

**To:** Hon Dr Megan Woods, Associate Minister of Finance  
 Hon Damien O'Connor, Minister for Land Information

## ASSESSMENT REPORT: Microsoft 6399 New Zealand Limited

<b>Date</b>	8 December 2022	<b>Classification</b>	IN CONFIDENCE: Commercially sensitive
<b>LINZ reference</b> (Report reference)	202200050 BRF 22- 367	<b>Deadline</b>	8 February 2023

### Purpose

We seek your decision on an application for consent to acquire an interest in 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 from page 3.

### Assessment timeframe requirements

A decision is required by 8 February 2023 to enable the decision to be communicated to the applicant in compliance with the prescribed assessment timeframe.

### Toitū Te Whenua Land Information New Zealand Contacts

Name	Position	Contact	First contact
Pedro Morgan	Lead Advisor	+64 4 460 2785	<input checked="" type="checkbox"/>
Hannah Worsley	Solicitor	+64 4 471 7353	<input type="checkbox"/>

## A. Summary

1. Microsoft 6399 New Zealand Limited (the **Applicant**) is a New Zealand registered company which forms a part of Microsoft New Zealand Limited (**Microsoft NZ**), the New Zealand entity of the global Microsoft business which has been operating in New Zealand since 1991.
2. The Applicant is ultimately owned by Microsoft Corporation, an American multinational technology company with headquarters in the US. Microsoft Corporation develops, manufactures, licences, supports and sells computer software, consumer electronics, personal computers, and related services.
3. The Applicant seeks consent to acquire a freehold interest in approximately 6.5 hectares of land at [ s 9(2)(b)(ii) ] Auckland (the **Land**). The Land is sensitive as it is non-urban land over 5 hectares. The Land is currently a vacant site, ready for development. The Applicant intends to construct a data centre on the Land.
4. The Applicant has previously received consent to build data centres in New Zealand. In 2019 the Applicant, together with Microsoft NZ, obtained a significant business assets consent (under case number 201900507) to set up a data centre region in New Zealand, including the acquisition of two freehold and three leasehold interests in non-sensitive land. Construction of two data centres is underway at the freehold sites.
5. For the reasons set out in this report, our recommendation is to **grant consent**.

### Key information

Applicant	<b>Microsoft 6399 New Zealand Limited</b> (United States 79.41%, United Kingdom 7.84%, Canada 2.86%, Norway 1.65%, Switzerland 1.38% Various 6.86%)
Vendors	<b>Neil Construction Limited</b> (Malaysia 91%, Singapore 9%)
Land	Approximately 6.5 hectares of land located at [ s 9(2)(b)(ii) ] Auckland [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ]
Consideration	[ s 9(2)(b)(ii) ]
Sensitivity	Is more than 5 hectares of non-urban land Includes residential land
Relevant tests	Investor test: s18A Benefit to New Zealand test – residential land outcome: s16(1) & s16A(1). National interest test: s16(1)(g)

### Timing

6. The Overseas Investment Regulations 2005 specify the total assessment timeframe for this application is 70 days (10 Feb 2023). This timeframe was originally 21 June 2022 but was extended to 91 days with the agreement of the Applicant on 25 May 2022 to allow the Applicant to consult on conditions and make amendments to the investment plan and paused on 30 July 2022 as the Applicant had not responded to a further request for information within the prescribed timeframe. We received the information

required from the Applicant on 7 December 2022 and the timeframe was un-paused on 8 December 2022.

## B. Decision

### Core tests

7. I determine that:

7.1 The 'relevant overseas person' (ROP) is (collectively):

Relevant overseas person	Role
Microsoft Corporation	Ultimate beneficial owner
Microsoft 6399 New Zealand Limited	The Applicant

7.2 The 'individuals with control of the relevant overseas person' (IWCs) are:

Individuals with control	Role
Corey Michael Sanders	Corporate Vice President of Microsoft Corporation
Keith Ranger Dolliver	Director of the Applicant
Benjamin Owen Orndorff	
Vanessa Stacey Sorenson <sup>1</sup>	

7.3 One of the relevant overseas persons has established one of the factors contained in section 18A(4) of the Act. However, I consider that this does not make any of the relevant overseas persons or individuals with control unsuitable to invest in New Zealand.

