant submits there is no other regional alternative.
45. In anticipation of Greenmount reaching the end of its life as a fill site, the Applicant has been involved in discussions with the Vendor over several years about the future of the Property. This is because the Applicant considers that the existing cleanfill business would be a suitable replacement for Greenmount, while also providing the opportunity to undertake other waste initiatives.
46. The Applicant has established that the Property has a cleanfill capacity of [s 9(2)(b)(ii)] until [s 9(2)(b)] and has a practical lifespan [s 9(2)(b)(ii)].
47. The Property straddles the Auckland and Waikato regions. The map below from the Waikato Regional Council website shows the existing and closed cleanfill sites in that region and shows the Applicant's other site (marked with a purple diamond), Hampton Downs, which is discussed in more detail at paragraphs 176-179. The approximate location of the Property is north of the Hampton Downs site:



¹⁰ [s 9(2)(b)(ii)]

48. The map below shows cleanfill sites, landfill sites, recycling centres and depots and transfer stations in the Auckland region¹¹. The Property does not appear on this map, but is located approximately south east of the Pukekohe Refuse and Recycling Transfer Station at the bottom of the map:



49. The table below shows the current and proposed uses of the Property if consent should be granted:

¹¹ <https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-plans-strategies/topic-based-plans-strategies/environmental-plans-strategies/docs/wastemanagementplan/waste-assessment-2017.pdf>

537 - 587 Ridge Road and Beaver Road, Pokeno, South Auckland		
Land use	Current (ha)	Proposed (ha)
Quarry and Cleanfill Operations	67	67
Dwellings leased to third parties for residential purposes	0.8509	0.7105
Commercial leases	5.131 hectares	5.131hectares
Proposed Recycling Operations	0	2.5
Unused area	202.408	200.0484
Total	275.3720	275.3720

50. The Vendor began operating the cleanfill on the Property in 2012 and upgraded it to a managed fill operation¹² in 2014. The current operation accepts the tipping of managed fill and is aimed at aggregates customers who back-load the fill into the quarry space exhausted through prior quarrying.

51. There are two commercial leases, one of which forms part of the Sale Sites. Under the other, 4.8 hectares is leased [s 9(2)(b)(ii)]

52. The Applicant's development plans for the Property are discussed in more detail below:

Cleanfill

53. The Applicant intends to expand the cleanfill operations on the Property given it has a greater capacity than is currently being utilised under the Vendor's current operation.

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

[s 9(2)] (the Vendor closes the site at 5pm).

Infrastructure Disposal and Recovery Park

55. The Applicant intends to build an infrastructure disposal and recovery park, or construction and demolition waste recycling operation ("**C&D Operation**") on the Property. The C&D Operation will receive and recycle waste from construction and housing developments and, where viable, recover the residual waste and dispose of it in an environmentally friendly manner.

56. The Applicant already has commercial dealings with housing developers in South Auckland which they consider will provide a steady stream of 'users' of the C&D Operation and will assist with the recycling of construction and demolition materials from such projects. The C&D Operation would also be integrated into the Applicant's network of transfer stations.

¹² Managed fill involves the deposit of cleanfill material, contaminated clay, soil, rock and other inert materials that may have contaminants that exceed background concentrations.

¹³ [s 9(2)(b)(ii)]

¹⁴ [s 9(2)(b)(ii)]

57. Part of the C&D Operation will be a dedicated wood recovery facility enabling [s 9(2)] tonnes of such resources per annum to be recovered and which the Applicant claims will lead to a reduction of [s 9(2)(b)] tonnes of carbon dioxide landfill emissions each year.
58. The Applicant will also [s 9(2)(b)(ii)] on the Property and process this material to produce [s 9(2)(b)(ii)]
59. When contacted, the Ministry for the Environment (the "Ministry") advised that there is a need for construction and demolition recovery parks in Auckland like the C&D Operation. They advised that dealing with this type of waste is to be a focus of the Ministry over the next few years.

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

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

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

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

Vermiculture Operation

63. The Applicant intends to develop a vermiculture operation on the Property (subject to obtaining resource consent) which will be able to receive food waste from approximately [s 9(2)] households. The Applicant claims this will meet the market demand for food waste recycling which is largely driven by Auckland City Council.
64. Waste from these households could be expected to produce approximately [s 9(2)] tonnes of Vermicast¹⁵ compost per annum and the Applicant would expect these volumes to increase after the first [s 9(2)] years of operation. The Vermicast compost would be available for sale at the Applicant's network of transfer stations and the existing landscape yard on the Property.
65. The Ministry has advised that these operations are becoming more popular again, although the market is small and competitive. Operated well the Applicant considers the business can be viable and there is a demand for Vermicast.

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

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

¹⁵ End product of breakdown of organic matter by earthworms.

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



67.

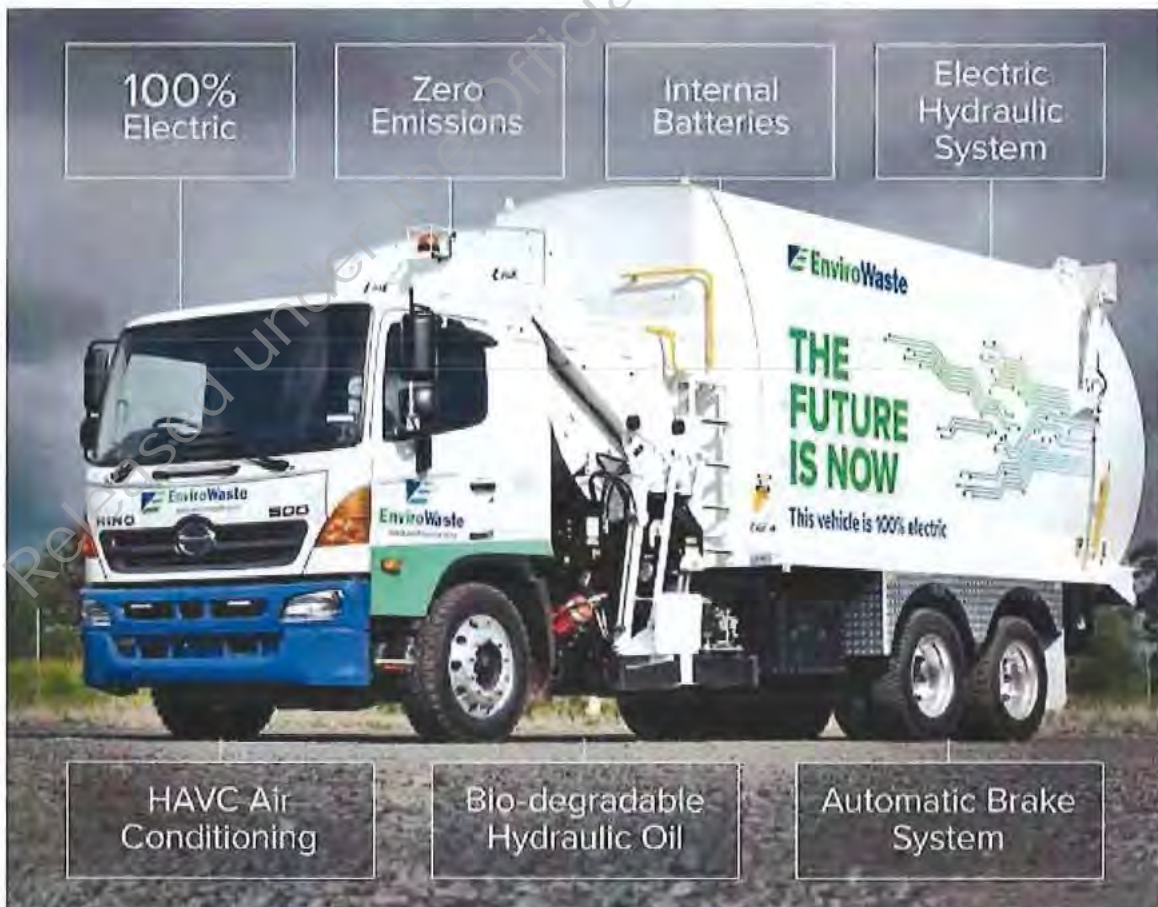
[s 9(2)(b)(ii)]



Other initiatives

68. The Applicant intends to:

- a) introduce a fully sustainable power network via introduction of solar panelling to power activities on the Property thereby improving the Property's carbon footprint and supply electricity to power various activities on the site, including the weighbridge, pump stations and offices;
- b) install on the Property what it believes may be a first for New Zealand, being a lithium ion battery bank, which will allow excess solar power supply to be stored in long life batteries. The stored power will then be used on cloudy and wet days and to ensure continuous power to the site;
- c) purchase s new electric waste collection vehicles to replace existing internal combustion vehicles. A picture of the new style of vehicle is below:



69. The Applicant will also plant 10 hectares of trees surrounding the quarry area on the Property (pine trees with native plants in the riparian planting areas).

70.

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

71.

What is likely to happen without the investment (Counterfactual)

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

72. If the Applicant did not purchase the Property we consider the Property will likely be sold to an Alternative New Zealand Purchaser ("**ANZP**") who would continue to operate it as a clean fill operation (in much the same manner as the Vendor). The ANZP is likely to be a new market entrant to the cleanfill business.

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

- (a) who is likely to own the Land? and
- (b) what is the likely use of the Land?

Who is likely to own the Land

74. The Vendor has stated that it will sell the Property and we are satisfied there will be an alternative purchaser for it.

75.

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

76. While the Applicant is not aware of [s 9(2)(b)(ii)] it considers that the most likely purchaser of the Property would be a waste or landfill operator. This is because of:

- a) the level of remediation required on the Property;
- b) the steep and sloping contours of the Property;
- c) covenants on the Property preventing building in certain areas; and
- d) the presence of overground power lines running through the middle of the Property which cost a considerable amount of money to 'underground'.

77. The Applicant considers the above would make the Property commercially unfeasible for a residential or commercial development.

78. The Applicant considers that any alternative purchaser, ANZP or otherwise¹⁶, is likely to already operate waste facilities servicing the Auckland and Waikato region (although not necessarily cleanfill operations). This is because a new entrant into

¹⁶ Noting that we do not use overseas persons as our counterfactual.

these regions would face difficulty obtaining contracts to access cleanfill and they are likely to face cost and resource restraints.

79. The Applicant submits that potential ANZPs are likely to be relatively limited and will likely be a new entrant to the cleanfill market. This is because the New Zealand owned operators operating in the Auckland region do not currently have cleanfill facilities. The Applicant submits that smaller operators are prone to high levels of attrition and acquisition by larger operators.
80. The Applicant has identified the existing waste operators in Auckland and has provided information on why each of these are unlikely to purchase the Property¹⁷. This is included at **Attachment 7**.

What is the likely use of the Land

81. The Property contains an unremediated quarry and a cleanfill operation. As such, the Applicant submits the Property is most likely to continue to be used as a cleanfill alone, as the quarry pits have reached the ends of their lives. As set out above, it is commercially unfeasible for a residential or commercial development on the Property.
82. While we consider that, without the Investment, an ANZP is likely to acquire and run the Property as a cleanfill, there is only a very small possibility that an ANZP would develop the Property to the same extent as that proposed by the Applicant. This is because the Applicant has an existing waste management business of scale, including transfer stations and transport networks.

Conclusion

83. We consider that if consent is not granted to the Applicant, the Property will likely be sold to an ANZP who would continue to operate it as a clean fill operation and is likely to be a new market entrant to the cleanfill market.
84. We consider that an ANZP for the Property, regardless of whether it is a new entrant or existing smaller operation, is unlikely to have an existing waste management business of the scale that the Applicant has, including transfer stations, transport networks and experience with other cleanfills. An ANZP is therefore unlikely to undertake the same developments or offer many of the same services to consumers that the Applicant intends to offer.

Consultation and submissions about the investment

Consultation with Department of Conservation

85. Please see paragraphs 134-145.

Consultation with New Zealand Walking Access Commission

86. Please see paragraphs 153-163.

Consultation with Heritage New Zealand

87. Please see paragraphs 146-152 and Attachment 3.

Consultation with the Ministry for the Environment

88. Please see paragraphs 41-42, 59, 65, 70-71 and 194.

¹⁷ We do not use overseas persons as our counterfactual.

Submissions

89. No third party submissions were received.

Residential land outcome – ‘use for non-residential purposes’

90. When an investment requiring consent under the Act includes residential land, it must be established what the outcome will be for this residential land once the investment is completed.
91. There are several residential land outcomes available (as set out in clause 19, Schedule 2 of the Act), including: ‘on-sale’, ‘use for non-residential purposes’, ‘operation of a long term accommodation facility on the residential land’, ‘increased residential dwellings’, ‘residential purposes incidental to a relevant business’, ‘occupation as main home or residence’, ‘operation of existing share equity, rent-to-buy, or rental arrangements’, and ‘any other case’.
92. Each residential land outcome has a specific set of conditions that must be imposed on the investment if that outcome is considered to be appropriate.
93. The Property contains approximately 1.7453 hectares of land categorised as ‘Lifestyle’ in the district valuation roll, as discussed above at paragraphs 38-40. The Applicant has submitted that it does not intend to use the dwelling for staff accommodation and intends to leave it vacant. Further, it submits the residential land outcome 8, “any other case”, is appropriate.
94. In light of the Applicant’s submissions, we consider that residential land outcome 2 “use for non-residential purposes” outcome is more appropriate given the Applicant does not intend to use the dwelling for staff accommodation and intends to leave it vacant.
95. We have therefore recommended a condition of consent be imposed that, for so long as the Applicant owns the Property, the residential land must only be used in a manner that is consistent with the “use for non-residential purposes” outcome, as set out in item 2 of the table in s19(2)(c) of Schedule 2 of the Act.
96. Having regard to the above, we are satisfied that the appropriate residential land outcome is the “use for non-residential purposes” outcome and that the overseas investment satisfies the requirements of that outcome.

