

To: Hon Stuart Nash  
 Hon Eugenie Sage, Minister for Land Information

## ASSESSMENT REPORT: **Happy Valley Nutrition Limited**

<b>Date</b>	18 August 2020	<b>Classification</b>	IN CONFIDENCE: Commercially sensitive
<b>OIO reference</b> (Report reference)	202000153 (1532)	<b>Suggested deadline</b>	31 October 2020

### Purpose

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

### Action sought

1. Review this report and consult with each other if desired.
2. Determine whether to grant consent and, if so, on what conditions.
3. Indicate your decision on pages 2 and 3.

### Key information

For the reasons set out in this report, our recommendation is to **grant consent**.

Applicant	<b>Happy Valley Nutrition Limited</b> (Australia 60.12%; New Zealand 28.06%; Hong Kong (SAR) 8.96%; Singapore 1.75%; Philippines 0.42%; United States of America 0.24%; Thailand 0.24%; Portugal 0.10%; United Kingdom 0.09%; Czech Republic 0.01%; Various 0.01%)
Vendors	<b>Merilyn Ruth Connolly and Derek Kotuku Wooster</b> – Waipa Meadows (154.9864 hectares) (New Zealand 100%) <b>Woolly Farm Limited</b> – Woolly Farm (141.6183 hectares) (New Zealand 100%) <b>Allen Peter van der Poel, Linda Dawn van der Poel and Bailey Ingham Trustees Limited</b> – Lot 2, 5 Redlands Road (12.2450 hectares) (New Zealand 100%) <b>Ricardo Vaughan Te Whare</b> – 6 Redlands Road (0.4047 hectares) (New Zealand 100%) <b>Ōtorohanga District Council</b> (New Zealand 100%) – Part of Redlands Road (0.2 hectares)
Land	<b>309.46 hectares</b> of land in Ōtorohanga
Consideration	\$9,675,000
Sensitivity	Sensitive land: non-urban land of over 5 hectares, residential land, special land, adjoins land that is over 0.4 hectares and is a reserve under the Reserves Act 1977, and adjoins land that is over 0.4 hectares and is a reserve under s37 of the Act

Relevant tests	Investor test (s16(1)(a) & 2) Benefit to NZ test – substantial and identifiable benefit (s16(1)(c)(ii) and s16A(1)(a)&(b)) Residential land outcome (s16B) Farm land offer test (s16(1)(f))
----------------	--

### OIO Contacts

Name	Position	Contact	First contact
Louise Hornabrook	Manager Applications, OIO	04 494 2543	<input checked="" type="checkbox"/>
Daniel Mumford	Senior Solicitor, OIO	04 830 3959	<input type="checkbox"/>
Sherlene Ho	Solicitor, OIO	04 474 1017	<input type="checkbox"/>

Released under the Official Information Act 1982

## Decision

I determine that:

1. The 'relevant overseas person' is:

ROP	Role
Happy Valley Nutrition Limited	Applicant

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

IWC	Role
Gregory Kenneth Wood	Director and Chief Executive of the Applicant
Ivan Jeremy Hammerschlag	Director and Chairman of the Applicant
David John McCann	Directors of the Applicant
Randolph Edward Casimir van der Burgh	
Anthony Larry Kahn	

3. The individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment.
4. The relevant overseas person has demonstrated financial commitment to the overseas investment.
5. All the individuals with control of the relevant overseas person are of good character.
6. Each individual with control of the relevant overseas person is not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (which sections list certain persons not eligible for visas or entry permission under the Immigration Act);
7. I am satisfied that the investor test, as outlined in paragraphs 1 to 6 above, has been met.

**Hon Stuart Nash**

**Hon Eugenie Sage**

Agree

Agree

Disagree

Disagree

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

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

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

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

**Hon Stuart Nash**

**Hon Eugenie Sage**

Agree

Agree

Disagree

Disagree

9. I am satisfied, in relation to farm land advertising, that the criterion need not be met by reason of the circumstances relating to the particular overseas investment, as set out in the Report.

**Hon Stuart Nash**

**Hon Eugenie Sage**

Agree

Agree

Disagree

Disagree

10. I am satisfied, in relation to the residential land, that the criterion in section 16A(1)(c) and the conditions imposed on the consent in accordance with section 16B (residential outcomes) will be, or are likely to be met, as set out in the Report.

**Hon Stuart Nash**

**Hon Eugenie Sage**

Agree

Agree

Disagree

Disagree

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

**Hon Stuart Nash**

**Hon Eugenie Sage**

Grant consent subject to the conditions in the Proposed Decision

Grant consent subject to the conditions in the Proposed Decision

Grant consent with amended conditions provided on:

Grant consent with amended conditions provided on:

Consent declined

Consent declined

Hon Stuart Nash

Hon Eugenie Sage

Date:     /     /

Date:     /     /

Released under the Official Information Act 1982

## A. Background and proposed transaction

- Happy Valley Nutrition (**Applicant**) intends to develop a milk processing and packaging plant (**Facility**) on non-sensitive land it already owns in Ōtorohanga (**Investment**). It has entered into five separate conditional contracts<sup>1</sup> for a total of \$9,675,000 to acquire freehold interests in the following land in Ōtorohanga, southwest of Te Awamutu, highlighted in yellow on the map below in paragraph 33 (the **Land**) to support the development of the Facility.

Address	Total Size (hectares)
333 Kawhia Road, Ōtorohanga (“ <b>Waipa Meadows</b> ”)	154.9864
117 Mangamahoe Road, Ōtorohanga (“ <b>Woolly Farm</b> ”)	141.6200
5 Redlands Road, Ōtorohanga (“ <b>Lot 2, 5 Redlands Road</b> ”)	12.2450
6 Redlands Road, Ōtorohanga (“ <b>6 Redlands Road</b> ”)	0.4047
Part of Redlands Road, Ōtorohanga (“ <b>Balance of Road</b> ”)	0.2

- The Applicant intends to develop and operate the Facility to produce infant milk formula (**IMF**) and **Other Nutritional Products**, being other nutritional products including IMF base powders, IMF ingredients and liquid variants that align with market demands. The Applicant owns the land on which the Facility will be built, however it also requires the Land which is subject to this application in order to fulfil the requirements of resource consents relating to the discharge of wastewater and stormwater from the Facility as well as water take from the nearby Waipa River. If the Applicant is unable to acquire the Land, the Facility will not be built.
- The Applicant intends for all the production from the Facility to eventually be exported, primarily to China. This would be subject to the Applicant obtaining in-market registrations which may take a few years. The Applicant intends to be commercially producing China-qualified IMF by the third year of the Facility being operational. While waiting for in-market registration approvals, the Applicant intends to produce other high-value IMF ingredients such as whey protein, lactose, and specialised milk fat products targeted at overseas and New Zealand markets.
- The Applicant has obtained resource consents required for the development and operation of the Facility, including for the discharge of wastewater, and construction of pipelines to transport water to and from the Facility. The Applicant will also apply for any remaining resource consents and permits it requires to develop the Facility (such as for further wastewater and water transport arrangements), as well as routine resource consent and building consents, with an expectation to acquire these before the end of 2020.
- The Land contains non-urban land and farm land. The current and proposed use of the Land is detailed in the table below.

Parcel	Current Use	Proposed Use
Waipa Meadows	Cattle trading, with parts of the land used for making silage	Accommodate the discharge of wastewater generated by the Facility on this land.

<sup>1</sup> Settlement of the purchase is conditional on OIO consent.

	and hay.	This land will be leased back to Marilyn Connolly (one of the vendors) to undertake pastoral farming subject to the rights of the Applicant in relation to the irrigation infrastructure and the terms of the wastewater resource consent.
Woolly Farm	Operational dairy farm, milking approximately 280 dairy cows.	Accommodate the discharge of wastewater generated by the Facility on this land.  This land will also be leased to Marilyn Connolly to undertake pastoral farming subject to the rights of the Applicant in relation to the irrigation infrastructure and the terms of the wastewater resource consent.
Lot 2, 5 Redlands Road	Small support block for the vendors' dairy farm, with parts of the land used for making silage and growing maize	Satisfy resource consent requirements, to obtain benefit of certain water and power rights required for the construction and operation of the Facility. This land is also needed to operationalise the surface water resource consent, to install water intake equipment and get direct access to Waipa River.
6 Redlands Road	Unused housing	Relocate the driveway to 8 Redlands Road from the west side to the east side of 6 Redlands Road, as well as parking, storage, amenity space, and location of auxiliary plant connected with the construction and operation of the facility.
Balance of Road	Road	This portion of the road will be rendered redundant by the realignment of the road required by condition 8 of the Land Use Consent (detailed further in paragraph 35 below). Will be incorporated into one of the Applicant's neighbouring titles following the realignment.

## B. Application of the Act

6. The Applicant entered into the respective contracts<sup>2</sup> to purchase the Land and applied for consent<sup>3</sup> prior to the commencement of the recent amendments to the Act.<sup>4</sup> Thus, the version of the Act and regulations in force immediately before the amendments continue to apply. In particular, no national interest assessment applies.
7. As the Land is sensitive<sup>5</sup> consent is required for its acquisition.<sup>6</sup> We assess the investor test and farm land advertising requirements in Part C and the benefit to New Zealand test and residential outcome in Part D, then offer our recommendation in Part E.

<sup>2</sup> By agreements for sale and purchase dated 18 April 2019, 9 July 2019, 13 March 2020, and 20 March 2020.

<sup>3</sup> By application dated 12 May 2020.

<sup>4</sup> Overseas Investment (Urgent Measures) Amendment Act 2020, which commenced on 16 June 2020.

<sup>5</sup> Table 1, Part 1, Schedule 1 of the Act.

<sup>6</sup> See the 'Relevant tests' section of the table on page 2 for the applicable statutory references.

## C. Applicant and investor test

---

8. This section describes the Applicant and assesses whether the investor test is met and whether the farm land advertising test has been met.

### Relevant overseas person

9. The Applicant was incorporated in New Zealand on 8 April 2016 and is listed on the Australian Stock Exchange (ASX: HVM). The Applicant's shares are widely-held and approximately 72% are owned by overseas persons.
10. There are four shareholders owning 5% or more of the Applicant's shares (as at 11 May 2020). These are:

Shareholder	% of shares
Rockburgh Nominees Limited as bare trustee for the AP & LD van der Poel Trust	9.06%
Alceon Group No 62 Pty Ltd on trust for the Alceon Group Trust	5.88%
Spinite Pty Ltd on trust for the Rosenburg Family Trust	5.54%
Rockburgh Nominees Limited as bare trustee for the Arwon Asia Pacific Focus Fund	5.28%

### Control and experience

11. The Applicant is controlled by its five directors, one of whom is also its Chief Executive and another of whom is its Chairman. As at 23 July 2020, four of the five directors have shareholdings in the Applicant. The directors make decisions in relation to the Facility and the Land.
12. Thus, we recommend that the **'individuals with control of the relevant overseas person' (IWC)** are the five directors of the Applicant:

IWC	Role
Gregory Kenneth Wood	Director and Chief Executive of the Applicant
Ivan Jeremy Hammerschlag	Director and Chairman of the Applicant
David John McCann	Directors of the Applicant
Randolph Edward Casimir van der Burgh	
Anthony Larry Kahn	

13. We received the biographical information provided by the Applicant for each IWC and note that the IWC collectively have extensive general business experience and acumen. All the IWC have held various senior management and executive roles at international companies. These include Beca Limited, Fonterra, Macquarie Infrastructure Group, and Ernst & Young.
14. Three of the five IWC have direct experience in the dairy industry, while four have extensive experience in investments management. These are relevant to the Investment.
15. Accordingly, we consider that the IWC have the business experience and acumen required by the Act.

## Good character

16. While we have identified certain matters relevant to character that have arisen as a result of the actions of the companies they are associated with, we consider these do not prevent a finding that the individuals with control are of good character; and we are satisfied that the statutory declaration provided with the application as to good character can be relied on.
17. The matters we have identified and considered are detailed in **Attachment 3**.

## Summary of investor test

18. For the reasons set out above and summarised in the table below, our conclusion is that **the investor test has been met**.

