

From: gio@linz.govt.nz on behalf of [Overseas Investment Office Application submission online form](#)
To: lance.jones@russellmcveagh.com
Cc: lance.jones@russellmcveagh.com
Subject: Application received – Fisher Funds Management Limited
Date: Wednesday, 17 August 2022 5:14:04 p.m.



Hi Fisher Funds Management Limited

Thank you for your application to the Overseas Investment Office. Below are the details you have submitted. Your application will now be reviewed to check you have provided all of the information we need to assess your application.

We will get back to you within 12 working days, and provided your application can be accepted, we will include a request for payment of the application fee, an indication of current assessment timeframes, and more information about the consent process.

If more information is required, or we cannot accept your application, we will give our reasons for this.

In the meantime, there is more information on our website www.linz.govt.nz/overseas-investment

Nga mihi nui
The Overseas Investment Office team

Application submission details

Submitted on Wed, 17/08/2022 - 17:07

Submission ID: 5971

Submitted values are:

Start

status
ready

Application type
Consent

Consent type
Significant business assets only

Application detail

Details

Have you attended a pre-application meeting?
No

Are you resubmitting this application?
No

Is this a [retrospective application](#)?
No

Applicant name
Fisher Funds Management Limited

Short description of Assets, or the Investment
Acquisition of 100% of the shares in Kiwi Wealth Management Limited

Full legal name of the target entity (if any)
Kiwi Wealth Management Limited

Applicant's address for service in New Zealand
Level 1, 67-73 Hurstmere Road
Takapuna
Auckland, 0622
New Zealand

Requested decision date

11/11/2022

Reason for requesting this date

The requested decision date allows the OIO longer than the statutory 55 business day from the date of submission for a significant business assets application. This date will allow the parties to complete the Proposed Transaction on 30 November 2022, which would otherwise slip until 28 February 2023 if OIO consent is not obtained by the requested date. This is because the Vendor and Kiwi Wealth Group have made it clear that, for operational reasons, it will not be possible for them to complete the Proposed Transaction over the Christmas period and very difficult for them to do so at any time in January 2023. It is also important for all parties (the Applicant, the Vendor and Kiwi Wealth Group) that the Proposed Transaction is completed at a month end (including for Completion accounts adjustment purposes). In any event, we also note that it is unlikely that the OIO and Minister will issue their decision in the first half of January 2023 in order to allow Completion to occur at the end of January 2023.

Notwithstanding the requested decision date, the Applicant requests that the OIO consider this application with urgency and meet the shortest achievable timeframe to issue its consent (i.e., deliver its decision prior to 11 November 2022), because:

- the Applicant already operates in the same sector as the Kiwi Wealth Group, and is therefore a highly suitable purchaser of this business (and noting that competition considerations are addressed in detail in this application); and
- the OIO condition is the only condition precedent to the Proposed Transaction that is not within the control of the parties. The parties intend for the transaction to complete as soon as possible, and a shortened OIO consent timeframe is the factor which will permit that; and
- present financial market conditions and uncertainty, coupled with the ongoing impact of those conditions on Kiwisaver and other funds managed by the Kiwi Wealth Group, mean that it is in the interests of the investors in those funds that the Proposed Transaction close as soon as possible to ensure business continuity and management focus on the underlying Business; and
- adverse (and inaccurate) media coverage has created significant uncertainty for the employees and clients of Kiwi Wealth Group and the investors in the funds it manages, which can only be resolved by the Applicant once it has taken ownership of Kiwi Wealth Group.

In respect of this request for urgency, the Applicant:

- notes that this application was submitted promptly after the SPA was executed (which in turn was achieved shortly after the Applicant was chosen as preferred bidder); and
- undertakes to keep the OIO updated on commercial deadlines that relate to the investment and the need for urgency; and
- acknowledges that the OIO may shorten the usual timeframe for the Applicant to respond to information requests and that the application may be deprioritised if these timeframes are not complied with.

Further, as covered in more detail below, given:

- the (indirect) majority owner of the Applicant is the Toi Foundation (formerly the TSB Community Trust), which is a very well-known and highly reputable organisation in New Zealand;
- the Applicant itself is highly regulated given its activities in the wealth and investment management sector; and
- TA Fisher Investco previously obtained consent for its acquisition of a 33.99% interest in the Applicant (see case number 201720056), and the OIO has therefore previously vetted TA Fisher Investco's ownership and control structure, including the TA Funds, and consented to them holding a 33.99% stake in the Applicant, which is a very similar business to the business of the Kiwi Wealth Group,

the Applicant submits that this application should be treated as both low-risk and low complexity and should be processed accordingly (including prioritisation from a timing perspective).

Has an Agreement for Sale and Purchase been entered into?

Yes

Date of Sale and Purchase Agreement

11/08/2022

Due date of the Overseas Investment Act condition

28/02/2023

Decision maker

Ministers

Does any information in this application need to be kept confidential from other parties to this application?

All information in this application should be kept strictly confidential at all times, including from other parties to this application. In particular, all information relating to the upstream ownership, control and decision-making structure of the TA Funds disclosed in the application, and all information in the application relating to individual persons, is highly sensitive and should be kept strictly confidential.

Contact details**Applicant contact person's name**

Bruce McLachlan, Chief Executive Officer

Applicant contact person's email

[s 9(2)(a)]

Applicant contact person's phone number

[s 9(2)(a)]

Contact person name

[s 9(2)(a)]

Contact email

[s 9(2)(a)]

Best contact phone number

[s 9(2)(a)]

Role in application

Legal representative

What law firm are you from (if applicable)?

Russell McVeagh

Do you want to add another contact person?

Yes

Contact person name

[s 9(2)(a)]

Contact email

[s 9(2)(a)]

Best contact phone number

[s 9(2)(a)]

Role in application

Legal representative

What law firm are you from (if applicable)?

Russell McVeagh

Vendor/Lessor name

Kiwi Group Holdings Limited

Vendor/Lessor's email

[s 9(2)(a)]

Vendor/Lessor's phone number

[s 9(2)(a)]

Vendor/Lessor's advisors' name

[s 9(2)(a)]

Vendor/Lessor's advisors' email

[s 9(2)(a)]

Vendor/Lessor's advisors' phone number

[s 9(2)(a)]

Invoice details

Name and company for invoice

Fisher Funds Management Limited

Postal address for invoice

Level 1, 67-73 Hurstmere Road
Takapuna
Auckland, 0622
New Zealand

Attention (if applicable)

Bruce McLachlan, Chief Executive Officer

Defined terms

Defined terms

- **Terms:** the Act
Meaning: the Overseas Investment Act 2005
- **Terms:** Applicant
Meaning: means FFML
- **Terms:** Applicant Group
Meaning: means, on and from Completion, Fisher Topco and its subsidiaries, including the Applicant and the Kiwi Wealth Group
- **Terms:** [s 9(2)(b)(ii)]
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- **Terms:** [s 9(2)(b)(ii)]
Meaning: [s 9(2)(b)(ii)]
- **Terms:** Completion
Meaning: means completion of the Proposed Transaction as contemplated by the SPA.
- **Terms:** Current Shareholders
Meaning: [s 9(2)(b)(ii)]
- **Terms:** FFML
Meaning: means Fisher Funds Management Limited (NZCN: 903800).
- **Terms:** Fisher HoldCo
Meaning: means a yet to be incorporated special purpose vehicle incorporated solely in connection with the Applicant obtaining financing for the Proposed Transaction
- **Terms:** Fisher TopCo
Meaning: means a yet to be incorporated special purpose vehicle company incorporated solely in connection with the Applicant obtaining financing for the Proposed Transaction.
- **Terms:** IWC
Meaning: means individuals with control of the relevant overseas person
- **Terms:** KGHL
Meaning: means Kiwi Group Holdings Limited
- **Terms:** KB
Meaning: means Kiwibank Limited
- **Terms:** Kiwi Wealth Group
Meaning: KWML, KWL, Kiwi Wealth Investments Limited Partnership, Kiwi Wealth Investments General Partner Limited, Portfolio Custodial Nominees Limited and Kiwi Investment Management Limited, and Kiwi Wealth Group Member has a corresponding meaning
- **Terms:** KWL
Meaning: means Kiwi Wealth Limited
- **Terms:** KWML
Meaning: means Kiwi Wealth Management Limited
- **Terms:** New Shareholders' Agreement
Meaning: means the shareholders' agreement to be entered into on or prior to Completion by the Toi Shareholders, TA Fisher Investco and Fisher Topco, which will effectively replicate the Current Shareholders' Agreement.
- **Terms:** OIO Consent Condition
Meaning: means the condition to Completion set out in clause 2.1 of the SPA, whereby the Applicant must obtain consent under the Act in respect of the Proposed Transaction.
- **Terms:** Proposed Transaction
Meaning: means the acquisition of the Shares by the Applicant
- **Terms:** Regulations
Meaning: means the Overseas Investment Regulations 2005
- **Terms:** ROP
Meaning: means relevant overseas person
- **Terms:** Shares
Meaning: means 100% of the shares in the Target, which are being acquired under the SPA.
- **Terms:** Shareholders' Agreement
Meaning: means the Current Shareholders' Agreement and/or the New Shareholders' Agreement, as the context requires
- **Terms:** SPA
Meaning: means the sale and purchase agreement relating to the Proposed Transaction between the Applicant and the Vendor, dated 11 August 2022
- **Terms:** TA Associates
Meaning: means [s 9(2)(b)(ii)]

- **Terms:** TA Fisher Investco
means TA FF HoldCo Limited [s 9(2)(b)(ii)]
- **Terms:** [s 9(2)(b)(ii)]
[s 9(2)(b)(ii)]
[s 9(2)(b)(ii)]
- **Meaning:** [s 9(2)(b)(ii)]
- **Terms:** Tar
Meaning: means Kiwi Wealth Management Limited
- **Terms:** Toi Shareholders
Meaning: means the wholly-owned direct and indirect subsidiaries of the Toi Foundation (formerly the TSB Community Trust) who are the direct shareholders in Fisher Topco, being Toi Foundation Investments Limited (NZCN: 5655589) and Toi Foundation Holdings Limited (NZCN: 5615203).
- **Terms:** Vendor
Meaning: means KGHL and Vendor Group means the Vendor, KB and the Vendor's other subsidiaries following Completion

Investment

Tell us about the proposed transaction and relevant agreements and steps involved in the transaction

1. Transaction: The Applicant proposes to acquire the 100% of the share capital of the Target, being 44,500,001 ordinary shares, from the Vendor pursuant to the SPA.

The consideration to be paid by the Applicant for the acquisition of the Shares under the SPA is NZ\$310,000,000. This amount is subject to customary adjustments to reflect the cash, debt and working capital position of the Kiwi Wealth Group as at Completion.

