



To: Kirsty Hulena, Principal Advisor, Applications

ASSESSMENT REPORT: T&G Global Limited

Date	27 September 2022	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	202200205	Statutory deadline	19 October 2022

Purpose

We seek your decision on an application for consent to acquire an interest in sensitive land under the Overseas Investment Act 2005 ("Act").

Action sought

1. Review this report.
2. Determine whether to grant consent and, if so, on what conditions.
3. Indicate your decision from page 3.

Key information

Applicant	T&G Global Limited Germany (73.99%); China, People's Republic of (19.99%); New Zealand (5.93%); Various (0.09%).
Lessors	Noel Patrick Cawston and Catherine Ann Cawston as trustees of the Cawston Family Trust New Zealand (100%)
Land	Approximately 8.5728 hectares at 100 Te Mata-Mangateretere Road, Havelock North
Consideration	[s 9(2)(b)(ii)] per annum (total [s 9(2)(b)(ii)] over lease term excluding CPI and market rent reviews)
Sensitivity	Is more than 5 hectares of non-urban land
Relevant tests	Investor test: s18A Benefit to New Zealand test: substantial and identifiable: s16A(1C) Farm land offer test: s16(1)(f) National interest test: s16(1)(g)

Timing

4. The prescribed timeframe for this application is 100 working days. This case is on working day 84 and as such a decision must be made by 19 October 2022 to meet the prescribed timeframe. The OIO condition date in the lease is 30 November 2022 at the latest and the Applicant has requested a decision by 30 September 2022.

Core tests

5. I determine that:

5.1 The 'relevant overseas person' is (collectively):

Relevant overseas person	Role
T&G Global Limited	The Applicant and 100% parent of acquiring entity
ENZAFruit New Zealand International Limited ("ENZIL")	Acquiring entity

5.2 The 'individuals with control of the relevant overseas person' are:

Individuals with control	Role
Ralf Tobias Priske	Director of the Applicant
Carol Anne Campbell	
Benedikt Joerg Mangold	
Andreas Helber	
Robert James Hewett	
Marcus Poellinger	
Douglas James Bygrave	Director of ENZIL
Craig Victor Betty	

5.3 None of the relevant overseas persons and individuals with control of the relevant overseas person have established any of the factors contained in section 18A(4) of the Act.

6. I am satisfied that the investor test in section 18A, as outlined in paragraph 5.3 above, has been met.

7. I am satisfied, in relation to the benefit to New Zealand test, that:

7.1 the criteria for consent in sections 16 and 16A have been met;

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

7.3 the benefit will be, or is likely to be, substantial in relation to one or more of the factors of high relative importance for farmland; and

National interest assessment

8. I note that the overseas investment in sensitive land is not a transaction of national interest under section 20A of the Act and the Minister of Finance has not notified it is a transaction of national interest under section 20B of the Act.

Decision about whether to grant or decline consent

9. My ultimate decision is to grant consent subject to the conditions in the Proposed Decision in **Attachment 1**.

[s 9(2)(a)]

A large black rectangular redaction box covers the text in this section.

Kirsty Hulena
Principal Advisor
Overseas Investment Office
Date: 29 / 09 / 2022

Released under the Official Information Act 1982

A. Background and proposed transaction

10. T&G Global Limited (**Applicant**) is a New Zealand-incorporated grower, distributor, marketer, and exporter of a variety of fresh produce including apples.
11. The Applicant is seeking consent under the Act for its 100% owned subsidiary, ENZA Fruit New Zealand International Limited (**ENZIL**), to acquire a 25 year leasehold interest (being a 20 year initial term plus one five year right of renewal) in orchard land owned by the Cawston Family Trust.
12. The subject land comprises approximately 8.5728 hectares of sensitive land located at 100 Te Mata-Mangateretere Road, Havelock North, (**Land**) which is outlined in red below:



Figure 1 – Cawston Orchard

13. ENZIL currently leases the Land¹ from the Lessors under a short-term lease agreement which commenced on 1 July 2021 and is set to expire on 30 November 2022 (**Lease**).²
14. The Applicant wishes to redevelop the Land to plant s 9(2)(b)(i) hectares of Envy apples, replacing the current planting of pears and older apple varieties. In order for the Applicant to obtain a satisfactory return on its investment in the redevelopment, it submits it requires a lease of at least 20 years, with a right of renewal of 5 years.