8. I am satisfied that the investor test in section 18A has been met.

**Hon Dr Megan Woods**

Agree

☒

Disagree

☐

**Hon Damien O'Connor**

Agree

☒

Disagree

☐

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

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

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

9.3 the benefit is proportionate to the sensitivity of the land and the nature of the transaction; and

<sup>1</sup> Vanessa Stacey Sorenson is a New Zealand citizen and so does not have to meet the investor test.



- 9.4 the conditions relating to residential land to be imposed on the consent in accordance with section 16B will be, or are likely to be, met.

**Hon Dr Megan Woods**

Agree

☒

Disagree

**Hon Damien O'Connor**

Agree

☒

Disagree

☐

*National interest assessment*

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

**Hon Dr Megan Woods**

Noted

☒

**Hon Damien O'Connor**

Noted

☒

*Decision about whether to grant or decline consent*

11. My ultimate decision is to:

**Hon Dr Megan Woods**

Grant consent subject to the conditions in the Proposed Decision in **Attachment 1**

☒

Grant consent with amended conditions provided on:

☐

Decline consent

☐

**Hon Damien O'Connor**

Grant consent subject to the conditions in the Proposed Decision in **Attachment 1**

☒

Grant consent with amended conditions provided on:

☐

Decline consent

☐

**Hon Dr Megan Woods**

Date: 8 / 02 / 23

**Hon Damien O'Connor**

Date: 5 / 2 / 23

### C. Background and proposed transaction

12. The Applicant is a New Zealand registered company<sup>2</sup> which forms a part of Microsoft New Zealand Limited (**Microsoft NZ**)<sup>3</sup>, the New Zealand entity of the global Microsoft business which has been operating in New Zealand since 1991.
13. The Applicant seeks to acquire a freehold interest in approximately 6.5 hectares of land [ s 9(2)(b)(ii) ]
14. The Applicant intends to construct and operate a data centre on the Land (the **Proposed Investment**).

#### Land

15. The Applicant seeks to acquire a freehold interest in four records of title<sup>4</sup> which will be subdivided to create the Land totalling approximately 6.5 hectares.
16. [ s 9(2)(b)(ii) ]
17. An aerial photograph of the Land is below:



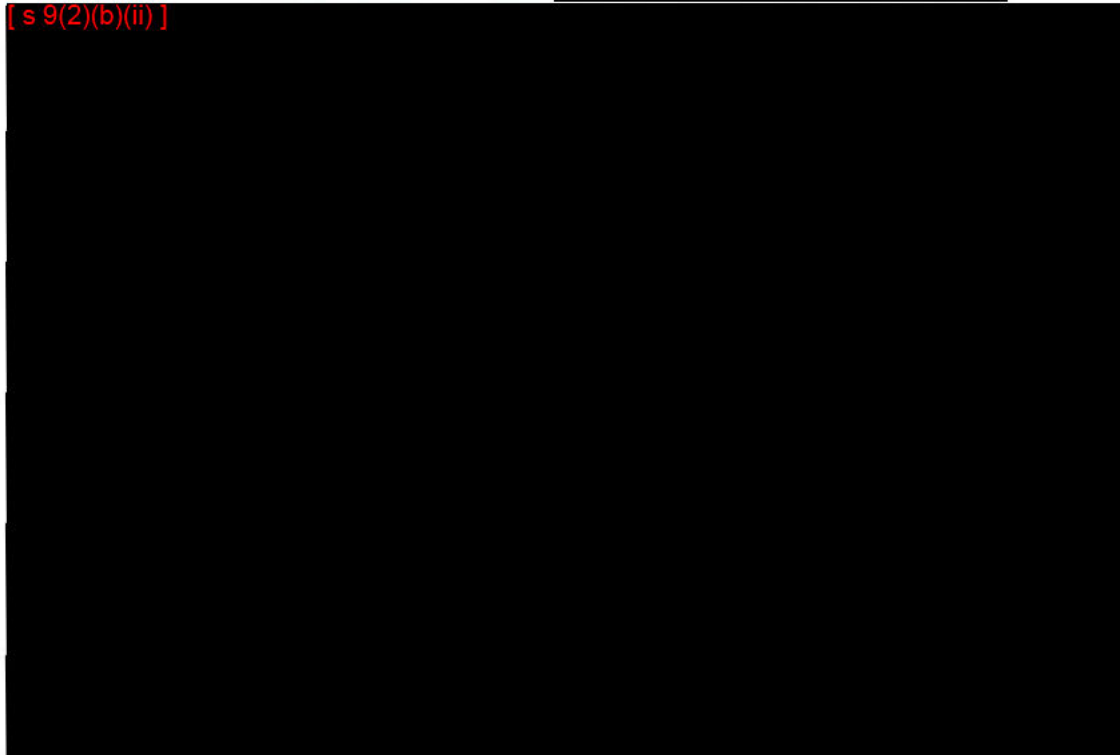
*Figure 1 – Aerial photo of the Land*

<sup>2</sup> Company number 7985599.

<sup>3</sup> Company number 510446.

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

18. A plan showing the subdivided Land [ s 9(2)(b)(ii) ] is below:  
[ s 9(2)(b)(ii) ]



*Figure 2 – Plan showing the Land*

19. The Land is residential land as it has a property category of lifestyle for the purposes of the District Valuation Roll. Parts of the Land were historically used for farming purposes, for example, flower growing. However, the Land is no longer being used exclusively or principally for agricultural, horticultural, or pastoral purposes, or for the keeping of bees, poultry, or livestock.
20. The Land is held by the Vendor, Neil Construction Limited, as a vacant site, ready for development.
21. The Applicant approached the Vendor to sell the Land to the Applicant for its proposed data centre, rather than pursuing the Vendor's proposed residential and industrial freehold lot development.
22. The Vendor is an overseas person and is a consent holder. It has made an application to LINZ to vary its consent conditions as it does not intend to develop the Land further if consent is granted to the Applicant to acquire the Land.
23. Aerial photos of the land and wider location can be found in **Attachment 4**.

#### **D. Application of the Act**

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24. The Land is sensitive because it is both residential land and non-urban land over 5 hectares in size, being approximately 6.5 hectares of residential land,<sup>6</sup> so consent is required.<sup>7</sup> The following criteria for an investment in sensitive land apply to this application:<sup>8</sup>

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<sup>6</sup> Table 1, Part 1, Schedule 1 of the Act.

<sup>7</sup> Under sections 10(1)(a) and 12(a)(i) of the Act.

<sup>8</sup> Set out in section 16(1) of the Act.

- The investor test must be met.<sup>9</sup>
  - The benefit to New Zealand test must be met.<sup>10</sup>
  - You must also note whether the investment is a transaction of national interest and, if so, whether the Minister of Finance has decided that the investment is contrary to New Zealand's national interest.<sup>11</sup>
25. In order to satisfy the benefit to New Zealand test, the decision-maker must:
- determine that the overseas investment will, or is likely to, benefit New Zealand;<sup>12</sup> and
  - because the Land is residential:
    - determine a residential land outcome;<sup>13</sup>
    - apply conditions of consent for the residential land outcome; and
    - be satisfied that those conditions are likely to be met.<sup>14</sup>
26. We assess the investor test in Part E, the benefit to New Zealand test in Part F, the residential land outcome in Part G, and the national interest matters in Part H.

## **E. Applicant and investor test**

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27. This section describes the Applicant and assesses whether the investor test is met.