Overview of assessment: investment and benefit test

Relevant benefit factors	Applicant's claims: what they intend to do	Comment from third parties	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
				Indicative strength	Summary		
Job opportunities <i>(high relative importance)</i>	Expand the existing cleanfill operation and develop new operations/developments on the Property.	Not applicable	Some FTE would be retained by an ANZP, but the FTE resulting from the new developments are unlikely to otherwise occur.	Strong weighting	Increase of 12 FTE roles over the counterfactual with a further 6 FTE if the Applicant can secure contracts with the Auckland Council.	Applicant to be <u>conditioned</u> to create or retain at least 18 FTE roles on the Land.	Paragraphs 96-120
Added market competition, increased productivity, efficiency, and enhanced domestic services	Expand the existing cleanfill operation and develop new operations on the property including C&D operation, dewatering facility and vermiculture operation.	The Waikato Regional council advises more cleanfill space is required in the region.	It is unlikely the cleanfill would be expanded by an ANZP or the additional developments created.	Strong weighting	The Applicant's proposed developments on the Property are likely to provide enhanced domestic benefits for the Auckland region through expansion of the cleanfill operation and development of the C&D Operation, dewatering facility and vermiculture operation.	Applicant to be <u>conditioned</u> to develop the dewatering facility, C&D operation and vermiculture operation and report on the development of these developments.	Paragraphs 121-133
Indigenous vegetation/fauna	Undertake environmental protections in line with the Boffa Miskell Report and DOC Report.	DOC Report and Boffa Miskell Report	New environmental protections unlikely to be implemented.	Strong weighting	The Applicant's proposed environmental protections are likely to provide benefit to New	The Applicant to be <u>conditioned</u> to undertake the vast majority of protections recommended by	Paragraphs 134-145

Relevant benefit factors	Applicant's claims: what they intend to do	Comment from third parties	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
				Indicative strength	Summary		
					Zealand	Boffa Miskell and DOC.	
Historic heritage	Comply with Heritage New Zealand's recommendations, as set out in the letter in Attachment 3.	Letter from Heritage New Zealand which is set out in Attachment 3.	It is unlikely an ANZP would consult with, and implement the recommendations suggested by, Heritage New Zealand regarding the Property.	Weak weighting	The Applicant will consult with an archaeologist regarding Site 2 and will seek Heritage's consent before undertaking works on Site 1.	Applicant to be <u>conditioned</u> to a) arrange for an archaeologist to investigate Site 2 and b) to not undertake any felling of trees or earthworks regarding Site 1 without Heritage New Zealand's approval.	Paragraphs 146-152
Walking access	Implement walking access on the western boundary of the Property.	WAC Report	No walking access would be created on the Property.	Moderate weighting	New walking access along the western boundary of the Property will be created for the general public.	Applicant to be <u>conditioned</u> to create access along the western boundary of the Property.	Paragraphs 153-163
Consequential benefits	Introduce solar power and lithium ion batteries to assist with running the business on the Property.	Not applicable	It is unlikely an ANZP would introduce solar power and lithium ion battery technology to help run the business	Moderate to Low weighting	The introduction of solar power and lithium ion batteries to store that power is likely to be of consequential environmental benefit in making the business	Applicant to <u>report</u> on the introduction of solar power and lithium ion battery technology onto the Property.	Paragraphs 164-173

Relevant benefit factors	Applicant's claims: what they intend to do	Comment from third parties	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
				Indicative strength	Summary		
			on the Property.		on the Property more sustainable and less reliant on the national power grid.		
Previous investments	The Applicant has previously undertaken major projects which have improved New Zealand's waste processing capacity and generated new FTE.	Not applicable	Not applicable	Strong weighting	The Applicant has undertaken major projects which have improved New Zealand's waste processing capacity and generated new FTE.	Not applicable	Paragraphs 174-183
Advance significant government policy or strategy	Expand the existing cleanfill operation and develop new operations on the property including C&D operation, dewatering facility and vermiculture operation.	Not applicable	An ANZP is unlikely to develop the developments the Applicant proposes. An ANZP is therefore unlikely to advance the New Zealand Waste Strategy to the same degree.	Strong weighting	The Applicants development plans for the Property will advance the New Zealand Waste Strategy.	Not applicable	Paragraphs 184-196

Released under the Official Information Act 1982

97. 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.
98. 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**.

Jobs (high relative importance factor)

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**.

99. We consider the Applicant's development plans for the Property will result in a net increase of approximately 12 full time equivalent jobs ("FTE") and may result in a further 6 FTE positions [s 9(2)(b)(ii)]
100. The Applicant submits its development plans for the Property will create additional jobs that an ANZP would be unlikely to create if it purchased the Property. The Applicant intends to retain 6.6 FTE of those currently employed on the Property and to employ an additional 14.6 FTE within a year of acquisition of the Property.
101. The Vendor currently employs 5.6 FTE in relation to the cleanfill on the Property and 3 FTE in relation to the closure and shutdown of the quarry business. While the quarry pits are no longer producing, staff are required to conclude the dealings of this business and mind the quarry pits. When the quarry business was working at full capacity the Vendor employed 17 FTE on average throughout the year.

Cleanfill Operation and development of the Dewatering Facility - 8.6 FTE created or retained

102. The Applicant will retain the 5.6 FTE currently employed by the Vendor on the cleanfill site. These roles are:
- a) 1.6 FTE weighbridge operator;
 - b) 1 FTE cleanfill operator;
 - c) 1 FTE managed fill operator;
 - d) 1 FTE environmental and quality technician; and
 - e) 1 FTE site manager.
103. The Applicant intends to develop a dewatering facility where staff will be required. Further if the Applicant [s 9(2)(b)(ii)] it intends to [s 9(2)(b)(ii)] This means that additional staff would be required which the Applicant estimates at 6 FTE. [s 9(2)(b)(ii)] [s 9(2)(b)(ii)]

Counterfactual

104. The Applicant considers that an ANZP would retain 3 of the 5.6 FTE employed by the Vendor in relation to the cleanfill site, as they would be required to run the

cleanfill. The Applicant further contends that 2.6 of the existing FTE are unlikely to be retained by an ANZP as they are likely to be surplus to requirements and the Applicant will only need these 2.6 FTE jobs as a result of the its proposed expansion of the cleanfill operation and development of the dewatering facility.

105. The additional 6 FTE (resulting from [s 9(2)(b)(ii)]) would not be required at all under the counterfactual as the cleanfill on the Property would not be expanded and the dewatering facility not developed. This is due to an ANZP being unlikely to have the expertise and knowledge to [s 9(2)(b)(ii)] develop the dewatering facility or have the finances to be able to do so.

Our assessment

106. The Applicant has provided insufficient information to determine that 2.6 FTE from the Vendor's current operation would likely be lost without the Investment. Accordingly, we consider an ANZP would likely retain a similar operation (5.6 FTE) to that being run by the Vendor. [s 9(2)(b)(ii)]

Maintenance and Operational support staff- 1 retained FTE

107. The Applicant will offer to retain 1 FTE employed by the Vendor (of the total 8.6 FTE) as maintenance and operational staff on one of its other Auckland sites – either Hampton Downs or at its Pukekohe transfer station.

Counterfactual

108. The Applicant claims this 1 FTE would not be retained by an ANZP purchaser as this type of role is not required for the operation of a cleanfill on the Property. As noted in our counterfactual section above, we consider an ANZP is unlikely to have the same scale as that of the Applicant. It is therefore unlikely that an ANZP would retain this role.

Our assessment

109. We are satisfied that the retention of this job, for maintenance / operational reasons on one of its other Auckland sites, is only likely to occur with the Investment.

C&D Operation-7 FTE created

110. The Applicant submits that it will create 2 FTE within a year of acquiring the Property at its Auckland transfer stations. These roles are required due to the increased volume of wood that will need to be dealt with. The roles will involve the [s 9(2)(b)(ii)]

[s 9(2)(b)(ii)] But for the development of the C&D Operation these roles would not be required as there would not be wood to be sorted.

111. A further 5 FTE will be created within a year of acquisition of the Property. These FTE will be employed at the new C&D Operation and will deal with [s 9(2)(b)(ii)]

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

Counterfactual

113. As noted in our counterfactual section above, we consider an ANZP is unlikely to have an equivalent existing waste management business of the scale that the Applicant has. It is therefore unlikely that the ANZP would develop a C&D Operation and employ the FTE required to run such an operation.

Our assessment

114. We are therefore satisfied that the 7 FTE resulting from the C&D Operation are only likely to occur with the Investment.

Increased Cleanfill Supply to Property from Transfer Stations- 3 FTE created

115. The Applicant submits 3 new FTE will be required within a year of acquisition in relation to the transfer of cleanfill from the Applicant's four Auckland transfer stations¹⁸ to the Property. A 0.75 FTE machine operator will be required at each site, so 3 FTE in total. These machine operators will manage incoming trucks and load out material for transfer to the Property.

Counterfactual

116. The Applicant submits, and we agree, that these 3 FTE would not be created by an ANZP as they would be unlikely to have such a large network of transfer stations or such a large supply of materials for the cleanfill as the cleanfill would not be expanded.

Our assessment

117. We are therefore satisfied that the 3 FTE resulting from the additional work at the Applicant's other transfer stations is only likely to occur as a result of the Investment.

Vermiculture Operation-1 FTE created

118. The Applicant expects one FTE will be created to work on the vermiculture operation, an operations technician responsible for the operation and maintenance of the vermiculture process which will result in a Vermicast compost product.

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

Counterfactual

120. We consider it unlikely an ANZP would establish a vermiculture operation, which is outside the core business of a cleanfill, and as such no additional FTE would be created.

Our assessment

121. We are therefore satisfied that an additional FTE will be required for the vermiculture operation which is only likely to occur as a result of the Investment.

Conclusion

122. We consider it likely that an ANZP would be likely to continue to run the clean fill operation in a manner similar to the Vendor, without expanding it or developing a C&D operation, dewatering facility or vermiculture operation. This is because an ANZP is likely to be a new entrant to the cleanfill market and is unlikely to expand the cleanfill or undertake new developments due to lack of scale, experience and financing. This would mean the additional FTE created under the Applicant's development plans are unlikely to be created under the ANZP's ownership.

¹⁸ Located at Patiki Road, Pikes Point, Wiri and Pukekohoe

123. We therefore consider that the Applicant's plans for the Property are likely to result in a net increase of 12 FTE (being 1 FTE retained for maintenance/operations, 7 FTE for the C&D Operation, 3 FTE for the increased work at the transfer stations, and 1 FTE for the vermiculture operation). The Investment may result in a further 6 FTE [s 9(2)(b)(ii)] We consider this benefit to be of **strong weighting**.

Added market competition, greater efficiency or productivity, enhanced domestic services

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:
 - (i) **added market competition;**
 - (ii) **greater efficiency or productivity;** or
 - (iii) **enhanced domestic services.**
- The added market competition, greater efficiency or productivity, or enhanced domestic services must occur in 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.

124. We consider that the Applicant's proposed developments on the Property are likely to provide enhanced domestic benefits for the Auckland region through expansion of the cleanfill operation and development of the C&D Operation, dewatering facility and vermiculture operation.

Enhanced Domestic Services

125. The Applicant claims its proposed development on the Property will enhance domestic services in the Auckland region by development of:
- a) expanding the clean fill operation to take full advantage of its capacity;
 - b) the C&D Operation where mixed waste, including building waste, can be recycled;
 - c) a dewatering facility to [s 9(2)(b)(ii)] and
 - d) a vermiculture operation to help meet demand for food waste recycling resulting in production of high quality compost for the local region.

Clean fill expansion & Dewatering facility

126. The Applicant claims that the Auckland region requires further disposal outlets for the waste created by the construction industry. This industry requires clean fill facilities that are easily accessible. [s 9(2)(b)(ii)] The Applicant submits this will increase productivity for its customers.

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

¹⁹ A 4.5 metre diameter wastewater tunnel expected to reduce wastewater overflows in central Auckland by up to 80%

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



*Source: Auckland Council engineering report

128.

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

Council comment on cleanfill expansion and dewatering facility

129.

The Waikato Regional Council ("**WRC**") have advised that, taking a wider approach across both the Waikato and Auckland regions, there is a greater need for more cleanfill space. The WRC referred us to an Environment Court case²⁰ which states every new house built results in approximately 25 square metres of spoil which would generally be disposed of at a cleanfill site. The Court notes that given the rate of building occurring in the Auckland region it would expect the Council and Auckland Transport to be making strategic plans to deal with the resulting waste, but whether that was the case was unclear.

130.

After discussions with WRC, it appears that the relative isolation of the Property would make it suitable for the Applicant's proposed developments.

131.

Auckland Council have advised that 2 million tonnes in waste was generated by the Auckland region in 2016 and they expect those volumes to grow by 2.4% per annum.

C&D Operation

132.

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

²⁰ Norsho Bulc and Auckland Council and Blackbridge Environmental Protection Society Decision No. [2017] NZEnvC109

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

133. [s 9(2)(b)(ii)] These transfer sites currently receive approximately [s 9(2)(b)(ii)] tonnes of wood each year and the Applicant intends [s 9(2)(b)(ii)]

134. As discussed above, the Applicant will [s 9(2)(b)(ii)] on the Property to [s 9(2)(b)(ii)]. The Applicant claims that each house uses [s 9(2)(b)(ii)] tonnes of [s 9(2)(b)(ii)] and that 15% of all [s 9(2)(b)(ii)] ends up as [s 9(2)(b)(ii)]. This leads to a large amount of [s 9(2)(b)(ii)] being disposed of at transfer stations in the Auckland region. The Applicant hopes to be able to recycle [s 9(2)(b)(ii)] tonnes a year of [s 9(2)(b)(ii)] increasing to [s 9(2)(b)(ii)] tonnes over [s 9(2)(b)(ii)] years.

Counterfactual

135. As noted above, we consider it unlikely that an ANZP would expand the cleanfill or develop any additional or new developments due to both a lack of experience, it not being their core business and potentially not having the funding. We note the Applicant's submissions of potential alternative purchasers at **Attachment 7**. We are therefore satisfied that the enhanced domestic services resulting from the new developments are only likely to occur with the Investment.

Our Assessment

136. We consider there is a requirement for further developments of this type in the Auckland and Waikato regions. The Applicant's other northern region site-Hampton Downs- does not have these developments on site. Hampton Downs is discussed further at paragraphs 176-179. We consider the Applicant's plans will therefore provide an enhanced domestic service to both regions, in particular the Auckland region, in this regard and the resulting benefit to be of **strong weighting**.

Indigenous vegetation/fauna

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

- The relevant land must contain **significant existing**:
 - (i) areas of indigenous vegetation; or
 - (ii) habitats of indigenous fauna.
- There must be **adequate mechanisms** in place or proposed to **protect or enhance** the significant area or habitat.
- The protection or enhancement of the significant area or habitat that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**

137. We consider the environmental protections the Applicant has agreed to put in place are likely to be of benefit to New Zealand.