B. Application of the Act

15. The Land is sensitive because it is non-urban land over 5 hectares in size,³ so consent is required.⁴ The following criteria for an investment in sensitive land apply to this application:⁵

¹ The Lease excludes approximately 0.5728 hectares of land that includes a house and curtilage (located within the red outline in Figure 1).

² Being a lease of less than ten years, this did not require consent under the Act.

³ Table 1, Part 1, Schedule 1 of the Act.

⁴ Under sections 10(1)(a) and 12(a)(i) of the Act.

⁵ Set out in section 16(1) of the Act.

- The investor test must be met.⁶
 - The benefit to New Zealand test must be met.⁷
 - The farm land must have been offered for sale on the open market,⁸ and
 - You must also note whether the investment is a transaction of national interest and, if so, whether the Minister of Finance has decided that the investment is contrary to New Zealand's national interest.⁹
16. In order to satisfy the benefit to New Zealand test, the decision-maker must:
- Determine that the overseas investment will, or is likely to, benefit New Zealand;¹⁰ and
 - Determine that benefit will be, or is likely to be, substantial in relation to one or more of the factors of high relative importance for farmland.¹¹
17. We assess the investor test in Part D, the benefit to New Zealand test in Part E, the farm land offer test in Part F and discuss national interest matters in Part G.

Delegated decision

18. This decision has been delegated to the OIO because the overseas investment in this sensitive land is in respect of a leasehold interest of less than 35 years¹².

C. Applicant and investor test

19. This section describes the Applicant and assesses whether the investor test is met. We note that this investor has been granted consent recently for separate leasehold acquisitions¹³ and as part of those applications they satisfied the investor test.

Business Activities

20. The Applicant is a New Zealand incorporated limited liability company whose shares have been listed on the Main Board of the NZX since 2004.
21. The Applicant is a New Zealand grower, distributor, marketer, and exporter of premium fresh produce. The Applicant's business represents over [s 9(2)(b)(i)] of the New Zealand apple export volume, and its logistics operations include over [s 9(2)(b)(ii)] m² of storage facilities in New Zealand.

Relevant overseas person

Ownership

22. The Applicant is an overseas person as more than 25% of its shares are held by overseas persons.¹⁴ The Applicant's majority shareholder with a 73.99% interest is BayWa Global Produce GmbH (**BayWa Global Produce**), a company incorporated in Germany.¹⁵

⁶ Section 16(1)(a) of the Act.

⁷ Section 16(1)(c)(ii). The alternative is the relevant overseas person or each of the individuals with control is a NZ citizen or resident, which is not applicable to the proposed investment.

⁸ Section 16(1)(f) of the Act.

⁹ Section 16(1)(g) of the Act.

¹⁰ Section 16A(1)(a) of the Act.

¹¹ Section 16A(1C)(b) of the Act. This criterion applies because the Land is farm land over 5 ha in size.

¹² See Table A, row C, Paragraph 5 of the Designation and Delegation Letter of 17 October 2018.

¹³ cases 202100354, 202100521, 202100523, and 202100618

¹⁴ Section 7(2)(b) of the Act

¹⁵ Incorporated in Germany on 8 June 2018 under registration number Munich HRB 241963.

23. BayWa Global Produce acts as a holding entity for BayWa's global produce business and is a wholly owned subsidiary of BayWa Aktiengesellschaft (**BayWa**). We understand BayWa to be a large trading and services group with a diverse range of investments including agriculture, energy, and building materials. Consent was granted by Ministers in 2012 to BayWa's acquisition of shares in the Applicant¹⁶
24. A diagram of the proposed ownership structure is in **Attachment 2**.
25. The Applicant's remaining shares are held by:
- Wo Yang Limited (held beneficially for Joy Wing Mau Fruit Technologies Corporation Limited): 19.99%; and
 - Various: 6.02%.
26. BayWa's shares are held as follows:
- Free floating¹⁷ on the Frankfurt stock exchanges: 38.44%;
 - Bayerische Raiffeisen-Beteiligungs-AG - a holding company for the Bavarian Primary Cooperatives: 34.61%; and
 - Raiffeisen Agrar Invest AG -the investment arm of the independent Lower Austrian Raiffeisen banks: 26.95%.
27. We do not consider BayWa Global Produce or BayWa to be relevant overseas persons as BayWa Global Produce does not have any control over the Applicant's board, aside from its right as a shareholder to vote on the appointment or removal of the Applicant's directors at a shareholders meeting. Additionally, neither BayWa Global nor BayWa are involved in decisions around the investment. The Applicant stated that this transaction is not of the size requiring the Applicant's shareholder approval and that the proposed acquisition of the Land was approved by the Applicant's board.
28. For these reasons, we recommend that the '**relevant overseas person**' is (collectively):