### **Business Activities**

28. Microsoft NZ, the New Zealand entity of the global Microsoft business, has been operating in New Zealand since 1991. Microsoft Corporation is an American multinational technology company. It develops, manufactures, licences, supports and sells computer software, consumer electronics, personal computers and related services.
29. The Applicant has previously received consent to build data centres in New Zealand. In 2019 the Applicant, together with Microsoft NZ, obtained a significant business assets consent under consent 201900507 (the **Previous Investment**) to set up a data centre region in New Zealand, including the acquisition of two freehold and three leasehold interests in non-sensitive land. Construction of two data centres is underway at the freehold sites.

### **Ownership**

30. The Applicant was incorporated in New Zealand on 11 May 2020 for the purposes of entering into the significant business asset transactions under the Previous Investment. It is wholly owned by Microsoft Ireland Operations Limited (**MIOL**), which is 100% indirectly owned by Microsoft Corporation.
31. Microsoft Corporation is a stock corporation registered in Seattle, Washington. It is a publicly traded company, whose stock is listed on the NASDAQ index. It is widely owned.
32. The Applicant is an overseas person for the purposes of the Overseas Investment Act 2015 (the **Act**) because its ultimate upstream owner is an overseas person.

<sup>9</sup> Section 18A / 16(1)(a) of the Act.

<sup>10</sup> Section 16(1)(d)(ii).

<sup>11</sup> Section 16(1)(g) of the Act.

<sup>12</sup> Section 16A(1)(a) of the Act.

<sup>13</sup> Section 16B(3)(a). The Act specifies a range of outcomes to choose from in clause 19, Schedule 2 of the Act.

<sup>14</sup> Section 16A(1)(c) of the Act.



33. A diagram of the intended ownership structure is in **Attachment 2**.

### **Control**

34. The Microsoft Cloud for Industry and Global Expansion Team (**MCIGE**) (previously called Azure Global) within Microsoft Corporation's Cloud and AI Division is responsible for making strategic decisions on Microsoft Corporation's data centre footprint and expansion. Corey Sanders, the Corporate Vice President for MCIGE, is responsible for the Proposed Investment and any expansion at the existing sites under the Previous Investment.
35. The Proposed Investment requires formal approval by Microsoft Corporation given the level of capital expenditure. Corey Sanders is authorised to the full level of expenditure required to make the Proposed Investment.
36. Microsoft Corporation has the power to approve the divestment of the assets. Microsoft Corporation will hold responsibility for certain key decisions for the Proposed Investment, for example, expansion of the Proposed Investment, or taking up reserved capacity. Microsoft Corporation is therefore included as a relevant overseas person.
37. The Applicant anticipates that once the data centres are operational, the Applicant will have a local data centre operation team (**DC Ops**) which will be responsible for day-to-day control and decision making authority over the Proposed Investment and day to day management of the Applicant. This includes running the data centres and making daily operational decisions. The Applicant anticipates that [s 9(2)(b)(ii)] will be appointed as the General Manager for the Applicant but that will be confirmed in the same process as appointing the DC Ops team.
38. Due to the significant decision making powers afforded to Corey Sanders as Vice President of MCIGE we consider that he is an **IWC**. We consider that the other directors of Microsoft Corporation are not IWCs as they will not be directly involved in the Proposed Investment.
39. The directors of the Applicant are IWCs due to their involvement in the operational and strategic direction of the Proposed Investment as well as having the ability to provide the internal authorisations necessary to approve and manage the Proposed Investment.
40. We consider that the other intermediary companies are not part of the ROP, as whilst they have ownership interests of over 25% in the Applicant, ultimate decision making and control as it relates to the Proposed Investment will lie with the Applicant and Microsoft Corporation.

### **Relevant overseas person and individuals with control**

41. We recommend that the ROP is (collectively):

<b>Relevant overseas person</b>	<b>Role</b>
Microsoft Corporation	Ultimate 100% owner of the Applicant
Microsoft 6399 New Zealand Limited	The Applicant.