Investor test criteria	OIO assessment		Cross-references
	Risk	Summary	
Collectively have business experience and acumen relevant to the investment	Test met	The IWC have relevant business experience in a range of areas, including experience in the dairy industry and investments management, which are both relevant to the investment.	Paras 8-15 Section 16(2)(a).
ROP demonstrated financial commitment	Test met	The Applicant has demonstrated financial commitment by engaging third party consultants and advisers in relation to the development and construction of the Facility and for acquisition of the Land. As at February 2020, the Applicant spent a total of \$11 million on undertaking the transaction for the investment.	Section 16(2)(b).
Good character	Some concerns	We have identified some matters relating to public opposition to the Facility and a lawsuit relating to a failed joint venture, but after assessment, we are satisfied that the IWC are of good character.	Paras 16-17 and <b>Attachment 3</b> . Section 16(2)(c).
Not an individual of the kind ineligible for a visa or entry permission under ss 15 or 16 of the Immigration Act 2009	Test met	Statutory declarations have been provided confirming that each IWC is not of the kind referred to in ss 15 or 16 of the Immigration Act.	Section 16(2)(d).

## Farmland advertising – exemption sought

19. The following parcels of land are farmland:
- Waipa Meadows;
  - Woolly Farm; and



- Lot 2, 5 Redlands Road.
20. Each of the parcels in paragraph 19 is (other than residential, but not otherwise sensitive) used exclusively or principally for agricultural purposes and keeping of livestock.
21. The Applicant seeks an exemption for the requirement under section 16(1)(f) for the farm land to be advertised in accordance with the Regulations. The Applicant submits public advertisement of the farmland will not achieve the purpose intended by section 16 of the Act because any public advertising is unlikely to result in any offers being made that would be accepted by the Vendors.
22. Section 20(a) of the Act permits the decision maker to exempt investments from the need to meet the farm land advertising criterion if “the circumstances relating to the particular overseas investment, [or] interest in land” warrant an exemption.
23. We are of the view that it is appropriate to grant an exemption to the farmland advertising requirements in this case for the following reasons:
- the vendors of Waipa Meadows have stated that they would sell the land to the Applicant as it enables their existing leaseback agreement with the Applicant to continue, and they would not have sold the land otherwise. This arrangement (contained in an Agreement for Sale and Purchase for Waipa Meadows (**Waipa Sale Agreement**)) contemplates that one of the vendors, Merylyn Connolly is to lease back Waipa Meadows for 100 years, allowing her to undertake pastoral farming subject to the rights of the Applicant to undertake all the works required under the wastewater resource consent;
  - the Waipa Sale Agreement also contemplates that Merylyn Connolly is entitled to lease part of Woolly Farm on similar terms as the leaseback for Waipa Meadows. Merylyn Connolly intends to coordinate her farming operations on both Waipa Meadows and Woolly Farm;
  - the nature of the interest is such that New Zealanders are offered the opportunity to use Waipa Meadows and Woolly Farm given that they will be leased back to Merylyn Connolly, who is a New Zealander, for pastoral farming;
  - the vendors for Lot 2, 5 Redlands Road have an existing relationship with the Applicant, in that they hold 9.06% of the shares in the Applicant; and
  - and
  - the Waipa Sale Agreement also grants Merylyn Connolly the right of first refusal should the Applicant intend to dispose of Waipa Meadows.;
24. In light of these factors, we consider that any advertising for Waipa Meadows, Woolly Farm, and Lot 2, 5 Redlands Road would not be genuine as the vendors would be unlikely to accept alternative offers. We therefore recommend that a section 20(a) exemption from the section 16(1)(f) criterion be granted.

### **Residential land outcomes**

25. The following parcels of the Land are classed as residential land:
- Lot 2, 5 Redlands Road;
  - 6 Redlands Road; and
  - Balance of Road.

26. There is also a house on 6 Redlands Road. We are advised by the vendor that this house is uninhabitable, with no services connected to it.
27. When an investment requiring consent under the Act includes residential land, to the extent that the consent relates to the residential land you (as relevant Ministers) must determine a residential land outcome, and the consent must be made subject to the set of conditions for the applicable residential land outcome.
28. There are several residential land outcomes available (as set out in clause 19(2) Schedule 2 of the Act), including 'on-sale', 'use for non-residential purposes', 'operation of a long term accommodation facility on the residential land', 'increased residential dwellings', 'residential purposes incidental to a relevant business', 'occupation as main home or residence', 'operation of existing share equity, rent-to-buy, or rental arrangements', and 'any other case'.
29. We consider that the appropriate residential land outcome in this instance, for all three parcels of residential land, is residential land outcome 2, the 'use for non-residential purposes' outcome as defined in clause 19(2) Schedule 2 of the Act. That is that the residential land is not used, nor held for future use, for residential dwellings or long-term accommodation facilities".
30. In considering the use for non-residential purposes, we have taken the following factors into account:
- Lot 2, 5 Redlands Road will be used primarily for stormwater discharge and to operationalise the Surface Water Consent (more details of this and the other consent requirements are described in more detail at paragraphs 34 and 35 below);
  - the house on 6 Redlands Road is uninhabitable and there are no services connected to it. There is no intention for the house to be inhabited; and
  - Balance of Road<sup>7</sup> will form part of the land at 6 Redlands Road following the realignment of the junction of Redlands Road and SH31, which is a condition of the Applicant's Land Use Consent.
31. We therefore recommend that the appropriate residential land outcome is the 'use for non-residential purposes' outcome and that the Investment satisfies the requirements of that outcome.

---

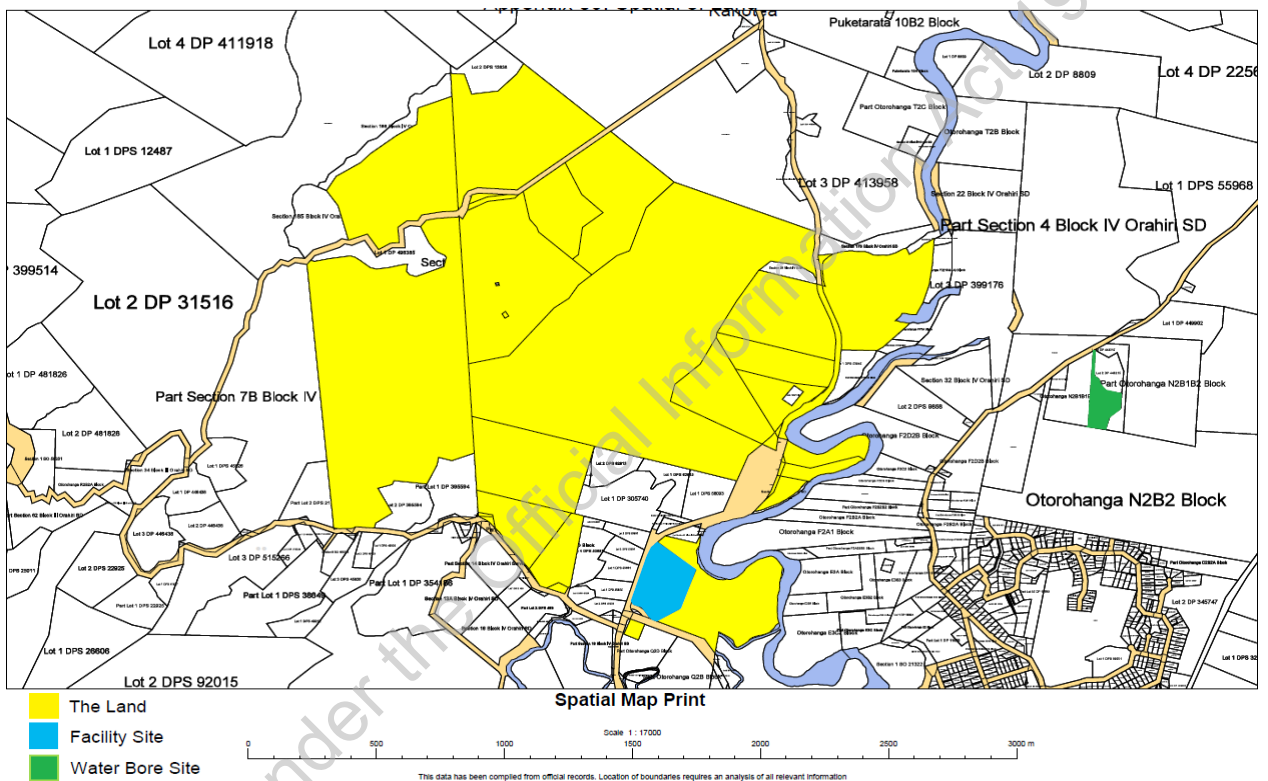
<sup>7</sup> This is approximately 0.15 to 0.2 hectares of land at Redlands Road that will become redundant once the junction at Redlands Road and SH31 is realigned. This land will need to be acquired by the Applicant to form part of the Applicant's land so that it does not become unusable.

## D. Investment plan and benefit to NZ test

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

### Investment plan and key benefit

33. The Applicant intends to build the Facility on the land which it acquired in 2016 (**Facility Site**). The Facility Site did not require OIO consent as it was not sensitive land at the time. As shown below, the Land, highlighted in yellow, surrounds the Facility Site, highlighted in blue (a more detailed map showing the land parcels colour-coded by the respective vendors is in **Attachment 5**):



34. The Applicant has acquired consents to develop the Facility, including the Cleanfilling Consent, Discharge Consent, Land Use Consent, Groundwater Consent, Stormwater Discharge Consent, Surface Water Consent and Wastewater Consent (together, the **Resource Consents**). The Resource Consents were obtained following involvement from the local community at a public hearing and through submissions.
35. The Land is required to satisfy the requirements of the Resource Consents related to the development and operation of the Facility as follows:
- Waipa Meadows and Woolly Farm are required under the conditions of the Wastewater Consent to discharge wastewater from the Facility through irrigation. The Facility cannot operate unless it is able to discharge wastewater onto these two properties;
  - Lot 2, 5 Redlands Road is required under the conditions of the Land Use Consent, Discharge Consent, Cleanfilling Consent, Stormwater Discharge Consent and Surface Water Consent. Conditions include establishing native plants as a visual screen for the Facility and constructing and operating a stormwater drain from the Facility to the Waipa River and

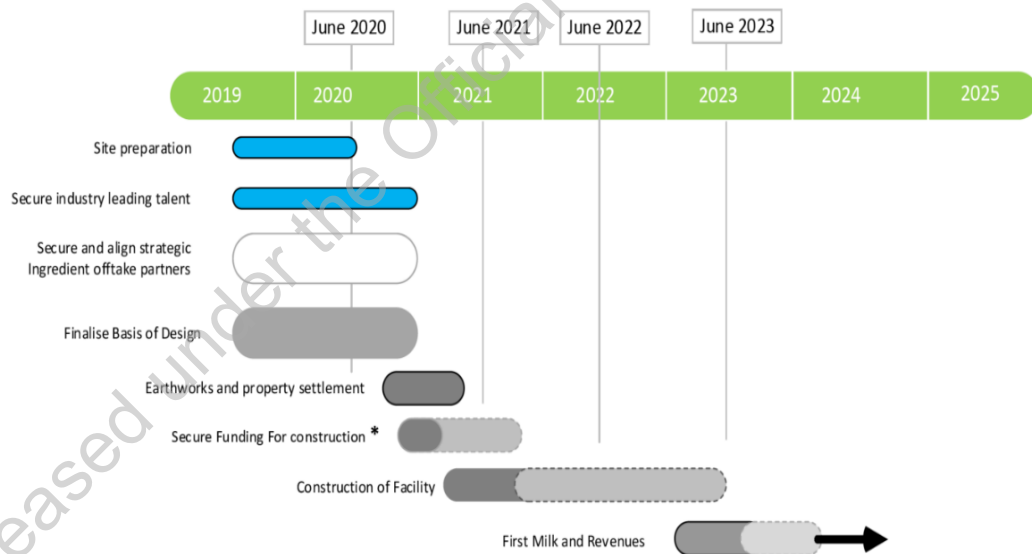
installing water intake equipment, including appropriate screening equipment, to take water from the Waipa River;

- 6 Redlands Road is required under the conditions of the Land Use Consent for the realignment of the junction of Redlands Road with SH31, Ōtorohanga; and
- The Balance of Road will be rendered redundant by the Land Use Consent requirement to realign the junction of Redlands Road with SH31, Ōtorohanga and then will need to be purchased by the Applicant so that part of the Applicant's land does not become unusable.