Relevant overseas person	Role
T&G Global Limited	The Applicant and 100% parent of acquiring entity
ENZAFruit New Zealand International Limited (ENZIL)	Acquiring entity

Control

29. The day-to-day operational decisions of ENZIL are made by the management and/or the board of directors of ENZIL. Strategic decisions regarding the ongoing business operations of ENZIL are made by the management and the board of ENZIL and approved by the executive team and/or the board of directors of the Applicant.
30. Similarly, day-to-day operational decisions for the Applicant are made by the managers of the Applicant. Strategic decisions (as referred to above) are made by members of the Applicant's executive team. Significant and material decisions regarding the Applicant and its subsidiaries are approved or determined by the board of directors of the Applicant.
31. The board of directors of the Applicant was responsible for approving this investment and will approve significant capital and operating expenditure relating to it.

¹⁶ case 201120077

¹⁷ Publicly traded and not restricted

32. We recommend that the ‘individuals with control of the relevant overseas person’ (IWCs)¹⁸ are:

Individuals with control	Role
Ralf Tobias Priske	Director of the Applicant
Carol Anne Campbell	
Benedikt Joerg Mangold	
Andreas Helber	
Robert James Hewett	
Marcus Poellinger	
Douglas James Bygrave	Director of ENZIL
Craig Victor Betty	

Summary of investor test

33. The relevant overseas persons and individuals with control established none of the factors contained in section 18A(4) of the Act.
34. For the reasons set out above, our conclusion is that **the investor test has been met.**

D. Investment plan and benefit to New Zealand test

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

Investment plan

36. The Land is currently planted:
- [REDACTED] hectares in in Beurre Bosc, WBC and Winter Nelis pears;
 - [REDACTED] hectares in Pacific Queen apples; and
 - [REDACTED] hectare in Envy apples planted in 2017.

37. The Applicant intends to replant the Land as follows:

- [REDACTED] hectares in Envy apples;
- Limited number of pollinating varieties; and
- [REDACTED] hectares of tracks and paths

38. The Land is currently leased to ENZIL in accordance with the Lease and ENZIL is looking to lease the Land for a longer term. ENZIL seeks a long-term lease to redevelop the areas of the Land planted in older apple varieties and pears. ENZIL

¹⁸ Section 15.

intends to plant the Land with Envy apples, one of its Plant Variety Rights (“PVR”),¹⁹ and with some pollinating varieties, being Granny Smith apples and Manchurian Crab-apples. If OIO consent is granted for the proposed orchard re development on the Land, the term of the Lease will become 20 years (with a five year right of renewal) with a final expiry date of 30 June 2047.

39. The Applicant intends to plant the Land using a two-dimensional planting system (“2D”) where the branches of the trees are trained to grow along horizontal wires on a single vertical wall.²⁰ Envy will be planted on rootstocks which they have pre-ordered [s 9(2)(b)(ii)] trees per hectare on a 2D structure²¹).
40. The Applicant expects that the orchards will be redeveloped and planted in 2023 (this may be extended to no later than the winter of 2024 depending on the availability of trees and rootstock). The Applicants will plant a total of approximately [s 9(2)(b)(ii)] trees over [s 9(2)(b)] hectares.
41. The Applicant expects that the orchard will begin producing at [s 9(2)(b)(ii)] capacity in [s 9(2)(b)(ii)] season, increasing [s 9(2)(b)(ii)] % each year. The orchard will reach full production by the [s 9(2)(b)(ii)] season. They anticipate that at full production the trees will produce [s 9(2)(b)(ii)] TCES²² with an export value of approximately \$ [s 9(2)(b)(ii)] per annum.
42. The Applicant expects the capital expenditure required to undertake the investment plan will be approximately \$2,746,782.00. The Applicant submits this investment in Envy apples will result in an increase of [s 9(2)(b)] FTE and an additional approximately \$ [s 9(2)(b)(ii)] in export receipts per annum due to higher export prices for Envy and an increased number of apples produced.

