



Our Ref: 201620096

10 December 2021

TO: Creswell NZ Limited

BY EMAIL

CC BY EMAIL: Susie Kilty

Overseas Investment Office

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CONSENT FOR VARIATION OF CONDITIONS OF CONSENT 201620096

1. We¹ have now considered, and approved, your application to vary conditions of consent 201620096.
2. We enclose a copy of the decision. You will see it contains some important details of the consent you have been given, and of the conditions you must meet.
3. These include standard conditions that apply to all overseas people who are given consent to acquire sensitive New Zealand land. They also include special conditions that apply only to you and were important considerations that particularly influenced our decision to give consent.
4. The conditions are about the things you must do in order to be allowed to acquire, and keep, the land. They also require you to provide information to us either regularly or when particular events occur.
5. **Please read the conditions carefully and make sure you put processes in place so you can meet them. This is important because if you do not meet the conditions, you may be required to dispose of the land and/or be subject to fines or other penalties.**
6. You can find information about these penalties and how we monitor and enforce them on our website at: <http://www.linz.govt.nz/regulatory/overseas-investment/enforcement>.
7. Your legal advisers can advise you about the conditions and about the consequences of failing to comply with them, but only you are responsible for complying with them.
8. We look forward to hearing about the progress of your investment.

Yours sincerely

Daniel Mumford
Senior Solicitor
Overseas Investment Office
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¹ Your consent has been granted either by the Associate Minister of Finance and the Minister of Land Information, or by a manager at the Overseas Investment Office, acting under delegated authority from the Chief Executive of Land Information New Zealand.



Notice of Decision**Case: 201620096**

Decision Date

Original Decision: 30 May 2018

Varied: 10 December 2021

Decision

Consent is granted to Creswell NZ Limited to acquire a freehold and leasehold interest in approximately 6.2719 hectares of land at 57 Johnson Road, Otakiri, Bay of Plenty and comprising the following computer freehold register: SA25C/985 (South Auckland).

Only the named consent holder may give effect to the investment, not a subsidiary of the consent holder, a trust, or other entity.

Consent is granted subject to the following conditions:

Statutory Conditions of Consent

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

- (a) the information provided by each applicant to the Overseas Investment Office or the relevant Ministers in connection with the application was correct at the time it was provided; and
- (b) each consent holder must comply with the representations and plans made or submitted in support of the application and notified by the Overseas Investment Office as having been taken into account when the consent was granted, unless compliance should reasonably be excused.

For the purposes of section 28(1)(b), the representations and plans made or submitted in support of the application and taken into account when consent was granted are those contained in the correspondence listed in the statutory declaration of Michael Hilkja Joachim Gleissner of 27 June 2017 and in all attachments annexed to that correspondence.

Special ConditionsInterpretation

Any term or expression that is defined in the Overseas Investment Act 2005 and used, but not defined, in this consent has the same meaning as in the Overseas Investment Act 2005.

Act means the Overseas Investment Act 2005.

Application Letter means the application letter dated 20 December 2016 and all subsequent correspondence relating to this application for consent, sent by, or on behalf of, the Consent Holder.

Business Plan means the business plan set out in Appendix 14 of the Application Letter.

Consent Holder means Creswell NZ Limited.

Individuals with Control means:

- (a) the individuals who have, directly or indirectly, a 25% or more ownership or control interest in the Consent Holder or a Parent of the Consent Holder;
- (b) the members of the governing body of the Consent Holder or a Parent of the Consent Holder; and

- (c) includes, for the avoidance of doubt, Shanshan Zhong and the members of the governing body of the Consent Holder and Nongfu Spring Co., Limited.

Inspector means a person appointed by the Regulator to undertake an Inspection on the Regulator's behalf.

Inspection means a visit to a property by an Inspector for the purpose of monitoring these conditions.

Investment means the Land.

Land means a freehold and leasehold interest in approximately 6.2719 hectares of land at 57 Johnson Road, Otakiri, Bay of Plenty and comprising the following computer freehold register: SA25C/985 (South Auckland).

OIO means the Overseas Investment Office.

Parent of Consent Holder means a person that has, directly or indirectly, a 25% or more ownership or control interest in the Consent Holder, and includes a person that has, directly or indirectly, a 25% or more ownership or control interest in any Parent of the Consent Holder.

Regulations means the Overseas Investment Regulations 2005.

Resource Consents means the resource consents from the Whakatane District Council and the Bay of Plenty Regional Council which the Consent Holder needs to implement the Business Plan.

Resource Consent Date means the date that is the day after all appeals on the Resource Consents have been determined and all avenues for further appeals have been exhausted.

Settlement Date means the date the acquisition of the Investment took place.

Special Conditions

When the transaction must be given effect to

1. The Consent Holder must not give effect to the transaction until all Resource Consents have been obtained.
2. The consent will lapse if the Investment has not been acquired by and transferred to the Consent Holder within 6 months after the Resource Consent Date.

Good character

3. The Individuals with Control must:
 - (a) continue to be of good character; and
 - (b) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.

Additional investment

4. The Consent Holder must introduce into New Zealand capital expenditure of at least:

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

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

for the following developments:

- (c) bottling plant development and construction;
- (d) two new high speed bottling lines; and
- (e) a blow molding machine.