36. As mentioned in paragraph 23, Waipa Meadows and Woolly Farm are subject to a leaseback to Marilyn Connolly. Woolly Farm currently operates as a dairy farm with approximately 280 dairy cows, producing around 100,000 kgMS<sup>8</sup> annually. The leaseback would result in Marilyn Connolly using Woolly Farm for pastoral farming instead, together with Waipa Meadows.

37. The Applicant will apply for the other resource consents and permits it requires to develop the Facility (including facilitating the wastewater and water transport arrangements and negotiating an easement to carry water) as well as generally obtaining routine resource and building consents for the construction of the Facility. The Applicant's timetable contemplates that all remaining resource consents and permits will be acquired by the end of 2020.

38. The Applicant submits the following timeline for the Investment:



39. The Applicant has commenced Pre-Project Activities which includes the following:

<b>Site preparation</b>	<ul style="list-style-type: none"> <li>• Detailing designs to enable earthworks to commence and prepare for the construction of the proposed Facility.</li> <li>• Developing key management plans in accordance with the requirements by the ODC for earthworks and preliminary construction activities.</li> <li>• Securing any further required consents and permits.</li> </ul>
-------------------------	--

<sup>8</sup> Kilogramme Milksolids

<b>Industry-leading talent</b>	<ul style="list-style-type: none"> <li>• Attracting, retaining and developing industry-leading talent.</li> <li>• Appointing key senior management across key functional areas to build organisational capability, including but is not limited to a Chief Financial Officer, General Manager of Quality and the General Manager of Sales and Marketing.</li> </ul>
<b>Finalise Basis of Design and Construction Planning</b>	<ul style="list-style-type: none"> <li>• Engaging engineering consultants to assist with finalising the basis of designs, procurement strategy, budgeting and planning for the construction of the Facility.</li> <li>• Refining user requirements and specifications with strategic partner(s) product requirements.</li> <li>• Refining parallel strategy on product requirements. One strategy will focus on IMF requirements, the other will focus on Other Nutritional Product requirements.</li> <li>• Finalising utility connection details, including electrical power and natural gas connections.</li> <li>• Optimising water and wastewater design solutions for the Facility.</li> <li>• Securing any further required consents and permits.</li> <li>• Negotiating and entering into key procurement contracts for the construction of the Facility provided that these are likely to remain subject to securing funding.</li> <li>• Strengthening governance frameworks and support processes for the construction and commissioning of the Facility.</li> <li>• Securing OIO consent as soon as possible in relation to the establishment of the Facility.</li> </ul>
<b>Strategic partners</b>	<ul style="list-style-type: none"> <li>• Securing a strategic partner(s) for IMF and/or Other Nutritional Products including possible funding and long-term supply agreements.</li> <li>• Continuing discussions with milk suppliers, ideally located within a 150 kilometre radius of the site.</li> </ul>
<b>Secure funding</b>	<ul style="list-style-type: none"> <li>• Once the basis of design is meaningfully engaged, by undertaking a process to identify the available sources of funds, then structuring, documenting and securing the funding from those sources for the procurement and construction of the Facility and the working capital requirements during the periods of construction, commissioning and the ramp up phase of production.</li> </ul>
<b>Land</b>	<ul style="list-style-type: none"> <li>• Complete acquisition of the Land.</li> </ul>

40. The Applicant intends for the Pre-Project Activities to be completed by the end of 2020. As per the timeline in paragraph 38, the Applicant intends on completing the earthworks required and commence construction of the Facility by June 2021. The Applicant endeavours to meet this timeline but submits that there may be unforeseen delays due to COVID-19. We have, therefore, recommended a condition that the Applicant must begin construction of the Facility, including commencing the earthworks by 31 November 2021.

41. The Applicant intends to achieve first commercial production for the July 2022 to June 2023 milk season. The Applicant intends to be commercially producing IMF for export by the third year of the Facility being operational and reach its annual volume objective of processing at least 25,000 Megatonnes (MT) of IMF by the fifth year.

**What is likely to happen without the investment (Counterfactual)**

42. The most likely counterfactual would be the status quo, with the Vendors maintaining current ownership of the Land and continuing the current use of the Land, being the following:

Land	Current use
Woolly Farm	The vendors for Woolly Farm would continue farming on the land. They would continue cattle trading, buying beef cattle as weaners or yearlings, retaining them for approximately a year, then selling them. Parts of the land are used for making silage and hay for sale.
Waipa Meadows	The vendors for Waipa Meadows would continue farming on the land. They would continue their operations of dairy farm milking.
Lot 2, 5 Redlands Road	The vendors for Lot 2, 5 Redlands Road would continue using the land as a small support block for their dairy farm nearby. The land would be used for silage harvesting in spring and maize crop harvesting in late summer or early autumn.
6 Redlands Road	There is a currently a house on the land which is uninhabitable with no services connected to it.
Balance of Road	This land will continue to form part of Redlands Road and will not be realigned to improve the junction with State Highway 31.

43. The Land would not be used in support of the Facility and consequently the Facility would not be developed as the Applicant would be unable to fulfil the requirements of the Resource Consents.

**Assessment**

44. The key difference between the Investment and the counterfactual is the operations that the Applicant will be able to undertake if it acquires the Land, processing IMF and Other Nutritional Products on the Facility. We consider it unlikely that the benefits that the Investment would provide would be realised with the counterfactual.
45. We consider the benefits of the development to be substantial and identifiable. The Applicant has also received the Resource Consents required for the development and operations of the Facility. The Land is now required to fulfil the requirements of the Resource Consents.
46. The Investment is likely to result in the creation of additional job opportunities, specifically within Ōtorohanga. The Applicant submits that it intends to create 330 full time equivalent (FTE) roles during the construction phase of the Facility and 80

FTE roles during the operational phase of the Facility. This is supported by Dr. Ganesh Nana's<sup>9</sup> Economic Impact Assessment, attached as **Appendix 6**.

47. The Investment is likely to result in increased export receipts, conditional on the Applicant obtaining in-market registrations. We consider that the Applicant is likely to obtain in-market registrations as the Applicant is already actively working with Global Dairy Networks, an international dairy sales and marketing organisation. The Applicant estimates an export revenue of approximately \$287 million from IMF and \$120 million from Other Nutritional Products.
48. The Applicant will introduce additional investment for development purposes. The Applicant has already introduced approximately \$7.7 million of additional capital into New Zealand for the Facility and intends to spend a further \$356 million on the development of the Facility, with some of these funds being sourced from offshore.
49. The Applicant projects that it will export approximately 25,000 megatonnes of IMF per year. This would require the processing of approximately 100 million litres of raw milk per year. The Applicant would also require raw milk to produce Other Nutritional Products. This would lead to a likely increase in processing of primary products.
50. The Investment is likely to result in covenant protection for the long-tailed bat habitat and pest plant and animal control in this area (which has been conditioned) as well as the planting of native vegetation and stock-proof fencing to aid wetlands restoration. Some of the recommendations made by the Department of Conservation (**DOC**) relate to measures that the Applicant is required to undertake as part of the resource consents granted to the Applicant for the Investment. Accordingly, we have not conditioned these measures.
51. The Investment is likely to result in improved walking access with a riparian walkway along part of the Waipa River and Waitomo Stream (esplanade strip already in place) as well as the construction of a carpark on Redlands Road near the start of the riparian walkway (which has been conditioned). Some of the recommendations made by the Walking Access Commission (**WAC**) relate to measures that the Applicant is required to undertake as part of the resource consents granted to the Applicant for the Investment. Accordingly, we have not conditioned these measures.
52. As the Applicant is incorporated and based in New Zealand, with approximately 28% New Zealand ownership and two New Zealand directors, there is a material amount of New Zealand ownership and participation in the Investment.
53. Under the Special Land requirements of the Act, The Vendor has offered to sell the riverbed that adjoins and abuts Lot 2, 5 Redlands Road to the Crown for \$1. This is the riverbed of Waitomo Stream. We will provide a separate Special Land assessment report relating to this offer.

### **Benefit to New Zealand test**

54. The benefits to New Zealand that are likely to result from this investment and our assessment of the relative weight to be given to each are set out in the tables on the next two pages. There is also a summary table in **Attachment 5**.
55. Factors that we considered were either not relevant to the investment, or the benefit to New Zealand was not sufficient to be relied on, are noted in **Attachment 2**.
56. In applying the benefit to New Zealand criteria, you are required to consider each of the benefit factors and determine which of them are relevant. The weight and relative importance to be given to each factor is a matter to be determined by you as the decision-maker.

---

<sup>9</sup> Dr Ganesh Nana is from BERL. Dr Nana gave evidence on the likely economic impact of the Facility at the Applicant's hearing for Land Use Consent.

57. The 'rural land directive' applies to this Investment.<sup>10</sup> Of the benefit factors Ministers have directed should be given high relative importance,<sup>11</sup> we have assessed 'jobs' and 'oversight and participation by New Zealanders' as being relevant to this Investment and met.<sup>12</sup> As indicated in the table below, we have treated those two factors as being of high relative importance.

## Consultation

58. In undertaking our assessment, we consulted with DOC and WAC. We also consulted the Ministry of Primary Industries, Infrastructure Reference Group, and the Provincial Growth Fund. We set out a summary of our consultation below.

### *Department of Conservation*

59. We consulted the Department of Conservation (**DOC**) about whether there are any serious or significant indigenous vegetation or fauna issues relating to the Land.
60. DOC completed an assessment of the Land and made the following recommendations:
- registration of a covenant to protect the long-tailed bat habitat as well as pest plant and animal control in the area;
  - stock-proof fencing for wetland habitat;
  - fencing and plant maintenance of a pond and vegetation site;
  - no work or disturbance near heritage sites (unless relevant consents obtained);
  - restore a wetland habitat by removing willows and replanting with native plants; and
  - riparian planting along a stream.
61. DOC's recommendations were sent to the Applicant for comment. DOC's assessment and recommendations, and the Applicant's responses, are set out in the table in **Attachment 4**. We have assessed the benefits relating to indigenous vegetation and fauna on the Land in the benefits assessment table.

### *Walking Access Commission*

62. We consulted the Walking Access Commission (**WAC**) about whether there are any significant walking access issues or opportunities relating to the Land.
63. WAC completed an assessment of the Land and made the following recommendations:
- creation of esplanade strips and a carpark to allow public access alongside wetlands and waterfowl hunting;
  - creation of esplanade strips to allow public access alongside the Waipa River and Waitomo Stream;
  - create a private right of way to provide access to and from adjoining landlocked Māori land;
  - providing access to two archaeological sites on the Land;
  - create a private right of way to provide access to and from an adjoining reserve;
  - create a walkway along part of the Waipa River; and
  - construct a car park on Redlands Road adjoining an esplanade strip.

<sup>10</sup> Because the investment involves the acquisition of non-urban and over 5 hectares in size (excluding any associated land), but excludes 'forest land'.

<sup>11</sup> Ministerial Directive letter dated 28 November 2017, paras 13-17. High relative importance factors: jobs, new technology or business skills, increased export receipts, increased processing of primary products, oversight and participation by New Zealanders.

<sup>12</sup> High relative importance factors under the rural land directive we consider not relevant or not met are discussed in **Attachment 2**.



64. WAC's recommendations were sent to the Applicant for comment. WAC's assessment and recommendations, and the Applicant's responses, are set out in the table in **Attachment 4** Error! Reference source not found. We have assessed the benefits relating to walking access on the Land in the benefits assessment table.