What is the current state of the land (Counterfactual)

43. The Land is currently used as an orchard, planted as follows:
- [s 9(2)(b)(ii)] hectares of pear varieties [s 9(2)(b)(ii)] trees);
 - [s 9(2)(b)(ii)] hectares of Pacific Queen apples [s 9(2)(b)(ii)] trees); and
 - [s 9(2)(b)(ii)] hectare of Envy apples planted in 2017 [s 9(2)(b)(ii)] trees).
44. Currently the Applicant leases the Land under the Lease which expires on 30 November 2022. At the time of making the application, the Applicant had not yet harvested the 2021/2022 season fruit. The information provided for the purpose of the counterfactual assessment is based on the 2020/2021 season harvest²³.
45. The Land produced [s 9(2)(b)(ii)] bins of pears, [s 9(2)(b)(ii)] bins of Pacific Queen apples, and [s 9(2)(b)(ii)] bins of Envy apples. The pears were sold to the local market (Watties) and the apples were exported. The export receipts for the 2020/2021 season were \$ [s 9(2)(b)(ii)]. The 2020/2021 harvesting equated to 1 FTE.
46. Since filing the application, the Applicant has provided updated information for the 2021/2022 harvest. The fruit from this season had been harvested but not yet packed or

¹⁹ Plant Variety Rights are a type of intellectual property right in New Zealand that cover new varieties of plants and give the breeder exclusive control over the propagating material. The Applicant has the exclusive license to grow and market the Envy PVR registered in New Zealand as “Scilate”, grant number 2924.

²⁰ This results in the trees growing along a 2D plane with flat branches as opposed to the branches growing in a three-dimensional sphere. The Applicant has made claims in previous applications about the productivity benefits of planting in the 2D system but does not rely on those claims for this application.

²¹ The Applicant has several OIO consents for orchards using the 2D system (Cases 202000929, 202100521, 202100523, and 202100618). They previously claimed increased productivity based on the 2D system which did not eventuate as expected. The Applicant is therefore not making increased productivity claims based on the 2D system for this application.

²² Tray Carton Equivalent: Defined as 18.6kg packed weight which equates to 18kg sale weight.

²³ This information was provided to the Applicant by the Lessor of the Land.

exported at the time the information was provided. The Applicant confirmed the following for the 2021/2022 season:

- Production volumes: Pacific Queen apples ^s 9(2) (b) bins; Pears ^s 9(2)(b) () bins; and Envy apples ^s 9(2) (b) bins;
- 0.66 FTE on harvesting; and
- The pears were again sold on the local market to Heinz Watties for canning.

47. There is no public access to the land as this would not be appropriate given it is a small scale operational orchard.

Consultation with the Ministry for Primary Industries

48. In other recent applications from the Applicant²⁴, the OIO consulted with the Ministry for Primary Industries (“MPI”) on matters relating to apple orchards. The feedback from MPI is also relevant to this application, so we provide a summary of it here.
49. MPI previously commented on the productivity and export prices of Envy apples as well as the 2D planting system and whether the Applicant’s claims regarding the desirability of the various apple varieties were borne out. MPI also provided a general commentary and overview of these topics.²⁵
50. MPI raised no concern with the Applicant’s claims regarding yields from Envy apples, noting that the export price for Envy per Tray Carton Equivalent (“TCE”) in recent years is approximately \$65 per TCE²⁶.
51. MPI noted that other 2D plantings or “fruit wall” growing systems are being planted in Hawkes Bay. There are new 2D orchards of Rockit apples. There are varying permutations of 2D systems. Plant and Food Research are undertaking research and development to further optimise ‘Future Orchard Planting Systems’, which are largely based on the concept of fruit wall or 2D growing systems.
52. MPI provided some useful background about the market for the various apple varieties. MPI noted that the Envy apple variety is known to be a high yielding variety, and is a larger sized sweet, red apple which is mainly exported to Asia and the US.

Summary of benefits

53. The benefits to New Zealand that are likely to result from this investment and our assessment of the relative weight to be given to each are set out in the table below.
54. Factors that we considered were either not relevant to the investment, or the benefit to New Zealand was not sufficient to be relied on, are noted in **Attachment 3**.
55. In applying the benefit to New Zealand criteria, you are required to consider each of the benefit factors and determine which of them are relevant. The weight and relative importance to be given to each factor is a matter to be determined by you as the decision-maker. This report sets out our assessment to guide your consideration, however it is not determinative.

²⁴ Cases 202100521 and 202100523.

²⁵ As currently applicable to apple orchards in the Hawkes Bay but not specific to the orchard under consideration.

²⁶ This price is Free On Board (**FOB**). FOB is a term frequently used in shipping terms where the seller quotes a price including the cost of delivering goods to the nearest port. The buyer bears all the shipping expenses and is responsible to get the products from that port to its final destination.