Existing covenanted Land

138. There is an approximately 1 hectare area of native bush on the Property which is protected by a conservation covenant registered under the Reserves Act 1977²¹. The area is labelled in green in the centre of the picture below:



139. The covenant prevents future development on the covenanted area and obliges the owner of the Property to manage the covenanted area with the purpose of protecting and enhancing the native bush in that area²². The owner is also obliged to undertake animal and pest control in this area. Should consent be granted, these obligations and maintenance of the covenanted area will become the Applicant's. We note the Applicant is not bringing any additional protection to this area.

Boffa Miskell Report

140. The Applicant commissioned Boffa Miskell ("**Boffa**") to undertake an ecological values report on the Property ("**Report**")²³.

²¹ Contained in title NA94C/844 and NA64C/521

²² Prohibited activities in the area include construction of buildings or structures, planting of exotic species, excavation, pumping of ground water, entry by the general public, granting of easements and accumulation of rubbish.

²³ Contained in the bundle

141. The Report identified three ecologically significant areas of mature native forest on the Property. These are shown as Areas 5, 6 and 7 in the picture below:



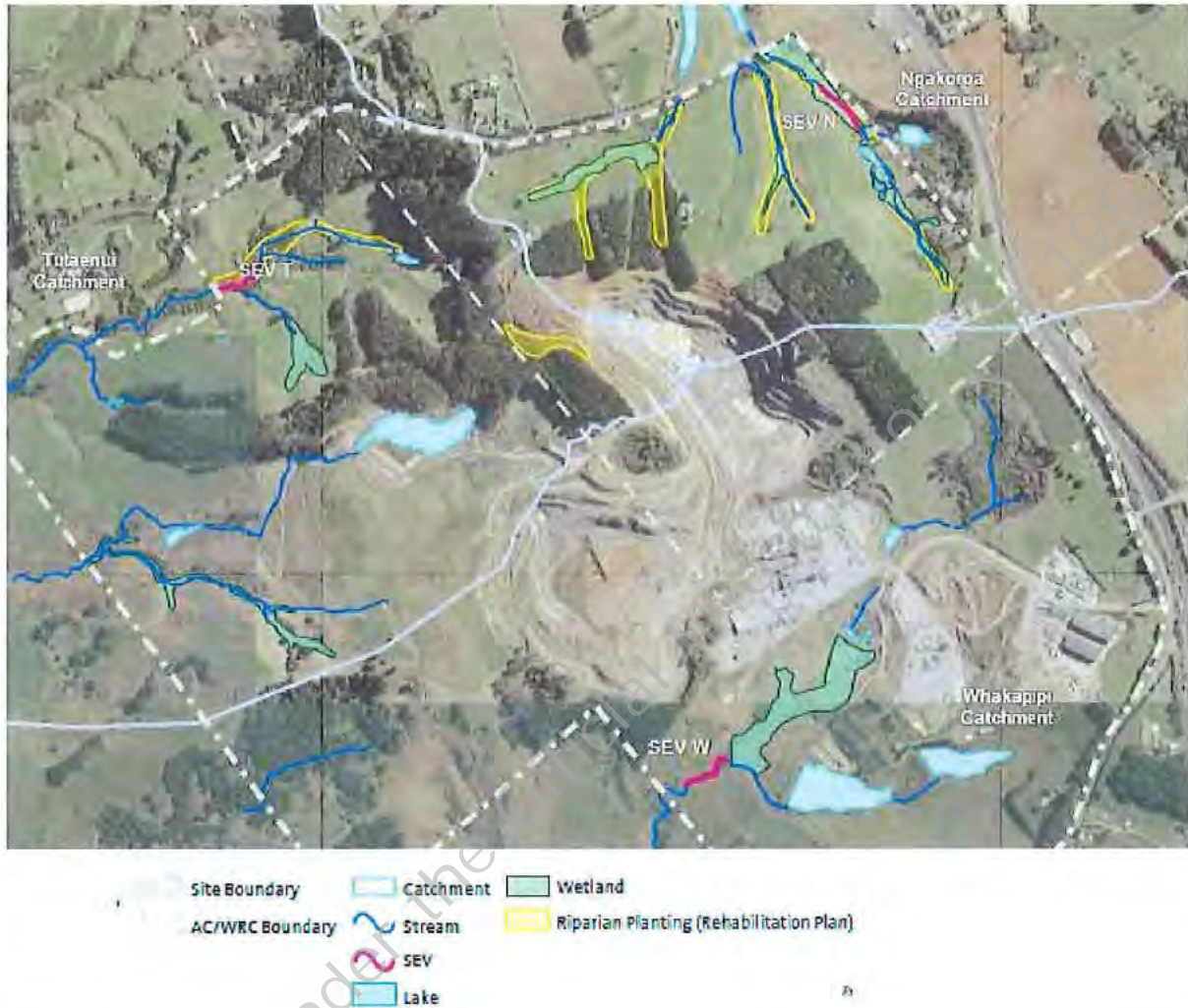
142. The Report states Areas 5, 6 and 7 may also support at risk native lizard fauna. Area 3 in the picture at paragraph 138 above has high stream ecological values, similar to a native forest stream and in Boffa's opinion should be regarded as an ecologically significant area. The Report states that Area 3 requires additional riparian protection, weed control and planting to protect and enhance its values.
143. The Report recommends fencing and pest control of permanent indigenous areas as well as buffering existing vegetation, although no specific areas are identified.
144. The Applicant is agreeable to all recommendations in the Report.

DOC Report

145. DOC was provided with a copy of the Report and undertook a site visit to the Property with the Applicant's representatives. As a result, DOC prepared its own report ("**DOC Report**")²⁴.
146. DOC made certain recommendations over and above those contained in the Report. These are included in the table below together with the Applicant's comment. All references to Areas are those as shown in the picture at paragraph 138 above. All

²⁴ Contained in the bundle.

references to coloured areas are those as shown in the picture below. In light of DOC's recommendations and the Applicant's comments, we have recommended imposing conditions that we think are appropriate in the circumstances for the Property:



	DOC Recommendation	Applicant comment
1	All stock be removed from the Property until fencing is completed around areas 1, 3, 3b, 4, 6 and 7	The Applicant is willing to complete the required fencing within 3 years of consent being granted and shall use reasonable endeavours to ensure stock is not permitted to enter onto areas 1,3, 3b,4,6 and 7 prior to that.
2	Areas 1, 3, 3b, 4, 6 and 7 and all wetlands or waterways that are fenced should be protected by QEII covenants to ensure perpetuity	The Applicant shall, no later than one year following the date on which the required fencing is completed engage with the QE II Trust and seek a QE II covenant over the fenced and replanted areas.

	DOC Recommendation	Applicant comment
3	Areas 6 and 7 (encompassing 4) are steep hill country and should be progressively replanted	Areas 4, 6 and 7 shall be fenced where not already fenced and progressively re-planted. The Applicant will not allow stock to graze on areas 4,6 and 7.
4	All waterways and seeps on the Property are to be fenced with riparian buffers of 20 metres on either side	The Applicant will fence all waterways and wetlands not already fenced in accordance with resource consent requirements, to provide riparian buffers of 10-120 metres on either side. This fencing will be completed within 3 years of the date of grant of consent.
5	All fenced areas be revegetated with appropriate ecosourced native plantings with maintenance programmes put in place. The target should be 80% indigenous cover	<p>The Applicant will undertake revegetation planting of the fenced areas as shown in yellow on the picture at paragraph 141.</p> <p>The Applicant will prepare a planting plan, including a maintenance plan within one year of acquiring the Property and submit the same to DOC within that same period. The plan will target achieving a minimum of 80% indigenous cover.</p> <p>The Applicant proposes a timeline of 15 years from the grant of consent for the completion of the planting.</p>
6	Any existing fenced riparian areas should be reviewed and have 20 metre set back put in place on either side of the bank	The Applicant proposes that where riparian areas have been fenced in accordance with the conditions of existing resource consents that fencing and planting remain in place without amendment
7	<p>Intensive pest control should be undertaken:</p> <ul style="list-style-type: none"> *possums should be maintained year round at or below 5% residual trap catch index; *rats should be maintained year round at or below 5% tracking rate or equivalent; *possum and rat numbers should be 	The Applicant shall prepare a pest control programme for the Property and submit the proposed programme to DOC for approval within one year of acquisition of the Property. Following approval of the pest

	DOC Recommendation	Applicant comment
	monitored on a 6 monthly basis.	<p>control programme by DOC, possum and rat abundance must be monitored on a six monthly basis. The Applicant will use reasonable endeavours to implement the pest control programme to achieve the following targets within two years of the pest control programme being approved:</p> <ul style="list-style-type: none"> * possums are maintained year-round at or below 5% residual trap catch index or equivalent; and * rats are maintained year-round at or below 5% tracking rate or equivalent.
8	A weed control plan should be put in place to protect and enhance any areas of native vegetation and general weed control should be undertaken over the rest of the Property to reduce further invasion.	The Applicant will, within one year of acquisition of the Property, prepare a weed control plan for the Property and submit it to DOC. This plan shall seek to protect and enhance the areas fenced and replanted and to deliver general weed control over the Property. The weed control plan shall be implemented following DOC approval.
9	Removal of exotic plantation species from the Property should have a sustainable logging plan which should include proposals to establish and maintain forested corridors across the site which may include replacing with indigenous species or compensating the loss of forested cover by planting an equivalent area on the site in indigenous vegetation.	<p>The Applicant will prepare a sustainable logging plan in respect of the exotic plantation species on the Property (shown as pale green in the picture at paragraph 141).</p> <p>The sustainable logging plan shall consider possible means of mitigating the impacts of the logging and consider forested corridors across the Property. It shall include proposals to replace removed exotic species with exotic or native species in the same area on the Property (but may also allow, at the Applicant's discretion, for substitution of logged areas with equivalent areas planted by the Applicant in indigenous</p>

	DOC Recommendation	Applicant comment
		vegetation). The logging plan shall be prepared and submitted to DOC for approval within 3 years of acquisition of the Property. Following approval of the logging plan by DOC, any logging on the Property shall be conducted in accordance the logging plan.

Counterfactual

147. If an ANZP were to purchase the Property they would be under no obligation to consult with DOC or undertake any environmental protections other than ensuring the existing covenanted land is protected. It is possible that given they would not need to consult, areas identified as significant by DOC may be developed on.

Conclusion

148. While the Applicant has not accepted all recommended conditions²⁵, we consider that the protections agreed between the Applicant and DOC are likely to be of benefit to New Zealand. The full extent of these benefits are unlikely to occur should an ANZP purchase the Property (although it is possible some of these benefits may occur anyway). Given the level of protections put in place we consider the likely benefit to be of **strong weighting**.

Historic heritage

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

- **Historic heritage** must be identified **within the relevant land**.
- There must be **adequate mechanisms** in place or proposed to **protect or enhance** the historic heritage.
- The protection or enhancement of historic heritage that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

149. We consider the Applicant's purchase of the Property is likely to ensure that certain areas of potential historic importance to New Zealand will be investigated and, if necessary, protected.
150. The Applicant liaised with Heritage New Zealand directly ("**Heritage**"). Heritage's response can be found in **Attachment 3**.
151. Heritage have advised there are two areas which require further investigation:
- a) one area, which contains subsurface scatter of ceramics, glass and bricks, about 10 metres in a circular depression 1 metre in diameter and 30cm deep²⁶, has never had any earthworks undertaken on it and it is now covered in trees between 15-20 years old ("**Site 1**"); and
 - b) another area, where a possible small terrace was observed²⁷, has not been entered into the New Zealand Archaeological Association Site Record System ("**NZAA**") at all ("**Site 2**").

²⁵ Such as the replanting in DOC recommendation 3 and not replanting with exotic species in DOC recommendation 9.

²⁶ The Applicant advises that it appears the site is not of significant age, and is unlikely to date to earlier than the last two decades of the nineteenth century.

²⁷ The Applicant advises that no midden or blackened soil were exposed during investigations into this area.

152. Heritage recommend that no felling of trees or earthworks be undertaken on Site 1 without first obtaining an archaeological authority from Heritage, and that an archaeologist investigate Site 2 to confirm whether there are any archaeological values and record Site 2 in NZAA.
153. The Applicant is agreeable to arranging for investigation of Site 2 and undertaking not to undertake works on Site 1 without archaeological authority from Heritage.

Counterfactual

154. If an ANZP purchases the Property it is unlikely that they would involve Heritage to investigate Site 1 and Site 2.

Our Conclusion

155. While we consider there is benefit to New Zealand likely to occur from the Applicant's agreeing to investigate Site 2 and only undertake works on Site 1 with permission from Heritage, we consider the benefit likely to occur is of **weak weighting** as these sites have not been identified as significant. We also note there are existing protections for heritage sites, such as those set out in the Heritage New Zealand Pouhere Taonga Act 2014.

Walking access

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

- There must be **adequate mechanisms** in place or proposed to **provide, protect or improve walking access**.
- The walking access must be over the **relevant land**.
- The walking access must be **available to the public** or any section of the public.
- The provision, protection or improvement of walking access that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

156. We consider that the walking access provided by the Applicant is likely to be of benefit to the local community.

Walking Access Commission Report

157. Walking Access Commission ("**WAC**") undertook a site visit to the Property with the Applicant's representatives. As a result, WAC prepared a report outlining the access it thought suitable for the Property ("**WAC Report**")²⁸.