*Consultation with Ministry of Primary Industries*

65. We consulted the Ministry of Primary Industries (**MPI**) about this application. MPI advised that the application was thorough and contained all the expected information. It further advised that the land use considerations are good and provide room to expand the Facility if needed. MPI also considered that the lease back arrangement with the vendors is positive for the local community.
66. The notified resource consent process required the Applicant to agree to a number of conditions as part of the Investment and involved extensive consultation with stakeholders and the local community. The Applicant has also engaged with farmers to ensure the supply of milk.
67. MPI advised that there is a thorough accreditation process involved in moving from producing milk powder to producing IMF. The process involves significant work and can take a long time. This is because the product is designed for 'sensitive persons' (specifically children). Accreditation is obtained from MPI, who audit the manufacturer as required. The benefit to the manufacturer is a high-value product for export.

*Consultation with Crown Infrastructure Partners*

68. We consulted with the Shovel Ready Team at Crown Infrastructure Partners Limited (**CIP**). CIP advised that the Applicant submitted the development of the Facility as a shovel ready project with the Infrastructure Reference Group (**IRG**). While this project is on a list of 802 eligible projects, this does not guarantee any government funding or support. Ministers are currently considering which (if any) projects might be provided with support.

*Consultation with PGF*

69. We consulted with the Provincial Growth Fund (**PGF**) about this application. PGF advised that the Applicant had sought acceleration funds before they went to market to find additional investors. However, as the Applicant's capital structure and financial plans were still being developed, the Investment did not meet the criteria for PGF assistance.

## Assessment: benefit to NZ test

This table summarises the benefits to NZ likely to result from the Investment and our assessment of the relative weight to be given to each.

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
<b>Job opportunities</b> <i>(high relative importance)</i>	The Applicant intends to create 330 full time equivalent ( <b>FTE</b> ) roles during the construction phase of the Facility and 80 FTE roles during the operational phase of the Facility.	The current use of the Land amounts to 5.1 FTE roles, which will likely remain under the status quo.	<b>Strong</b>	The Investment is likely to result in additional job opportunities, specifically within Ōtorohanga, during both the construction and operational phase of the Facility. Should the Vendors retain ownership and current use of the Land, the Vendors are unlikely to offer the same job opportunities.	Proposed special condition on creating at least 300 FTE roles during the construction phase of the Facility and at least 70 FTE roles during the operational phase.  Proposed reporting on the number of jobs created, their roles, and their salaries.	s17(2)(a)(i)
<b>Increased export receipts</b> <i>(high relative importance)</i>	The Applicant estimates that there would be an export revenue of \$287 million from IMF and \$120 million from Other Nutritional Products, subject to overseas in-market registrations.	There would be no increased export receipts. There is no indication that the Vendors export any of their farming produce.	<b>Strong</b>	These increased in export receipts would depend on the Applicant obtaining overseas in-market registrations. However, based on the assumption that the Applicant will	Proposed reporting on the application and status of any overseas in-market registrations.	s17(2)(a)(iii)

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
				obtain overseas in-market registrations, the Investment is likely to result in an increased in export receipts, which is significantly more than what the status quo would offer.		
<b>Additional investment for development purposes</b>	The Applicant has already introduced approximately \$7.7 million of additional capital into New Zealand for the Facility. The Applicant intends to spend a further \$356 million on the development of the Facility, with some of these funds being sourced from offshore. This would, therefore, result in more additional investment for development purposes being introduced into New Zealand.	The vendors for Waipa Meadows has future development plans for the land. There are no development plans for the rest of the Land. The status quo is, therefore, unlikely to introduce the same amount of additional capital into New Zealand.	<b>Strong</b>	The Investment has already resulted in additional investment for development purposes in New Zealand. The Applicant intends to spend a further \$356 million on developing the Facility. Some of these funds would be sourced from offshore, and would result in additional investment being introduced into New Zealand.	Proposed special condition that the Applicant introduce at least 50% of the \$356 million into New Zealand, being \$178 million.	s17(2)(a)(v)

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
<b>Added market competition, increased productivity, efficiency, and enhanced domestic services</b>	The Investment is likely to result in increased efficiency. The Applicant intends to use the latest technology on the Facility, including Reverse Osmosis, heat recycling, and solar arrays. This would lead to more efficient water and energy usage.	There would unlikely be increased efficiency as the Vendors have no development plans that would include technology that leads to increase efficiency.	<b>Moderate</b>	The Investment is likely to result in more efficient water and energy usage, with the latest technologies that the Applicant intends to use on the Facility. This is additional to what would be offered by the Vendors should they retain the Land. However, the installation of the solar arrays is dependent on discussions with commercial suppliers.	Proposed reporting on the status and progress of the installation of the solar arrays.	s17(2)(a)(iv)
<b>Increased processing of primary products</b> <i>(high relative importance)</i>	The Applicant projects that it will export approximately 25,000 MT of IMF per year. This would require the processing of approximately 100 million litres of raw milk per year. The Applicant would also require raw milk to produce Other	The Vendors use the Land for farming purposes, but are unlikely to be processing primary products at the level that the Applicant would.	<b>Moderate</b>	The Investment is likely to result in an increase in processing of primary products in New Zealand, being raw milk sourced from New Zealand. This is above what the Vendors are likely to offer should	Proposed reporting on the application and status of any overseas in-market registrations.	s17(2)(a)(vi)

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
	Nutritional Products.			they retain ownership and current use of the Land. However, the increase in processing would depend on the Applicant obtaining overseas in-market registrations for exporting IMF and Other Nutritional Products.		
<b>Indigenous vegetation/fauna</b>	<p>The Applicant has committed to:</p> <ul style="list-style-type: none"> <li>• register a covenant to protect the long-tailed bat habitat and undertake pest control</li> <li>• stock-proof fencing for the Site 2 wetland habitat</li> <li>• fully fencing and plant maintenance of a pond and vegetation in the Site 3 area</li> <li>• stock-proof fencing in the Site 4 area</li> </ul>	No additional protection or enhancement of indigenous vegetation is likely to occur.	<b>Moderate</b>	Applicant will protect bat habitats by covenant, fence waterways, planting of native vegetation over parts of the Land	Applicant to register a covenant to protect the long-tailed bat habitat and implement an ongoing pest plant and animal control programme.	s17(2)(b)

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
	<ul style="list-style-type: none"> <li>no work or disturbance is proposed near Site 5A (pit/terrace)</li> <li>any work within the vicinity of Site 5B (burial cave) will adhere to Heritage New Zealand guidelines</li> </ul>					
<b>Walking access</b>	<p>The Applicant has committed to:</p> <ul style="list-style-type: none"> <li>create an esplanade strip that provides walking access alongside parts of the Waitomo Stream and Waipa River</li> <li>build a carpark over part of the Land that adjoins the existing esplanade strip</li> </ul>	No additional public walking access is likely to occur.	<b>Moderate</b>	Applicant will provide riparian walking access alongside parts of the Waitomo Stream and Waipa River and build a park adjoining the esplanade strip	Applicant to build a carpark over part of the Land adjoining the existing esplanade strip that provides walking access alongside parts of the Waitomo Stream and Waipa River	s17(2)(e)
<b>Offer to sell seabed / foreshore / riverbed to the Crown</b>	The Vendor has offered to sell the riverbed that adjoins and abuts Lot 2, 5 Redlands Road for \$1. This is the riverbed of Waitomo Stream.	N/A	<b>Moderate</b>	The Applicant has signed a notice of intention to offer the riverbed of the adjoining Waitomo Stream to the Crown. The OIO will now assess this	Proposed condition on Special Land.	s17(2)(f)

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
				offer and make a recommendation to the Ministers.		
<b>Oversight and participation by New Zealanders</b> <i>(high relative importance)</i>	<p>The Applicant is a New Zealand incorporated company with its head office in Auckland.</p> <p>Two of the five IWCs (company directors) are New Zealanders.</p> <p>The Applicant is listed and traded on the ASX and is widely held, with 28% of the company owned by New Zealanders.</p>	N/A	<b>Weak</b>	The ASX listing enables participation and oversight by New Zealanders in the Applicant, thereby giving them indirect participation in any profits that are made from the Investment.	No conditions appropriate.	S17(2)(g)

Released under the Official Information Act 1982

## Proposed conditions and rationale

### *Job opportunities*<sup>13</sup>

70. To ensure the benefit of new jobs is secured, we recommend conditions are imposed requiring the Applicant to employ at least 300 FTE employees based in New Zealand during the construction phase of the Facility and at least 70 FTE employees based in New Zealand during the operational phase of the Facility.
71. We recommend that the Applicant report on their number of FTE employed on the Land (whether temporary or ongoing), their roles, and their salaries. We have conditioned the lower figure to provide a small margin in case the number of new jobs is less than expected.

### *Increased export receipts*<sup>14</sup>

72. To ensure that the OIO is aware of the status of the Applicant's in-market registrations, we recommend that the Applicant report on details of any overseas in-market registration that it has applied for and if they have been granted.
73. We do not propose imposing a condition on the Applicant to achieve a specific number of export receipts as export receipts would be dependent on external economic and political factors that are beyond the Applicant's control.

### *Greater efficiency*<sup>15</sup>

74. To encourage the Applicant to retain focus on increasing energy efficiency, we recommend that the Applicant report on their progress in integrating the solar arrays, including details of how many megawatts the solar arrays can accommodate.

### *Additional investment for development purposes*<sup>16</sup>

75. To secure the scale of the Investment, we propose to include a minimum spending condition. We recommend conditions are imposed requiring the Applicant to introduce at least \$178 million of additional investment into New Zealand, funded from offshore. We consider it reasonable that at least 50% of the additional \$356 million capital required for the Investment be introduced into New Zealand from overseas. Without such a condition, there may be a temptation to scale back plans, thereby frustrating the promised benefit.

### *Increased processing of primary products*<sup>17</sup>

76. Similar to the proposed conditions for increased export receipts, we recommend that the Applicant report on details of any overseas in-market registration that it has applied for and if they have been granted.
77. The processing quantity of primary products is linked to export numbers. We, therefore, do not propose imposing a condition on specifically how much processing the Applicant should undertake as this would be dependent on external market demands, which may be outside the Applicant's control.

### *Indigenous vegetation or fauna*<sup>18</sup>

78. To secure the protection and enhancement of significant indigenous vegetation or fauna on the Land, we recommend that a condition be imposed to register a

---

<sup>13</sup> s17(2)(a)(i) of the Act

<sup>14</sup> s17(2)(a)(iii) of the Act

<sup>15</sup> s17(2)(a)(iv) of the Act

<sup>16</sup> s17(2)(a)(v) of the Act

<sup>17</sup> s17(2)(a)(vi) of the Act

<sup>18</sup> s17(2)(b) of the Act



protective covenant over part of the Land to protect the long-tailed bat habitat and pest plant and animal control over this area.

*Walking access*<sup>19</sup>

79. To secure the improvement of walking access over the Land, we recommend that a condition be imposed for the construction of a carpark on Redlands Road near the start of the riparian walkway.

*Offer to sell seabed/foreshore/riverbed to the Crown*<sup>20</sup>

80. We recommend that the Applicant, upon becoming registered proprietor of the Land, be bound by any offer or agreement that the Vendor has made or entered into with the Crown in relation to the Special Land that forms part of the Land, should the Crown decide to accept the offer of Special Land. The Applicant should deal with the Crown accordingly if the offer of Special Land is accepted.
81. If the relevant Ministers make a decision to waive the offer of Special Land in accordance with Regulation 15(1), this condition will be deemed to have been complied with.

## **E. Conclusion**

---

82. We have undertaken our assessment having regard to the characteristics of the land and the nature of the interest being acquired (reflecting the proportional nature of the benefit to NZ test).
83. After consideration of the application, we are satisfied that the investment is likely to result in the benefits considered in Part D, above. We have recommended that special conditions be imposed to ensure the principal benefits are secured or the Land is re-sold.
84. In relation to the benefit to New Zealand test, taking into account the large size of the Land and the proposed conditions:
- 84.1 the criteria for consent in sections 16 and 16A have been met;
  - 84.2 the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
  - 84.3 the benefit will be, or is likely to be, substantial and identifiable.
85. Therefore, our recommendation is to **grant consent**.