Summary assessment: benefit to New Zealand test

56. This table assesses the benefits to New Zealand likely to result from the investment and the relative weight to be given to each.

Relevant benefit factors	Applicant’s claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
Economic benefits <i>(High relative importance factor)</i>	Increased export receipts Export receipts will begin to accrue from [s 9(2)(b)(ii)] Export receipts of approximately \$ [s 9(2)(b)(ii)] per annum are estimated once the orchards are at full production from the [s 9(2)(b)(ii)] season (in total approximately \$ [s 9(2)(b)(ii)] of export receipts are likely to be earned over the term of the Lease).	Increased export receipts Currently approximately \$ [s 9(2)(b)(ii)] of annual export receipts.	Strong	Increased export receipts An additional approximately \$ [s 9(2)(b)(ii)] in annual export receipts once the orchards are at full production are likely as a result of the higher value Envy apples being planted, in contrast to the current production of the Land (totalling \$ [s 9(2)(b)(ii)] of additional export receipts over the term of the Lease).	We have conditioned the orchard redevelopment (Special Condition 1) which is likely to result in export receipts.
	Capital expenditure Applicant will spend approximately \$ [s 9(2)(b)(ii)] redeveloping the orchard to plant [s 9(2)] hectares of Envy apples and [s 9(2)] hectares of tracks and paths.	Capital expenditure No further capital expenditure		Capital expenditure Additional spending on orchard redevelopment	We have conditioned the spending of at least \$ [s 9(2)(b)(ii)] on the orchard redevelopment (Special Condition 2).
	Creation or retention of jobs The investment is likely to result in approximately [s 9(2)] total full time equivalent employees (“FTE”) per annum once the orchards are at full production (from the [s 9(2)(b)(ii)] season). These will include seasonal or casual workers for pruning, thinning, harvesting, and packing.	Creation or retention of jobs The current orchard only requires 1.0 FTE annually.		Creation or retention of jobs The Applicant’s investment would likely create 4.2 seasonal equivalent FTE per annum once the orchard is at full production. This is 3.2 FTE above what would occur without the investment.	We have conditioned the orchard redevelopment (Special Condition 1) which is likely to result in job opportunities.

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
	<p>Greater efficiency or productivity Approximately [§ 9(2)(b)(ii)] bins per annum of Envy apples are likely to be produced once the orchard is at full production from the [§ 9(2)(b)(ii)] season (in total approximately [§ 9(2)(b)(ii)] bins over the term of the Lease), and increased efficiency is likely to result due to equipment sharing between orchards in the same 'sector'.²⁷</p>	<p>Greater efficiency or productivity In the 2020/2021 season the Land produced: Pacific Queen apples [§ 9(2)(b)(ii)] bins; Pears [§ 9(2)(b)(ii)] bins; and Envy apples [§ 9(2)(b)(ii)] bins.</p>		<p>Greater efficiency or productivity An additional approximately [§ 9(2)(b)(ii)] bins per annum of higher value pip fruit are likely to be produced once the orchard is at full production compared to the counterfactual (total of [§ 9(2)(b)(ii)] bins per annum). In addition to this increase in productivity on the Land, there are efficiencies in the Applicant's ability to use nearby necessary equipment through their orchard management sectors.</p>	<p>Special Condition 1 requires redeveloping and planting at least [§ 9(2)(b)(ii)] hectares of the Land in Envy apples (total of approximately [§ 9(2)(b)(ii)] trees), which is likely to ensure the productivity gains occur.</p>
Consequential benefits	<p>As a result of the Applicant's investment and use of Envy apples, PVR royalties will become payable to Plant & Food Research of approximately \$ [§ 9(2)(b)(ii)] per annum once the orchards are at full production in the [§ 9(2)(b)(ii)] season (in total approximately \$ [§ 9(2)(b)(ii)]²⁸ in royalties are likely over the term of the Lease).</p>	<p>No royalties would be paid as the vendor does not have a contract with Plant and Food to allow them to produce and export Envy apples.</p>	Moderate	<p>Additional royalties will be paid to Plant and Food Research which will contribute to their ongoing work supporting the apple industry in NZ.</p>	<p>We have conditioned the orchard redevelopment and the planting of the Envy apple variety (Special Condition 1) which will result in the PVR royalties becoming payable.</p>

²⁷ The Applicant groups orchards into management sectors of approximately 85 to 130 hectares. The Applicant operates eight such sectors in the Hawke's Bay. The Land forms part of the 'Tuki Tuki Sector'.