In addition to the SPA, KB and KWML have entered into a transitional services agreement, pursuant to which KB agrees to provide certain separation and transitional services to the Kiwi Wealth Group Members for the period prior to Completion and for a limited period following Completion.

On Completion, KB and KWML will enter into a multi-year partnership agreement pursuant to which the parties will participate in a mutually beneficial customer referral model.

A copy of the SPA is attached at Appendix 1.

2. Applicant: The Applicant is a specialist investment manager with a singular focus on delivering great investment returns and superb client service. It has one of New Zealand's largest and most experienced locally-based investment teams, managing over \$14.6 billion of funds under management on behalf of over 250,000 clients (as at 31 March 2022). The Applicant was incorporated under New Zealand law on the 9th of April 1998. Further information about the business activities of the Applicant is provided later in this application.

The Applicant is indirectly owned by the Toi Shareholders (together holding 66.01% of the Shares) and TA Fisher Investco (holding 33.99% of the Shares), which is ultimately owned by the TA Funds.

Toi Foundation Investments Limited is wholly owned by Toi Foundation Holdings Limited, which is in turn wholly owned by the Toi Foundation (formerly known as the TSB Community Trust), i.e., the Toi Foundation indirectly owns and controls the Toi Companies' 66.01% combined shareholding in the Applicant. For clarity the Applicant notes that the TSB Community Trust is still the named holder of the shares in Toi Foundation Holdings Limited – this is solely because the Companies Office details have not been updated. Proof of the name change is included in Appendix 6.

The Toi Foundation was established as a charitable trust in 1988. It is committed to championing positive opportunities and being an agent of beneficial change for Taranaki and its people. The Toi Foundation receives dividends from its assets (including the Applicant) which it applies towards supporting towards charitable, cultural, philanthropic, recreational and other purposes beneficial to the community in Taranaki.

TA Fisher Investco is ultimately owned by the TA Funds. The TA Funds are advised by TA Associates, a leading global private equity firm which invests in business services, consumer, financial services, healthcare, and technology sectors. TA Associates is focussed on partnering with the management of companies with the objective of building lasting value. On and from Completion, the Applicant will be wholly-owned by Fisher HoldCo, which in turn is wholly-owned by Fisher TopCo. These entities will be incorporated prior to Completion solely for the purpose of obtaining and securing the Applicant's financing arrangements in respect of the Proposed Transaction.

Refer to the Applicant's corporate structure chart attached at Appendix 2.

3. Target: The target is Kiwi Wealth Management Limited, a company incorporated in New Zealand. The Target is one of the holding companies for the Kiwi Wealth Group.

The Kiwi Wealth Group is a wealth and investment organisation that focuses on creating better financial futures for New

Zealanders. The Kiwi Wealth Group was founded as Gareth Morgan Investments, which was acquired by KGH in 2012. The Kiwi Wealth Group offers a number of investment products to customers. Specifically, it manages the Kiwi Wealth KiwiSaver Scheme, Managed Funds, Super Scheme and Private Portfolio Service. It also provides investment advice through its advisory arm, Kiwi Invest. Kiwi Wealth is currently one of six default KiwiSaver providers in New Zealand, through one of the Kiwi Wealth Group Members, KWL.

Refer to the corporate structure chart attached at Appendix 2 for details of the members and structure of the Kiwi Wealth Group.

4. Vendors: The Vendor is the sole shareholder of the Target. The Applicant notes that, indirectly, the owners of the Target are:

- New Zealand Post Limited (NZCN 315766), which owns 53% of the shares in KGHL. New Zealand Post Limited is a state owned enterprise;
- NZSF Tui Investments Limited (NZCN 6126607), which owns 25% of the shares in KGHL. NZSF Tui Investments Limited is wholly owned by the Guardians of New Zealand Superannuation, a Crown Entity; and
- Accident Compensation Corporation, which owns 22% of the shares in KGHL. Accident Compensation Corporation is a Crown Entity.

5. Rationale for the Proposed Transaction: [s 9(2)(b)(ii)]

6. Categorisation of this application: The Applicant considers that this application should be categorised by the OIO as "low risk" and "low complexity" and should be processed by the OIO accordingly for the following reasons:

- the Applicant is 66.01% owned by the Toi Foundation, a New Zealand registered charitable trust, which operates for the benefit of Taranaki and its residents;
- the 33.99% minority shareholder of the Applicant (TA Fisher Investco) received OIO consent to acquire its interest in the Applicant and, therefore, is known to, and has been approved by, the OIO;
- the Vendor, the Applicant and TA Associates are all regulated entities, subject to a high degree of regulatory oversight. In particular, the Applicant is registered to provide the following financial services, details of which are available through the Financial Services Providers Register:
 - (i) client money or property services;
 - (ii) discretionary investment management services;
 - (iii) financial advice services (transitional licence);
 - (iv) acting as an investment manager under an offer under the Financial Markets Conduct Act 2013 ("FMCA");
 - (v) being an issuer under an offer under the FMCA;
 - (vi) keeping, investing, administering, or managing money, securities, or investment portfolios on behalf of other persons;
 - (vii) acting as a manager of a registered managed investment scheme;
 - (viii) being an offeror under an offer under the FMCA;
 - (ix) trading financial products or foreign exchange on behalf of other persons.

Of particular significance are the licences referred to in paragraphs (ii), (iii) and (vii) above, which require the senior managers and directors of the Applicant to be "fit and proper" persons. This is a broad test, concerned with the good character and capability of the persons in question. The only persons who are required to meet the investor test for this application are the Applicant, David Clarke, Mark Lazberger, Edward Francis Sippel and Michael Stuart Berk (because all other ROPs and IWCs are not overseas persons). The Applicant is the licensed entity which is subject to many ongoing obligations, and Messrs Clarke, Lazberger, Sippel and Berk have satisfied this 'fit and proper' test in order to permit the Applicant to be licensed. This should give the OIO comfort that these persons are highly reputable and are suitable to control sensitive New Zealand assets. Given the few people that are required to meet the investor test, the Applicant expects that the OIO's assessment of the application could also be expedited on that basis;

- the Applicant and the Kiwi Wealth Group are both well established in New Zealand and well known, with significant information regarding each publicly available, including via their websites, available here: <https://fisherfunds.co.nz/> and here: <https://www.kiwiwealth.co.nz/>;
- the ownership structure of the Applicant's 66.01% majority shareholder (Toi Foundation) is very straightforward; and
- although the ownership structure of the TA Funds' 33.99% minority shareholder is complex (but not unusual for private equity funds, with which the OIO is familiar), this structure has relatively recently been reviewed by the OIO (in TA Fisher

Investco's application to invest in the Applicant).

7. While the above matters may not be directly relevant to the OIO's specific assessment of the application, the Applicant notes these factors to evidence to the OIO that the Applicant is a highly reputable investor, the likes of which should be encouraged to undertake material investment in New Zealand. The Applicant accordingly urges the OIO to consider this application on an expedited basis to minimise ongoing uncertainty for investors in funds managed by both the Applicant and the Kiwi Wealth Group (particularly in light of current adverse economic and financial market conditions), and to demonstrate the OIO's support for high quality inbound investment in New Zealand.

Provide details of any pre-conditions to the completion of the acquisition other than OIO consent

8. The parties have entered into the SPA to implement the Proposed Transaction.

9. In addition to the OIO Consent Condition, the SPA includes a condition that requires "Operational Readiness" to have occurred under the transitional services agreement prior to Completion. [s 9(2)(b)(ii)]

10. Under the SPA, Completion will occur on the later of:

- if the last of the Conditions are satisfied 10 or more business days prior to the end of the then current month, the last business day of that month; or
- if the Conditions are satisfied less than 10 business days prior to the end of the then current month, the last business day of the following month,

except that if the Conditions are satisfied less than ten Business Days prior to the end of November 2022 or during December 2022, then the Completion Date shall mean the last Business Day of January 2023 (being 31 January 2023). The last date for satisfaction of the Conditions is 28 February 2023, after which either party can terminate the SPA.

Provide details of any pre-consent arrangements such as short-term leases, management agreements, etc

11. There are no pre-consent arrangements in place – the Proposed Transaction is at arms' length and has been executed following a competitive bid process involving multiple participants.

Describe the target entity/business

12. The Kiwi Wealth Group currently provides various wealth and investment services to customers in locations across New Zealand, including KWL being one of the default KiwiSaver providers appointed by the New Zealand Government.

Does the Applicant have any existing interest in the sensitive assets and / or an existing relationship with the vendor / lessor?

No

Has the Applicant applied for, or is the transaction the subject of, any other regulatory consent(s)?

Yes

Provide details of other regulatory consent requirements

13. Although not strictly regulatory consents which are required in order for the transaction to proceed, we note that in connection with the Proposed Transaction:

- KWL will seek consent from the Minister of Commerce and Consumer Affairs and the Minister of Finance in accordance with the KiwiSaver Default Provider (Kiwi Wealth) Notice 2021 to the change of control of KWL that will result from the Proposed Transaction;
- the Financial Markets Authority must be notified in respect of the change of control that will occur in connection with the Proposed Transaction in accordance with the conditions of certain Managed Investment Scheme licences and Discretionary Investment Management Service licences held by certain Kiwi Wealth Group Members; and
- Public Trust (Supervisor) must be notified in respect of the change of control that will occur in connection with the Proposed Transaction in accordance with the terms of certain scheme trust deeds entered into between Kiwi Wealth Group Members and Public Trust.

Tell us why the transaction requires consent under the Overseas Investment Act 2005, and reference the relevant sections of the Act

14. The Proposed Transaction requires consent under section 10(1)(b) and 13(1)(a) of the Act, because:

- the Applicant is an overseas person (as to which, see below); and
- the consideration provided for the Shares under the SPA exceeds NZ\$100m.

15. The Kiwi Wealth Group does not have any interests in "sensitive land".

16. The Applicant is an "overseas person" under section 7(d) of the Act because it is a body corporate in which an "overseas person", Fisher HoldCo, has a more than 25% ownership and control interest in respect of the single class of the Applicant's securities. Fisher Holdco and Fisher Topco are each an overseas person because they are directly (in the case of Fisher Topco) or indirectly (in the case of Fisher Holdco) more than 25% owned by TA Fisher Investco.

17. This application will also be subject to assessment under the national interest test under section 20A(1)(b) of the Act on the basis that the Applicant will be considered a [s 9(2)(b)(ii)] non-New Zealand government investor [s 9(2)(b)(ii)]

What is the amount being paid, or the value of the asset?

310000000

GST inclusive?

Yes

Comment (if any) about the amount being paid, or asset value

As at 30 June 2022, the gross value of the Kiwi Wealth Group's assets was approximately NZ\$67.06 million.

