



ASSESSMENT REPORT: CDL Land New Zealand Limited

For	Anneke Turton Manager Applications	From	Hannah Worsley Operations Advisor
Date	11/12/2020	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	[Out of Scope]	Suggested deadline	18/12/2020

Purpose

1. We seek your decision on an application to vary conditions of consent under section 27(1) of the Overseas Investment Act 2005 (the **Act**).
2. This decision has been delegated to the OIO.¹
3. For the reasons set out in this report, our recommendation is to **grant the variation**. If you agree, indicate your decision on page 6.

Key information

Applicant	CDL Land New Zealand Limited (Singapore 43.4667%, New Zealand 38.897%, Various 11.0858%, United Kingdom 3.2788%, United States of America 3.2717%)
Relevant provisions	Variation – s27(1)
Key details of original consent	
Assets	[Out of Scope]
	Consent 201810232 : acquisition of approximately 8.4299 ha of land at 108, 122 and 160 Arataki Road, Havelock North (benefit to NZ S&I).
Consideration	[Out of Scope]
	Consent 201810232: Total Consideration = \$8,767,108.00 (Including GST)
Sensitivity	Sensitive land

A. Background

4. On 28 September 2018, CDL Land New Zealand Limited (the **Applicant**) applied for consent to purchase sensitive land at 108, 122 and 160 Arataki Road, Havelock North, Hawkes Bay (the **first acquisition**) from the vendors, Carolyn Elizabeth Wallis,

¹ All variation decisions are delegated to the OIO pursuant to Table A (G) of the Designation and Delegation letter dated 17 October 2018.

Christine Margaret Hawley, James Christopher Hawley and Martin Graham Speeden (the **Vendors 1**).

5. The OIO granted consent to the first acquisition under consent 201810232 on 18 April 2019.

6. [Out of Scope]

7.

8. The Applicant is applying to vary consent 201810232 and [Out of Scope] The Applicant considers that they will no longer be able to comply with the consent condition under both consents that require the Applicant to rezone the land to an appropriate urban residential zone within the respective specified timeframes. The Applicant seeks to extend the timeframes by which it is required to complete the conditions.

[Out of Scope]

9. [Out of Scope]

10.

11.

Variation Requested for Consent 201810232

12. The Applicant is applying for an extension to the dates for consent 201810232 for the same reasons as for [Out of Scope]. The Applicant requests an extension of the dates of:
- a. Special condition 1(a) which requires the Applicant *to work with the relevant authorities to ensure that an application to rezone the Land to an appropriate urban Residential Zone for residential use is lodged with the relevant local authority* by one year and six months from 31 December 2020 until 31 June 2022;
 - b. Special condition 1(b) which requires the Applicant *to work with the relevant authorities to ensure that an application for the necessary resource, subdivision and any other consents required to allow the Land to be developed for residential purposes is lodged with the relevant local authority* by one year and six months from 31 December 2021 to 31 June 2023;
 - c. Special condition 1(c) which requires the Applicant *to work with the relevant authorities to obtain the necessary resource, subdivision and any other consents required to allow the Land to be developed for residential purposes* by one year and six months from 31 December 2023 to 31 June 2024; and
 - d. Special condition 2(b) which requires the Applicant to start staged construction on the Land. The Applicant seeks to extend completion of stages 1 and 2 by one year and six months from [s 9(2)(b)(ii)] [s 9(2)(b)(ii)] respectively.
 - e. The Applicant is applying to replace the date [s 9(2)(b)(ii)] in special condition 2(a) which requires the Applicant to start stage 1 construction within 6 months of receiving all of the approvals in special condition 1, with the words *within [s 9(2)(b)] of receiving all of the approvals set out in special condition 1 above* to align condition 2(a) of consent 201810232 with condition 3(a) of [Out of Scope].

The Applicant

13. The Applicant is a New Zealand incorporated company which has been acquiring and developing undeveloped land in New Zealand for two decades.
14. The Applicant submits that since the granting of the consents, there have been two changes to the CDL Investments NZ Limited's board of directors, (the Applicant's parent company), and The Applicant's board of directors. These changes have previously been reported to the OIO in the Applicant's annual report dated 21 February 2020. Since the consents were granted, Kwek Eik Sheng has replaced Tan Kian Seng for CDL Investments NZ Limited, and Jason Craig Adams has replaced Donald John Lindsay for CDL Land NZ Limited.

Timing

15. Processing days for the application to date are below.

Quality Assurance	OIO Processing	Waiting for Applicant / Vendor	Third party consultation
12	39	4	0

16. The Applicant seeks to have the variation to the consents prior to 31 December 2020 being the date that the first condition in each consent must currently be satisfied.