²⁸ The Envy PVR expires in 2035, therefore the royalty payable has only been calculated up until that date. It is unknown whether any royalty will be payable beyond that date. Growers will likely continue to pay a royalty to be able to brand their apple as "Envy". However, this is yet to be determined.

Conclusion – benefit to New Zealand test

57. 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 to New Zealand test.
58. The key benefits of the investment are:
- Export receipts of approximately \$ [s 9(2)(b)(ii)] over the term of the investment;
 - Additional investment of \$ [s 9(2)(b)(ii)] dollars;
 - Creation of 3 new FTE roles per annum; and
 - the Applicant's ability to use its PVR in the Envy variety of apples resulting in greater productivity and payment of royalties to Plant and Food Research NZ.
59. The benefit is proportionate to the sensitivity of the land being a leasehold interest in approximately 8.5 hectares of farm land and the nature of the transaction because the freehold interest in the land will remain in New Zealand ownership. The benefit will be, or is likely to be, substantial in relation to one of more of the factors of high relative importance for farm land, namely economic benefit.

E. Farm land offer test

60. Because the Land is farm land,²⁹ we note that it was advertised for sale on the open market with the required information for a period exceeding 20 working days³⁰ through the following channels:
- window cards placed on three display boards, in the PGG Wrightson Real Estate office, at the entrance to the PGG Wrightson merchandise store, and in the Fruitfed Store at Stortford Lodge, Hastings;
 - the PGG Wrightson website; and
 - single column advertisements placed in the "Hawkes Bay Today" newspaper under the heading "For Lease"³¹.
61. We are therefore satisfied the regulations requiring the farm land to be offered for acquisition on the open market have been complied with.³²

F. Not a transaction of national interest

62. The investment does not involve a transaction of national interest under the mandatory criteria of the Act.³³ This is because the investment does not involve a non-NZ government investor, or an investment in a strategically important business (as defined in the Act).
63. We have not referred this transaction to the Minister of Finance for him to call it in for a national interest assessment on a discretionary basis.³⁴ He has therefore not declined consent to the transaction.

²⁹ Currently being used primarily for horticultural purposes (see the definition of farm land in s 6 of the Act).

³⁰ The Lease was entered into prior to November 2021 so the previous advertising regime applies. The advertising period commenced on 23 November 2021 and finished on 22 December 2021.

³¹ On Tuesday 23 November 2021 and Thursday 25 November 2021.

³² Overseas Investment Regulations 2005, regulations 5 to 10.

³³ Under s 20A of the Act.

³⁴ Section 20B of the Act

64. We are directed³⁵ that the starting point is the assumption that overseas investment is in New Zealand's national interest and that we should only seek the Minister of Finance to exercise his discretion for a national interest assessment if the proposed investment:
- could pose risks to New Zealand's national security or public order
 - would grant an investor significant market power within an industry or result in vertical integration of a supply chain
 - has foreign government or associated involvement that was below the 10 per cent threshold for automatic application of the national interest test, but granted that government (and/or its associates) disproportionate levels of access to or control of sensitive New Zealand assets
 - would have outcomes that were significantly inconsistent with or would hinder the delivery of other Government objectives
 - raises significant Treaty of Waitangi issues, or
 - relates to a site of national significance (e.g. significant historic heritage).
65. We do not consider that this investment engages any of these risk factors.

G. Conclusion

66. After considering the application, our view is that:
- the investor test has been met; and
 - the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
 - the benefit will be, or is likely to be, substantial and identifiable; and
 - the farm land offer test has been met; and
 - we note that the transaction has not been determined to be a transaction of national interest.
67. Therefore, we consider that the criteria for consent in section 16 have been met and our recommendation is to **grant consent**.

[s 9(2)(a)]

Senior Solicitor
Overseas Investment Office

Date: 27 / 09 / 2022

H. List of Attachments

1. Proposed Decision and Conditions
2. Intended ownership structure
3. Other benefit factors

³⁵ Supplementary Ministerial Directive Letter (8 June 2020).

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: [date]

The following people have been given the following consent:

Case	202200205
Consent	The Consent holder may acquire the interest in the Land subject to the Conditions set out below.
Consent holder	ENZAFruit New Zealand International Limited (company number 398677) We will also refer the Consent Holder as you .
Interest	A leasehold interest with a final expiry date of 30 June 2048
Land	Approximately 8.5 hectares of land located at 100 Te Mata-Mangateretere Road, Havelock North, Hawkes Bay, contained in Record of Title HBM4/1380 (Hawkes Bay).
Timeframe	You have until 31 October 2023 to acquire the interest in 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**.