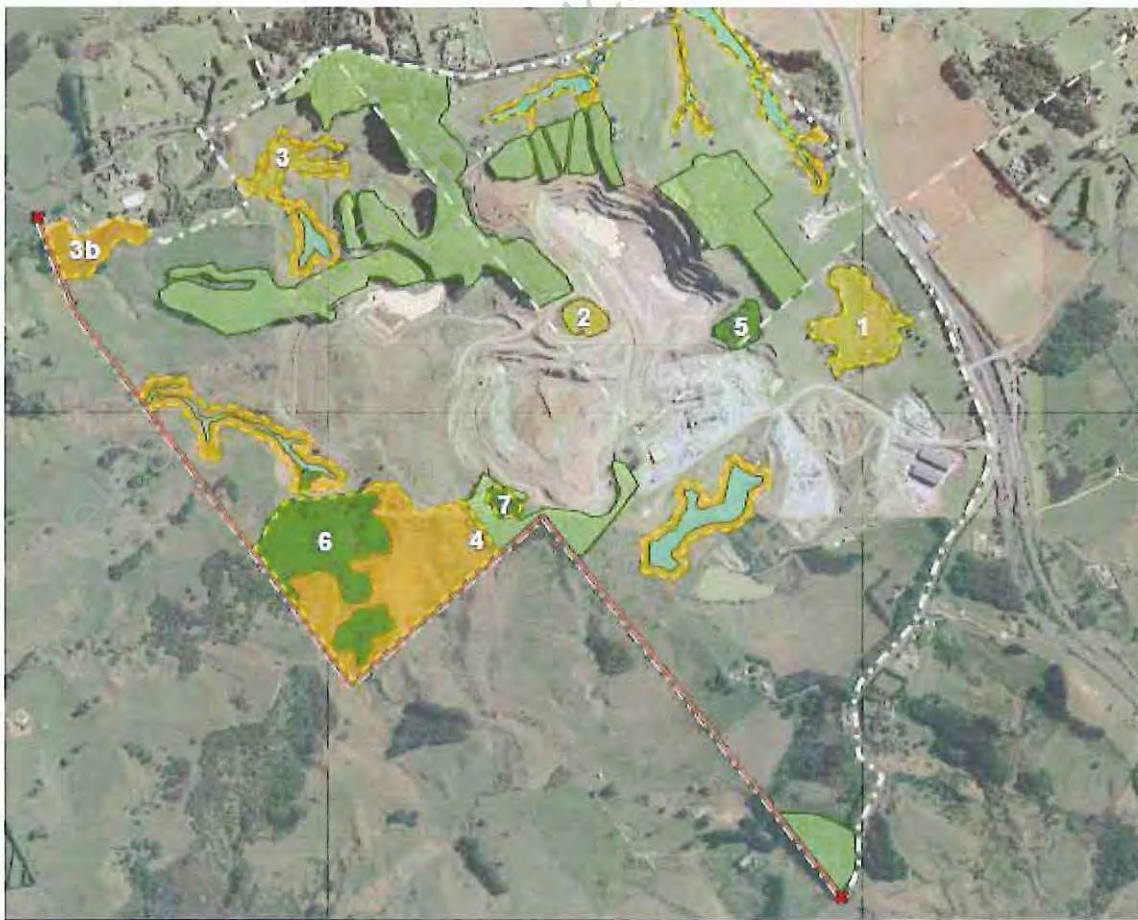
Proposed Access

158. WAC's proposed walkway is delineated in the yellow lines in the picture below. The Property is shaded grey with WAC's proposed entry/exit points noted as red:

²⁸ Contained in the bundle.



159. The below map shows the western boundary of the Property marked in red. This boundary is referred to in the table directly below the map:



160. We set out in the table below WAC's recommendations and the Applicant's comments. For ease of reference, we have highlighted in orange where the Applicant and WAC could not agree (or could only partially agree) on an issue.

	WAC Recommendation	Applicant comment
1	The Applicant to liaise with WAC, and where relevant DOC, to agree and finalise a plan for implementing the following: assessment of riparian restoration and conservation covenant areas within the property and alignment of public access through or around these where public access is, in the reasonable opinion of WAC, warranted.	Once the Applicant has acquired the Property, the Applicant will liaise with WAC, and where relevant DOC, to allow WAC to undertake an assessment of the riparian restoration and covenant areas within the Property along the proposed access route around the western boundary of the Property.
2	The Applicant must confirm a suitable public access route alignment within and along the Property boundaries adjacent to State Highway 1 (Nikau Road), Beaver Road and the western boundary. The route alignment will include driveway crossings, wetland and stream crossings, exit and entry points and connection to car parking.	After the completion of the assessment referred to at 1 above, the Applicant will negotiate with WAC to agree an appropriate public access route alignment along only the western boundary of the Property, having regard to the Applicant's intended use of the Property. The route will include entry and exit points on Ridge and Beaver Roads and may, if required, include wetland and stream crossings.
2a	Confirm appropriate crossing alignment and vegetation clearance required for public access across driveway that intersect with the proposed access trail.	The Applicant is not agreeable to walking access along the Beaver Road boundary of the Property so there is no need to consider walking access across driveways.
2b	Confirm wetland crossings that require board walks, and water courses that require bridges for public access.	The Applicant will negotiate with WAC and DOC to agree which wetland crossings require board walks and which water courses require bridges and any other appropriate track specifications, having regard to the Applicant's obligations with regard to the ecological areas traversed by the walkway.
2c	Confirm the best placement for vehicular access	The Applicant will agree to

	WAC Recommendation	Applicant comment
	and parking for ten cars inside the property boundary, accessed from Beaver Road.	consider and discuss with WAC the possible creation of a carpark for 10 cars but only in the north western corner of the Property with the entrance to it from the far western corner that connects to Beaver Road. If a location suitable location within that area can be located and agreed, WAC will be responsible for obtaining all necessary consents to create the carpark (including any necessary driveway crossings from the road) and will need to manage the carpark (including ensuring there is no freedom camping or other undesirable activities which may impact on the adjoining house sites) on an ongoing basis.
3	Establish a 10 metre wide gazetted walkway easement (under the Walking Access Act 2008) within and along the property boundaries adjacent to State highway 1 (Nikau Road), Beaver Road and the western boundary for walking, cycling and dogs on leads and to include entry and exit points connecting the walkway to legal roads.	The Applicant will grant a 10 metre wide gazetted walkway easement (pursuant to the Walking Access Act 2008) within and along the alignment agreed in item 2 above along the western boundary of the Property for walking, cycling and dogs on leads . This is to include entry and exit points connecting the walkway to legal roads (as marked 'x' on the picture directly above this table) The easement will include terms and conditions that acknowledge the Property is an operating industrial site.
4	Establish a gazetted walkway easement (pursuant to the Walking Access Act 2008) allowing for vehicular access and parking for ten cars inside the Property boundary (dimensions to be determined by negotiation), accessed from Beaver Road and adjacent to the walkway.	As for 2c above
5 ²⁹	In consultation with WAC, provide signage and information about the public access where	Once the walkway has been formed, the Applicant will allow

²⁹ This recommendation disappeared in the most recent version of WAC's report, but given the Applicant and WAC are largely in accord on this matter we have still included it in this report.

	WAC Recommendation	Applicant comment
	appropriate (having regard to safety and operational concerns). This is to include erecting signs at each entry exit point to the Property.	WAC to erect signage identifying each entry and exit point to the walking track on the Property, the content of which is to be agreed between WAC and the Applicant (having regard to safety and operational concerns).
6	The consent holder is responsible for all costs associated with the survey of the walkway easement prepared by a registered surveyor and registration of the walkway easement in accordance with the Land Transfer Act 2017	The Applicant will agree to meet the reasonable and actual costs of survey and registration of the easement. To the extent that there is negotiation regarding the drafting of and terms of the easements each party shall bear their own costs.
7	The Applicant agrees to allow WAC and the local authorities, their consultants, employees and contractors reasonable access to the Land, and to remain on the Land, with their equipment, vehicles, machinery and tools for the purpose of completing investigations and undertaking construction of the works (if any) required to construct the walkway over the easement area.	This condition would be included in the easement in any event (see for example, the implied terms under the Land Transfer Regulations) and the Applicant has offered access for investigation. Any access for investigation and formation will be subject to the Applicant's health and safety requirements and other reasonable requirements as to access, and to WAC (or the controlling authority) and their contractors fully complying with all district and regional requirements such as sediment controls, consents etc in undertaking the investigations and works.
8	The Applicant will remove vegetation to ensure a clear line of sight for vehicles using driveways intersecting the easement and to clear vegetation within the easement adjacent to Beaver Road and form a 10 car park within the property adjacent to Beaver Road	No driveways will be crossed as part of the Applicant's proposed western route. The Applicant considers WAC is better placed to undertake the necessary clearing of the easement area and all formation costs (including the carpark).
9	In addition to any costs associated with the	The costs of implementing the

	WAC Recommendation	Applicant comment
	above recommendations, the Commission considers that \$100,000.00 would be a sufficient contribution from the consent holder towards the construction of this walkway	above recommendations (including all ongoing maintenance of the walkway) will be met by WAC. The Applicant will reimburse WAC up to \$100,000 (plus GST) of such costs on the presentation to the Applicant of receipts and tax invoices for work undertaken on the Property and registration / survey costs.

The Applicant's reasons for offering differing access to the Property than recommended by WAC

161. It would be beneficial for people in the district to have walking access along the western edge of the Property as it provides access to Mount William / Puketutu scenic reserve and walkway.
162. While the western boundary of the Property is largely removed from the likely cleanfill business working areas, there are a number of points at which the proposed route is very close to the proposed working areas. The Applicant will be in a better position to fully understand the site operations, and therefore to agree the exact route with WAC, following completion of the Transaction.
163. The Applicant has not offered walking access along the northern Beaver Road boundary of the Property or the eastern State Highway 1 boundary or a car park facility. The reasons for this generally fall into three categories:
- concerns regarding the safety of pedestrians in an area of significant high volume heavy vehicle movements;
 - concerns regarding the impact of site operations on potential users and the limiting impact of the proposed route on the use of the Property; and
 - uncertainty as to the demand or use case for the proposed walking access track and the likelihood of local connectivity (including over State Highway 1) to the proposed walking access track.
164. In **Attachment 8** we set out in greater detail why the Applicant does not consider that certain walking access is appropriate.

Counterfactual

165. The Applicant submits an ANZP would be under no obligation to liaise with WAC or provide any walking access to the public on the Property.

Our assessment

166. We consider that the walking access provided by the Applicant is likely to be of benefit to the local community. We consider that this benefit is likely to be of **moderate benefit**.

Consequential benefits

There are three key elements to this factor (reg28(a) of the Act):

- There must be a **consequential benefit to New Zealand**.
- The benefit must not have been considered under another factor, it must be **another** consequential benefit.

- The consequential benefit that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

167. We consider that the introduction of solar power and lithium ion batteries to store power is likely to be of consequential environmental benefit in making the business on the Property more sustainable and less reliant on the national power grid.
168. The Applicant submits that it will undertake a number of actions which will provide consequential environmental benefits to New Zealand. In summary, these are:
- a) enhancing the Auckland region's cleanfill capacity;
 - b) the introduction of solar panelling to create and supply electricity to power various activities on the Property and the introduction of a lithium ion battery bank allowing excess solar energy to be stored;
 - c) off-setting 350 tonnes of carbon dioxide by planting 10 hectares of trees around the old quarry site producing an estimated sequestration of 3,500 tonnes of CO₂ over the next 10 years;
 - d) a reduction of 32,000 tonnes of carbon dioxide landfill emissions each year through building the wood recovery facility (forming part of the C&D facility) which will achieve this by recovering **s 9(2)** tonnes of wood; and
 - e) further reduction in carbon dioxide emissions by purchasing **s** new electric waste collection vehicles, replacing existing internal combustion vehicles.

Cleanfill Capacity

169. We note that the Applicant has made submissions in this regard, but consider that the enhancement of Auckland's cleanfill capacity has already been considered under the benefit of enhanced domestic services under s17(2)(a)(iv). We have not considered this benefit here to avoid double counting the same benefit twice.

Solar power

170. The Applicant advises it is not aware of any other cleanfills that utilise this technology. The Applicant submits its proposed development will improve the carbon footprint of the Property. The Applicant is committed to the reduction of its carbon footprint across its business and the opportunity to use solar technology in a non-traditional application adds to this commitment and will make the Property partially self-reliant.
171. The WRC have advised that the use of solar and lithium batteries will be a new activity in the Waikato region and would appear to reduce the Applicant's reliance on the national grid.

Counterfactual

172. We consider it is unlikely that an ANZP that is new to the cleanfill market would introduce solar power or install lithium ion batteries on the Property as this is relatively new technology and is not currently readily employed by the waste industry.

Planting of trees

173. The Applicant intends to plant in stages as each section of the fill site is completed. The extent to which trees can be planted on the remediated land will depend on how quickly landfill can be completed and remediated. The Applicant estimates that the proposed 10 hectares of planting will take up to 5 years to complete.
174. The Applicant currently envisages that the planted land will be used solely for the purposes of carbon sequestration and has no immediate plans for the harvesting, processing and exporting of timber.

Counterfactual

175. We consider that while it is possible that an ANZP may also undertake planting on the Property, it is unlikely. However, we have not considered this benefit here as planting is considered under the environmental conditions.

Our Assessment

176. We consider the introduction of solar power and lithium ion batteries to store that power is likely to be of consequential environmental benefit in making the business on the Property more sustainable and less reliant on the national power grid. We consider that an ANZP would be unlikely to invest in the use of this technology. We consider such a development is unlikely to occur if the Investment does not proceed and consider it to be of **moderate to low weighting**.

Previous investments

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

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

177. We consider that the Applicant's previous investments have been, or are of, benefit to New Zealand.
178. Since the Applicant was acquired by CKI in 2013 the Applicant has undertaken major projects which the Applicant submits have improved New Zealand's waste processing capacity and generated new FTE. There are discussed below:

Hampton Downs

179. The Applicant operates the North Waikato Regional Landfill at Hampton Downs named the Hampton Power and Resource Recovery Centre ("**Hampton Downs**"), pictured below, 55 kilometres south of Auckland. It is one of the largest in New Zealand and services a large part of the upper North Island, including Auckland.
180. Hampton Downs is consented to a capacity of 30 million cubic metres with further capacity beyond this and can process approximately [s 9(2)(b)] tonnes of waste per annum and is consented to operate until [s 9(2)(b)].



Leachate treatment plant-Hampton Downs

181. The Applicant submits that this fully automated plant was the first of its type in New Zealand at a cost of [s 9(2)] million. The Applicant states that this is a vibratory reverse

osmosis plant designed to treat [s 9(2)(b)(ii)] per day of landfill leachate. It recovers up to [s 9(2)(b)(ii)] per day of pure water which can be discharged into local waterways. This plant operates 7 days a week and is operated by 1.5 skilled FTE.

GORE Composting plant-Hampton Downs

182. The Applicant installed a GORE green waste composting facility at Hampton Downs using GORE technology from Germany where green waste is composted under GORETEX covers in controlled conditions (i.e. temperature, humidity, and oxygen) to mitigate the plant's impact on the environment. The plant is designed to process up to [s 9(2)] tonnes per annum of green waste into compliant compost³⁰ which is then sold as a growing media to improve soil health.

Chemwaste Treatment plant and building-Auckland

183. In 2015, ChemWaste Auckland (a business unit of the Applicant) completed construction of a new main processing building and chemical treatment plant for treatment of liquid and hazardous waste at a cost of [s 9(2)] million. These buildings are negatively pressurised buildings connected to purpose built air pollution control equipment. The Applicant states that this provides necessary services to New Zealand industry by safely treating and disposing of approximately [s 9(2)(b)] tonnes per year of liquid and hazardous waste. This plant employs 22 FTE.