B. Application of the Act

17. 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.
18. The information that the OIO has taken into account in making its recommendation is summarised in the Report.
19. Section 27 of the Act provides that a consent may be varied with the agreement of the consent holder and conditions of consent may be varied or added to with the agreement of the consent holder, or revoked.
20. The Act does not spell out what you need to take into account in considering an application for variation of consent. The Act does not give specific guidance as to the circumstances in which consents may be varied but confers a wide discretionary power on the decision-maker to vary a consent or its conditions so long as the consent holder agrees.
21. This discretionary power should be exercised consistently with the purpose of the Act.

C. Reason for the Requested Variation

22. The Applicant submits that it is unable to proceed with the application to rezone the land which is the subject of consents [Out of Scope] 201810232 until a case relating to the Te Mata mushroom odour issues and reverse sensitivity matters² which is currently under appeal in the Environment Court is resolved.
23. A mushroom farm owned by Te Mata Mushrooms Limited (TMM) which located near to the Applicant's land has been the cause of numerous complaints regarding odour emitted from the farm. An investigation conducted by the regional and district councils required TMM to apply for new consent to build infrastructure to contain the odour. The proposed consent was deemed unsatisfactory and resulted in an Environment Court hearing in December 2019. The Court determined that TMM were required to fully enclose their odour causing composting operations, sufficient that no offensive or objectionable odour shall pass the boundary of the TMM site.
24. Four appeals to the Environment court decision have been lodged by multiple interested parties including two by the Applicant. The Applicant appealed to shorten

² Reverse sensitivity is the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new benign activity is proposed for the land. Refer to qualityplanning.org.nz and environmentguide.org.nz.

the timeframe for TMM to enclose the odour and appealed some of the design elements of the infrastructure.

25. The appeals were referred to mediation, however due to the COVID-19 lockdown the mediation was delayed until July 2020. The mediation was productive, and as a result the Applicant is hopeful that the hearing will conclude in late November 2020, with a decision forthcoming in either December 2020 or January / February 2021. The Hastings District Council has indicated that it will not progress the rezoning application (subject to the rezoning special conditions of the consents) until the Environment Court appeals are resolved.

D. Our Assessment

26. We consider that it is reasonable to agree a variation to both 201900310 and 201810232. We consider that the Applicant continues to be committed to the developments.
27. Progress on applying to rezone the land as required by [Out of Scope] [Out of Scope] special condition 1(b) of consent 201810232 has been delayed due to the appeals currently before the Environment Court. The Council will not progress the applications until the Court matters are resolved. Resolution has been delayed further due to the COVID-19 lockdown.
28. The delays have had a consequential effect on the Applicant's ability to satisfy the remainder of the conditions under both consents. The variation of timeframes for both consents is necessary to enable the Applicant to comply with the conditions.
29. It is apparent that these delays are beyond the Applicant's control due to the impact of proceedings in the Environment Court (still unresolved) and COVID-19. The Applicant has been proactive in raising the issue of the delay with the OIO.
30. We consider that the extension requested by the Applicant, as described in paragraphs 10, 11 and 12 above is reasonable given the circumstances.

E. Conclusion

31. We, therefore, consider it is reasonable to agree to the variation requested and we recommend that the variation application be granted.
32. **Attachment 1** sets out the proposed variation to 201810232. **Attachment 2** sets [Out of Scope]



Hannah Worsley, Operations Advisor (Overseas Investment Office)

Date: 14/12/2020.

F. Decision

33. I agree to vary the consent as set out in **Attachment 1**.

Agree / Disagree



Date: 14 / 12 / 2020

Anneke Turton, Manager Applications (Overseas Investment Office)

Released under the Official Information Act 1982

ATTACHMENT 1 – 201810232 (AS VARIED WITH MARKED CHANGES)

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 subject to fines or other penalties.

Consent

Decision date: 17 April 2019

Varied on: [date]

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

Case	201810232
Consent	CDL Land New Zealand Limited may acquire the Land subject to the Conditions set out below.
Consent holder/s	CDL Land New Zealand Limited We will also refer to each Consent holder and the Consent holders together as you .
Assets	Approximately 8.4299 hectares of freehold land at 108, 122 and 160 Arataki Road, Havelock North (contained in records of title HBM2/265, 677140 and 677141)
Timeframe	You have 12 months from the date of consent to acquire the Land.