Provide details of how the transaction will be funded

19. The Proposed Transaction will be funded [s 9(2)(b)(ii)]

Transactions

- **Transaction name:** Acquisition of Kiwi Wealth Management Limited
Description: 20. Consent is only being sought for the Proposed Transaction, being the acquisition of the Shares by the Applicant.

21. The parties intend to complete the Proposed Transaction on 31 October 2022, subject to receipt of OIO consent prior to or during the first two weeks of October 2022. If OIO consent is not received within that timeframe, then the parties expect to complete the Proposed Transaction on 30 November 2022, subject to receipt of OIO consent in the first two weeks of November 2022.

When it is likely to occur: 31 October or 30 November 2022

Upload transaction-related documents

- [Project Weka - Appendix 01 - SPA.pdf](#) (1.97 MB)
- [Project Weka - Appendix 12 - Partnership Agreement.pdf](#) (1.2 MB)
- [Project Weka - Appendix 13 - TSA \(signed\).pdf](#) (1.55 MB)

Applicant's ownership & structure

Does the Applicant have any current or past business operations in New Zealand?

Yes

Provide information about the Applicant's business operations, past and present, including those in New Zealand

1. The Applicant is a majority New Zealand owned and operated company established in 1998 as a specialist investment manager with two primary goals:

- to deliver great investment returns to its customers by investing in good quality companies; and
- through smart active management and quality customer engagement, help customers expect greater lifetime savings.

2. As at 31 March 2022, the Applicant is the fourth largest KiwiSaver provider, and the fifth largest investment manager in New Zealand, managing over \$14.6 billion of funds on behalf of over 250,000 clients. These funds are held on behalf of a diverse range of clients including community trusts, charities, not-for-profit, councils, family offices, insurance companies, iwi, platforms, corporate pension schemes and individuals.

3. In particular, the Applicant manages the following funds:

- The Fisher Funds KiwiSaver Scheme registered KiwiSaver scheme, comprising two funds: the Conservative Fund and the Growth Fund.
- The Fisher Funds TWO KiwiSaver Scheme registered KiwiSaver scheme, comprising six funds: the Preservation Fund, the Cash Enhanced Fund, the Conservative Fund, the Balanced Fund, the Growth Fund and the Equity Fund.
- The Fisher Funds Managed Funds registered managed investment scheme, comprising seven funds: the Conservative

Fund, the Growth Fund, the Income Fund, the Property & Infrastructure Fund, the New Zealand Growth Fund, the Australian Growth Fund and the International Growth Fund.

- The Fisher Funds Premium Service registered managed investment scheme, comprising five funds: the Premium Income Fund, the Premium Property & Infrastructure Fund, the Premium New Zealand Fund, the Premium Australian Fund and the Premium International Fund.
- The Fisher Funds Investment Series registered managed investment scheme, comprising five funds: the CashPlus Fund, the New Zealand Fixed Income Trust, the BondPlus Fund, the Trans-Tasman Equity Trust and the Global Fund.
- The Fisher Funds LifeSaver Plan registered workplace savings scheme, comprising seven Funds; the Preservation Fund, the New Zealand Fixed Income Fund, the Conservative Fund, the Balanced Fund, the Growth Fund, the Trans-Tasman Equity Fund and the Equity Fund.
- The FuturePlan legacy superannuation scheme (no longer offered to new members) comprising six investment funds.
- The Aon Kiwisaver Scheme registered KiwiSaver scheme, comprising funds managed by Milford Asset Management, Russell Investments, Nikko Asset Management and ANZ, which the Applicant acquired on 1 December 2021.
- The Aon Employer Superannuation Master Trust registered managed investment scheme, which the Applicant also acquired on 1 December 2021.

4. In addition, the Applicant manages three investment companies that are listed on the NZX Main Board, being:

- Kingfish Limited;
- Barramundi Limited; and
- Marlin Global Limited.

5. The Applicant was voted Fund Manager of the Year for both equities and bonds in the 2021 INFINZ awards. Super Ratings Australia (who independently research and rate KiwiSaver providers) awarded both of the Applicant's KiwiSaver Schemes "Platinum" ratings. The Applicant was also the recipient of the Reader's Digest "Most Trusted Brand" award for KiwiSaver and Superannuation in both 2021 and 2022.

6. The Applicant currently employs 150 people, with 23 specialists located within the investment team, which is the largest New Zealand based investment team in the industry. The Applicant's investment team has an investment thesis for each underlying business invested in, which considers the sustainability of its business model, financial performance, the quality of its governance and management team and its performance against high ESG standards.

7. The Applicant views it as an honour and privilege to have stewardship of the wealth of over 250,000 New Zealanders and, accordingly, takes its responsibilities to customers and the wider community very seriously. As noted in further detail below, the Applicant actively contributes to the wellbeing of the community which differentiates it from other entities in the industry.

Has the sensitive asset, or Applicant and related entities been subject of an application for consent before?

Yes

Consent number(s)

31. The Applicant has not previously needed to obtain consent under the Act.

32. The minority shareholder in the Applicant, TA Fisher Investco previously obtained consent for its acquisition of a 33.99% interest in the Applicant (see case number 201720056).

Applicant's financial position

33. The Applicant is a highly successful wealth and investment management business. In its most recent audited financial statements, which related to the period ended 31 March 2022, the Applicant had the following key financial metrics:

- net income of \$194,794,000;
- net profit (after tax) of \$93,920,000;
- total asset value of \$150,787,000; and
- net asset value of \$69,437,000.

34. Further information about the Applicant can be found on its website here: <https://fisherfunds.co.nz/> and its most recent annual report, for the period ended 31 March 2022, can be found here: <https://app.companiesoffice.govt.nz/companies/app/service/services/documents/64F7A11F47CE530EE64BE9195AE5DDEB>

35. Further information about the Toi Foundation can be found here: <https://toifoundation.org.nz/>

36. Further information about TA Associates can be found here: <https://www.ta.com/>

Tell us about ownership and control

1. The Applicant is a limited liability company which was incorporated in New Zealand on 9 April 1998. A copy of the Applicant's constitution is attached as Appendix 7.

2. The Applicant has 15,135 ordinary shares on issue, which are held as follows:

- 56.01% by Toi Foundation Investments Limited (formerly TSB Group Investments Limited);
- 10% by Toi Foundation Holdings Limited (formerly TSB Group Capital Limited); and
- 33.99% by TA Fisher Investco.

Ownership structure

3. The Applicant is, ultimately, jointly owned by the Toi Foundation (formerly the TSB Community Trust, through its indirect wholly-owned subsidiaries – the Toi Shareholders) and the TA Funds (through their indirect wholly-owned subsidiary TA Fisher Investco).
4. An ownership structure diagram showing the legal ownership of the Applicant is attached at Appendix 2.

Fisher Holdco and Fisher Topco

5. On and from Completion, the Applicant will be wholly-owned by Fisher Holdco. Fisher Holdco will be incorporated prior to Completion solely to raise debt from, and provide security to, the group of financiers that have been engaged to provide debt finance to fund the purchase price for the Proposed Transaction.
6. On and from Completion, Fisher Holdco will be wholly-owned by Fisher Topco. Fisher Topco will be incorporated solely for structuring purposes, as a requirement of the Applicant's debt funders.
7. The directors of Fisher Holdco and Fisher Topco will be taken from a pool of individuals who have already been identified as IWCs for the purposes of this application, being the directors of the Applicant and the trustees of the Toi Foundation. They may also include one or more of the CEO and CFO of Toi Foundation, who are both also directors of Toi Foundation Investments Limited.
8. Once Fisher Holdco and Fisher Topco have been incorporated, we will provide the required information in respect of those entities by way of an email supplement to this application.
9. Once Fisher Holdco and Fisher Topco are incorporated, the Current Shareholders' Agreement in respect of the Applicant will be terminated (because the Applicant will have only one shareholder, being Fisher Holdco) and the New Shareholders' Agreement will be entered into on materially the same terms and by the same parties but in respect of Fisher Topco rather than the Applicant. Notwithstanding the imposition of the new holding structure and the entry into the New Shareholders' Agreement, substantive decision-making authority and responsibility will continue to rest with the Applicant and in particular the Applicant's board of directors, and this will be set out in the New Shareholders' Agreement.
10. The New Shareholders' Agreement will only have very minor differences from the Current Shareholders' Agreement to (i) reflect the new holding company structure, (ii) remove certain outdated references, and (iii) to tweak the pre-emptive rights on transfers to incorporate minor amendments required by the group of financiers that have been engaged to provide debt finance to fund the purchase price for the Proposed Transaction. None of those amendments will affect decision-making in respect of the Applicant, including the Kiwi Wealth Group, following Completion.

The Toi Shareholders

11. Between the Applicant and the Toi Foundation in the Applicant's corporate ownership structure sit Toi Foundation Investments Limited and Toi Foundation Holdings Limited, Fisher Holdco and Fisher Topco. Toi Foundation Holdings Limited is both a direct shareholder in Fisher Topco and the sole shareholder in Toi Foundation Investments Limited.
12. In accordance with its constitution, the purpose of Toi Foundation Holdings Limited includes to hold assets in accordance with the objects and purposes declared by the trustees of the Toi Foundation and to invest in TSB Bank Limited.
13. Toi Foundation Holdings Limited is both a direct 10% shareholder in Fisher Topco and also an indirect 56.01% shareholder in Fisher Topco through Toi Foundation Investments Limited.
14. Toi Foundation Investments Limited is a special purpose intermediary company that was incorporated to invest in the financial services sector and "to do any other thing that is approved by Toi Foundation Holdings [Limited]."
15. Toi Foundation Investments Limited's capacity, rights, powers and privileges may only be exercised for the purposes of, and for giving effect to (and as such are so restricted) the following prescribed circumstances, namely to:
 - hold shares in the Applicant;
 - perform obligations under financing and security documents associated with the acquisition and holding of shares in the Applicant including in respect of funding for other companies within the group;
 - declare and pay dividends;
 - redeem or buy back share capital;
 - subject to receiving directions from Toi Foundation Holdings Limited, perform obligations as shareholder in the Applicant, including under its constitution and under agreements relating to that shareholding (e.g., the Shareholders' Agreement); and
 - undertake any other activity approved by Toi Foundation Holdings Limited.
16. Toi Foundation Holdings Limited is a special purpose intermediary company that was incorporated to:
 - hold assets in accordance with the objects and purposes declared by the trustees of the Toi Foundation, including shares in TSB Bank Limited, Toi Foundation Investments Limited, among others;
 - invest in Toi Foundation Investments, including by borrowing from TSB Bank Limited to fund that investment;
 - increase its investment in TSB Bank Limited, including by borrowing from Toi Foundation Investments Limited to fund that investment;
 - provide a guarantee to Toi Foundation Investments Limited (including to enable it to raise debt or equity capital);
 - receive income and capital in relation to its assets and to make distributions to the Toi Foundation; and
 - do any other thing that does not conflict with the above.