Transfer Station & Dewatering Plant-Cass Street, Christchurch

184. The Applicant completed construction of its Cass Street transfer station in 2015 at a cost of [s 9(2)] million. The central location of this facility provides for the much needed drop-off and accumulation of both liquid and solid non-hazardous waste loads generated from the Christchurch rebuild. The Applicant submits that this facility operates 7 days per week, employs 6 fully trained FTE's and plays a key role in helping assist the speed of rebuilding the City of Christchurch.

Our Assessment

185. We accept that the Applicant's previous investments listed above have been or are of benefit to New Zealand. Waste management services are essential services to New Zealand, and the Applicant provides collection services nationwide as well as landfill and transfer stations.
186. Further we note that the Applicant also operates recycling and waste minimisation programmes in connection with Councils and commercial entities. It also operates a gas to energy capture at its Hampton Downs landfill. The Applicant's submissions regarding its previous investments demonstrate an environmentally sustainable approach to waste management.

Advance significant government policy or strategy

There are three key elements to this factor:

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

187. We consider the Applicant's development plans for the Property will advance the New Zealand Waste Strategy.

New Zealand Waste Strategy

³⁰ Z Standard NZ4454

188. By developing waste disposal and recycling capacity on the Property, it is advancing the New Zealand Waste Strategy³¹ (“**Waste Strategy**”).
189. The Waste Strategy has two goals:
- a) To reduce the harmful effects of waste; and
 - b) Improve the efficiency of resource use.
190. The Applicant submits that its proposed development on the Property advances the first goal ie “to reduce the harmful effects of waste” by increasing the overall waste diversion, disposal and recycling capabilities for Auckland and the surrounding areas. This will create more options to safely dispose of potentially harmful waste as well as create sites where inert waste can be disposed of.
191. The Applicant’s proposed transfer station integration will also allow for the disposal of small lots of clean fill from domestic and commercial customers who otherwise would need to travel long distances to dispose of it.
192. The Applicant submits that the development on the Property also advances the second goal by getting more value from the resources used, including reusing and recycling waste. The Applicant submits its proposed vermiculture operation will provide a further source of Vermicast compost for the surrounding areas.
193. We consider that an ANZP is unlikely to undertake such an extensive development as the Applicant’s. Accordingly, the Waste Strategy under an ANZP is unlikely to be given effect to the same extent as the Applicant.

Auckland, Waikato and Tauranga Council’s Waste Management and Minimisation Plans

194. The Applicant considers its development plans for the Property will also advance the waste management and minimisation plans of each of the Auckland³², Waikato³³ and Tauranga³⁴ Councils, by providing increased recycling and disposal capability and will:
- a) Reduce the reliance of Auckland, Waikato and Bay of Plenty on landfills by providing a development where cleanfill and construction materials can be diverted to and converted for other uses;
 - b) Restricting organic waste going to landfill through utilisation of its vermiculture operation;
 - c) Reducing harm from waste by increasing capacity for consented disposal sites for waste; and
 - d) Maximising resource recovery utilising the proposed developments on the Property.

Counterfactual

195. If consent is not granted to the Applicant to acquire the Property we consider it unlikely that an ANZP would develop the C&D Operation, dewatering facility or a vermiculture compost facility on the Property. The Central and Local Government

³¹ <http://www.mfe.govt.nz/publications/waste/new-zealand-waste-strategy-reducing-harm-improving-efficiency>

³² <https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-plans-strategies/topic-based-plans-strategies/environmental-plans-strategies/docs/wastemanagementplan/auckland-waste-management-minimisation-plan.pdf>

³³ https://wdcsitefinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-bylaws/plans/waste-minimization-management-plan/waicd_waste-management-minimisation-plan_v-06_final.pdf?sfvrsn=9b2783c9_4

³⁴ https://www.tauranga.govt.nz/Portals/0/data/council/plans/reserve_management/files/waste_management_and_minimisation_plan.pdf

waste strategies identified are therefore more likely to be advanced if the investment proceeds.

Our Assessment

196. We consider that this factor is met and the investment is likely to lead to the advancement of Central and Local Government waste strategies including through the diversion of material from landfill for recycling or composting.

Waste Strategy

197. We consider that the Waste Strategy is a significant Government strategy. It is published on the Ministry website and is currently an area of focus by the Government as New Zealand struggles to deal with the ongoing demand of how to deal with waste in New Zealand. While this project is not utilising funds from the provincial growth fund, we note the Investment accords with aspects of the recent waste guidelines paper published by the Provincial Development Unit. For example, one of the stated goals is to shift to higher value waste processing that creates new job opportunities in regional New Zealand. This objective³⁵ is supported by supporting projects that reduce the environmental impact of waste and contribute to New Zealand's transition to a low emissions economy. This would indicate the Investment accords with some of the Government's objectives in the waste sector.
198. The Applicant's proposed development on the Property will advance the Waste Strategy as not only will it create additional waste diversion, disposal and recycling capabilities for Auckland and the surrounding areas thereby reducing the harmful effects of waste, it will also improve the efficiency of resource use, particularly through the use of its proposed vermiculture operation. We consider the Applicant's plans for the Property are extensive and an ANZP is not likely to undertake the same level of development. An ANZP is therefore unlikely to advance this Government policy to the same extent.

Auckland, Waikato and Tauranga Council's Waste Management and Minimisation Plans

199. While we consider that the Applicant's development plans will also further advance the waste management and minimisation plans of the Auckland, Tauranga and Waikato Councils these are not significant Government policies or strategies themselves, although they do feed into the Waste Strategy which we consider the Applicant's development will advance.

Provisional conclusion – benefits test

Benefit test

200. In order for consent to be granted, the Applicant must demonstrate:
- a) that the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
 - b) that the benefit will be, or is likely to be, substantial and identifiable.
201. We have assessed the benefit likely to result from this Investment in accordance with the rural land directive contained in the Ministerial Directive Letter.
202. We have undertaken our assessment having regard to the characteristics of the land and the nature of the interest being acquired (reflecting the proportional nature of the benefit test). Here the Applicant is acquiring approximately 275.372 hectares of non urban land located at 587 Ridge Road and Beaver Road, Pokeno, South Auckland.

³⁵ Along with two other objectives.

Ministerial discretion

203. Determining whether the investment is likely to result in substantial and identifiable benefit is ultimately a matter to be decided by Ministers and involves the exercise of Ministerial judgement. Ministers also have discretion under section 17(1)(c) of the Act to determine the relative importance to be given to each relevant factor (or part).

Rural land directive

204. In relation to rural land, the Ministerial Directive Letter states:

"The primary sector, and the rural land it is based on, forms a particularly important part of the New Zealand economy.

The Act acknowledges the privilege associated with the ownership or control of rural land is greater than for non-rural land by requiring the benefits resulting from the overseas investment to be substantial and identifiable (a higher threshold).

The merits of overseas investment in the primary sector can be less compelling given that we are already world leaders in this area. The Government is therefore concerned to ensure that the benefits from overseas investments in rural land are genuinely substantial and identifiable."

205. The Ministerial Directive Letter provides that the following factors will generally be of high relative importance:
- a) the 'jobs' factor;
 - b) the 'new technology or business skills' factor;
 - c) the 'increased exports receipts' factor;
 - d) the 'increased processing of primary products' factor; and
 - e) the 'oversight and participation by New Zealanders' factor.
206. We do not consider that any other factor should be given high relative importance in the context of this Investment.

Provisional conclusion

207. 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 5 of the executive summary and **Attachment 9**.
208. Our provisional view is that the Applicant has met the benefits test. On balance, we consider that, taking into account the size and nature of the Land and the interests being acquired, the Investment is likely to result in substantial and identifiable benefit to New Zealand. In this regard, we note the creation or retention of at least 12 FTE in excess of those created under the counterfactual; the enhancement of New Zealand's domestic services as a result of the developments; the advancement of the New Zealand Waste Strategy; the new environmental protections and the creation of public walking access over part of the Land.
209. Overall, when examined together, we consider that the benefits of the investment are likely to be **substantial and identifiable**.
210. Our provisional view is that the residential land outcome listed as item 2 in the table in clause 19 of Schedule 2, the use for non-residential purposes outcome, applies to the residential land and a condition of consent requiring this residential outcome should be imposed.

Provisional recommendation

211. Our provisional recommendation is to **grant consent**, as we consider that the investor test and the benefits test have been met.
212. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and to paragraphs 7 to 9 of the overview section of this Assessment Report to record your decision.

List of Attachments

1. Proposed Decision
2. Guidance for applying the Act
3. Heritage New Zealand letter
4. Other Benefit Factors
5. Sensitive Land Details
6. Good Character
7. Applicant's Submissions of Waste Operators in Auckland
8. Applicant's Submissions on Why Certain Walking Access is Not Appropriate
9. Overview Tables for Enviro Waste Services Limited - 201810134

List of other documents in the Bundle

1. Application
2. Investment Plan (Appendix 1 of the Application)
3. Boffa Miskell Report
4. Department of Conservation Report
5. Map accompanying DOC Report
6. Walking Access Commission Report
7. New Zealand Waste Strategy

ATTACHMENT 1 - PROPOSED DECISION

Consent for Overseas Person to Acquire Sensitive New Zealand Land

Read this consent carefully - you must comply with all the conditions. If you do not, you may be required to dispose of the land and/or be subject to fines or other penalties.

Consent

Decision date:

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

Case	201810134
Consent	Enviro Waste Services Limited (company number 660818) may acquire the Land subject to the Conditions set out below.
Consent holder/s	Enviro Waste Services Limited We will also refer to each Consent holder and the Consent holders together as you .
Land	The property located at 587 Ridge Road and Beaver Road, Pokeno, South Auckland contained in records of title NA573/288 part-cancelled, NA94C/844, NA572/221, NA572/218, NA70A/649, 637288 (all or part), NA64C/518, NA64C/521, NA46A/735, NA64C/517 and NA64C/520.
Timeframe	You have until 31 July 2020 to acquire the Land except in the case of 637288 (all or part) where legal title may be acquired up to 18 months following acquisition of the balance of the Land).

Conditions

Your Consent is subject to the Special conditions, Standard Conditions and Reporting conditions (**Conditions**) set out below. You must comply with them all. Be aware that if you do not comply with the Conditions you may be subject to fines or other penalties, and you may also be required to dispose of the Land.

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

Special conditions

You must comply with the following **special conditions**. These apply specifically to this Consent and were considerations that particularly influenced us to give consent:

Details	Required date
Special condition 1: [s 9(2)(b)(ii)]	
<p>[s 9(2)(b)(ii)]</p> <ul style="list-style-type: none"> i) [s 9(2)(b)(ii)] ii) [s 9(2)(b)(ii)] and iii) [s 9(2)(b)(ii)] <p>If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.</p>	<p>Within 12 months of acquisition of the Land</p>
Special condition 2: Development of the Land	
<p>You must, [s 9(2)(b)(ii)] develop the:</p> <ul style="list-style-type: none"> i) vermiculture operation; ii) dewatering facility; and iii) construction & demolition facility <p>If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.</p>	<p>Within [s] years of [s 9(2)(b) [s 9(2)(b)(ii)] [s 9(2)(b) [s 9(2)(b)]</p>
Special condition 3: Residential Land	
<p>You must ensure that the land in record of title NZ64C/518, being Lot 2 DP 114000 ("Property") and comprising approximately 1.7453 hectares of land categorised as "Lifestyle" (shown in the table below in yellow) is only used in a manner consistent with the "non-residential use outcome" (as defined in the Overseas Investment Act 2005).</p> <p>The Property must not be used, nor held for future use, for residential dwellings or long-term accommodation facilities.</p>	<p>At all times while you own the Land</p>

Special condition 4: Job opportunities		
You must create or retain at least 18 FTE roles on the Land		By 31 July 2021
Special condition 5: Heritage conditions		
1.The Applicant must arrange for an archaeologist to investigate the area referred to as site R12/931 by Heritage New Zealand in their letter dated 6 March 2019, to confirm whether it should be recorded as an archaeological site on the New Zealand Archaeological Associations Site record System.		By 31 July 2021
2.The Applicant must not undertake any felling of trees or earthworks on the area referred to as site R12/930 by Heritage New Zealand in their letter dated 6 March 2019, without obtaining an archaeological authority from Heritage New Zealand.		At all times while owner of the Land
Special condition 6: Ecological conditions		
All references to areas in this special condition 6 are as noted in the picture at the bottom of this section: You must:		
a) provide the Department of Conservation with a copy of this special condition 6;		within 3 months of the date of grant of consent
b) fence areas 1, 3, 3b, 4, 6 and 7;		By 31 July 2023
c) remove all stock from areas 1,3, 3b, 4, 6 and 7		within 3

		months of the date of grant of consent
d)	fence all wetlands, waterways and seeps on the Land not already fenced in accordance with resource consent requirements with riparian buffers of at least 10 metres on either side;	By 31 July 2023
e)	not allow stock to graze on areas 4,6 and 7;	At all times and following completion of the fencing referred to at special condition 6 b) and 6d)
f)	engage with QEII Trust and seek a QEII covenant over the fenced and replanted areas;	By 31 July 2024
g)	prepare a planting plan, which must include a maintenance plan, for the fenced areas on the land referred to in 6b) and 6d) above (" Plan ") and ensure the Plan targets achieving a minimum of 80% indigenous cover;	By 31 July 2021
h)	complete planting under the Plan;	By 31 July 2034
i)	prepare a sustainable logging plan (" Logging plan ") in respect of the exotic plantation species on the Land and including proposals to replace removed exotic plantation with exotic or native species (in the same area or elsewhere on the Land). The Logging plan must include ways to mitigate the impacts of the logging and consider forested corridors across the Land as well as consideration for the protection of bats when felling trees;	By 31 July 2023
j)	submit the Logging plan to the Department of Conservation for approval;	By 31 July 2023
k)	conduct any logging on the Land in accordance with the Logging Plan;	At all times once the Logging plan is prepared
l)	prepare a weed control plan (" Weed plan ") for the Land and submit the Weed plan to the Department of Conservation for approval;	By 31 July 2021

- m) conduct any weed control on the Land in accordance with the Weed plan;
- n) prepare a pest control program ("**Pest plan**") for the Land and submit the Pest plan to the Department of Conservation for approval. The Pest plan should include a target of maintaining possums year round at 5% residual trap catch index or equivalent and maintaining rats year round at below 5% tracking rate or equivalent ;
- o) once the Pest plan has been approved by the Department of Conservation, monitor the possum and rat abundance on the land on a 6 monthly basis.