42. We recommend that the IWCs<sup>15</sup> are:

Individuals with control	Role
Corey Michael Sanders	Corporate Vice President of Microsoft Corporation
Keith Ranger Dolliver	Director of the Applicant
Benjamin Owen Orndorff	
Vanessa Stacey Sorenson <sup>16</sup>	

### Summary of investor test

43. Microsoft Corporation has established one factor contained in section 18A(4) of the Act,  
S18A(4)(a)(iii):  
*"whether A has, at any time in the preceding 10 years, been convicted of an offence for which A has been sentenced to pay a fine"*
44. On 6 March 2013 the European Commission (the Commission) imposed a fine of €561 million on Microsoft Corporation for failing to comply with its 2009 legal commitments to address the Commission's concerns about the inclusion of web-browsing software in Windows.
45. Microsoft Corporation had made a commitment to display a "Browser Choice Screen" on Windows-based PCs in Europe where Internet Explorer is set as the default browser (**2009 Commitments**). Due to a technical error, Microsoft Corporation failed to deliver the requisite software to PCs that came preinstalled with a version of Windows 7 called Windows 7 Service Pack 1.
46. Following notification by the Commission of reports that some PCs were not receiving the update, Microsoft Corporation promptly fixed the error and advised the Commission of what Microsoft Corporation had discovered.
47. The Commission conducted an investigation and issued a Statement of Objection in October 2012. The Commission concluded that Microsoft Corporation had failed to comply with its 2009 Commitments.
48. The Applicant advises that Microsoft Corporation has subsequently provided the Commission a complete and candid accounting of the error and has taken steps to strengthen its software development and other processes to help avoid this mistake, or any similar occurrence in the future.
49. While there is some doubt from the information provided whether Microsoft Corporation has engaged the specific wording of s18A(4)(a)(iii) of the Act, for the avoidance of doubt, we have treated this factor as having been established.
50. Despite a substantial fine we consider this matter to be of minor to moderate significance given the historical nature of the fine and the size of Microsoft Corporation's global operations. It is mitigated by Microsoft Corporation's actions to ensure it will not occur again. We do not consider that Microsoft Corporation triggering this factor means it is unsuitable to own or control any sensitive New Zealand assets. Our conclusion is therefore that **the investor test has been met**.

<sup>15</sup> Section 15.

<sup>16</sup> Vanessa Stacey Sorenson is a New Zealand citizen and so does not have to meet the investor test.

## **F. Investment plan and benefit to NZ test**

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51. This section describes the Proposed Investment and our assessment of whether it is likely to meet the benefit criteria in the Act.

### **Investment plan**

52. The Applicant proposes to acquire the Land for the construction and development of a cloud-based data centre to be operated by the Applicant. The Investment will support the data centres currently under construction under the Applicant's previously consented significant business assets application.
53. The Applicant submits 'hyperscale cloud services' (i.e., massive scale cloud computing) are a key ingredient to every country's government, industry, and other organisations' digital transformation (similar to electricity). Microsoft provides these 'hyperscale cloud services' which, along with the physical data centres, act as a platform supporting the functions of its partners.
54. Virtually all information communication technology (ICT) companies (including New Zealand entities such as Spark or Datacom) build their ICT solutions on top of cloud platforms.
55. Data centres are centralised locations where cloud computing and networking equipment is concentrated for the purpose of storing and processing large amounts of data. In order to meet latency<sup>17</sup> and data residency<sup>18</sup> requirements, Microsoft delivers hyperscale cloud services from over 60 so-called "regions" worldwide. Microsoft Corporation is planning to add a region in New Zealand to meet expectations of its New Zealand customers and any other organisations that would like to store and process data in New Zealand. The data centre and the cloud it creates is a platform business, so its main function is to support New Zealand's digital ecosystem.
56. The Applicant recognises that some organisations (such as governments and financial institutions) may either have regulatory requirements or preference to use onshore services rather than offshore.
57. The Applicant submits that granting consent will enable the purchase of a third site in Auckland and the design, construction, and operation of a third Microsoft data centre which will enable the Applicant to continue to deliver highly secure data storage across New Zealand.