17. In addition, Toi Foundation Holding Limited is prevented from taking a number of actions in its capacity as shareholder in Toi Foundation Investments Limited without approval of its "Holding Entity", being the Toi Foundation, including "the passing of any shareholder resolution by [Toi Foundation Holdings Limited] as shareholder for either [TSB Bank Limited] or Toi Foundation Investments [Limited]."

18. As a result, each of the Toi Shareholders acts only in accordance with and subject to the direction of Toi Foundation, including in respect of appointing directors to the board of the Applicant (in accordance with the Shareholders' Agreement).

Toi Foundation

19. The Toi Foundation is the ultimate owner of the Toi Shareholders, therefore indirectly owning a 66.01% controlling stake in the Applicant. The Toi Foundation is a charitable trust set up for the benefit of the Taranaki community. The Toi Foundation derives its income from its assets and investments (including its investment in the Applicant), which can be applied towards supporting not-for-profit organisations for "charitable, cultural, philanthropic, recreational and other purposes beneficial to the community".

20. A copy of the trust deed for Toi Foundation (in its former name of the TSB Community Trust) is attached as Appendix 6. It contains the following requirements which may be relevant to the OIO's analysis of the control of the Toi Foundation:

- **Trustee:** The number of trustees shall not be more than 10 nor less than 5. The trustees shall be appointed by the Minister of Finance and each shall hold office for a term of not more than 4 years, unless the Minister of Finance considers that there are exceptional circumstances allowing for a trustee to serve two terms of four years. A trustee may at any time resign office by notice in writing to the Minister of Finance. At least half of the trustees appointed must have sufficient knowledge of, or experience in, business, banking, law or accounting so as to manage the investments of the Toi Foundation. The remaining trustees shall be appointed by reason of that person's interest or involvement in the community, and there must be sufficient diversity in order to properly represent the Taranaki region, including in relation to background, skillset, demographics, gender and whakapapa Maori.

The current trustees are:

Trustees

Harvey Dunlop Chris Ussher (Chair)

Sophie Braggins Liana Poutu

Robin Brockie Guy Roper

Peter Dalziel Bali Haque

Nicola Ngarewa Wharehoka Wano

- **Settlor:** The Minister of Finance is the settlor under the trust deed establishing the trust, dated 30 May 1988, as amended and restated from time to time (including by a replacement deed entered into by the trustees of the trust and the Minister of Finance dated 5 September 2000 and by a variation dated 7 December 2004).

- **Decision-making:** The trustees may invest the trust fund either alone or in common with any other person in any form of investment legally authorised for the investment of trust funds. Clause 23 of the trust deed sets out the specific powers of the trust. This includes the trustees having the power to act as directors of any company in which the trust fund holds shares, such as the Toi Shareholders and the Applicant.

A resolution of the trustees is passed if it is agreed to by a majority of trustees present at the meeting present without dissent or where some other majority is required by the trust deed. A higher (75% or more) threshold applies to any decision by the Trustees to:

- sell or otherwise dispose of all or any shares held in TSB Bank Limited;
- amend the trust deed, if such amendment is consistent with the purpose of the trust (upon the approval of the Minister of Finance)
- submit to the Minister of Finance a scheme for the amalgamation with one or more trusts established pursuant to the Trustee Banks Restructuring Act 1988 or the Community Trusts Act 1999;
- submit to the Minister of Finance a scheme for the formation of two or more trusts in place of the Toi Foundation; and
- declare that part of the TOI Foundation fund be held by the trustees for objects and purposes exclusively within (but which may be more limited than) the objects of the Toi Foundation.

In the case of equality of votes (where a simple majority is required), the chairperson (to be elected by the trustees) shall have a second or casting vote.

TA Fisher Investco, [s 9(2)(b)(ii)] and the TA Funds

21. The OIO is familiar with the structure of TA Fisher Investco, and its upstream shareholders, as its ownership and control structure was provided in TA Fisher Investco's fairly recent application to acquire its interests in the Applicant (case number 201720056). There has been no material change in TA Fisher Investco's ownership and control structure since the date of that consent (being 31 August 2018).

22. As shown in the structure diagram in Appendix 2, Fisher Topco, and indirectly the Applicant, is 33.99% owned by TA Fisher Investco.

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

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

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

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

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

TA Associates

28. TA Associates is a global private equity firm founded in 1968 – making it one of the original modern era private equity firms. It has offices in Boston, Menlo Park, London, Mumbai and Hong Kong. TA Associates invests in companies across North America, Europe and Asia and has a strong focus on five core sectors: financial services, business services, consumer, healthcare and technology industries.

29. TA Associates has extensive experience in investing around the globe and has raised over USD47.5 billion in the ~50 years it has operated.

30. TA Associates acts as the adviser to the general partner of each of the TA Funds. TA Associates itself does not have any direct or indirect economic interest in the Applicant, nor any direct or indirect control interest in relation to the Applicant, other than to the extent that two of its representatives are directors of the Applicant appointed by TA Fisher Investco (Edward Sippel and Michael Berk). These directors are trusted to oversee the investment by the TA Funds in the Applicant, and TA Associates does not otherwise participate in or seek to control the affairs and decision-making of the Applicant.

31. For every investment that TA Associates proposes to make, it establishes an investment committee. The investment committee is responsible for investigating and performing due diligence on the investment in order to allow TA Associates to recommend (or not recommend, as the case may be) the investment to the general partners of funds managed and/or advised by TA Associates. [s 9(2)(b)(ii)]

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

32. The shareholders of the Applicant (Toi Foundation Investments Limited, Toi Foundation Holdings Limited and TA Fisher Investco) are party to the Current Shareholders' Agreement, a copy of which is attached as Appendix 9 and will, on and from Completion, be party to the New Shareholders' Agreement. The Current Shareholders' Agreement and the New Shareholders Agreement will, in effect, be on the same terms as they relate to decision-making and control of the Applicant Group (including the Kiwi Wealth Group) following Completion.

[s 9(2)(b)(ii)] decisions of the board of directors of the Applicant must be made by a simple majority of the votes of the directors on the board.

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

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

Provide incorporation, shareholder and director information for the Applicant and persons who have a more than 25% beneficial or legal interest in the Applicant (or equivalent information if the Applicant is not a company)

1. The Applicant can have a maximum of eight directors (unless the shareholders unanimously determine otherwise). Under

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

2. The current directors of the Applicant are as follows:

Director Association

Michael Stuart Berk TA Associates representative nominated by TA Fisher Investco

Margaret Anne Blackburn Independent director nominated by the Toi Shareholders

David Clarence Clarke Independent director nominated by the Toi Shareholders

Mark John Lazberger Independent director nominated by the Toi Shareholders

Jennifer Clare Moxon Independent director nominated by the Toi Shareholders

Guy Roper

(trustee of Toi Foundation) Independent director nominated by the Toi Shareholders

Toi Foundation representative

Edward Francis Sippel TA Associates representative nominated by TA Fisher Investco

Fisher Holdco and Fisher Topco

3. The directors of Fisher Holdco and Fisher Topco have not yet been confirmed, but they will be taken from a pool of individuals who have already been identified as IWCs for the purposes of this application, being the directors of the Applicant and the trustees of the Toi Foundation. They may also include one or more of the CEO and CFO of Toi Foundation, who are also directors of Toi Foundation Investments Limited, and in respect of whom all information required by the OIO has been provided together with this application as if they had been selected as IWCs.

4. The shareholders in Fisher Topco will be the Toi Shareholders and TA Fisher Investco, in the same proportions as those entities currently hold their interests in the Applicant. Fisher TopCo will be the sole shareholder of Fisher Holdco, and Fisher Holdco will be the sole shareholder of the Applicant.

The Toi Foundation

5. The trustees of the Toi Foundation are:

Trustee

Chris Ussher (Chair)

Harvey Dunlop

Sophie Braggins

Robin Brockie

Peter Dalziel

Guy Roper (trustee of Toi Foundation)

Bali Haque

Nicola Ngarewa

Liana Poutu

Wharehoka Wano

6. Pursuant to clause 29(c)(ii) of the trust deed of the Toi Foundation, where a specific part of the trust fund of the Toi Foundation is vested in any company, the trustees must ensure that all times the company is governed and managed as to satisfy the requirements of the deed, including that the directors of the relevant investee company must all be trustees and may not hold office as directors after they cease to be trustees.

7. Decisions to appoint and remove directors of Toi Foundation Holdings Limited are made by simple majority decision of

the trustees of the Toi Foundation.

8. When there is any vacancy in the number of directors on the board of Toi Foundation Holdings Limited from time to time, the trustees of the Toi Foundation determine by majority decision which of their number will be appointed as directors of Toi Foundation Holdings Limited to fill such vacancy. This election process involves those trustees who are interested in holding a directorship position on the board of Toi Foundation Holdings Limited completing an 'expression of interest' form for consideration by the trustees. The trustees then identify, with assistance from the existing directors of Toi Foundation Holdings Limited, what skills are needed on the board. The HR Committee of the Toi Foundation then considers the applications received and makes recommendations to the full board of trustees of the Toi Foundation, which makes the final decision.

9. The number of directors in respect of the Toi Shareholders (as specified in the respective constitutions) is as follows:

- Toi Foundation Holdings Limited: The company must have at least three directors, with the maximum number of directors being six. All directors must also be trustees of the Toi Foundation. Toi Foundation Holdings Limited currently has five directors.
- Toi Foundation Investments Limited: The company must have at least two and no more than three directors. Toi Foundation Investments Limited currently has three directors.

10. The current directors of the Toi Shareholders are as follows:

Toi Foundation Holdings Limited

Director

Robin Brockie

(trustee of the Toi Foundation)

Harvey Frank Dunlop

(trustee of the Toi Foundation)

Liana Huia Poutu

(trustee of the Toi Foundation)

Guy Roper

(trustee of the Toi Foundation)

Christopher Patrick Ussher

(trustee of the Toi Foundation)

Toi Foundation Investments Limited

Director

Guy Roper

(trustee of the Toi Foundation)

Dion Maaka

(finance, risk and group strategy leader of the Toi Foundation)

Maria Ramsay

(Chief Executive Officer of the Toi Foundation and Toi Foundation Holdings Limited)

11. The effect of the constitutional requirements in respect of director appointments described above is that the board of directors of Toi Foundation Holdings Limited is entirely made up of trustees of the Toi Foundation. As Toi Foundation Holdings Limited is the sole shareholder of Toi Foundation Investments Limited, the board of directors of Toi Foundation Holdings Limited is able to control the appointment and removal of directors on the board of Toi Foundation Investments Limited. Toi Foundation Holdings Limited has appointed Guy Roper, (a trustee of the Toi Foundation), together with Dion Maaka and Maria Ramsay, as directors of Toi Foundation Investments Limited.