Act means the Overseas Investment Act 2005.

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: Redevelopment of orchard	
<p>You must :</p> <p>a) Remove the existing trees on the Land and finish preparing the Land for planting Envy apples</p> <p>b) Complete the planting of at least ^s₉₍₂₎ hectares of the Land in Envy apples with a total of at least ^s_{9(2)(b)(ii)} trees</p> <p>c) Retain at least ^s_{9(2)(b)} hectares of the Land planted in Envy apples for the duration of the leasehold interest (including right of renewal, if applicable)</p> <p>If you do not, standard condition 6 will apply and we may require you to dispose of your interest in the Land.</p>	<p>By 1 June 2024</p> <p>By 1 October 2024</p> <p>At all times</p>
Special condition 2: Capital expenditure	
In carrying out the redevelopment and planting required under Special Condition 1 you must spend at least \$ ^s _{9(2)(b)(ii)}	By 1 June 2026

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> <p>1. by the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Land, and</p>	As stated in the Consent

<p>2. using the acquisition, ownership and control structure 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. Include details of:</p> <ol style="list-style-type: none"> 1. the date you acquired the interest in the Land, 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the interest in the Land, and 4. copies of any transfer documents and lease agreements. 	<p>As soon as you can, and no later than two months after the date you enter into the lease.</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, 	<p>At all times</p>

<p>(b) being available, or requiring your employees, agents, tenants or other occupiers to be available, at all reasonable times during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required.</p> <p>3. During an Inspection:</p> <p>(a) we will not compel you and your employees, agents, tenants or other occupiers to answer our questions or to let us look at, copy or take away documents,</p> <p>(b) our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection.</p>	
Standard condition 4: remain not unsuitable to invest in New Zealand	
<p>You, and to the extent that you are not an individual, the Individuals Who Control You must remain not unsuitable to own or control the Land in accordance with section 18A(1) of the Act.</p> <p>The Individuals Who Control You are individuals who:</p> <p>(a) are members of your governing body,</p> <p>(b) directly or indirectly, own or control more than 25% of you or of a person who itself owns or controls more than 25% of you, and</p> <p>(c) are members of the governing body of the people referred to in paragraph (b) above.</p>	<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 become aware that you and/or any Individual Who Controls you establishes any of the investor test factors listed in section 18A(4) of the Act. 2. You cease to be an overseas person or dispose of all or any part of the Land. 3. Your New Zealand Service Address changes. This is the address you provided us in your application as the address which we will send any legal document we need to serve on you. 	<p>Within 20 working days after the change</p>

Standard condition 6: dispose of the interest in the Land if you do not comply with key special conditions

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 interest in the Land.

If all or part of this standard condition 6 applies to a special condition, we have said so in that condition.

We will give you written notice if we require you to dispose of the interest in the Land. After we have given you notice, you must:

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 interest in the Land: dispose of the interest in the Land to a third party who is not your associate.

Within six months of our notice.

Offer without reserve: if you have not disposed of the interest in the Land within six months of our notice, offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.

Within nine months of our notice.

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:

- (a) that you have disposed of the interest in 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 interest in 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.