Job creation

5. The Consent Holder must ensure that the following full time equivalent (**FTE**) jobs are created or retained on the Land:

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

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

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

Reporting to the OIO

6. The Consent Holder must notify the OIO in writing as soon as practicable, and by no later than 6 months after the relevant lapse date specified in condition 2, whether settlement of the acquisition of the Investment took place. If settlement of the acquisition of the Investment did take place, the notice must include:
- (a) the Settlement Date;
 - (b) final consideration paid (plus GST, if any);
 - (c) the structure by which the acquisition was made, and who acquired the Investment;
 - (d) where applicable, copies of transfer documents and settlement statements; and
 - (e) any other information that would aid the OIO in its function to monitor conditions of consent, including (as relevant) the Resource Consent date.

Annual reporting

7. The Consent Holder must report in writing annually to the OIO detailing progress of its Business Plan (**Annual Report**), including:
- (a) the Consent Holder's compliance with condition 4;
 - (b) the Consent Holder's compliance with condition 5, in particular, for each 12 month period the Settlement Date, provide to the OIO details of each new FTE job created, and each FTE job retained, on the Land, including a role title and description, weekly hours, and annual salary);
 - (c) metrics which show the Consent Holder's progress (in relation to the business carried out on the Land) with respect to:
 - (i) improvements in productivity;
 - (ii) improvements in efficiency;
 - (iii) improvements in efficiency;
 - (iv) increased export receipts, as compared with the representations made by the Consent Holder in the Application Letter; and
 - (v) the amount of expenditure on plant construction and development spent with business carried on in whole or in part in New Zealand;
 - (d) the following information relating to Otakiri Springs' products destined for the New Zealand market:
 - (i) the total number of bottles produced by Otakiri Springs;
 - (ii) the number of bottles produced by Otakiri Springs that are PET/plastic; and
 - (iii) the number of bottles produced by Otakiri Springs that are glass.

The first Annual Report is due on 31 July 2019 and the final report is due on 31 July 2028 (or such other date as advised by the OIO in writing).

8. The Consent Holder must notify the OIO in writing within 20 working days if:
- (a) the Consent Holder, any Individual with Control, or any person in which the Consent Holder or any Individual with Control has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the law (whether convicted or not); or

- (b) any Individual with Control:
 - (i) ceases to be of good character; or
 - (ii) commits an offence or contravenes the law (whether convicted or not); or
 - (iii) becomes aware of any other matter that reflects adversely on an Individual with Control's fitness to have the Investment; or
 - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
 - (c) the Consent Holder:
 - (i) ceases to be an overseas person; or
 - (ii) disposes of the Investment.
9. If requested in writing by the OIO, the Consent Holder must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
- (a) the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent was granted; or
 - (b) the conditions of this consent.

Disposal Process

10. If in our opinion, condition 4 and/or 5 are not complied with (**Non-Compliance**), the Consent Holder must dispose of the Investment as follows:
- (a) The Consent Holder must, within six weeks of receiving notice from the OIO that in its opinion there has been Non-Compliance (the **Notice Date**):
 - (i) procure from an independent New Zealand registered valuer, and provide to the OIO, a written market valuation of the Investment; and
 - (ii) appoint licensed real estate agents to actively market and appropriately advertise the Investment for sale on the open market; and
 - (b) The Consent Holder must dispose of the Investment within eighteen months of the Notice Date to a third party who must not be an associate of the Consent Holder. If the Consent Holder has not disposed of the Investment at the expiry of the eighteen month period, the Consent Holder must offer the Investment for sale by auction or tender within a further three months (with no reserve price or minimum bid set for the auction or tender) and dispose of the Investment.
 - (c) The Consent Holder must provide a written report to the OIO quarterly (by the last day of March, June, September and December) about the marketing activities undertaken and offers received for the Investment. The Consent Holder must also report at any other time if required by the OIO.
 - (d) The Consent Holder must provide a written report to the OIO within two months of the Investment being disposed of, providing evidence that:
 - (i) the Consent Holder has disposed of the Investment (including copies of any sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor); and
 - (ii) the purchaser is not an associate of the Consent Holder.

Inspection for the purposes of monitoring these conditions

11. The Consent Holder must allow an Inspector to conduct an Inspection, provided that the Consent Holder has been given at least two working days' notice of the Inspection.
12. For the purpose of conducting the Inspection, the Consent Holder must allow an Inspector to:

- (a) gather information and provide that information to the OIO;
 - (b) enter any building on the Land other than a dwelling;
 - (c) remain for as long as is reasonably required to conduct the Inspection;
 - (d) conduct surveys, inquiries, tests, and measurements;
 - (e) take photographs and video recordings; and
 - (f) do all other things that are reasonably necessary to enable an Inspector to carry out an Inspection.
13. The Consent Holder must take all reasonable steps to facilitate an Inspection, including:
- (a) directing its employees or agents to permit an Inspector to conduct an Inspection; and
 - (b) being available, or requiring its agents or employees to be available at all reasonable times during an Inspection to facilitate access by an Inspector onto and across the Land, including providing transport across the Land if reasonably required.
14. For the avoidance of doubt:
- (a) an Inspector will not inspect, copy or take documents during an Inspection, unless the Consent Holder or an employee or agent of the Consent Holder agrees to the document being inspected, copied or taken;
 - (b) the Consent Holder, its employees, and agents are not required to answer an Inspector's questions, but may do so if they wish.

Released under the Official Information Act 1982