12. As a result of the above requirements, the trustees of Toi Foundation control the board of directors of both of the Toi Shareholders – Toi Foundation Holdings Limited and Toi Foundation Investments Limited. Under the Shareholders' Agreement, the Toi Shareholders have the power to appoint five out of the maximum eight directors of the Applicant. The overall position is, therefore, that the trustees of the Toi Foundation controls the boards of directors of the Toi Shareholders (Toi Foundation Holdings Limited and Toi Foundation Investments), and, therefore, the appointment of five out of the maximum eight directors on the board of directors of the Applicant.

13. The Applicant notes that only one person, Guy Roper, represents the Toi Foundation on the board of the Applicant. Mr Roper is also the only person who is both a Toi Foundation trustee (which controls the boards of the Toi Shareholders) and a director of the Applicant. The trustees of the Toi Foundation and the directors of the Toi Shareholders have ensured that, given the technical and highly regulated nature of the funds management businesses of the Applicant, only highly experienced, qualified and (for the most part) independent directors have been appointed as their representatives on the board of the Applicant to oversee those businesses.

TA Fisher Investco

14. The current directors of TA Fisher Investco are as follows:

Directors

Edward Sippel

Michael Berk

Gregory Wallace

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

15. Two of these directors are also directors of the Applicant: Edward Sippel and Michael Berk.

TA Associates

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

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

Are there decision making delegations in place (formal or informal)?

Yes

What are the delegations, who controls the delegations, and how do they relate to the investment?

1. There is a formal Financial Delegations and Authority Policy in place which is reviewed and approved every two year (or more frequently if required) by the Applicant's board. The CEO and CFO review the policy each year and forward their recommended changes to the board for approval. The board reviews and approves these changes or makes its own amendments in its final decision making capacity, and ultimately has responsibility for approving the delegations.

2. As set out in the Financial Delegations & Authorities Policy, it is the board of the Applicant that is responsible for material decisions involving the Applicant. [s 9(2)(b)(ii)]

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

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

6. On the basis of the above delegations, it is the board of directors of the Applicant and the CEO of the Applicant who are responsible for all material decisions in relation to the Applicant and will be responsible for all material decisions in relation to the Kiwi Wealth Group business following Completion.

Tell us who could approve the acquisition of the investment and whether they consulted others (e.g. parent entities) before making the decision

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

97. Accordingly, the board of the Applicant was the key decision-making entity in respect of the entry by the Applicant into the Proposed Transaction.

98. None of the shareholders of the Applicant at the time the Proposed Transaction was entered into were required to approve entry into the Proposed Transaction, other than solely for the purpose of approving the Proposed Transaction as a 'major transaction' under section 129 of the Companies Act 1993.

99. The Proposed Transaction was approved by TA Associates' Investment Committee in accordance with TA Associates' usual investment procedures in relation to investments by funds which it advises, although this approval is not required as a matter of law or contract for the Applicant to enter into the Proposed Transaction, and was merely a procedural matter for TA Associates.

Who can approve the divestment of the investment?

100. For the same reasons as described in respect of the investment, it would be the board of the Applicant that would be required to approve any divestment of the Shares in the future.

101. The sole shareholder of the Applicant following Completion, Fisher Holdco) may, depending on the relative values of the Applicant's assets and the Kiwi Wealth Group at the relevant time, also be required to approve the divestment of the Shares as a 'major transaction' under section 129 of the Companies Act 1993.

- Percentage (must total 100%): [s 9(2)(b)]
- Country: [s 9(2)(b)(ii)]
- Percentage (must total 100%): [s 9(2)(b)]
- Country: [s 9(2)(b)(ii)]
- Percentage (must total 100%): [s 9(2)(b)]
- Country: [s 9(2)(b)(ii)]
- Percentage (must total 100%): [s 9(2)(b)]
- Country: [s 9(2)(b)(ii)]
- Percentage (must total 100%): [s 9(2)(b)]
- Country: [s 9(2)(b)(ii)]
- Percentage (must total 100%): [s 9(2)(b)]
- Country: [s 9(2)(b)(ii)]
- Percentage (must total 100%): [s 9(2)(b)]
- Country: [s 9(2)(b)(ii)]
- Percentage (must total 100%): [s 9(2)(b)]
- Country: [s 9(2)(b)(ii)]
- Percentage (must total 100%): [s 9(2)(b)]
- Country: [s 9(2)(b)(ii)]
- Percentage (must total 100%): [s 9(2)(b)]
- Country: [s 9(2)(b)(ii)]
- Percentage (must total 100%): [s 9(2)(b)]
- Country: [s 9(2)(b)(ii)]

Does the Applicant have any ROP individuals?

No

ROP entities < /b >

- Full legal name of entity in English: Toi Foundation
Full legal name in non-English characters: N/A
Other names (e.g. trading/former names): TSB Community Trust
Type of entity: Community trust
Jurisdiction: New Zealand
[s 9(2)(b)(ii)]
- Management Limited
Full legal name in non-English characters: N/A
Other names (e.g. trading/former names): N/A
Type of entity: Company
Jurisdiction: New Zealand
[s 9(2)(b)(ii)]

Explain the rationale for your selection

1. The Applicant considers that, for the purposes of this application, the ROPs are:

- the Applicant – on the basis it is the direct purchaser of the Shares, approved the Proposed Transaction and would be required to approve the divestment of the Kiwi Wealth Group in the future, and will be responsible for making all material decisions in relation to the Kiwi Wealth Group following Completion; and
- Toi Foundation – on the basis it will be the controller of 66.01% of the Kiwi Wealth Group following Completion (with the beneficiaries of the Toi Foundation (the Taranaki community in general) being the ultimate beneficial "owners"), and has the right and power (indirectly through the Toi Shareholders) under the Shareholders' Agreement to appoint and remove a majority of the board of directors of the Applicant.

2. It is the board of directors of the Applicant that makes all material decisions in relation to the Applicant and will make all material decisions in relation to the Applicant's investment in the Kiwi Wealth Group following Completion. The board of the Applicant makes decisions by a simple majority other than in relation to a limited number of 'fundamental matters' (discussed above) which, in any event, require only unanimous approval by the board of the Applicant, and are not required to be escalated to the shareholders of Fisher Topco. The board of the Toi Foundation (through its shareholding in the Toi Shareholders) ultimately has the power to appoint and remove a majority of the board of directors of the Applicant, whereas TA Fisher Investco only has the power to appoint and remove two of the board's seven (or eight) directors.

3. The Applicant does not consider that Fisher Topco or Fisher Holdco are ROPs. Both will be incorporated solely for the purposes of securing financing for the Applicant in respect of the Proposed Transaction and providing security in respect of that financing in favour of the new debt financiers. The addition of these new companies to the holding structure will not alter the decision-making structure in respect of the Applicant in any material way, which will remain as per the Current Shareholders' Agreement under the New Shareholders' Agreement.

4. The Applicant does not consider that the Toi Shareholders, being Toi Foundation Investments Limited and Toi Foundation Holdings Limited, are ROPs.

5. Both of the Toi Shareholders are effectively prohibited from taking action in their capacity as shareholders in Fisher Topco without the approval of the Toi Foundation. As the OIO will be aware, shareholders in a company exercise their rights through voting on matters in their capacity as shareholders.

6. Under the Shareholders' Agreement, all material decisions in relation to the Applicant are made by simple majority decisions of its board of directors, a significant majority (five out of seven directors) of which is controlled by the Toi Foundation.

7. As set out above, Toi Foundation Holdings Limited and Toi Foundation Investments Limited hold their assets / investments in accordance with the objects and purposes declared by the trustees of the Toi Foundation in its trust deed. The Toi Shareholders are special purpose vehicles established to effect these objectives and, as set out above, can only act subject to and in accordance with the direction of the Toi Foundation. Accordingly, the Toi Shareholders (and their directors) act solely in accordance with the directions of the Toi Foundation, and have no significant decision-making powers regarding the management or direction of the Proposed Transaction, nor in relation to either the day-to-day management of, or strategic decisions concerning, the Applicant.

8. The Applicant does not consider TA Fisher Investco, [s 9(2)(b)(ii)], or any of the TA Funds or TA Associates to be ROPs, given they do not have power to control or direct either material decisions or the day-to-day activities of the Applicant, and similarly will not have such power to control the activities of the Kiwi Wealth Group following Completion.

9. Those entities which indirectly own shares in the Applicant through TA Fisher Investco [s 9(2)(b)(ii)] are passive indirect investors in the Applicant that are removed from the Applicant and its business and investments and do not take an active role in management of the Applicant or any decisions relating to the Applicant. [s 9(2)(b)(ii)]

10. TA Fisher Investco is not considered to be a ROP given it is the minority shareholder in Fisher Topco, has no power to control decision-making in relation to the Applicant or its investment in the Kiwi Wealth Group, and will not be involved in material capex and opex decisions relating to the Kiwi Wealth Group following Completion. TA Fisher Investco only has a minority representation on the board of the Applicant (two out of seven directors) and is therefore unable to effect or control any decisions regarding the Applicant, as these decisions are made by a simple majority of the board and therefore can be made unilaterally by the appointees of the Toi Shareholders.

11. In addition, the TA Fisher Investco appointees on the Applicant's board of directors are in fact TA Associates representatives, being directors of TA Associates. [s 9(2)(b)(ii)]

Accordingly, it would be inappropriate to determine that TA Fisher Investco is a controller of this investment and, therefore, an ROP.

12. The Applicant has, however, determined that the TA Fisher Investco nominees to the board of the Applicant (who are TA Associates' representatives) are IWCs, given the decision-making power of the Applicant's board of directors in decision-making of the Applicant under the Shareholders' Agreement.

Individuals with control

Individuals with control (IWC)

- First name (in English): Wharehoka
Middle names (in English): Craig Robert
Last names (in English): [s 9(2)(a)]
Country of birth: [s 9(2)(a)]
Residing country: [s 9(2)(b)(ii)]
Date of birth: [s 9(2)(a)]
Identification type: [s 9(2)(a)]
Identification document number: [s 9(2)(a)]
Identification document expiry date: [s 9(2)(a)]
Role: Trustee of the Toi Foundation

Date became IWC: September 2 19

Is this individual also an ROP?:

Has this individual met the Inve or Test for a previous application decided under section 18A (post-22 March 2021)?:

New Zealand Inland Revenue number, if held: s 9(2)(a)

Has this individual ever applied for a visa to tra w Zealand?:

Is this individual ordinarily resident in New Zealand?:

Has this individual ever held an interest in a non-New Zealand government entity?