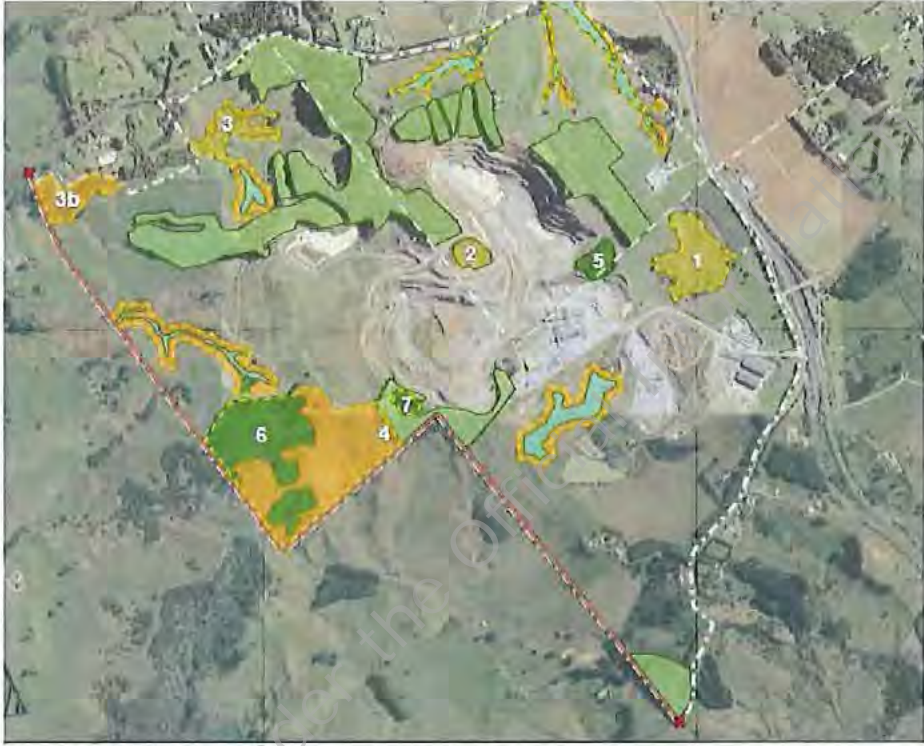
At all times once the Weed plan is prepared

By 31 July 2021

At all times after 31 July 2021



Special condition 7: Walking access conditions	
<p>You must:</p> <p>a) provide the Walking Access Commission with a copy of this special condition 7;</p> <p>b) liaise with the Walking Access Commission ("WAC"), and where relevant the Department of Conservation ("DOC"), to allow WAC to undertake an assessment of the riparian restoration and covenant areas within the Land along the proposed access route around the western boundary of the Land ("Assessment");</p> <p>c) after completion of the Assessment, agree with WAC and DOC a public access route alignment along the western boundary of the Land (delineated in red in Picture A at the bottom of this section) ("Western Boundary"), such route to include entry and exit points on both Ridge and Beaver Roads;</p> <p>d) create a 10 car park in the far north western corner of the Land ("Car Park"), with the entrance to that proposed Car Park from the far western corner that connects to Beaver Road, if relevant consents can be obtained and WAC and DOC agree it is technically practical and WAC and DOC agree it is environmentally appropriate to create the Car Park;</p> <p>e) grant a 10 metre wide gazetted walkway easement (pursuant to the Walking Access Act 2008) ("Walkway") along the alignment agreed between the parties at special condition 7c) above along the Western Boundary of the Land for walking, cycling and dogs on leads. The Walkway is to include entry and exit points connecting the Walkway to the legal roads (as marked X on picture A below). The easement may include terms and conditions acknowledging the Land is an operating industrial site;</p> <p>f) once the Walkway has been formed, allow the relevant Controlling Authority to erect signage identifying each entry and exit point to the walking track, the content of which is to be agreed between you and the relevant Controlling Authority, having regard to operational concerns;</p> <p>g) meet the costs of the survey and registration of the easement referred to above at special condition 7e) unless the parties agree otherwise;</p> <p>h) allow WAC and any relevant Controlling Authority reasonable access to the Land to form the Walkway and/or Carpark,</p>	<p>Within 3 months of the date of grant of consent</p> <p>By 31 July 2021</p> <p>By 31 July 2022</p> <p>By 31 July 2022</p> <p>By 31 July 2022</p> <p>By 31 July 2022 or once formed</p> <p>By 31 July 2022</p> <p>At all times until the walking access</p>

<p>subject to your health and safety requirements and other reasonable requirements;</p> <p>i) reimburse WAC up to \$100,000 plus GST towards the costs of the Walkway and Car Park.</p> <p>A:</p> 	<p>track is completed</p> <p>By 31 July 2024</p>
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Standard conditions

You must also comply with the **standard conditions** set out below. These apply to all overseas people who are given consent to acquire sensitive New Zealand land, including you:

Details	Required date
Standard condition 1: acquire the Land	
<p>You must acquire the Land:</p> <ol style="list-style-type: none"> 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 using the acquisition, ownership and control structure 	As stated in the Consent

<p>you described in your application.</p> <p>Note, only you – the named Consent holder - may acquire the Land, not your subsidiary, trust or other entity.</p>	
<p>Standard condition 2: tell us when you acquire the Land</p>	
<p>You must tell us in writing when you have acquired the Land.</p> <p>Include details of:</p> <ol style="list-style-type: none"> 1. the date you acquired the Land (Settlement), 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the Land, and 4. copies of any transfer documents and Settlement statements. 	<p>As soon as you can, and no later than two months after Settlement</p>
<p>Standard condition 3: allow us to inspect the Land</p>	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions.</p> <p>We will give you at least two weeks' written notice if we want to do this.</p> <p>You must then:</p> <ol style="list-style-type: none"> 1. Allow a person we appoint (Inspector) to: <ol style="list-style-type: none"> (a) enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (Inspection), (b) remain there as long as is reasonably required to conduct the inspection, (c) gather information, (d) conduct surveys, inquiries, tests and measurements, (e) take photographs and video records, and (f) do all other things reasonably necessary to carry out the Inspection. 2. Take all reasonable steps to facilitate an Inspection including: <ol style="list-style-type: none"> (a) directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection, (b) being available, or requiring your employees, agents, tenants or other occupiers to be available, 	<p>At all times</p>

<p>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>During an Inspection:</p> <ul style="list-style-type: none"> (a) we will not compel you and your employees, agents, tenants or other occupiers to answer our questions or to let us look at, copy or take away documents, (b) our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection. 	
Standard condition 4: remain of good character	
<p>You and the Individuals Who Control You:</p> <ol style="list-style-type: none"> 1. must continue to be of good character, and 2. must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009. <p>In summary, these sections describe convicted or deported people who are not eligible for visa or entry permission to enter or be in New Zealand and people who are considered likely to commit an offence or to be a threat or risk to security, public order or the public interest.</p> <p>The Individuals Who Control You are individuals who:</p> <ul style="list-style-type: none"> (a) are members of your governing body, (b) directly or indirectly, own or control 25% or more of you or of a person who itself owns or controls 25% or more of you, and (c) are members of the governing body of the people referred to in paragraph (b) above. 	<p>At all times</p>
Standard condition 5: tell us about changes that affect you, the people who control you, or people you control	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <ol style="list-style-type: none"> 1. You, any Individual Who Controls You, or any person in which you or any individual who 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 	<p>Within 20 working days after the change</p>

<p>or sued over and any investigation by enforcement or regulatory agencies or professional standard bodies.</p> <ol style="list-style-type: none"> 2. An Individual Who Controls You ceases to be of good character; commits an offence or contravenes the law (whether they were convicted or not); becomes aware of any other matter that reflects adversely on their fitness to have the Land; or becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (see standard condition 4). 3. You cease to be an overseas person or dispose of all or any part of the Land. 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: <ol style="list-style-type: none"> (d) becomes bankrupt or insolvent (e) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or (f) becomes subject to any form of external administration. 	
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Standard condition 6: dispose of the Land if you do not comply with key Special conditions

<p>Some of the special conditions were key to the decision to give consent. If we consider you have failed to comply with one of those Special conditions in a material way we may require you to dispose of the Land.</p> <p>We may also require you to execute a security deed before you may acquire the Land. The security deed:</p> <ol style="list-style-type: none"> 1. must be in the form we require, 2. must be executed and delivered to us before you acquire the Land, 3. gives us power to appoint a receiver to dispose of the Land if you do not do that as required by this Standard condition 6, 4. will provide, among other things, that if we appoint a receiver, the receiver may dispose of the Land, deduct his or her costs from the proceeds of sale, and pay the remainder to you. <p>If all or part of this Standard condition 6 applies to a Special condition, we have said so in that condition.</p> <p>We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:</p>	
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Value the Land: 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.
Market the Land: 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.
Dispose of the Land: dispose of the Land to a third party who is not your associate.	Within six months of our notice.
Offer without reserve: if the Land has not been disposed of, 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.
Report to us about marketing: 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.
Report disposal to us: send us, in writing, evidence: <ul style="list-style-type: none"> (a) that you have disposed of the Land, (b) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor), (c) the purchaser is not your associate. 	Within one month after the Land has been disposed of.

Reporting conditions

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

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

1. be sent to **oiomonitoring@linz.govt.nz** by these dates:
 - (a) Year one: 30 August 2020
 - (b) Year two: 30 August 2021
 - (c) Year three: 30 August 2022
 - (d) Year four: 30 August 2023
 - (e) Year five: 30 August 2024
 - (f) Final reporting date: 30 August 2034
2. contain information about:

- (a) your progress in implementing the special conditions (including costs where relevant), and
 - (b) [s 9(2)(b)(ii)]
 - (c) the number and type of jobs created and the approximate salaries for each;
 - (d) any contracts signed with councils regarding the use of the land and its developments;
 - (e) any dealings with Heritage New Zealand regarding the sites referred to in Heritage New Zealand's letter dated 6 March 2019;
 - (f) a summary of all dealings with WAC and DOC including the progress of the ecological and walking access special conditions.
3. follow the format of the template annual report published on our website.

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ATTACHMENT 2 - GUIDANCE FOR APPLYING THE ACT

1. Ministers must grant consent to this overseas investment if they are satisfied that all of the criteria in section 16 of the Overseas Investment Act are met. They must decline to grant consent if they are not satisfied that all of the criteria in section 16 are met. Ministers must not take into account any criteria or factors other than those identified in sections 16, 16A, 17 and regulation 28 of the Overseas Investment Regulations.
2. In the attached Report the Overseas Investment Office identifies each of the criteria and factors under sections 16, 16A and 17, and regulation 28 that Ministers are required to consider in this case.

“Benefit to New Zealand criteria”

3. In this case, section 16 requires Ministers to decide, among other things, whether they 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 (section 16A(1)(a)); and
 - that benefit will be, or is likely to be, substantial and identifiable (section 16A(1)(b)).
4. The application of the benefit to New Zealand criteria involves the exercise of Ministerial judgement. The fact that responsibility for making this decision has been conferred on Ministers 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.
5. In applying the benefit to New Zealand criteria, Ministers 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 Ministers. 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.
6. The decision concerning whether the benefit to New Zealand, or any part of it or group of New Zealanders, is substantial and identifiable under section 16A(1)(b), involves a collective assessment of the relevant factors.

Justice Miller’s “with and without test”

Economic factors

7. The High Court in *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147 (“Tiroa E”) requires the “economic benefit” factors in section 17(2)(a) to be assessed on the basis of a “counterfactual test”. That is, Ministers 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

8. Although the position is not free from doubt, the better view is that the same question – will this benefit be achieved even if the overseas investment does not occur – should be asked in relation to the other “non-economic” factors listed in section 17(2)(b)-(e). The High Court judgment suggested³⁶ 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 noted³⁷, 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).³⁸ We consider that Ministers 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

9. With regard to the factors in regulation 28 of the Overseas Investment Regulations 2005, Miller J noted that:
10. 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.³⁹
11. Many of the factors in regulation 28 are incapable of having a counterfactual analysis applied to them. However, as recognised by Miller J, there are some factors that may require a counterfactual analysis. The Overseas Investment Office has applied a counterfactual analysis where appropriate.

“Rural Land” Directive

12. The overseas investment involves the acquisition of ‘rural land’ being land that is non-urban and over 5 hectares in size (excluding any associated land), but excludes ‘forest land’. Therefore, in accordance with directions from Ministers, we have treated the following factors as being of high relative importance:⁴⁰
 - a. the “jobs” factor (section 17(2)(a)(i));
 - b. the “new technology or business skills” factor (section 17(2)(a)(ii));
 - c. the “increased exports receipts” factor (section 17(2)(a)(iii));
 - d. the “increased processing of primary products” factor (section 17(2)(a)(vi)); and
 - e. the “oversight and participation by New Zealanders” factor (regulation 28(j)).

Conditions

13. Conditions may be imposed on any consent that is granted, under section 25A. The attached Report recommends some conditions that Ministers may wish to consider imposing in this case.
14. As this overseas investment includes residential land, section 16A(1)(c) requires that the relevant Ministers must be satisfied that the conditions to be imposed in accordance with section 16B will be, or are likely to be, met. The attached Report

³⁶ *Tiroa E* at [36].

³⁷ *Tiroa E* at [38].

³⁸ The *Tiroa E* judgment refers to s16(1)(e)(iii), which, pursuant to Overseas Investment Amendment Act 2018, has now been amended to s16A(1)(b).

³⁹ *Tiroa E* at [36].

⁴⁰ Ministerial Directive letter date 28 November 2017, paras 13-17.

sets out the conditions that we suggest should be imposed in accordance with section 16B.

15. If you wish to make any changes to the conditions of consent, those changes should be discussed with the Overseas Investment Office, and the other Minister, before being finalised.

Decision

16. 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.
17. If you propose to disagree with the decision of the other Minister, you should discuss your proposed decision with the Overseas Investment Office and the other Minister.
18. If required, staff from the Overseas Investment Office are available to brief you on the Office's recommendations.

Good character criterion

19. Section 16(2)(c) of the Act requires that Ministers 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.
20. 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.
21. When undertaking the good character assessment, Ministers 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.
22. 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 person 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 person is less than this, there generally must be other grounds to reasonably infer participation by the individual in the alleged wrongdoing.
23. 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.
24. All relevant matters must be weighted up before making a decision that an individual is of good character. If the decision-maker wishes 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 to the applicant.

25. 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 the decision-makers.
26. 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.
27. 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.
28. Briefly, some of the things we consider when weighing up "good character" include:
- a. 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.
 - 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. what actions, if any, were taken to remedy the situation and reduce the chances of it reoccurring.
29. The onus is on the applicants to satisfy the decision maker that all the individuals with control are of good character.
30. If the decision maker has 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.