**Louise Hornabrook**

Manager Applications (Overseas Investment Office)

Date:

---

<sup>19</sup> s17(2)(e) of the Act

<sup>20</sup> s17(2)(f) of the Act

## Timing

86. Processing days for the application are set out in the table below. The OIO's processing time fell comfortably within the 65-day Statement of Performance Expectations target.

Quality Assurance	OIO Processing	Waiting for Applicant / Vendor	Third party consultation
11	13	26	8

## List of Attachments

---

1. Proposed Decision
2. Other benefit factors
3. Good character searches and analysis
4. Consultation recommendations and responses
5. Overview tables

Released under the Official Information Act 1982

## ATTACHMENT 1 - PROPOSED DECISION

### Consent for Overseas Person to Acquire Sensitive New Zealand Land

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

#### Consent

Decision date: [date]

The following people have been given the following consent:

<b>Case</b>	20200153
<b>Consent</b>	Happy Valley Nutrition Limited may acquire the Assets and Land subject to the Conditions set out below.
<b>Consent holder/s</b>	Happy Valley Nutrition Limited We will also refer to the Consent holder as <b>you</b> .
<b>Assets</b>	Significant business assets being the establishment of the Facility.
<b>Facility</b>	A vertically integrated nutritional grade milk processing blending and packaging plant on approximately 4.9984 hectares of land in Ōtorohanga, contained in record of title 846522.  This is not sensitive land.
<b>Land</b>	A freehold interest in approximately 309.25 hectares of sensitive land in Ōtorohanga comprised of the land in records of title SA44D/701, 395723, SA15B/579, 528682, 22968, 515258, 33586, 33587, 33588, 33585, 395724, SA25B/1148, 738000, SA12D/125, SA1737/64, SA45D/93, 846523, SA837/90 and approximately 0.2 hectares of land being part of Redlands Road, Ōtorohanga for which there is no record of title.
<b>Timeframe</b>	You have until 30 September 2021 to acquire the Land.

---

## Conditions

---

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

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

---

## Special conditions

---

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

Details	Required date
<b>Special condition 1: You must construct the Facility</b>	
You must commence construction of the Facility and this includes commencing the earthworks required. If you do not, standard condition 6 will apply and we may require you to dispose of the Land.	30 November 2021
You must construct the Facility. If you do not, standard condition 6 will apply and we may require you to dispose of the Land.	31 December 2025
<b>Special condition 2: Introduce capital into New Zealand</b>	
You must introduce at least NZD \$178 million of additional capital into New Zealand, associated with the acquisition of the Lands and the construction of the Facility specified in special condition 1.	31 December 2025
<b>Special condition 3: Create 300 FTE jobs during construction and 70 FTE jobs</b>	
You must create at least 300 FTE jobs during the construction phase of the Facility. These jobs must be based in Ōtorohanga and wider New Zealand.	31 December 2025
You must create at least 70 FTE jobs during when the Facility is operation. These jobs must be based in New Zealand	31 December 2026

#### Special condition 4: Special Land

1. Should the Crown decide to accept the offer of Special Land, you must, upon becoming the registered proprietor of the Land, adopt and be bound by any offer or agreement that the Vendor has made or entered into with the Crown in relation to the Special Land that forms part of the Land. If the relevant Ministers make a decision to waive the offer of Special Land in accordance with Regulation 15(1), this special condition will be deemed to have been complied with.
2. If the Crown decides to accept the offer of Special Land within the timeframe as set out in clause 2.1 of each agreement for sale and purchase (the **Special Land Agreement**) attached as Appendix X, you must:
  - (a) deal with the Crown in accordance with the requirements of the Act as if you were the party making the initial offer of the Special Land to the Crown;
  - (b) transfer the Special Land for the benefit of the Crown and on terms acceptable to the crown as outlined in the Special Land Agreement; and
  - (c) except in the case of Special Land which is foreshore or seabed, agree to an encumbrance or covenant in gross being registered to protect the Crown's interest upon the Crown's request.
3. The Crown reserves the right to caveat the Land until an encumbrance or covenant has been registered or, in the case of Special Land which is foreshore or seabed, until the transfer of the Special Land has been completed.
4. You will be responsible for all of your own costs involved in the transfer of the Special Land.

At all times.

#### Special condition 5: Use Land non-residential purposes

The primary use of the Land is in support of the Facility. You must use the residential land (contained within records of title 846523 and SA837/90) for non-residential purposes.

If you do not, standard condition 6 will apply and we may require you to dispose of the Land.

At all times.

**Special condition 6: Register a protective covenant**

You must implement the following measures over the two areas outlined in red in the photo below (contained within records of title SA45D/93 and 738000):

- (a) register a covenant (at your cost) that provides protection of the long-tailed bat habitat; and
- (b) implement an ongoing pest plant and animal control program to allow natural regeneration of native species.



30 September 2024

30 September 2022

**Special condition 7: Build a carpark**

You must build a carpark on the land in record of title 846523 that adjoins both Redlands Road and the esplanade strip contained in instrument 11288387.5 (registered on record of title 846523) and provides parking for at least five cars.

30 September 2023

Released under the Official Information Act 1982

## Standard conditions

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

Details	Required date
<b>Standard condition 1: acquire the Land</b>	
<p>You must acquire the Land:</p> <ol style="list-style-type: none"><li>by the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Land, and</li><li>using the acquisition, ownership and control structure you described in your application.</li></ol> <p>Note, only you – the named Consent holder - may acquire the Land, not your subsidiary, trust or other entity.</p>	As stated in the Consent
<b>Standard condition 2: tell us when you acquire the Land</b>	
<p>You must tell us in writing when you have acquired the Land. Include details of:</p> <ol style="list-style-type: none"><li>the date you acquired the Land (<b>Settlement</b>),</li><li>consideration paid (plus GST if any),</li><li>the structure by which the acquisition was made and who acquired the Land, and</li><li>copies of any transfer documents and Settlement statements.</li></ol>	As soon as you can, and no later than two months after Settlement
<b>Standard condition 3: allow us to inspect the Land</b>	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions.</p> <p>We will give you at least two weeks' written notice if we want to do this.</p> <p>You must then:</p> <ol style="list-style-type: none"><li>Allow a person we appoint (<b>Inspector</b>) to:<ol style="list-style-type: none"><li>enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (<b>Inspection</b>),</li><li>remain there as long as is reasonably required to</li></ol></li></ol>	At all times

<p>conduct the inspection,</p> <ul style="list-style-type: none"> <li>(c) gather information,</li> <li>(d) conduct surveys, inquiries, tests and measurements,</li> <li>(e) take photographs and video records, and</li> <li>(f) do all other things reasonably necessary to carry out the Inspection.</li> </ul> <p>2. Take all reasonable steps to facilitate an Inspection including:</p> <ul style="list-style-type: none"> <li>(a) directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection,</li> <li>(b) being available, or requiring your employees, agents, tenants or other occupiers to be available, at all reasonable times during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required.</li> </ul> <p>3. During an Inspection:</p> <ul style="list-style-type: none"> <li>(a) we will not compel you and your employees, agents, tenants or other occupiers to answer our questions or to let us look at, copy or take away documents,</li> <li>(b) our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection.</li> </ul>	
<b>Standard condition 4: remain of good character</b>	
<p>You and the Individuals Who Control You:</p> <ul style="list-style-type: none"> <li>1. must continue to be of good character, and</li> <li>2. must not become an individual of the kind referred to in <a href="#">section 15</a> or <a href="#">section 16</a> of the Immigration Act 2009. In summary, these sections describe convicted or deported people who are not eligible for visa or entry permission to enter or be in New Zealand and people who are considered likely to commit an offence or to be a threat or risk to security, public order or the public interest.</li> </ul> <p>The <b>Individuals Who Control You</b> are individuals who:</p> <ul style="list-style-type: none"> <li>(a) are members of your governing body,</li> <li>(b) directly or indirectly, own or control 25% or more of you or of a person who itself owns or controls 25% or more of you, and</li> </ul>	<p>At all times</p>



<p>(c) are members of the governing body of the people referred to in paragraph (b) above.</p>	
<p><b>Standard condition 5: tell us about changes that affect you, the people who control you, or people you control</b></p>	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <ol style="list-style-type: none"> <li>1. You, any Individual Who Controls You, or any person in which you or any individual who controls you hold (or at the time of the offence held) a 25% or more ownership or control interest commits an offence or contravenes the law anywhere in the world. This applies whether or not you or they were convicted of the offence. In particular, please tell us about any offences or contraventions that you are charged with or sued over and any investigation by enforcement or regulatory agencies or professional standard bodies.</li> <li>2. An Individual Who Controls You ceases to be of good character; commits an offence or contravenes the law (whether they were convicted or not); becomes aware of any other matter that reflects adversely on their fitness to have the Land; or becomes an individual of the kind referred to in <a href="#">section 15</a> or <a href="#">16</a> of the Immigration Act 2009 (see standard condition 4).</li> <li>3. You cease to be an overseas person or dispose of all or any part of the Land.</li> <li>4. You, any Individual Who Controls You, or any person in which you or any Individual Who Controls You hold (or at the time of the event held) a 25% or more ownership or control interest: <ol style="list-style-type: none"> <li>(a) becomes bankrupt or insolvent</li> <li>(b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or</li> <li>(c) becomes subject to any form of external administration.</li> </ol> </li> </ol>	<p>Within 20 working days after the change</p>
<p><b>Standard condition 6: dispose of the Land if you do not comply with key special conditions</b></p>	
<p>Some of the special conditions were key to the decision to give consent. If we consider you have failed to comply with one of those Special conditions in a material way we may require you to dispose of the Land.</p> <p>If all or part of this standard condition 6 applies to a special condition, we have said so in that condition.</p>	

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

Released under the Official Information Act 1982

---

## Reporting conditions

---

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

Every year, you must lodge a **report**. It must:

1. be sent to **oiomonitoring@linz.govt.nz** by these dates:
  - (a) Year one: 31 January 2022
  - (b) Year two: 31 January 2023
  - (c) Year three: 31 January 2024
  - (d) Year four: 31 January 2025
  - (e) Year five: 31 January 2026
2. contain information about:
  - (a) your progress in implementing the special conditions;
  - (b) your progress in integrating the solar arrays, including details of how many megawatts the solar arrays can accommodate;
  - (c) details of any construction undertaken, permits applied for, or resource consents granted (including copies of any resource consents obtained);
  - (d) the amount of FTE(s) employed on the Land (whether temporary or ongoing), their roles, and their salaries; and
  - (e) details of any overseas in-market registration that the Applicant has applied for and has been granted.
3. follow the format of the template annual report published on our website at <https://www.linz.govt.nz/overseas-investment/enforcement/how-we-take-action>
4. If requested in writing by the OIO, the Consent Holder(s) must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
  - (a) The representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the content was granted or
  - (b) The conditions of this consent.

## ATTACHMENT 2 - OTHER BENEFIT FACTORS

1. The table **below** lists other factors in the Act and regulations for assessing the benefit of overseas investments.
2. We considered that the factors below were either not relevant to the Investment, or the benefit to NZ was not likely or sufficient to be relied on for purposes of our assessment.