Has this individual ever held a position within a non-New Zealand government?:

Has this individual ever held a position within an intelligence agency or served in e military?:

- First name (in English): Christopher

Middle names (in English): Patrick

Last names (in English): Ussher

Country of birth: s 9(2)(a)

Residing country: s 9(2)(a)

Date of birth: s 9(2)(a)

Identification type: s 9(2)(a)

Identification document numb s 9(2)(a)

Identification document expiry da s 9(2)(a)

Role: Chairperson of the Toi Foundati

Date became IWC: May 2022

Is this individual also an ROP?: No

New Zealand Inland Revenue number, if held: s 9(2)(a)

Has this individual ever applied for a visa to tra w Zealand?:

Has this individual ever held an interest in a non-New Zealand gover ment entity?:

Has this individual ever held a position within a non-New Zealand government?:

Has this individual ever held a position within an intelligence agency or served in e military?:

- First name (in English): Bruce

Middle names (in English): James Murray

Last names (in English): McLachlan

Country of birth: s 9(2)(a)

Residing country: s 9(2)(a)

Date of birth: s 9(2)(a)

Identification d type: s 9(2)(a)

Identification document numb s 9(2)(a)

Identification document expiry da s 9(2)(a)

Role: Chief Executive Officer of the Ap

Date became IWC: April 2017

Is this individual also an ROP?: No

New Zealand Inland Revenue number, if held: s 9(2)(a)

Has this individual ever applie d for a visa to tr Zealand?:

Has this individual ever held an interest in a non-New Zealand govern ent entity?:

Has this individual ever held a position within a non-New Zealand government?:

Has this individual ever held a position within an intelligence agency or served in e military?:

- First name (in English): Michael

Middle names (in English): Stuart

Last names (in English): Berk

Country of birth: s 9(2)(a)

Residing country: s 9(2)(a)

Date of birth: s 9(2)(a)

Identification document type: s 9(2)(a)

Identification document number: s 9(2)(a)

Identification document expiry date: s 9(2)(a)

Role: Non-Executive Director of the Applicant

Date became IWC: 21 September 2018

Is this individual also an ROP?: No

New Zealand Inland Revenue number, if held: s 9(2)(a)

Has this individual ever applied for a visa to travel to N w Zealand?:

Is this individual ordinarily resident in New Zealand?:

Has this individual ever held an interest in a non-New Zealand government entity?

Has this individual ever held a position within a non-New Zealand government?:

Has this individual ever held a position within an intelligence agency or served in the military?:

- First name (in English): Mark

Middle names (in English): John

Last names (in En azberger

Country of birth: s 9(2)(a)

Residing coun s 9(2)(a)

Date of birth: s 9(2)(a)

Identification document type: s 9(2)(a)

Identification document number: s 9(2)(a)

Identification document expiry date: s 9(2)(a)

Role: Non-Executive Director of the Applicant

Date became IWC: 28 October 2020

Is this individual also an ROP?: No

Has this individual met the Investor Test for a previous application decided under section 18A (post-22 March 2021)?: [s 9(2)]

New Zealand Inland Revenue number, if held: [s 9(2)(b)(ii)]

Has this individual ever applied for a visa to travel to New Zealand?: [s 9(2)]

Is this individual ordinarily resident in New Zealand?: [s 9(2)]

Has this individual ever held an interest in a non-New Zealand government entity? [s 9(2)]

Has this individual ever held a position within a non-New Zealand government?: [s 9(2)]

Has this individual ever held a position within an intelligence agency or served in the military?: [s 9(2)]

- First name (in English): Nicola

Middle names (in English): Jane

Last names (in English): Ngawera

Other names: Nicole Ngawera

Country of birth: [s 9(2)(a)]

Residing country: [s 9(2)(a)]

Date of birth: [s 9(2)(a)]

Identification document type: [s 9(2)(a)]

Identification document number: [s 9(2)(a)]

Identification document expiry date: [s 9(2)(a)]

Role: Trustee of the Toi Foundation

Date became IWC: September 2019

Is this individual also an ROP?: No

New Zealand Inland Revenue number, if held: [s 9(2)(a)]

Has this individual ever applied for a visa to travel to New Zealand?: [s 9(2)]

Has this individual ever held an interest in a non-New Zealand government entity?: [s 9(2)]

Has this individual ever held a position within a non-New Zealand government?: [s 9(2)]

Has this individual ever held a position within an intelligence agency or served in the military?: [s 9(2)]

- First name (in English): Guy

Last names (in English): Roper

Country of birth: [s 9(2)(a)]

Residing country: [s 9(2)(a)]

Date of birth: [s 9(2)(a)]

Identification document type: [s 9(2)(a)]

Identification document number: [s 9(2)(a)]

Identification document expiry date: [s 9(2)(a)]

Role: Non-Executive Director of the A Trustee of the Toi Foundation

Date became IWC: 31 July 2018

Is this individual also an ROP?: No

New Zealand Inland Revenue number, if held: [s 9(2)(a)]

Has this individual ever applied for a visa to travel to New Zealand?: [s 9(2)]

Has this individual ever held an interest in a non-New Zealand government entity?: [s 9(2)]

Has this individual ever held a position within a non-New Zealand government?: [s 9(2)]

Has this individual ever held a position within an intelligence agency or served in the military?: [s 9(2)]

- First name (in English): David

Middle names (in English): Clarence

Last names (in English): Clarke

Country of birth: [s 9(2)(a)]

Residing country: [s 9(2)(a)]

Date of birth: [s 9(2)(a)]

Identification document type: [s 9(2)(a)]

Identification document number: [s 9(2)(a)]

Identification document expiry date: [s 9(2)(a)]

Role: Chairman and Non-Executive Director of the Applicant

Date became IWC: 1 January 2016

Is this individual also an ROP?: No

New Zealand Inland Revenue number, if held: [s 9(2)(a)]

Has this individual ever applied for a visa to travel to New Zealand?: [s 9(2)]

Has this individual ever held an interest in a non-New Zealand government entity? [s 9(2)]

Has this individual ever held a position within a non-New Zealand government?: [s 9(2)]

Has this individual ever held a position within an intelligence agency or served in the military?: [s 9(2)]

- First name (in English): Harvey

Middle names (in English): Frank

Last names (in English): [s 9(2)(a)]

Country of birth: [s 9(2)(a)]

Residing country: [s 9(2)(a)]

Date of birth: [s 9(2)(a)]

Identification document type: [s 9(2)(a)]

Identification document number: [s 9(2)(a)]

Identification document expiry date: [s 9(2)(a)]

Role: Trustee of the Toi Foundation

Date became IWC: June 2015

Is this individual also an ROP?: No

New Zealand Inland Revenue number, if held: [s 9(2)(a)]

Has this individual ever applied for a visa to travel to New Zealand?: [s 9(2)(a)]
Has this individual ever held an interest in a non-New Zealand government entity?: [s 9(2)(a)]
Has this individual ever held a position within a non-New Zealand government?: [s 9(2)(a)]
Has this individual ever held a position within an intelligence agency or served in the military?: [s 9(2)(a)]

- First name (in English): Peter
Middle names (in English): Seymour
Last names (in English): [s 9(2)(a)]
Country of birth: [s 9(2)(a)]
Residing country: [s 9(2)(a)]
Date of birth: [s 9(2)(a)]
Identification document type: [s 9(2)(a)]
Identification document number: [s 9(2)(a)]
Identification document expiry date: [s 9(2)(a)]
Role: Trustee of the Toi Foundation
Date became IWC: June 2017
Is this individual also an ROP?: No
New Zealand Inland Revenue number, if held: [s 9(2)(a)]
Has this individual ever applied for a visa to travel to New Zealand?: [s 9(2)(a)]
Has this individual ever held an interest in a non-New Zealand government entity?: [s 9(2)(a)]
Has this individual ever held a position within a non-New Zealand government?: [s 9(2)(a)]
Has this individual ever held a position within an intelligence agency or served in the military?: [s 9(2)(a)]

- First name (in English): Liana
Middle names (in English): Huia
Last names (in English): Poutu
Country of birth: [s 9(2)(a)]
Residing country: [s 9(2)(a)]
Date of birth: [s 9(2)(a)]
Identification document type: [s 9(2)(a)]
Identification document number: [s 9(2)(a)]
Identification document expiry date: [s 9(2)(a)]
Role: Trustee of the Toi Foundation
Date became IWC: September 2020
Is this individual also an ROP?: No
New Zealand Inland Revenue number, if held: [s 9(2)(a)]
Has this individual ever applied for a visa to travel to New Zealand?: [s 9(2)(a)]
Has this individual ever held an interest in a non-New Zealand government entity?: [s 9(2)(a)]
Has this individual ever held a position within a non-New Zealand government?: [s 9(2)(a)]
Has this individual ever held a position within an intelligence agency or served in the military?: [s 9(2)(a)]

- First name (in English): Edward
Middle names (in English): Francis
Last names (in English): Sippel
Country of birth: [s 9(2)(a)]
Residing country: [s 9(2)(a)]
Date of birth: [s 9(2)(a)]
Identification document type: [s 9(2)(a)]
Identification document number: [s 9(2)(a)]
Identification document expiry date: [s 9(2)(a)]
Role: Non-Executive Director of the A
Date became IWC: 25 August 2017
Is this individual also an ROP?: No
New Zealand Inland Revenue number, if held: [s 9(2)(a)]
Has this individual ever applied for a visa to travel to New Zealand?: [s 9(2)(a)]
Has this individual ever held an interest in a non-New Zealand government entity?: [s 9(2)(a)]
Has this individual ever held a position within a non-New Zealand government?: [s 9(2)(a)]
Has this individual ever held a position within an intelligence agency or served in the military?: [s 9(2)(a)]

- First name (in English): Jennifer
Middle names (in English): Clare
Last names (in English): [s 9(2)(a)]
Country of birth: [s 9(2)(a)]
Residing country: [s 9(2)(a)]
Date of birth: [s 9(2)(a)]
Identification document type: [s 9(2)(a)]
Identification document number: [s 9(2)(a)]
Identification document expiry date: [s 9(2)(a)]
Role: Non-Executive Director of the Applicant
Date became IWC: 31 July 2018
Is this individual also an ROP?: No
New Zealand Inland Revenue number, if held: [s 9(2)(a)]
Has this individual ever applied for a visa to travel to New Zealand?: [s 9(2)(a)]
Has this individual ever held an interest in a non-New Zealand government entity?: [s 9(2)(a)]
Has this individual ever held a position within a non-New Zealand government?: [s 9(2)(a)]
Has this individual ever held a position within an intelligence agency or served in the military?: [s 9(2)(a)]