Conditions

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

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

Special conditions

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

Details	Required date
Special Condition 1: Rezoning and Resource Consent	
<p>You must work with the relevant authorities to ensure that:</p> <p>(a) An application to rezone the Land to an appropriate Urban Residential Zone for residential use is lodged with the relevant local authority;</p> <p>(b) An application for the necessary resource, subdivision and any other consents required to allow the Land to be developed for residential purposes is lodged with the relevant local authority; and</p> <p>(c) You obtain the necessary resource, subdivision and any other consents required to allow the Land to be developed for residential purposes.</p> <p>If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.</p>	<p>By 31 June 2022</p> <p>By 31 June 2023</p> <p>By 31 June 2024</p>
Special Condition 2: Development of the Land	
<p>You must:</p> <p>(a) start stage 1 construction within [s 9(2)(b)(ii) 1] of receiving all of the approvals set out in special condition 1 above; and</p> <p>(b) complete 5 stages of construction within [s 9(2)(b)(ii) 1] of starting stage 1 construction (these stages being set out in Appendix 12 of your application).</p>	<p>Within [s 9(2)(b)(ii) 1] of receiving all of the approvals set out in Special condition 1 above.</p> <p>Stage 1 by [s 9(2)(b)(ii)]</p> <p>Stage 2 by [s 9(2)(b)(ii)]</p> <p>Stage 3 by [s 9(2)(b)(ii)]</p> <p>Stage 4 by [s 9(2)(b)(ii)]</p> <p>[s 9(2)(b)(ii)]</p>

<p>You must:</p> <p>(a) ensure at least [s 9(2)] residential sections are made available for sale to the New Zealand public per annum for [s 9(2)] years with at least [s 9(2)] residential sections being made available in the [s 9(2)] year. [s 9(2)(b)(ii)] construction as outlined in 2(a) has begun.</p> <p>If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.</p>	<p>Stage 5 by [s 9(2)(b)(ii)]</p> <p>[s 9(2)(b)(ii)]</p> <p>Stage 1 [s 9(2)(b)(ii)]</p> <p>[s 9(2)(b)(ii)]</p> <p>Stage 2 [s 9(2)(b)(ii)]</p> <p>[s 9(2)(b)(ii)]</p> <p>Stage 3 [s 9(2)(b)(ii)]</p> <p>[s 9(2)(b)(ii)]</p> <p>Stage 4 [s 9(2)(b)(ii)]</p> <p>[s 9(2)(b)(ii)]</p> <p>Stage 5 [s 9(2)(b)(ii)]</p> <p>[s 9(2)(b)(ii)]</p>
<p>Special Condition 3: Ownership</p> <p>You must not retain an ownership interest in any part of the Land including any subsequent subdivided records of title.</p> <p>If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.</p>	

Standard conditions

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

Details	Required date
<p>Standard condition 1: acquire the Land</p>	
<p>You must acquire the Land:</p> <ol style="list-style-type: none"> by the date stated in the Consent. <p>If you do not, your Consent will lapse or become invalid and you must not acquire the Land, and</p> <ol style="list-style-type: none"> using the acquisition, ownership and control structure you described in your application. <p>Note, only you – the named Consent holder - may acquire the Land, not your subsidiary, trust or other entity.</p>	<p>As stated in the Consent</p>

Standard Condition 2: tell us when you acquire the Land	
<p>You must tell us in writing when you have acquired the Land. 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>
Standard Condition 3: allow us to inspect the Land	
<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, 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>At all times</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 <u>section 15</u> or <u>section 16</u> 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 or sued over 	<p>Within 20 working days after the change</p>

<p>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 <u>section 15</u> or <u>16</u> 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. 	
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>	
<p>Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.</p>	<p>Within six weeks of the date of our notice.</p>
<p>Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.</p>	<p>Within six weeks of the date of our notice.</p>
<p>Dispose of the Land: dispose of the Land to a third party who is not your associate.</p>	<p>Within six months of our notice.</p>
<p>Offer without reserve: offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.</p>	<p>Within nine months of our notice.</p>
<p>Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.</p>	<p>By the last day of every March, June, September and December after our notice or at any other time we require.</p>
<p>Report disposal to us: send us, in writing, evidence:</p> <ul style="list-style-type: none"> (a) that you have disposed of the Land, (b) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor), (c) the purchaser is not your associate. 	<p>Within one month after the Land has been disposed of.</p>

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:

2. be sent to **oiomonitoring@linz.govt.nz** by 28 February every year starting 2020 until 2030 or such other date as agreed with the Overseas Investment Office in writing.
3. contain information about:
 - (a) your progress in implementing the special conditions;
 - (b) the rezoning application;

- (c) the necessary resource, subdivision and any other consents required to allow the Land to be developed for residential purposes;
 - (d) The number of full time equivalent jobs created as a result of the investment; and
 - (e) the Applicant's progress towards completing the stage 1 to 5 construction (as outlined in Appendix 12 of the Application) and progress in releasing sections to market, as set out in the Investment Plan, with such construction being adjusted to start within 6 months of receiving the consents set out in the special conditions.
4. follow the format of the template annual report published on our website.

Released under the Official Information Act 1982