### **Current state (counterfactual)**

58. The Land is a vacant site, ready for development. The Vendor has undertaken some earthworks under a preliminary earthworks consent but has not yet applied for a subdivision consent.
59. The Land was acquired by the Vendor for development of approximately 36 residential and 24 industrial freehold lots. The Vendor's group of companies is a well-established land developer of residential, commercial, and industrial buildings.
60. Prior to the acquisition by the Vendor, the Land was privately owned as lifestyle blocks.

### **Summary of benefits**

61. The benefits to New Zealand that are likely to result from this Investment and our assessment of the relative weight to be given to each are set out in the table below.

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<sup>17</sup> The delay before a transfer of data begins following an instruction for its transfer, also known as 'lag'.

<sup>18</sup> The physical or geographic location of data or information, also refers to the legal or regulatory requirements imposed on data based on the country or region in which it resides.

62. 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 4**.
63. In applying the benefit to New Zealand criteria, you are required to consider each of the benefit factors, decide which of them are relevant and determine the relative importance of those relevant factors. The weight and relative importance to be given to each factor is a matter to be determined by you as the decision-maker. This report sets out our assessment to guide your consideration, however it is not determinative.

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### Summary assessment: benefit to New Zealand test

64. This table assesses the benefits to New Zealand likely to result from the Proposed Investment and the relative weight to be given to each.

Relevant benefit factors	Applicant's claims: what they intend to do	Current state	LINZ analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
<b>Economic Benefits</b>	<b>Introduction of capital into New Zealand</b>  The amount to be introduced into New Zealand will total [s 9(2)]. This includes: [s ] for planning and design, approval and building permits, [s 9(2)] for construction and [s ] for IT computing fit out, equipment and installation.	<b>Introduction of capital into New Zealand</b>  The capital proposed to be introduced by the Applicant has not yet been introduced and is therefore not part of the existing state of affairs.	Strong	<b>Introduction of capital into New Zealand</b>  The amount to be introduced into New Zealand will total approximately [s 9(2)]. On the information provided, there is some degree of uncertainty with exactly where the benefit to New Zealand is, or the extent of this benefit, from the introduction of these funds.	Apply for necessary resource consents.  Introduce at least \$180m in capital expenditure.  Construct the data centre on the Land and continue to operate it as a datacentre.
	<b>New Jobs</b>  The Proposed Investment is expected to create:  (a) Consultant roles to a value of [s 9(2)] (b)	<b>New Jobs</b>  There are no jobs on the Land as it is a vacant site pending development.		<b>New Jobs</b>	We are satisfied the above conditions will result in the jobs being created.

	<p>(b) 300 full time equivalent (FTE) jobs over an [REDACTED] s 9(2) period for construction;</p> <p>(c) 50 full time equivalent jobs once development is complete; and</p> <p>Indirect job opportunities in the construction and transportation sectors.</p>			<p>The Proposed Investment is expected to sustain 300 FTE jobs over an [REDACTED] s 9(2) construction period and create 50 full time equivalent jobs once development is complete.</p> <p>While the exact figure may vary slightly, we are satisfied that the Proposed Investment will likely result in a significant number of temporary and permanent FTE jobs. Given the number of jobs likely to result from the investment, we consider this factor should have a strong weighting.</p>	
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## **Consultation and submissions about the investment**

65. No third-party submissions were sought or received in relation to this application.

## **Conclusion – benefit to New Zealand test**

### *Key benefits*

66. After considering the application, we are satisfied that the Proposed Investment is likely to result in the benefits considered above. In particular, we are satisfied that the Proposed Investment is likely to result in a significant number of short-term and permanent FTE jobs. We consider this benefit should have a strong weighting.

### *Proportionality*

67. We have undertaken our assessment having regard to the sensitivity of the Land and the nature of the overseas investment transaction, reflecting the proportional nature of the benefit to New Zealand test. There will be a substantial number of jobs created relative to the size (6.5 hectares) and sensitivity of the Land (residential only). We are not aware of the Land containing features that are of particular public interest. The Land does not have any natural, cultural, or historic features that would increase the sensitivity of the Land.