ATTACHMENT 3 – HERITAGE NEW ZEALAND LETTER



HERITAGE NEW ZEALAND
POUHERE TAONGA

6 March 2019

Anna Crosbie
Partner
Russell McVeagh
PO Box 8
Auckland 1140

By email: anna.crosbie@russellmcveagh.com

Tēna koe Anna

OID SITE INFORMATION REQUEST - CONFIDENTIAL

You have contacted Heritage New Zealand Pouhere Taonga (Heritage New Zealand) with regard to a purchase by EnviroWaste of the following land:

- 537-587 Ridge Road;
- 122-270 Beaver Road; and
- 2272 Great South Road (collectively 'the Land').

The purchase of sensitive land in New Zealand is governed by the provisions of the Overseas Investment Act 2005 (the Act). The Act requires the consideration of the protection and enhancement of historic heritage within the relevant land.

Thank you for providing the information held by the current owner. In addition to the information you have provided, Heritage New Zealand has also undertaken a review of the land to identify any heritage values that are present and existing protection mechanisms, as well as a recommendation to the purchaser.

New Zealand Heritage List/Rārangi Kōrero

Our listing staff have searched the New Zealand Heritage List/Rārangi Kōrero using the information you have provided, being the Land described above. There is not any entry on the New Zealand Heritage List/Rārangi Kōrero, proposal or notified proposal for any historic place, historic area, wāhi tapu, wāhi tapu place or wāhi tūpuna on the Land. There are also no sites on the Land over which Heritage New Zealand has a heritage order as a heritage protection authority.

Archaeological sites

As your email states, there are known archaeological sites on the property. Our archaeologists have completed a further desk survey of the sites and previously granted archaeological authorities for the Land and note the following:

- R12/930 has been avoided by any earthworks to date. The site is now within a grove of pine trees which are approximately 15-20 years old.
- There is an issue with site R12/931 in that the site record does not appear to have been entered into the New Zealand Archaeological Associations Site Record System (NZAA). The actual physical location shown in the 2005 Felgate report for the site does not appear to have been modified since the report was completed so it is unclear why the site was not recorded with NZAA.

Recommendations

Based on the information outlined above, the recommendations of Heritage New Zealand are that:

1. Any purchaser of the Land is alerted to the existence of archaeological site R12/930 and that any felling of trees or earthworks within the site extents should only be undertaken with an archaeological authority from Heritage New Zealand; and
2. Because the site at the purported location of R12/931 in the Felgate report is currently not recorded with NZAA, Heritage New Zealand would recommend that the site be investigated by an archaeologist to confirm whether there is in fact a site, what its location is and that it be recorded with NZAA as appropriate.

Please do not hesitate to contact us if you have any queries and please accept apologies for the delay in getting this information to you.

Yours sincerely



Rebecca Vertongen
Legal Advisor

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ATTACHMENT 4 - OTHER BENEFIT FACTORS

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) (high relative importance factor)	We note that the Applicant intends to make use of lithium ion batteries on site, while we consider this may be new for a landfill operator, it is not new technology introduced into New Zealand as other business operators currently use this technology to power their sites.
Increased export receipts – s17(2)(a)(iii) (high relative importance factor)	The Applicant does not export products or services.
Additional investment for development purposes – s17(2)(a)(v)	The funds utilised to develop the Investment will not be introduced into New Zealand.
Increased processing of primary products – s17(2)(a)(vi) (high relative importance factor)	The Investment does not relate to the processing of primary products in New Zealand.
Trout, salmon, wildlife and game – s17(2)(c)	There are no habitats of trout, salmon, wildlife or game on the Property
Offer to sell seabed/foreshore/riverbed to the Crown – s17(2)(f)	There are no streams, rivers, watercourses or foreshore on the Property.
Key person in a key industry – reg 28(b)	This application does not involve a key person in a key industry.
Affect image, trade or international relations – reg 28(c)	A well-reasoned decision to decline the application would be unlikely to adversely affect New Zealand's image or its trade or international relations.
Owner to undertake other significant investment – reg 28(d)	The Vendor does not intend to undertake other significant investment in New Zealand.
Enhance the viability of other investments – r28(g)	The acquisition of the Property will not enhance the viability of the Applicant's other investments.
Strategically important infrastructure – reg 28(h)	There is not strategic infrastructure on the Property.
Economic interests – reg 28(i)	The Applicant's acquisition of the Property will not affect New Zealand's economic interests.

Factor	Reason not relevant or insufficient
<p>Oversight and participation by New Zealanders – reg 28(j) (high relative importance factor)</p>	<p>While there are two New Zealanders on the Board of the Applicant the remainder are overseas persons. We consider that New Zealand participation in the investment or relevant overseas person should be at an ownership or control level which it is not with this Investment.</p>

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ATTACHMENT 5 - SENSITIVE LAND DETAILS

1. 587 Ridge Road and Beaver Road Pokeno

Land Interest	Freehold Interest (approximately 275.372 hectares)
Record(s) of Title	RT NA573/288 - part cancelled, RT NA94C/844, RT NA572/221, RT NA572/218, RT NA70A/649, RT NA54C/520, RT NA64C/517, RT NA46A/735, RT NA64C/521, RT NA64C/518, RT 637288 (North Auckland)
Sensitivity	Is more than 5 hectares of non-urban land Includes residential land

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ATTACHMENT 6 - GOOD CHARACTER SEARCHES AND ANALYSIS

The OIO undertook an open-source search of the relevant overseas persons (ROPs) and individuals with control (IWCs). We also undertook searches of the entities that own the relevant overseas person, which found certain matters. For the reasons set out in the Report⁴¹, while we do not consider these entities are relevant overseas persons for the purposes of this application. However, for completeness, we have included these matters in this attachment too.

The searches of the International Consortium of Investigative Journalists (ICIJ) database did not produce any results that would suggest the individuals with control of the relevant overseas person are not of good character. The searches of the United Nations Security Council (UNSC) Terrorist Entities List and Interpol Red Notice List did not produce any relevant results.

Matter (sorted by most recent)	Summary of disclosure or search finding	Connection to IWC/ ROP			Relevance to this investment			Summary of Applicant's response	OIO assessment
		Low	Med	High	Low	Med	High		
Enviro Waste Services Limited-the Applicant									
1. <u>Environment Court-service of Abatement Notice</u>	The Porirua City Council holds an air discharge resource consent in respect of the City's landfill. The Regional Council served the City Council with an Abatement Notice dated 17 June 2015 — later replaced by an amended notice. In brief, the Abatement Notice required the cessation of: "...the unauthorised discharge of contaminants, namely landfill gases, to air from the gas collection system at the Spicer Landfill". The notice was actually addressed (and also served upon) to Enviro Waste Services Limited, which operates the landfill on behalf of the Porirua City			✓			✓	The abatement notice was issued as a result of the odour resulting from the landfill operation. The odour issues resulted from the high volumes of odorous sludge which was being delivered to the site. The Applicant has no control over the waste that comes to the site as an operator for the Porirua City Council. The council and the Applicant worked together to implement greater controls around daily cover, although the greatest impact on the odour was that the mix of sludge significantly changed. This issue resulted from the normal operation of the landfill and is inherent in the nature of the Applicant's business. The issue was resolved without any adverse finding against the Applicant.	We accept the Applicant's statement that it has no control over the waste that comes to the site as the operator for the Porirua City Council. Further the Applicant has taken steps to mitigate the issue and no finding was made against the Applicant. We do not consider that there is any impact on the good character of the IWCs of the relevant overseas person.

⁴¹ see paragraphs 19-22.

Matter (sorted by most recent)	Summary of disclosure or search finding	Connection to IWC/ ROP			Relevance to this investment			Summary of Applicant's response	OIO assessment
		Low	Med	High	Low	Med	High		
	Council. Enviro Waste are appealing the abatement notice.								
2. <u>Employment Relations Authority claim</u>	<p>An employee tested positive for THC when their employer tested for drugs. The employee maintained he does not take drugs. The Applicant dismissed the employee. The Applicant failed to produce any evidence to show it complied with its Drug and Alcohol Policy. It did not provide the employee with a copy of their positive THC test results.</p> <p>Expert evidence at court said "He concluded that the test results showed that the employee was a very infrequent user of the drug and the failed drug test was likely from a one off single <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> the test".</p> <p>The Applicant had to pay the employee approximately \$28,000.</p>			✓	✓			<p>The reason for the adverse finding against the Applicant in this case was that the Applicant didn't follow its own procedure when obtaining a second sample from the employee. The Applicant has subsequently reviewed the relevant procedures to rectify the issue.</p>	<p>The Applicant has provided a reasonable explanation of the finding and has taken steps to ensure this issue does not occur again. We do not consider there is any impact on the good character of the IWCs of the relevant overseas person.</p>
3. <u>Unfair dismissal claim</u>	<p>In 2011, the Applicant terminated the employment of an employee who did not adhere to company policies and procedures with regard to health and safety reporting and following instructions.</p>			✓	✓			<p>This was a minor historic incident that arose in the ordinary course of the Applicant's business. Claims of this nature arise in the ordinary course of many businesses.</p>	<p>We accept the Applicant's explanation and consider this to be litigation in the ordinary course of business. We are not aware of the IWC being personally involved in this matter. We consider that this matter does not</p>

Matter (sorted by most recent)	Summary of disclosure or search finding	Connection to IWC/ ROP			Relevance to this investment			Summary of Applicant's response	OIO assessment
		Low	Med	High	Low	Med	High		
	<p>The Employment Relation Authority found that the Applicant failed to discharge the burden of showing that its actions were what a fair and reasonable employer would have done in all the circumstances at the time and that the employee was unjustifiably dismissed.</p> <p>The Applicant paid \$1470 for lost remuneration and \$4000 for distress, humiliation and injury.</p>							<p>impact on the good character of the IWCs of the relevant overseas person.</p>	
4. <u>Workplace death 2015</u>	<p>On 3 March 2015, an Enviro Waste worker died from injuries sustained at work when he was crushed by the bin lifter of one of the company's collection trucks. The resulting WorkSafe investigation found that the worker had not received proper training and that Enviro Waste had not taken appropriate steps to manage the hazard, of which it had been aware for some time. Enviro Waste pleaded guilty to certain charges under the Health and Safety in Employment Act 1992. At its sentencing on 23 March 2016, it was fined \$56,250 and ordered to pay \$85,000 reparations to the worker's family.</p>					✓	<p>Enviro Waste is in the waste industry which has a high incidence of health and safety issues. Where health and safety issues have arisen, Enviro Waste has taken steps to work proactively with WorkSafe to resolve these matters promptly and in accordance with their obligations under the law. Measures that Enviro Waste have put in place meet its due diligence requirements at the Board level under the Health and Safety at Work Act include but are not limited to the following: having a Board of Directors ("the Board ") that meet quarterly and is responsible for operating to, monitoring and managing a safety charter; having a Safety Executive team that reports directly to the BOD on safety performance and improvement initiatives; having a Executive Safety Steering Committee that works with the CEO to review safety</p>	<p>This offence is a mandatory consideration under section 19 of the Act in relation to the character of the IWC of Enviro Waste. The Applicant indicates that this is the only instance of a prosecution by WorkSafe and that following this conviction, Enviro Waste has taken measures to ensure that the incident in question will not happen again. Applicant also pleaded guilty to the charges. We note the further information provided by the Applicant regarding steps to prevent a similar measure and how it is meeting its due diligence at Board level. Although the offence is a mandatory consideration,</p>	

Matter (sorted by most recent)	Summary of disclosure or search finding	Connection to IWC/ ROP			Relevance to this investment			Summary of Applicant's response	OIO assessment
		Low	Med	High	Low	Med	High		
								<p>performance and drive improvement on a monthly basis; having seven Health and Safety teams to ensure compliance with the Health and Safety at Work Act; having a AS/NZS/ISO certified Health and Safety Management System that is audited annually by an external audit party; preparing monthly health safety operational performance reports as part of the business's operational KPIs that are benchmarked against similar industries; having in place escalation procedures to ensure that the Board, the CEO, CFO and the Safety Executive Team are informed of all notable and serious incidents and accidents. This is the only instance where the Applicant has been prosecuted by WorkSafe. Since the incident, Enviro Waste has taken steps to ensure that the incident in question will not happen again. These steps include but are not limited to the following: modifying the control of the glass lifter from a semi automatic lift operation to a manual two-handed hold -to- run operation, ensuring that the lift cycle stops if one or more hands are removed from the operating buttons; replacing the glass lifter unit on all glass trucks with a new positive chain driven unit that will not stall; adding shielding to both sides of the lifter; increasing Specialist Support Resources to ensure the health and safety of its workers by hiring 20 new</p>	<p>the Applicant pleaded guilty and has taken steps to prevent a similar incident occurring again. In terms of Board level (i.e. the IWC), the Applicant has subsequently put further measures in place to meet requirements under the Health and Safety at Work Act. We consider that this matter does not adversely reflect on the character of the IWC.</p>

Matter (sorted by most recent)	Summary of disclosure or search finding	Connection to IWC/ ROP			Relevance to this investment			Summary of Applicant's response	OIO assessment
		Low	Med	High	Low	Med	High		
								employees, including seven new operations advisors, four new driver trainers, a National Driver Training Manager, four new Health and Safety Advisors, a Risk and Compliance General Manager, a Operations Risk Manager, a Fleet Build Coordinator and a Quality Manager; revising the Standard Operating Procedure to provide for additional training; introducing a New Truck Driver Training Procedure and a New Contractor Management Procedure; and emphasising compliance with rest breaks to eliminate fatigue.	
[s 9(2)(b)(ii)]									
5. [s 9(2)(b)]	[s 9(2)(b)(ii)]							[s 9(2)(b)(ii)]	[s 9(2)(b)(ii)]

Matter (sorted by most recent)	Summary of disclosure or search finding	Connection to IWC/ ROP			Relevance to this investment			Summary of Applicant's response	OIO assessment
		Low	Med	High	Low	Med	High		
	[s 9(2)(b) (ii)] [REDACTED]							[REDACTED]	

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Matter (sorted by most recent)	Summary of disclosure or search finding	Connection to IWC/ ROP			Relevance to this investment			Summary of Applicant's response	OIO assessment
		Low	Med	High	Low	Med	High		
								[s 9(2)(b)(ii)]	
6. [s 9(2)(b)(ii)]	[s 9(2)(b)(ii)] [s 9(2)(b)(ii)] [s [s 9(2)(b)]] [s 9(2)]] [s 9(2)(b)(ii)] [s 9(2)(b)(ii)] [s 9(2)(b)(ii)] [s 9(2)(b)] [s 9(2)] [s 9(2)(b)(ii)]		✓		✓			This article is an opinion piece [s 9(2)(b)(ii)] [s 9(2)(b)(ii)] Given that the article is an opinion piece it cannot be reasonably asserted that the article is strong evidence of anything besides the author's own opinion.	We accept the Applicant's response-this is an opinion piece and there is nothing more substantial available to further this contention. Nor are we aware of any allegations of wrong-doing of the IWC in relation to this matter. We do not consider this impacts on the good character of the IWC of the relevant overseas person.