Factor	Reason not relevant or insufficient
<b>New technology or business skills – s17(2)(a)(ii)</b>	<b>Not met</b> – The Applicants submits that the Facility will be state of the art and incorporate latest technology, including Reverse Osmosis, heat recycling, and New Zealand’s largest solar arrays. These technology may be rare in New Zealand, but they are not new. We have considered the benefits associated with these technologies in relation to the greater efficiency factor.
<b>Trout, salmon, wildlife and game – s17(2)(c)</b>	<b>Not relevant</b> - There are no areas of significant habitats of trout, salmon, or wildlife on the Land.
<b>Historic heritage – 17(2)(d)</b>	<b>Not met</b> - The Investment is unlikely to result in the protection or enhancement of historic heritage on the Land.
<b>Consequential benefit – reg28(a)</b>	<b>Not relevant</b> - The consequential benefits claimed have been assessed under other applicable benefit factors.
<b>Key person in a key industry – reg 28(b)</b>	<b>Not relevant</b> - The Investment does not involve a key person in a key industry.
<b>Affect image, trade or international relations – reg 28(c)</b>	<b>Not relevant</b> - Declining the Investment would be unlikely to affect trade, image, or international relations.
<b>Owner to undertake other significant investment – reg 28(d)</b>	<b>Not relevant</b> - The use of the sale proceeds by the respective vendors of the Land is unlikely to result in a significant investment.
<b>Advance significant government policy or strategy – reg 28(f)</b>	<b>Not relevant</b> - The Applicant did not provide sufficient information to demonstrate that the Investment would advance a significant government policy or strategy.
<b>Previous investments – reg 28(e)</b>	<b>Not relevant</b> - The Applicant has no prior business operations in New Zealand.
<b>Enhance the viability of other investments – r28(g)</b>	<b>Not relevant</b> - The Applicant has no other business operations in New Zealand.
<b>Strategically important infrastructure – reg 28(h)</b>	<b>Not relevant</b> - The Investment does not involve strategically important infrastructure.
<b>Economic interests – reg 28(i)</b>	<b>Not relevant</b> - The Investment is likely to contribute towards the New Zealand economy but appears insufficient to meet the threshold under this factor.

## ATTACHMENT 3 - GOOD CHARACTER SEARCHES AND ANALYSIS

The OIO undertook an open-source search of the relevant overseas persons (ROPs) and individuals with control (IWCs). The table below summarises the matters we identified that have not already been addressed with a finding of good character in earlier applications.


Matter and date	Finding	Applicant response	OIO assessment
<b>1. Community</b>	Public opposition to the Applicant's proposed milk plant in Ōtorohanga. Mr van der Burgh, an IWC, was quoted in articles about the public opposition to the milk plant.	This article which details the two-day hearing demonstrates how well scrutinised by council the application has been and how locals have been given the opportunity to be part of the resource consent process. That the consent has since been granted is evidence of council's determination of the overall benefits of the Facility. Many locals are reported as being in support of the benefits that the Facility will bring the small rural town of Ōtorohanga. The Applicant has, and will continue to be, accommodating of the concerns of locals and has been proactive in working with them to resolve concerns, including offering compensation to affected homeowners.	<b>Low</b>
<i>Connection to IWC / ROP</i>			This matter is of high relevance as it directly includes the Investment. \ We place considerable importance on public opinion and public engagement by members of the community that may be impacted by the Applicant's milk plant. We consider that the Applicant has appropriately involved the community in the resource consent process and is working with the community to mitigate the issues that have been raised. Overall, we consider that this matter does not preclude a finding of good character.
Low    Med <b>High</b>			
<i>Relevance to this investment</i>			
Low    Med <b>High</b>			
<b>2. Individual directorship history</b>	The Plaintiffs in this case are Pure Elite Holdings Limited ("PEH") and PEH New Zealand Limited ("PEHNZ"). The Defendants in this case are BODCO Limited ("Bodco"), and Brian Wagstaff and Richard Young. Mr. Wagstaff and Mr. Young formed Danpac (NZ) Limited ("Danpac") with the intention of building an infant milk formula plant in Hamilton. Mr. Wagstaff and Mr.	In relation to the substantial issues in dispute, the judge in the proceedings held in favour of Defendants and dismissed the lawsuit. The Defendants' cross claim defence strategy lead to the Court finding that that Mr. van der Burgh and the other Mr. McCann made misleading representations contrary to New Zealand's Fair Trading Act in the course of dealings between the joint-	<b>Low</b>
<i>Connection to IWC / ROP</i>			This matter is of moderate relevance to the Investment as it is a matter involving a commercial business and contracts. We consider this matter to be moderately serious as it involves a breach of contract. Despite Mr. McCann and Mr. van der Burgh initiating the lawsuit, the High Court decided in favour of the
Low    Med <b>High</b>			
<i>Relevance to this investment</i>			
Low    Med <b>High</b>			


Matter and date	Finding	Applicant response	OIO assessment
	<p>Young were seeking to raise capital. Mr. McCann and Mr. van der Burgh, as founding shareholders of PEH, were both involved in the discussion and negotiation of the "heads of agreement" that were entered into on 24 September 2014 between PEG, PEHNZ, Bodco, Mr. Wagstaff, Mr. Young, and other entities. PEH and PEHNZ were to provide the required capital for Danpac in exchange for shares. Later in 2014, 51% of Danpac were transferred to PEHNZ. Mr. McCann was heavily involved in arranging funding for PEH to give to Danpac. The anticipated capitalisation did not eventuate. Neither Mr. Wagstaff nor Mr. Young was informed that PEH did not have access to funds and that PEH was having difficulties raising money for Danpac. Mr. Wagstaff and Mr. Young lost patience and unilaterally transferred the shares from PEHNZ back to Bodco. PEH and PEHNZ sued, claiming that the taking back of the shares were unlawful and it repudiated the joint venture, and that they had suffered significant losses as a result.</p>	<p>venture parties but there was no finding that the misleading representations were intentional, and accordingly no damages flowed from these misrepresentations. The Plaintiffs filed an appeal with the New Zealand Court of Appeal on all matters of the judgment, including the findings of facts relating to the conduct of Mr. van der Burgh and Mr. McCann. The suit has since been settled out of court.</p>	<p>Defendants. Mr. McCann and Mr. van der Burgh did file an appeal with the New Zealand Court of Appeal, but the matter has since been confidentially settled outside of court. The High Court did not find that Mr. McCann and Mr. van der Burgh's misleading representations were intentional and had decided in favour of the Defendants on the grounds that the Plaintiffs would be unjustly enriched if they were to keep the shares. Having considered the decision of the High Court and the Applicant's decision to appeal, we consider that this matter does not preclude a finding of good character.</p>

## ATTACHMENT 4 : CONSULTATION RECOMMENDATIONS AND RESPONSES

### Department of Conservation (DOC)




DOC requested specific protection, in addition to what is being required through the Applicant's resource consent conditions, for significant areas of indigenous vegetation or habitats of indigenous fauna. DOC's assessments and recommendations, as well as the Applicant's responses, are set out in the table below.

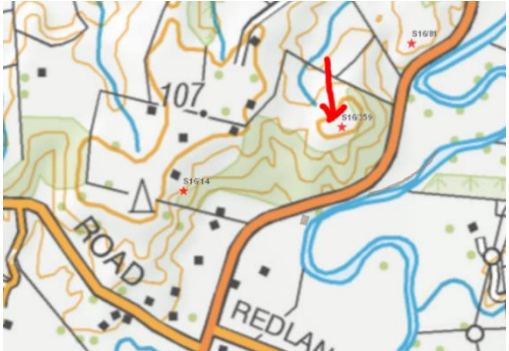
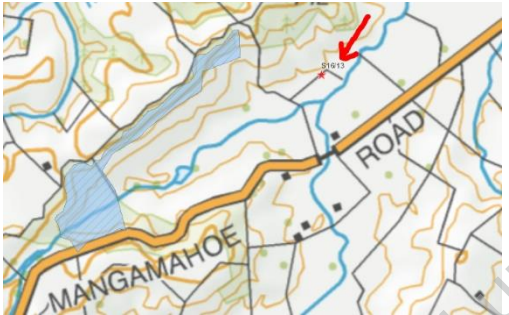
Title refs	Description / Images	DOC Assessment	DOC Recommendation	Applicant's response
SA45D/93 & 738000	<p><b>Site 1 - Remnant bush</b></p> <p>There is an area of bush in the north western corner of the proposal that adjoins the 5.5 hectare Mangamahoe Road Scenic Reserve. DOCGIS shows this adjoining bush to already be fenced from the farmland with a DOC maintained fence. Across the legal road from this appears to be a further larger area of bush.</p> <ul style="list-style-type: none"> <li>• What benefit would proposing a covenant over the bush area provide to the reserve?</li> <li>• What benefit would proposing a covenant over the bush area across the road provide to habitat extension for species in the reserve?</li> </ul> 	<p>Long-tailed bats (<i>Chalinolobus tuberculatus</i>) are known to be in the region (see comments from Dr Kerry Borkin in the 'Commissioners' Decision on Land Use Consent Application - 8 February 2018) and are classified as 'Nationally Critical'. The bats are known to use established pine trees as roost sites (Borkin &amp; Parsons, 2011) and prefer corridors of native vegetation to forage and disperse. Therefore a covenant over the two sites (delineated by the map below) would provide valuable bat habitat in an otherwise ecologically depleted landscape, with knock-on benefits for other native flora and fauna.</p> <p>The bush in the area largely consists of regenerating native vegetation (e.g. coprosma, mahoe, kanuka, five-finger, tree fern, hangehange) with emergent pine, poplar and rewarewa. A number of weeds are present, the most noteworthy being Chinese privet and Japanese honeysuckle which, if left unchecked, could spread to dominate the understory. Possum browse was also significant.</p>	<p>As a habitat for the nationally critical long-tailed bat. For optimal outcomes for biodiversity, long term protection through a covenant protection is required together with pest plant and animal control to allow natural regeneration of native species.</p>	<p>The analysis that was completed for the Land Use Consent application in February 2018 was for 5 Redlands Road.</p> <p>Happy Valley Nutrition Limited (HVN) supports the covenant protection of the two areas of bush identified that adjoins the Mangamahoe Road Scenic Reserve.</p> <p>If not already fenced, fencing will be maintained to keep livestock out of these areas of bush.</p> <p>HVN will commit to pest control subject to a site assessment.</p>

Title refs	Description / Images	DOC Assessment	DOC Recommendation	Applicant's response
395724	<p><b>Site 2 - Oxbow lakes</b></p> <p>There is an area of old riverbed forming a type of oxbow lake in the north-eastern part of the property that appears to hold water in the aerial images.</p> <ul style="list-style-type: none"> <li>• What values does this area have?</li> <li>• What protection would be required if it does have freshwater/wetland values?</li> </ul> 	<p>The two oxbow lakes, a relic from the Waipa river being channelled, are choked by willow and the lakes are not fenced and accessed by livestock. However, there were some Carex secta growing on the willow banks and it did contain an abundance of birdlife. Dabchick ('At risk -Recovering'), Australasian shoveler, grey teal, black swan and mallard-black duck hybrids were all observed, indicating an abundance of food for wildlife in the lakes.</p>	<p>This area provides an opportunity to restore wetland habitat by removing the willows and replanting with natives. The lake could also be valuable for recreation if access is enabled. Stock-proofing the lake (if stock are to be present) would be essential for improving water quality. Some restoration work is occurring in places. There are also opportunities to connect nearby remnant kahikatea swamp and extend the ecological corridor with access. Applicant should actively liaise with stakeholders and voluntary groups to improve the area contiguous to and surrounding their boundaries.</p> <p>90% of NZs wetlands have disappeared and they continue to be destroyed or depleted (Landcare NZ, 2017). They provide an essential ecosystem service in terms of habitat, air, water, flood and carbon management. It is strongly recommended that the applicant</p>	<p>The Waikato Regional Council (<b>WRC</b>) has specific plans for the oxbow lakes to remain a resting place for eels and habitat for native birds. Consistent with this, work is underway with in conjunction with the local iwi and WRC to restore the lakes which is likely to be finished prior to construction commencing on 5 Redlands Road.</p> <p>Where the Waipa River is not already fenced on HVN land it will install fencing to protect the water ways from stock. While wider areas are always more beneficial (particularly terrestrial ecosystem), a minimum of 5m buffer will provide appropriate freshwater ecological functioning for the wetland which is generally provided by riparian planting. In accordance with the Waste Water Consent HVN will also provide fencing at 5 m setback from identified sensitive waterways, which will include the oxbow lakes</p> <p>HVN is not aware of any Kahikatea swamps nearby, but is willing in principle to support increasing ecological connectivity with the potential neighbouring kahikatea swamps.</p> <p>HVN is actively involved with</p>