- First name (in English): Robin

Released Under the Official Information Act 1982

- Last names (in English): [redacted]
Country of birth: [redacted]
Residing country: [redacted]
Date of birth: [redacted]
Identification document type: [redacted]
Identification document number: [redacted]
Identification document expiry date: [redacted]
Role: Trustee of the Toi Foundation
Date became IWC: June 2017
Is this individual also an ROP?: No
New Zealand Inland Revenue number, if held: [redacted]
Has this individual ever applied for a visa to travel to New Zealand?: [redacted]
Has this individual ever held an interest in a non-New Zealand government entity?: [redacted]
Has this individual ever held a position within a non-New Zealand government?: [redacted]
Has this individual ever held a position within an intelligence agency or served in the military?: [redacted]
- First name (in English): Margaret
Middle names (in English): Anne
Last names (in English): Blackburn
Country of birth: [redacted]
Residing country: [redacted]
Date of birth: [redacted]
Identification document type: [redacted]
Identification document number: [redacted]
Identification document expiry date: [redacted]
Role: Non-Executive Director of the A
Date became IWC: 13 June 2013
Is this individual also an ROP?: No
New Zealand Inland Revenue number, if held: [redacted]
Has this individual ever applied for a visa to travel to New Zealand?: [redacted]
Has this individual ever held an interest in a non-New Zealand government entity?: [redacted]
Has this individual ever held a position within a non-New Zealand government?: [redacted]
Has this individual ever held a position within an intelligence agency or served in the military?: [redacted]
 - First name (in English): Sophie
Middle names (in English): Ellie
Last names (in English): Braggins
Country of birth: [redacted]
Residing country: [redacted]
Date of birth: [redacted]
Identification document type: [redacted]
Identification document number: [redacted]
Identification document expiry date: [redacted]
Role: Trustee of the Toi Foundation
Date became IWC: September 2020
Is this individual also an ROP?: No
New Zealand Inland Revenue number, if held: [redacted]
Has this individual ever applied for a visa to travel to New Zealand?: [redacted]
Has this individual ever held an interest in a non-New Zealand government entity?: [redacted]
Has this individual ever held a position within a non-New Zealand government?: [redacted]
Has this individual ever held a position within an intelligence agency or served in the military?: [redacted]
 - First name (in English): Iqbal
Middle names (in English): Manzoor
Last names (in English): Haque
Other names: [redacted]
Country of birth: [redacted]
Residing country: [redacted]
Date of birth: [redacted]
Identification document type: [redacted]
Identification document number: [redacted]
Identification document expiry date: [redacted]
Role: Trustee of the Toi Foundation
Date became IWC: July 2018
Is this individual also an ROP?: No
New Zealand Inland Revenue number, if held: [redacted]
Has this individual ever applied for a visa to travel to New Zealand?: [redacted]
Has this individual ever held an interest in a non-New Zealand government entity?: [redacted]
Has this individual ever held a position within a non-New Zealand government?: [redacted]
Has this individual ever held a position within an intelligence agency or served in the military?: [redacted]

Explain the rationale for your selection

1. The IWCs identified are the members of the governing bodies of the two ROP, being the Applicant and the Toi Foundation. The CEO of the Applicant has also been identified as an IWC because of his authority in respect of the

activities of the Applicant, which is expected to extend to the Kiwi Wealth Group after Completion.

2. Other members of the senior management of the Applicant noted on the Applicant's website are not considered to be IWCs. This is because they each report to the CEO and/or the board of directors of the Applicant and do not have responsibility for any material business decisions in relation to the Applicant under the Applicant's Financial Delegations & Authorities Policy or otherwise.

3. For the reasons discussed above, neither of the Toi Shareholders are considered to be ROPs. Therefore, the directors of the Toi Shareholders who are not also trustees of the Toi Foundation and/or directors of the Applicant are not considered to be IWCs.

IWC documents upload

- [Project Weka - Appendix 04 - IWC Passports 0.pdf](#) (11.41 MB)
- [Project Weka - Appendix 05 - IWC CVs 0.pdf](#) (372.88 KB)

Investor test

Repeat investor information

Have any individuals or entities relevant to this application met the investor test for a previous application decided under section 18A (post-22 March 2021)?

No

Investor Test - 12 Factors under [section 18A](#) of the Overseas Investment Act 2005

18A(4)(a)(i)
No

18A(4)(a)(ii)
No

18A(4)(a)(iii)
No

18A(4)(a)(iv)
No

18A(4)(a)(v)
No

18A(4)(a)(vi)
No

18A(4)(a)(vii)
No

18A(4)(b)
No

18A(4)(c)
No

18A(4)(d)
No

18A(4)(e)(i)
No

18A(4)(e)(ii)
No

18A(4)(f)
No

National Interest

Does the transaction fall under [Section 20A](#) of the Act?
Yes, the transaction involves a non-NZ government investor.

Has the Applicant been granted an exemption under [section 20AA](#) of the Act?
No

Explain why the Applicant does or does not consider that the transaction involves a strategically important business.

1. The Applicant does not consider that the Proposed Transaction involves a strategically important business ("SIB"), as defined in the Act and Regulations. Limbs (a) to (i) in the definition of SIB in the Act are not relevant to the Kiwi Wealth Group / the Proposed Transaction. The Applicant considers that the information held by the Kiwi Wealth Group is not "sensitive information" of the type described in limb (j) of the definition of SIB in the Act, as set out in further detail in Regulations 3B and 3C. In particular, the Applicant understands that the financial information held by the Kiwi Wealth Group is not "used to determine an individual's financial position or credit score." The purpose of customers providing information relating to their personal financial affairs is not to enable the Kiwi Wealth Group to determine their financial position, it is used by the Kiwi Wealth Group so that it can provide wealth and investment management services (which does not necessarily require determining an individual's financial position).

2. Notwithstanding the above, the Applicant also notes that even if the Kiwi Wealth Group was a SIB on the basis it fell within limb (j) of the definition of SIB, that would not trigger a mandatory national interest assessment under section 20A of the Act. This is because limb (j) of the definition of SIB in the Act is expressed to only be relevant for the purposes of the national security and public order notification regime under section 82(2) of the Act, and is therefore not relevant for the purpose of considering whether a mandatory national interest assessment is triggered under section 20A of the Act.

Explain why the Applicant does or does not consider that the transaction involves a non-NZ government investor under section 20A(1)(a)-(b) of the Act.

1. The Applicant considers that the Proposed Transaction does involve a non-NZ government investor under section 20A(1)(b) of the Act.

2. The Toi Foundation, which is the (indirect) majority owner of the Applicant, is not a non-NZ government investor.

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

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

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

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

9. As the application of the national interest test to this applicant is triggered by the Applicant being deemed a non-New Zealand government investor under the Act, we understand that the following factors, which are set out in the Directive Letter from the Minister of Finance to the OIO, dated 24 November 2021 and Government's current guidance: Foreign Investment Policy and National Interest Guidance - June 2021 (treasury.govt.nz), are relevant to the Minister's consideration as to whether the Proposed Transaction gives rise to national interest risks:

- the extent to which the investor operates on an arm's length and commercial basis from the relevant government (entities operating at arm's length from the relevant foreign government are likely to pose fewer risks);
- the investor's governance arrangements and prospective governance arrangements for the relevant investment;
- the existence of any other shareholders or partners in the investment,
- whether the target entity will be, or will remain, listed on a New Zealand financial market (additional regulations that apply to listed entities mean that investments in listed entities are generally less likely to pose significant risks);
- the extent to which the investment would grant the relevant government control over, or access to, the underlying asset (for example, investments with no control rights are less likely to pose risks than those that grant a foreign government significant control of strategically important business assets); and
- the share of the entity that would remain owned by non-associated investors if the transaction was to proceed (transactions where non-associated investors will retain a significant degree of control are less likely to pose national interest concerns).

10. With reference to the above factors, it is clear that the Proposed Transaction does not pose risks to New Zealand's national interest as a result of [s 9(2)(a)], [s 9(2)(b)(ii)] non-New Zealand government investors having an indirect

ownership interest in the Applicant. In particular (by reference to the factors above in order):

• [s 9(2)(b)(ii)]

• As disclosed elsewhere in this application, the governance of the Applicant primarily occurs, and of the Kiwi Wealth Group following Completion will primarily occur, at the level of the Applicant's board of directors. [s 9(2)(b)(ii)]

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

The TA Funds themselves have only a 33.99% indirect ownership interest in the Applicant. Importantly, the remaining 66.01% of the shares in the Applicant are indirectly owned and controlled by the Toi Foundation, which is a New Zealand charitable trust established for the benefit of residents of the Taranaki region that has a large degree of oversight of the Applicant and its business activities.

• The Kiwi Wealth Group is not currently, and nor will it be as a result of the Proposed Transaction, listed on a New Zealand financial market.

• The Proposed Transaction will not grant the [s 9(2)(b)(ii)]

• The Applicant is, and the Kiwi Wealth Group following Completion will be, ultimately 66.01% owned by the Toi Foundation, which is a New Zealand charitable trust established for the benefit of residents of the Taranaki region.

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

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

Does the Applicant consider the transaction to be a transaction of national interest under [section 20B](#) of the Act?
No

If the Applicant considers the transaction is not a transaction of national interest under section 20B of the Act, provide submissions on why the transaction does not engage one of the scenarios outlined in the Annex of the 2021 directive letter from the Minister of Finance. Specifically, whether the transaction:

1. The Applicant submits that the Proposed Transaction is not a transaction of national interest under section 20B of the Act.
2. The Proposed Transaction does not involve a Strategically Important Business because the business of the Kiwi Wealth Group does not fall within any of the classes of businesses described in the definition of "Strategically Important Business" in the Act and Regulations.
3. The Kiwi Wealth Group is in the business of wealth, investment and fund management services. It is not a critical direct supplier and nor is it involved in military or dual-use technology, ports or airports, electricity, water, telecommunications, or financial market infrastructure. As at 30 June 2022, the consolidated gross assets of the Kiwi Wealth Group are valued at well below the significant business assets OIO consent threshold, at NZ\$67.06 million, and the Proposed Transaction only requires OIO consent due to the purchase price payable for the Shares under the SPA being in excess of NZ\$100 million.