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ATTACHMENT 7 – APPLICANT’S SUBMISSIONS OF WASTE OPERATORS IN AUCKLAND

Name of Waste Operator	Reasons unlikely to purchase the Property	Overseas person or ANZP
Fletcher Building-Winstone Aggregates	Winstone Aggregates already operates a cleanfill as part of its Hunua Quarry in Papakura. The Applicant submits that Hunua Quarry has a surplus of internal capacity and as such Winstone is unlikely to acquire another site at this time.	Overseas person
Kalista Limited-Green Gorilla	Kalista’s retail division is Green Gorilla, which focuses on recycling and has no experience in dealing with landfill or clean fill operations. The Applicant submits it is therefore unlikely that Kalista would acquire a property to use as a cleanfill or waste disposal site.	ANZP
Smart Environmental	Smart Environmental’s business focuses on collections, sorting and recycling operations for municipal waste and has no experience in landfill or cleanfill operations. The Applicant submits it is unlikely that Smart Environmental would acquire a property to use as a cleanfill or waste disposal site.	ANZP
Waste Management Limited	Waste Management recently acquired a new landfill to the north of Auckland. The Applicant considers Waste Management is unlikely to have a strong focus on the South Auckland market at this time and is unlikely to acquire a property such as this at this time.	Overseas person
Econowaste Limited	Econowaste is not currently active in the South Auckland market and does not have a significant customer base. The Applicant submits it has limited expertise to be able to operate a cleanfill site and are therefore unlikely to acquire a property to use as a cleanfill or waste disposal site.	ANZP

ATTACHMENT 8 – APPLICANT’S SUBMISSIONS ON WHY IT CONSIDERS CERTAIN WALKING ACCESS IS NOT APPROPRIATE

Vehicle Movements

31. During consultation, the Applicant raised with WAC the fact that the cleanfill business, together with the other businesses operated on the Property (mean there are between 600-1000 vehicle movements per day (primarily made by large trucks) entering and exiting the Property. Most of these are coming to or from Auckland on State Highway 1. As a result of this, WAC withdrew its original recommendation for the proposed walking access route along the Ridge Road boundary of the Property, to avoid the need for the walking track to cross the main entrance to and from the Property from Ridge Road.
32. A map extract and 'street view' shots of the Nikau Road overbridge and onramp at the point of entry / exit from the Property as originally recommended by WAC appear below:

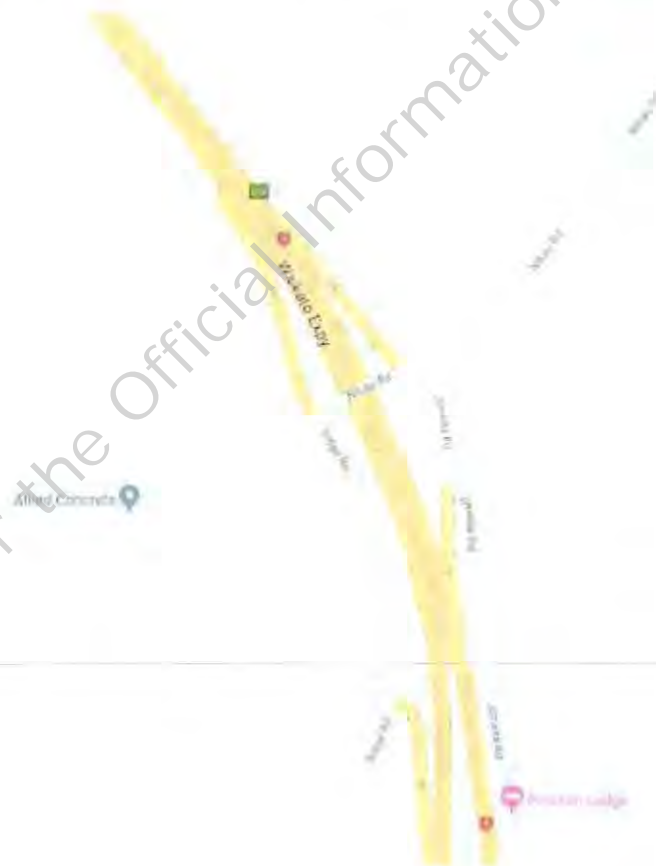


Figure 1 - Map showing the detail of the Nikau Road overbridge and Ridge Road on ramp to State Highway 1.



Figure 2 – Image of the Ridge Road on ramp to State Highway 1. The entry / exit point of the walking access track as proposed by WAC is in the approximate location of the powerpole to the left and the Nikau Road overbridge is to the right.



Figure 3 – Image of the Nikau Road overbridge. The entry / exit point of the walking access track as proposed by WAC is to the left of the image.

33. The Nikau Road overbridge and Ridge Road onramp are used as the entry and exit point for State Highway 1 by those same vehicles (likely at greater speeds) and the vehicles travelling to and from another quarry further west along Ridge Road. The Applicant does not consider there to be any suitable pedestrian crossing points over Ridge Road onto the Nikau Road overbridge. Nor does the Applicant consider the Nikau Road overbridge itself is suitable for pedestrian use. The Applicant is not aware of any proposal by the New Zealand Transport Authority to install a pedestrian overbridge at Nikau Road.

34. The possibility of a walking track which leads to the onramp / overbridge, but not further, gives rise to the risk that users of the track may choose to continue their walk rather than turn back and re-walk the same section of the track. The Applicant considers there is a real possibility a track will increase the number of pedestrians crossing the onramp and using the overbridge. Accordingly, if walking access was enabled through the Property to the Nikau Road overbridge, pedestrian movement in that area would be treated by the Applicant as a matter of high health and safety risk. The steps which must then be taken by the Applicant to avoid or minimise harm to its employees and/or contractors (predominately the drivers) are likely to have substantial operational impacts.
35. As a result, the Applicant considers that at this point in time it would be inappropriate to create a walking track which has an entry / exit point directly onto a busy motorway off / on ramp which is not designed for such use. The walking track along the eastern boundary of the Property as proposed by WAC would also cross the vehicle crossing from State Highway 1 into the tenanted pet foods property. While the volume of vehicle movements is not as significant here as at the Nikau Road on / off ramp, the vehicle crossing is a direct entry / exit from State Highway 1 and as a result is a concern from a health and safety perspective, particularly as regards pedestrian visibility and speed.
36. The Applicant acknowledges that representatives from WAC, the Waikato District Council and DOC all consider it would be beneficial for people in the district (particularly Pokeno) for there to be walking access from the western side of State Highway 1 to the east (to the Mount William / Puketutu scenic reserve and walkway). However, the Applicant submits there are other overbridges in the area which would more logically provide a suitable connection between the Pokeno township and Mount William and may be more suitable for upgrading for that purposes. In particular, the Applicant suggests that Helenslee Road (the next overbridge to the south) is immediately adjacent to a residential area in the northern part of the Pokeno township, and is more closely located to the southern entry point to the Mount William walkway (see picture below). In addition the Bombay overbridge at Mill Road to the north is also located more closely to the residential township of Pukekohe.

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submitting community members that increased off-road walking access in the district that provides connectivity between sites of local significance is desirable. However, the Applicant also considers that there is, at present, no overarching scheme or master plan for walking access across the district, nor is there any means of securing pedestrian access routes through the district plan subdivision provisions. As noted above, the Applicant is not aware of any plans by the New Zealand Transport Agency to provide a pedestrian overbridge over State Highway 1 in the local area.

43. The Applicant is also unaware of any other off-road public access routes near the Property (with the exception of the Mount William track noted above) and in particular any routes which would link any walking access track on the Property with the townships of Pukekohe, Pokeno and Tuakau. The Applicant submits there are numerous significant tracts of land which would need to be "joined up" in order to achieve the vision as articulated by WAC.
44. While the Applicant understands that WAC has begun the process of consultation with the community and other stakeholders (the Connecting Franklin – North Waikato project) to determine how such a network could be created, the process is in the infancy of what is likely to be a long process, with many stakeholders and an uncertain outcome.
45. The Applicant notes that the Waikato District Council has likened the proposed route across the Property (presumably once suitably connected over State Highway 1 to Mount William and over other land through to the Pokeno township) to the Hakarimata tracks in Ngaruwahia. While there may be similarities, the track through the Hakarimata Scenic Reserve links directly to residential streets (with footpaths) and is of a much more significant scale (and, in the Applicant's view, scenic and recreational value) than the proposed walking track through the Property.
46. Aside from general statements of desirability for a network of public walking access routes through the region, the Applicant has no information to hand (whether from WAC or otherwise) on the likely use by the public of a walking track through the Property, were it to be formed. This means the Applicant has been unable to properly verify the benefits that would arise if it adopted WAC's recommendations and weigh those against the risks and costs to the Applicant in terms of its business activities on the Property.

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ATTACHMENT 9 - OVERVIEW TABLES FOR ENVIRO WASTE SERVICES LIMITED 201810134

	<p>Application</p> <ul style="list-style-type: none"> • Enviro Waste Services Limited seeks consent to acquire approximately 275.372 hectares of non-urban land known located at 587 Ridge Road and Beaver Road, Pokeno, South Auckland • The Vendor is Holcim (New Zealand) Limited. 	<p>Provisional recommendation</p> <ul style="list-style-type: none"> • Our provisional recommendation is to grant consent. • Relevant Tests: Investor test Benefits test – substantial and identifiable benefits A residential land outcome listed in the table in clause 19 of Schedule 2 applies.
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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	Test met	ROP & IWC identified	Paragraphs 15-23 Section 15 of the Act.
Collectively have business experience and acumen relevant to the investment	Test met	The IWCs have experience relevant to the investment.	Paragraphs 24-26 Sections 16(2)(a) of the Act.
ROP demonstrated financial commitment	Test met	The Applicant has demonstrated financial commitment by entering into an agreement for sale and purchase of the Property; having prepared plans for the operation of the site; and engaging professional advisers.	Sections 16(2)(b) of the Act.
Good character	Test met	We are satisfied that the ROP/IWC are of good character.	Paragraphs 27-30 Attachment 6. Sections 16(2)(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	Statutory declarations provided confirming that each individual is not of the kind referred to in ss 15 or 16 of the Immigration Act. No additional assessment required.	Paragraphs 31-33 Sections 16(2)(d) of the Act.

Overview of assessment: Benefit test

Relevant benefit factors	Applicant's claims: what they intend to do	Comment from third parties	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
				Indicative strength	Summary		
Job opportunities <i>(high relative importance)</i>	Expand the existing cleanfill operation and develop new operations on the property	Not applicable	The FTE would either not be created or retained.	Strong weighting	Increase of 12 FTE roles over the counterfactual with a further 6 FTE if the Applicant can secure contracts with the Auckland Council.	Applicant to be conditioned to create or retain at least 18 FTE roles on the Land.	Paragraphs 98-118
Added market competition, increased productivity, efficiency, and enhanced domestic services	Expand the existing cleanfill operation and develop new operations on the property including C&D operation, dewatering facility and vermiculture operation.	The Waikato Regional council advises more cleanfill space is required in the region.	It is unlikely the cleanfill would be expanded or the additional development created.	Strong weighting	The Applicant's proposed developments on the Property are likely to provide enhanced domestic benefits for the Auckland region through expansion of the cleanfill operation and development of the C&D Operation, dewatering facility and vermiculture operation.	The Applicant will be <u>conditioned</u> to develop the dewatering facility, C&D operation and vermiculture operation and report on the development of these developments.	Paragraphs 119-132
Indigenous vegetation/fauna	Undertake environmental protections in line with the Boffa Miskell Report and DOC Report	DOC Report and Boffa Miskell Report	No new environmental protections implemented.	Strong weighting	The Applicant's proposed environment protections is likely to provide benefit to New Zealand.	The Applicant be <u>conditioned</u> to undertake the protections recommended by DOC.	Paragraphs 133-144
Historic heritage	Comply with Heritage's recommendation per their letter in Attachment 3.	Letter from Heritage which appears in Attachment 3	It is unlikely an ANZP would consult with Heritage regarding the property.	Weak weighting	The Applicant will consult with an archaeologist regarding Site 2 and will seek Heritage's consent before undertaking works on Site 1.	The Applicant should be <u>conditioned</u> to a) arrange for an archaeologist to investigate Site 2 and b) to not undertake any felling of trees or earthworks regarding Site 1 without Heritage's approval.	Paragraphs 145-151
Walking access	Implement walking access on the western boundary of the Property.	WAC Report	No walking access would be created on the Property.	Moderate weighting	New walking access along the western boundary of the Property will be created for the general public.	The Applicant be <u>conditioned</u> to create access along the western boundary of the Property.	Paragraphs 152-175
Consequential benefits	Introduce solar power and lithium ion batteries to assist with running the business on the Property.	Not applicable	It is unlikely an ANZP would introduce solar power and lithium ion battery technology to help run the business on the Property.	Moderate weighting	The introduction of solar power and lithium ion batteries to store that power is likely to be of consequential environmental benefit in making the business on the Property more sustainable and less reliant on the national power grid. Further we consider the planting is a likely consequential development of the Applicants plans for the Property.	The Applicant should <u>report</u> on the introduction of solar power and lithium ion battery technology onto the Property and the planting on the Property.	Paragraphs 176-185
Previous investments	Not applicable	Not applicable	Not applicable	Strong weighting	The Applicant has undertaken major projects which have improved New Zealand's waste processing capacity and generated new FTE	Not applicable	Paragraphs 186-195

Relevant benefit factors	Applicant's claims: what they intend to do	Comment from third parties	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
				Indicative strength	Summary		
Advance significant government policy or strategy	Expand the existing cleanfill operation and develop new operations on the property including C&D operation, dewatering facility and vermiculture operation.	Not applicable	An ANZP is unlikely to develop the developments the Applicant intends to, and as such the New Zealand Waste Strategy would not be enhanced to the same degree.	Strong weighting	The Applicants development plans for the Property will advance the New Zealand Waste Strategy.	Not applicable	Paragraphs 196-208

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