Title refs	Description / Images	DOC Assessment	DOC Recommendation	Applicant's response
			<p>considers broadening its area dedicated to wetland planting beyond the zone indicated in the plan.</p>	<p>stakeholders and voluntary groups (including the Otorohanga Kiwi House Charitable Trust) and the Nehenehenui Regional Management Committee (<b>NRMC</b>) throughout the development process of the HVN site and as part of the conditions of the Land Use Consent.</p> <p>Wetland and tree planting are occurring on the properties and other areas. There are access issues due to not owning the adjacent land and safety issues associated with vehicle and public access from the State Highway (Kawhia Road). HVN suggests this is reassessed.</p>
<p>22968 / SA15B/579</p>	<p><b>Site 3 - Restoration site</b></p> <p>There appears to be a lake or pond in the centre of the block west of State Highway 31 and in the block further north-west near the reserve. There is also vegetation south of the first lake that is hard to determine.</p> <ul style="list-style-type: none"> <li>• What values would these have?</li> <li>• What protection/actions would be required if there are values associated with this lake/ponds (or the vegetation)?</li> </ul>	<p>DOC was not able to determine the condition of the first lake due to the need for private land access.</p>	<p>Aerial photos suggest some planting restoration work, amongst a track network has already been implemented. This requires active management by fencing and plant maintenance.</p>	<p>HVN is undertaking restoration works with the proposed lessee and botanical gardening of this area and the valley area to the east and will continue to do so in the future. This valley and stream area is fully fenced and actively managed.</p> <p>Photo below is looking south-west towards Site 3.</p>

Title refs	Description / Images	DOC Assessment	DOC Recommendation	Applicant's response
				
22968	<p><b>Site 4 - Remnant bush with wetland</b></p> 	<p>The vegetation south of the lake contains regenerating bush with emergent pines (similar species composition and age to the Mangamahoe Scenic Reserve area) and a wetland with some native species including flax and Carex. The reserve holds similar values to the Mangamahoe Scenic Reserve area.</p>	<p>Some native species and poplars are present. Riparian planting along the stream (and fencing it off if stock are present) would have clear benefits for water quality and freshwater species, including downstream in the Waipa river.</p>	<p>This area will remain fenced and maintained.</p> <p>No further planting is planned for this area.</p> <p>This area is currently not accessible by livestock.</p> <p>HVN is not aware of any stream in this area.</p>
SA15B/579	<p><b>Site 5A - Archaeological site - Pit/Terrace</b></p> <ul style="list-style-type: none"> <li>What further information/consideration needs to be given to these?</li> </ul>	S16/359 – Pit/Terrace – near the State Highway	Archaeological sites are protected under the Heritage NZ Pouhere Taonga Act 2014. It is an offence to damage or destroy an archaeological	HVN is aware of this archaeological site through liaison with local iwi. A cultural assessment was carried out by the NRMC for the WRC consents.


Title refs	Description / Images	DOC Assessment	DOC Recommendation	Applicant's response
			<p>site without an archaeological authority under the Act. Further information on protection of archaeological sites is available on the Heritage New Zealand website.</p>	<p>No work or disturbance near this site is proposed by HVN.</p> <p>HVN has no issue with providing access to the sites, provided HVN is provided adequate notification and there is compliance with Health and Safety guidelines.</p>
<p>SA12D/125</p>	<p><b><u>Site 5B - Archaeological site – Burial Cave</u></b></p> <ul style="list-style-type: none"> <li>What further information/consideration needs to be given to these?</li> </ul> 	<p>S16/13 – Burial cave – at the northern corner of the property</p>	<p>Archaeological sites are protected under the Heritage NZ Pouhere Taonga Act 2014. It is an offence to damage or destroy an archaeological site without an archaeological authority under the Act. Further information on protection of archaeological sites is available on the Heritage New Zealand website.</p>	<p>HVN is not aware of this burial cave and is working with local iwi to determine the exact location of this site.</p> <p>Any work within the vicinity of this site will adhere to Heritage New Zealand guidelines and the required archaeological authority will be sought.</p>

Released under the Official Information Act 1987

## Walking Access Commission (“WAC”)

Using the criteria set out in Section 11 of the Walking Access Act 2008, WAC has undertaken an assessment of the land to determine public access opportunities. The access matters identified and WAC’s public access recommendations, as well as the Applicant’s responses, are set out in the table below.

Title refs	Description / Images	WAC Assessment	WAC Recommendation	Applicant’s response
395724	-	There is no public access over or alongside Oxbow wetland	<p>Consent Holder to create public access alongside and over oxbow wetland, and have it depicted in the cadastre, by;</p> <ul style="list-style-type: none"> <li>* creating esplanade strips along both sides of the oxbow wetland (s253 Resource Management Act 1991 (RMA) oxbow (where it lies within the Consent Holder’s property) and having it depicted on a plan to enable identification in the cadastre.</li> </ul> <p>The esplanade strip instrument to allow for waterfowl hunting on the oxbow wetland.</p> <ul style="list-style-type: none"> <li>* ownership of the bed of the oxbow wetland be offered to the Crown</li> </ul>	<p>Public access alongside and over the oxbow wetland will not be created by HVN as there are access issues due to not owning the adjacent land and safety issues associated with access from the State Highway (Kawhia Road).</p> <p>See responses in relation to Site 2. The current restoration work in conjunction with the local iwi and WRC is aimed at restoring the area to its native habitat for birds and eels. HVN does not consider this would be consistent with allowing waterfowl hunting in the area.</p> <p>The oxbow lakes are not special land for the purposes of the Overseas Investment Act 2005 so there is no requirement to offer the bed to the Crown.</p> <p>As we understand it, the relevant sections of the RMA relating to esplanade strips (ss229-232) would only apply where HVN was subdividing the land, which is the not the case here.</p>
395724	-	There is no public access to Oxbow wetland	<p>Consent holder to create public access to oxbow wetland, and have it depicted in the cadastre, by;</p> <ul style="list-style-type: none"> <li>* creating an access strip to provide carparking and access to proposed esplanade strips alongside the oxbow wetland.</li> </ul> <p>Consent Holder to form carpark and walking track to provide a connection from Kawhia Road to the oxbow</p>	<p>See response above and in relation to Site 2. Public access alongside and over the oxbow wetland will not be created by HVN as there are access issues due to not owning the adjacent land and safety issues associated with</p>

Title refs	Description / Images	WAC Assessment	WAC Recommendation	Applicant's response
				access from the State Highway (Kawhia Road).
395724	-	There is no public access for waterfowl hunting at the Oxbow wetland	Consent Holder to enter into a memorandum of understanding with Fish & Game to enable waterfowl hunting on and adjacent to the wetland	<p>See above responses and those in relation to Site 2. The current restoration work in conjunction with the local iwi and WRC is aimed at restoring the area to a native habitat for birds and eels.</p> <p>HVN does not consider this would be consistent with allowing waterfowl hunting in the area.</p>
33587 & 33585	-	There is no public access alongside parts of the Waipa River	<p>Consent holder to create public access alongside the Waipa River, where there are gaps in riparian access and have it depicted in the cadastre, by;</p> <p>*Creating an esplanade strip alongside the Waipa River (s253 RMA) and having it depicted on a plan to enable identification in the cadastre.</p>	Public access alongside the Waipa River will not be created by HVN as there are access issues due to not owning the adjacent land and safety issues associated with access from the State Highway (Kawhia Road).
33585	-	There is no access to privately owned land surrounded by subject property	<p>Consent Holder to consult with the owners of the landlocked Maori freehold land (held in title 309802) in conjunction with the Commission and if requested:</p> <p>*creating a private Right of Way (<b>ROW</b>) easement/agreement from Kawhia Road to the land, along an agreed practical, passable route. The private ROW is to be surveyed and registered on the titles, at no expense to the registered owners of title 309802.</p>	<p>ROW access to the freehold land will not be created by HVN as there are access and safety issues associated with access from the State Highway (Kawhia Road).</p>  <p>The image above denotes the topography of the area and the impractical nature of providing access.</p> <p>HVN will liaise with the local iwi to allow access to this area from the main farm and existing driveways and farm tracks as required to ensure Health and Safety protocols are followed.</p>

Title refs	Description / Images	WAC Assessment	WAC Recommendation	Applicant's response
SA15B/579 & SA12D/125	-	There is no access to archaeological sites within the subject property	Consent holder to consult with local iwi and Heritage NZ in conjunction with the Commission to determine if enduring access is appropriate for two archaeological sites on property (S16/356 and S16/13).	HVN will liaise with the local iwi and Heritage NZ to allow access to these areas from the main farm and existing driveways and farm tracks as required to ensure Health and Safety protocols are followed.
515257, 22968, & 528682	-	There is no practical vehicular access for Council to maintain Ōtorohanga Recreational Reserve (SA42C/525)	Consent holder to create enduring access to the Ōtorohanga Recreational Reserve, and have it depicted in the cadastre, by: *creating a private Right of Way easement/agreement from Honikiwi Road to the Reserve for vehicular access for Ōtorohanga District Council (ODC) staff and their contractors.	HVN will liaise with ODC to allow access to these areas from the main farm and existing driveways and farm tracks as required to ensure Health and Safety protocols are followed.
846523	-	There is no public access alongside true right of Waitomo Stream	Consent holder to create public access alongside the Waitomo Stream, and have it depicted in the cadastre, by; *Creating an esplanade strip alongside Waitomo Stream (s253 RMA) and having it depicted on a plan to enable identification in the cadastre.	HVN will create public access through the esplanade strip from Redlands Road, along the true left of Waitomo Stream and around the true left of the Waipa River to the Ripley Jones Reserve as per the conditions of the Land Use Consent. No work will be completed on the true right as HVN does not own the adjacent land.
846523	-	Forming the proposed Waipa River Walkway	Consent holder to form the Waipa River Walkway as required in the Land Use Consent and Agreement to Create Easement documents in consultation with ODC. The Walkway to be constructed at the Consent holder's cost	HVN will create public access through the esplanade strip from Redlands Road, along the true left of Waitomo Stream and around the true left of the Waipa River to the Ripley Jones Reserve as per the conditions of the Land Use Consent.
846523	-	There is no provision for parking for the proposed Waipa River Walkway	Consent Holder to create public access to the Waipa River, and have it depicted in the cadastre, by; *Creating an Access Strip (s253 RMA) connecting Redlands Road to the Waipa River and having it depicted on a plan to enable identification in the cadastre. * Forming a carpark for 5 vehicles within the access strips at the Consent holder's cost * Erecting signage informing the public about carparking (in consultation with ODC)	HVN will create safe provision for public parking and turning a vehicle around for the proposed Waipa River Walkway. The carpark will be situated at the end of Redlands Road at the start of the walkway.

ATTACHMENT 5 – MAP OF THE LAND

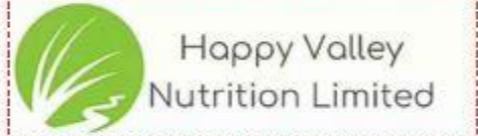


**KEY**

A - HVN SITE	G - GAS EASEMENT
B - 6 REDLANDS RD	H - GAS HOT POINT
C - FLOOD PLAIN	I - BORE
D - FLOOD PLAIN EASEMENTS	J - NEW EASEMENTS
E - WAIPA FARM	TELECOMMUNICATIONS EASEMENTS TO BE DETERMINED
F - WOOLLEY FARM	

**LAND AREAS**

AREA	m <sup>2</sup>
A - HVN SITE	68007.23 m <sup>2</sup>
B - 6 REDLANDS RD	4184.40 m <sup>2</sup>
C - FLOOD PLAIN	84761.17 m <sup>2</sup>
D - FLOOD PLAIN EASEMENTS	37676.09 m <sup>2</sup>
E - WAIPA FARM	1490646.61 m <sup>2</sup>
F - WOOLLEY FARM	1390969.23 m <sup>2</sup>
G - GAS EASEMENT	43674.07 m <sup>2</sup> 3122908.80 m <sup>2</sup>



Irrigation Layout  
Otorohanga  
For Information

IRRIGATION PLAN  
SK01-1  
28/04/20  
REV.