Nature of information held by the Kiwi Wealth Group

4. The Applicant recognises that even if the Kiwi Wealth Group does not technically qualify as a Strategically Important Business for the purposes of the Act, it nevertheless holds a large volume of information which customers would likely consider to have 'sensitive' characteristics (even if such information is not "sensitive information" for the purposes of Regulation 3B). [s 9(2)(b)(ii)]

5. However, the Applicant considers that the Proposed Transaction does not give rise to national interest considerations for the purposes of section 20B of the Act for the following reasons:

6. The Applicant already operates, and is highly respected and reputable, in the wealth and investment management sector, and is already licensed to provide the same types of services as are provided by the Kiwi Wealth Group, including KiwiSaver. This sector is highly regulated given it requires handling and investment of investors' funds and the provision of financial advice. The Kiwi Wealth Group and the Applicant both require (and hold) a licence to act as a manager of a registered managed investment scheme ("MIS"), a licence to act as a provider of a discretionary investment management scheme ("DIMS") and a transitional licence to act as a provider of a financial advice service in order to conduct their respective businesses. The Applicant complies with the terms of this licence, and understands that the Kiwi Wealth Group also remains in compliance with those licences.
7. The Applicant has a similar share to the Kiwi Wealth Group in this sector, meaning the Applicant already

handles and manages similar volumes of information with similar characteristics. Therefore, the Proposed Transaction does not represent the commencement of a new business or expansion of an existing business into an area for which there are increased data protection requirements not presently applying to the business of the Applicant. Either of those cases – which do not apply here – would be more likely to create risk from the perspective of the handling of this sensitive customer information.

8. The Applicant maintains very strong processes and policies in regards to the protection of personal information, and actively monitors its compliance with the Privacy Act 2020, including notifying the Privacy Commissioner where necessary. As at 30 June 2022, this has only been required twice since 2020. No further action has resulted from those notifications. The Applicant's privacy policy, which was most recently updated in January 2022, and its Privacy Breach Response Plan are attached as Appendix 14 to this application.

9. The Applicant is indirectly majority owned by the Toi Foundation, which is a charitable trust established for the benefit of residents of the Taranaki region. As the OIO is aware, the Toi Foundation has a long and successful history supporting this region and is a highly reputable New Zealand business, which is controlled by respected members of the community. As the (indirect) majority shareholder in the Applicant, the Toi Foundation has a large degree of oversight of the Applicant and its business activities.

10. Noting the above, and relative to other buyers that are overseas persons and which may not already operate in this sector, the Applicant is an ideal purchaser and holder of the Kiwi Wealth Group as it will treat customer information with the same robust protections as it already applies to its existing customers, and has extensive experience in doing so in the New Zealand market, having been established and operating in New Zealand since 1998.

11. In addition, the Applicant notes the Directive Letter from the Minister of Finance to the OIO, dated 24 November 2021, which identifies the factors that the OIO must take into account when assessing whether it should recommend that an application be called in for review against the national interest test under section 20B of the Act. These factors, and the Applicant's view on their applicability in this situation, are addressed as follows (also having regard to the considerations set out in the Treasury's Guidance Note on Foreign Investment Policy and National Interest Guidance (June 2021)):

12. National security and public order: Due to the nature of the Applicant, and the existing business of the Kiwi Wealth Group, the Proposed Transaction does not pose risks to New Zealand's national security, public order, or international relations. The Applicant is already a substantial and significant business within the New Zealand economy, and the acquisition of the Kiwi Wealth Group does not create any new or different considerations in regard to national security and public order.

13. Market power; vertical integration of a supply chain: [s 9(2)(b)(i)]

14. Delivery of Government objectives: The Applicant is not aware of any Government objectives which would be hindered by the Proposed Transaction.

15. Significant Treaty of Waitangi issues: Due to the nature of the Kiwi Wealth Group's business, the Proposed Transaction does not relate to or raise any Treaty of Waitangi issues.

16. Site of national significance: The Proposed Transaction does not relate to a site of national significance.

Acquisition of a Kiwisaver default provider

17. The OIO may be aware that the default KiwiSaver providers have relatively recently been changed. Prior to 1 December 2021, the Applicant was a default KiwiSaver provider. KWL was (prior to 1 December 2021), and continues to be, a default KiwiSaver provider. In New Zealand, the KiwiSaver regime is of great significance, with over three million members. The Proposed Transaction would result in a non-default KiwiSaver provider acquiring a default KiwiSaver provider. Under the terms of the relevant instrument appointing KWL as a default provider, this aspect of the Proposed Transaction is being assessed by the Minister of Finance and the Minister of Commerce and Consumer Affairs, with the support and advice of the governmental agencies with primary responsibility for and expertise on these matters. Given that, there is no need for the Minister of Finance to consider the Proposed Transaction from a national interest perspective under the Act.

18. Specifically, the KiwiSaver Default Provider (Kiwi Wealth) Notice 2021 ("Default Provider Notice"), provides that the Minister (being the Minister of Finance and the Minister of Commerce and Consumer Affairs jointly), may terminate the appointment or suspend new default allocations upon a change of control of KWL, if those Ministers are not satisfied that KWL will continue to have substantially the same resources, capability and operational priorities as those that were represented in KWL's proposal and will continue to comply with all relevant requirements (being the provisions of the KiwiSaver Act 2006 that apply to the Kiwi Wealth KiwiSaver Scheme, the provisions of the FMCA and any regulations made under the KiwiSaver Act 2006 or the FMCA that apply to the Kiwi Wealth KiwiSaver Scheme, the terms and conditions of the Default Provider Notice, the trust deed for the Kiwi Wealth KiwiSaver Scheme and all other applicable legislation). This process, which is coordinated by the Ministry of Business, Innovation and Employment ("MBIE") and the Financial Markets Authority ("FMA"), is the appropriate avenue for any matters relating to the Applicant's ownership of a default KiwiSaver provider to be considered and decided on.

19. Additionally, under the terms of the Kiwi Wealth Group's MIS, DIMS and financial advice provider licences, the Applicant will be required to notify the FMA of the Proposed Transaction and of any change in the directors and senior managers, key people and managers of the relevant entities. The FMA will review any such notification, with a view to determining whether the licensed entities / authorised bodies will continue to meet their licence conditions and regulatory obligations. This is likely to require the provision of information relating to the Applicant, including submissions regarding how the Applicant will ensure that the licensed entities / authorised bodies will continue to meet applicable conditions and obligations. Again, this provides a robust framework under which the Proposed Transaction can be scrutinised from the appropriate perspective and with the support and advice of the governmental agencies with specific expertise in the subject matter. It is not necessary or desirable for the Minister of Finance to duplicate those existing statutory processes from an overseas investment perspective.

20. Based on the above, the Applicant submits that the Proposed Transaction does not engage any factors which could justify the application of the national interest test under section 20B of the Act. The Proposed Transaction is an acquisition of significant business assets and it does not give rise to any of the concerns that the national interest test is aimed at. Additionally, the Minister of Finance, as well as the Minister of Commerce and Consumer Affairs, MBIE and the FMA, will also be considering the Proposed Transaction under existing statutory processes which have a specific focus on financial regulation and the providers of financial services.

21. If, despite the above, the Minister of Finance did consider it necessary to call in the Proposed transaction for review against the national interest test pursuant to section 20B of the Act, the Applicant does not consider the Proposed Transaction gives rise to any national interest risks. The specific factors set out in the Treasury's Guidance Note on Foreign Investment Policy and National Interest Guidance (June 2021), are addressed as follows:

22. National security, public order and international relations: This factor is addressed above.

23. Market structure: This factor is addressed above.

24. Economic and social impact: The Proposed Transaction will not have an adverse impact on the New Zealand economy or society. The Applicant is a successful business which, through its majority owner the Toi Foundation, contributes significantly to the Taranaki region, with hugely beneficial economic and social impacts arising out of that. The Proposed Transaction can reasonably be expected to improve the returns paid to the Toi Foundation from this investment, increasing the ability of the Toi Foundation to support that region.

25. Alignment with New Zealand's values and interests, and broader policy settings: The Proposed Transaction will not have an adverse impact on New Zealand's values and interests, and broader policy settings. The Applicant is not aware that the Proposed Transaction relates to any specific Government objective or policy, but equally (and relevantly in terms of the national interest test), it is by no means contrary to any such objective or policy.

26. Character of the investor: The Applicant, and its major shareholder the Toi Foundation, have a long and successful track record of operations in New Zealand. The Applicant's existing business is subject to extensive regulation and public scrutiny of their actions. This requires their collective character to remain of the highest calibre.

27. Significant Treaty of Waitangi issues: This factor is addressed above.

28. Site of national significance: This factor is addressed above.

National interest documents upload

- [Project Weka - Appendix 14 - FFML Privacy Policy and Privacy Breach and Response Plan.pdf](#) (480.36 KB)
- [Project Weka - Appendix 11 - Non-NZ government investors.pdf](#) (318.08 KB)

Upload documents

Supporting Information upload

- [Project Weka - Investor Test Statutory Declaration.pdf](#) (76.26 KB)
- [Project Weka - OIO Application Signature Form.pdf](#) (184.37 KB)
- [Project Weka - True and Correct Statutory Declaration.pdf](#) (55.34 KB)
- [LINZ - Lodgement Fee.pdf](#) (90.25 KB)

Tax information

Upload Tax information submission confirmation

[Project Weka - Tax Information Required.pdf](#) (704 KB)

Appendices

- Appendix reference: 01
Name of document: SPA
- Appendix reference: 02
Name of document: Structure Diagrams
- Appendix reference: 03
Name of document: Kiwi Wealth Group Structure Diagram

- Appendix reference: 04
Name of document: IWC Passports
- Appendix reference: 05
Name of document: IWC CVs
- Appendix reference: 06
Name of document: Toi Foundation registration details and trust deed
- Appendix reference: 07
Name of document: Applicant certificate of incorporation and constitution
- Appendix reference: 08
Name of document: FFML Annual Report 2022 (including financial statements)
- Appendix reference: 09
Name of document: FFML Shareholders' Agreement
- Appendix reference: 10
Name of document: FFML's Financial Delegations & Authorities Policy
- Appendix reference: 11
Name of document: TA Funds – details of non-NZ government investors
- Appendix reference: 12
Name of document: Partnership Agreement (agreed form)
- Appendix reference: 13
Name of document: TSA (signed)
- Appendix reference: 14
Name of document: FFML Privacy Policy and Privacy Breach and Response Plan

Declaration

Who is submitting the application?

I am the Applicant's advisor/external representative (lawyer acting on behalf of a client, other external advisors)

Name of person submitting application and declaring below

[s 9(2)(a)]

I have read, understood, and agreed to the privacy notice.

Yes

I have uploaded all documentation relevant to the claims made in this application and in support of the application.

Yes

I have uploaded proof of payment of the [lodgement fee](#) for this application.

Yes

I solemnly declare to the best of my knowledge, that all the information in this application form is true and correct.

Yes

True and correct

Yes

Investor test

Yes

Repeat investor test
No

I have uploaded the signed applicant declaration.

Yes

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