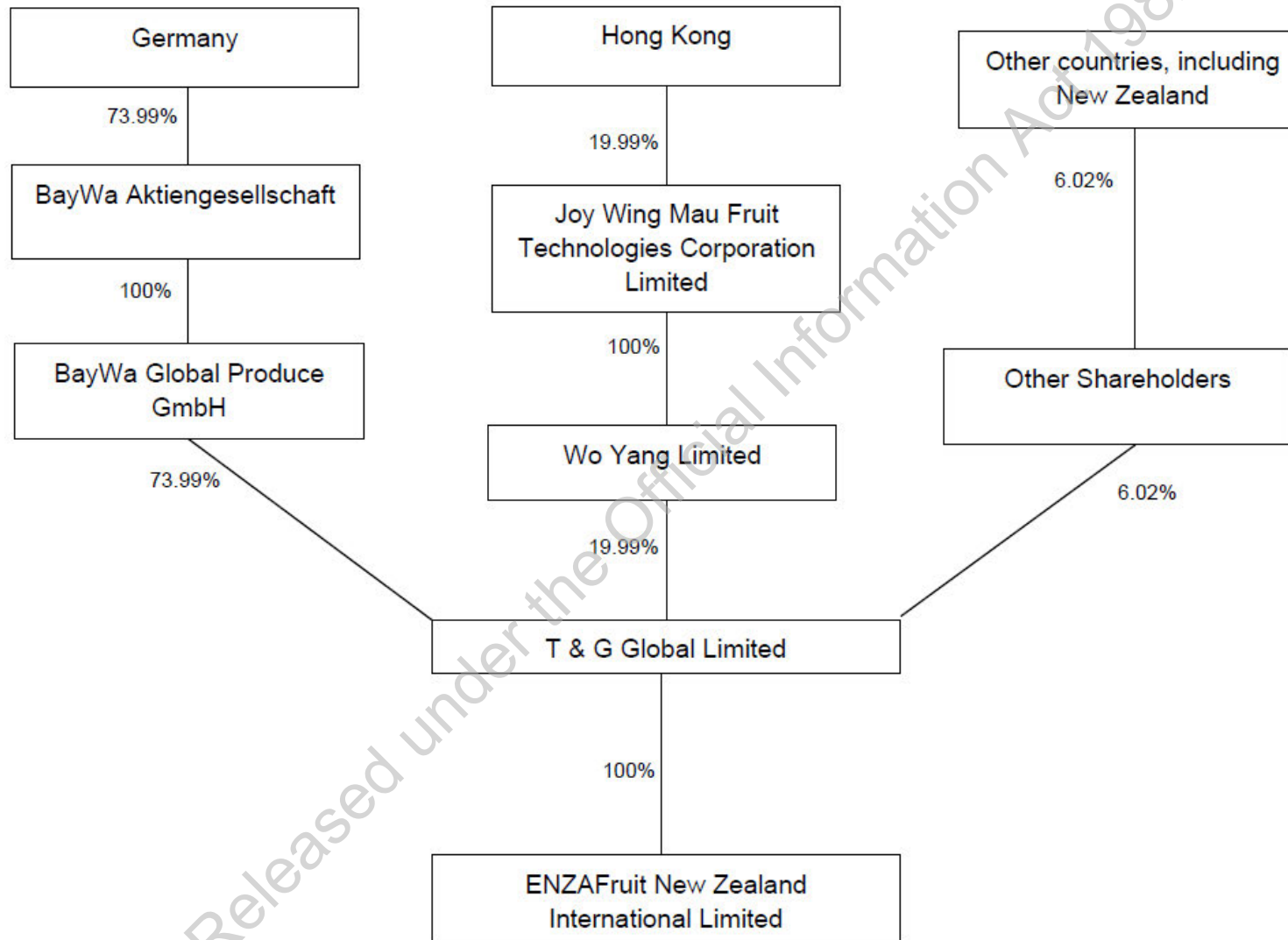
You must lodge **reports**. They must:

1. be sent to **oiomonitoring@linz.govt.nz** by these dates:
 - (a) Year one: 1 November 2024
 - (b) Year two: 1 July 2026
 - (c) Year three 1 July 2028
 - (d) Year four 1 July 2032
2. contain information about:
 - (a) your progress in implementing the special conditions, including how many Envy apple trees are planted,
 - (b) confirmation of the capital expenditure incurred in the redevelopment and planting,
 - (c) information as to the volume of apples (expressed as tray carton equivalents) produced from the Land,
 - (d) information as to the export receipts created by the operation of the orchards on the Land, including details of total export numbers (expressed as tray carton equivalents) and the total exports generated,
 - (e) amount of royalties paid to Plant and Food Research in respect of the apples produced on the Land,
3. follow the format of the template annual report published on our website (see <https://oio.linz.govt.nz/oio-consent-monitoring>).

If requested in writing by the OIO, the Consent Holder(s) must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:

- (a) the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the content was granted or
- (b) the conditions of this consent.

ATTACHMENT 2 – INTENDED OWNERSHIP STRUCTURE



ATTACHMENT 3 – OTHER BENEFIT FACTORS

The table below lists other factors in the Act and regulations for assessing the benefit of overseas investments.

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 the purposes of our assessment.

Factor	Reason not relevant or insufficient
Environmental benefits	Not relevant – No specific claims
Public access	Not relevant – No walking access over the Land
Historic heritage	Not relevant – No known areas of historic heritage on the Land.
Significant government policy	Not met – The investment is unlikely to materially advance or support a significant government policy.
Oversight or participation by New Zealanders	Not met – The investment will result in a net reduction in New Zealand control although the land will remain in New Zealand ownership.
Extraction of water for bottling	Not relevant – The investment does not involve any water bottling.

Released under the Official Information Act 1982