LEVEL 4, 58 BEACH ROAD • PO BOX 2087 • AUCKLAND 1140 • NEW ZEALAND • PH 09 370 9885 • FAX 09 377 1170 • [www.babbage.co.nz](http://www.babbage.co.nz)

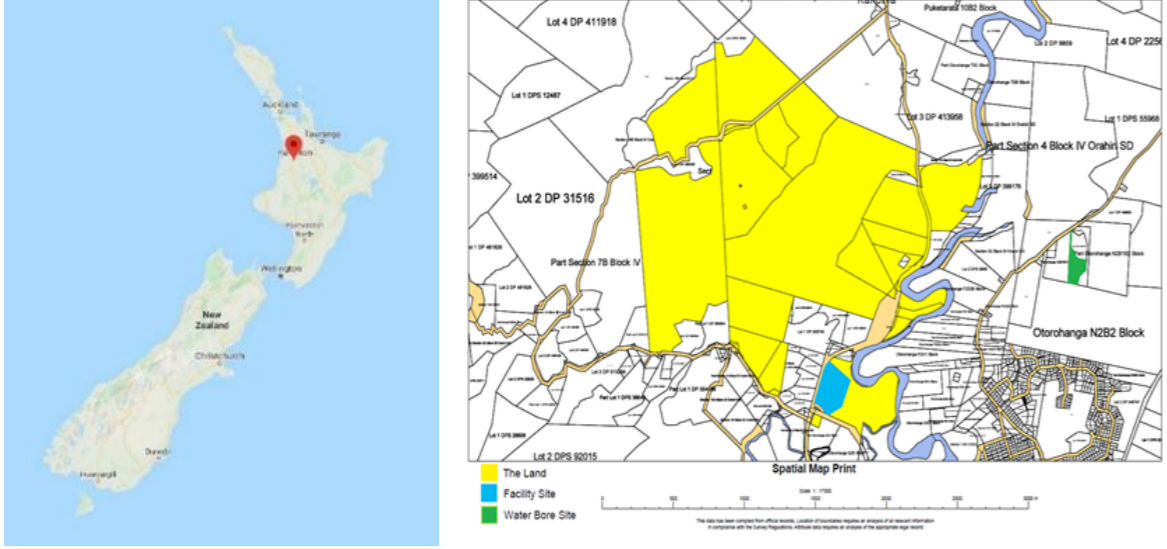
63270#A1

**ATTACHMENT 6 – ECONOMIC IMPACT ASSESSMENT**

Released under the Official Information Act 1982



**ATTACHMENT 7 OVERVIEW TABLES FOR HAPPY VALLEY NUTRITION LIMITED 202000153**

	<p><b>Application</b></p> <ul style="list-style-type: none"> <li>Happy Valley Nutrition Limited (<b>Applicant</b>) seeks consent to:             <ul style="list-style-type: none"> <li>acquire a freehold interest in approximately 309.46 hectares of land in Otorohanga (<b>Land</b>) for a total of \$9,675,000; and</li> <li>establish a business in New Zealand where the expenditure before commencing business is expected to exceed \$100 million.</li> </ul> </li> <li>The Applicant is an ASX-listed New Zealand incorporated company created to become a trusted business-to-business supplier of consumer-ready infant milk formula (<b>IMF</b>) and other nutritional products that will primarily use A2 and organic milk.</li> <li>The Applicant intends to acquire the Land in order to develop and operate a milk processing blending and packaging plant to produce IMF and other nutritional products.</li> <li>The Applicant has requested a decision by <b>31 October 2020</b>.</li> </ul>	<p><b>Provisional recommendation</b></p> <ul style="list-style-type: none"> <li>Our provisional recommendation is to <b>grant consent</b>.</li> <li>Relevant tests for this transaction:             <ul style="list-style-type: none"> <li>Investor Test (s16(2)(a)-(d) and s18(1)(a)-(d) of the Act)</li> <li>Benefits test - benefit to New Zealand (s16(1)(c)(ii) and s16A of the Act)</li> </ul> </li> <li>The Land includes farm land, residential land, and special land and the rural land directive applies.</li> <li>The Applicant has requested an exemption from the farm land advertising criterion in section 16(1)(f).</li> </ul> <p>Transitional note: The contract for this transaction was entered into, and the application for consent was received, prior to commencement of the Overseas Investment (Urgent Measures) Amendment Act 2020, and the version of the Act and the regulations in force immediately before its commencement continue to apply.</p> <p><b>Factors for Ministers to particularly consider:</b></p> <ul style="list-style-type: none"> <li>We consulted with a number of agencies and departments (including DOC, WAC, MPI, CIP, and PGF) in relation to this application, who were overall in support of the application.</li> </ul>
--	--	--

**Investor test**

Investor test criteria	OIO assessment		Cross-references
	Risk	Summary	
Collectively have business experience and acumen relevant to the investment	Test met	The IWC have relevant business experience in a range of areas, including experience in the dairy industry and investments management, which are both relevant to the investment.	Paras 13-15 Section 16(2)(a).
ROP demonstrated financial commitment	Test met	The Applicant has demonstrated financial commitment by engaging third party consultants and advisers in relation to the development and construction of the Facility and for acquisition of the Land. As at February 2020, the Applicant spent a total of \$11 million on undertaking the transaction for the investment.	Section 16(2)(b).
Good character	Some concerns	We have identified some matters relating to public opposition to the Facility and a lawsuit relating to a failed joint venture, but after assessment, we are satisfied that the IWC are of good character.	Paras 16-17 and <b>Attachment 3</b> . Section 16(2)(c).
Not an individual of the kind ineligible for a visa or entry permission under ss 15 or 16 of the Immigration Act 2009	Test met	Statutory declarations have been provided confirming that each IWC is not of the kind referred to in ss 15 or 16 of the Immigration Act.	Section 16(2)(d).

**Assessment: benefit to New Zealand test**

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
<b>Job opportunities</b> <i>(high relative importance)</i>	The Applicant intends to create 330 full time equivalent ( <b>FTE</b> ) roles during the construction phase of the Facility and 80 FTE roles during the operational phase of the Facility.	The current use of the Land amounts to 5.1 FTE roles, which will likely remain under the status quo.	<b>Strong</b>	The Investment is likely to result in additional job opportunities, specifically within Otorohanga, during both the construction and operational phase of the Facility. Should the Vendors retain ownership and current use of the Land, the Vendors are unlikely to offer the same job opportunities.	Proposed special condition on creating at least 300 FTE roles during the construction phase of the Facility and at least 70 FTE roles during the operational phase.  Proposed reporting on the number of jobs created, their roles, and their salaries.	s17(2)(a)(i)
<b>Increased export receipts</b> <i>(high relative importance)</i>	The Applicant estimates that there would be an export revenue of \$287 million from IMF and \$120 million from Other Nutritional Products, subject to overseas in-market registrations.	There would be no increased export receipts. There is no indication that the Vendors export any of their farming produce.	<b>Strong</b>	These increased in export receipts would depend on the Applicant obtaining overseas in-market registrations. However, based on the assumption that the Applicant will obtain overseas in-market registrations, the Investment is likely to result in an increased in export receipts, which is significantly more than what the status quo would offer.	Proposed reporting on the application and status of any overseas in-market registrations.	s17(2)(a)(iii)
<b>Additional investment for development purposes</b>	The Applicant has already introduced approximately \$7.7 million of additional capital into New Zealand for the Facility. The Applicant intends to spend a further \$356 million on the development of the Facility, with some of these funds being sourced from offshore. This would, therefore, result in more additional investment for development purposes being introduced into New Zealand.	The vendors for Waipa Meadows has future development plans for the land. There are no development plans for the rest of the Land. The status quo is, therefore, unlikely to introduce the same amount of additional capital into New Zealand.	<b>Strong</b>	The Investment has already resulted in additional investment for development purposes in New Zealand. The Applicant intends to spend a further \$356 million on developing the Facility. Some of these funds would be sourced from offshore, and would result in additional investment being introduced into New Zealand.	Proposed special condition that the Applicant introduce at least 50% of the \$356 million into New Zealand, being \$178 million.	s17(2)(a)(v)
<b>Added market competition, increased productivity, efficiency, and enhanced domestic services</b>	The Investment is likely to result in increased efficiency. The Applicant intends to use the latest technology on the Facility, including Reverse Osmosis, heat recycling, and solar arrays. This would lead to more efficient water and energy usage.	There would unlikely be increased efficiency as the Vendors have no development plans that would include technology that leads to increase efficiency.	<b>Moderate</b>	The Investment is likely to result in more efficient water and energy usage, with the latest technologies that the Applicant intends to use on the Facility. This is additional to what would be offered by the Vendors should they retain the Land. However, the installation of the solar arrays is dependent on discussions with commercial suppliers.	Proposed reporting on the status and progress of the installation of the solar arrays.	s17(2)(a)(iv)
<b>Increased processing of primary products</b> <i>(high relative importance)</i>	The Applicant projects that it will export approximately 25,000 MT of IMF per year. This would require the processing of approximately 100 million litres of raw milk per year. The Applicant would also require raw milk to produce Other Nutritional Products.	The Vendors use the Land for farming purposes, but are unlikely to be processing primary products at the level that the Applicant would.	<b>Moderate</b>	The Investment is likely to result in an increase in processing of primary products in New Zealand, being raw milk sourced from New Zealand. This is above what the Vendors are likely to offer should they retain ownership and current use of the Land. However, the	Proposed reporting on the application and status of any overseas in-market registrations.	s17(2)(a)(vi)

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
				increase in processing would depend on the Applicant obtaining overseas in-market registrations for exporting IMF and Other Nutritional Products.		
<b>Indigenous vegetation/fauna</b>	<p>The Applicant has committed to:</p> <ul style="list-style-type: none"> <li>register a covenant to protect the long-tailed bat habitat and undertake pest control</li> <li>stock-proof fencing for the Site 2 wetland habitat</li> <li>fully fencing and plant maintenance of a pond and vegetation in the Site 3 area</li> <li>stock-proof fencing in the Site 4 area</li> <li>no work or disturbance is proposed near Site 5A (pit/terrace)</li> <li>any work within the vicinity of Site 5B (burial cave) will adhere to Heritage New Zealand guidelines</li> </ul>	No additional protection or enhancement of indigenous vegetation is likely to occur.	<b>Moderate</b>	Applicant will protect bat habitats by covenant, fence waterways, planting of native vegetation over parts of the Land	Applicant to register a covenant to protect the long-tailed bat habitat and implement an ongoing pest plant and animal control programme.	s17(2)(b)
<b>Walking access</b>	<p>The Applicant has committed to:</p> <ul style="list-style-type: none"> <li>create an esplanade strip that provides walking access alongside parts of the Waitomo Stream and Waipa River</li> <li>build a carpark over part of the Land that adjoins the existing esplanade strip</li> </ul>	No additional public walking access is likely to occur.	<b>Moderate</b>	Applicant will provide riparian walking access alongside parts of the Waitomo Stream and Waipa River and build a park adjoining the esplanade strip	Applicant to build a carpark over part of the Land adjoining the existing esplanade strip that provides walking access alongside parts of the Waitomo Stream and Waipa River	s17(2)(e)
<b>Offer to sell seabed / foreshore / riverbed to the Crown</b>	The Vendor has offered to sell the riverbed that adjoins and abuts Lot 2, 5 Redlands Road for \$1. This is the riverbed of Waitomo Stream.	N/A	<b>Moderate</b>	The Applicant has signed a notice of intention to offer the riverbed of the adjoining Waitomo Stream to the Crown. The OIO will now assess this offer and make a recommendation to the Ministers.	Proposed condition on Special Land.	s17(2)(f)
<b>Oversight and participation by New Zealanders</b> <i>(high relative importance)</i>	<p>The Applicant is a New Zealand incorporated company with its head office in Auckland.</p> <p>Two of the five IWCs (company directors) are New Zealanders.</p> <p>The Applicant is listed and traded on the ASX and is widely held, with 28% of the company owned by New Zealanders.</p>	N/A	<b>Weak</b>	The ASX listing enables participation and oversight by New Zealanders in the Applicant, thereby giving them indirect participation in any profits that are made from the Investment.	No conditions appropriate.	S17(2)(g)