68. Taking into account the size and the relatively low sensitivity of the Land, we consider the overseas investment is likely to benefit New Zealand.

## **G. Residential land outcome**

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69. As the Land is classed as residential, we consider it appropriate to impose the 'non-residential use' outcome,<sup>19</sup> for which conditions must be imposed that require that the residential land is not used, nor held for future use, for residential dwellings or long-term accommodation facilities.
70. The construction of the data centre will satisfy this condition because the Applicant will use the Land for a non-residential use in the ordinary course of its business and will not hold the Land for any future residential use. The Applicant notes that the Land's zoning will likely change from a lifestyle to a commercial/industrial category if the Proposed Investment proceeds. We can be confident that the Land will be used for a non-residential use (see **Attachment 1** for the proposed conditions).

## **H. Not a transaction of national interest**

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71. The Proposed Investment does not involve a transaction of national interest under the mandatory criteria of the Act.<sup>20</sup> This is because the Proposed Investment does not involve a non-NZ government investor, or an investment in a strategically important business (SIB) (as defined in the Act).
72. For context, we note that the Previous Investment had a national interest assessment undertaken and the Minister of Finance decided that that transaction was not contrary to New Zealand's national interest.

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<sup>19</sup> Clause 19(2), row 2, Schedule 2 of the Act.

<sup>20</sup> Under s 20A of the Act.



73. The Previous Investment required a mandatory national interest assessment as the business was or included an SIB. It was considered that there was a potential national interest risk in that the supply of critical services to the New Zealand Government agencies and SIBs could be disrupted. The risk of the Previous investment being contrary to New Zealand's national interest was considered to be low by LINZ because it was likely to be managed through existing regulatory regimes and contractual terms. LINZ considered that the Previous Investment was likely to have a positive economic and social impact on New Zealand by delivering hyper-scale computing capability to New Zealand.
74. We do not consider that the concerns raised in the Previous Investment exist for this application.
75. We have not referred this transaction to the Minister of Finance for him to call it in for a national interest assessment on a discretionary basis.<sup>21</sup> He has therefore not declined consent to the transaction.
76. We are directed<sup>22</sup> that the starting point is the assumption that overseas investment is in New Zealand's national interest and that we should only seek the Minister of Finance to exercise his discretion for a national interest assessment if the proposed investment:
- could pose risks to New Zealand's national security or public order;
  - would grant an investor significant market power within an industry or result in vertical integration of a supply chain;
  - has foreign government or associated involvement that was below the 25 percent threshold for automatic application of the national interest test, but granted that government (and/or its associates) disproportionate levels of access to or control of sensitive New Zealand assets;
  - would have outcomes that were significantly inconsistent with or would hinder the delivery of other Government objectives;
  - raises significant Treaty of Waitangi issues; or
  - relates to a site of national significance (e.g. significant historic heritage).
77. We do not consider that this investment engages any of these risk factors.

## I. Conclusion

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78. After considering the application, our view is that:
- the investor test has been met; and
  - the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
  - the benefit is proportionate to the sensitivity of the land and the nature of the transaction; and
  - the conditions relating to residential land to be imposed on the consent will be, or are likely to be, met; and
  - the transaction is not considered to be a transaction of national interest.
79. Therefore, we consider that the criteria for consent in section 16 have been met and our recommendation is to **grant consent**.

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<sup>21</sup> Section 20B of the Act

<sup>22</sup> Ministerial Directive Letter (24 November 2021).

80. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and from page 3 of this Assessment Report to record your decision.



Pedro Morgan  
Lead Advisor - Overseas Investment

Date: 8-Dec-22

#### **J. List of Attachments**

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1. Proposed Decision
2. Intended ownership structure
3. Other benefit factors
4. Photos and maps

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## ATTACHMENT 1 PROPOSED DECISION

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

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

#### Consent

Decision date: [date]

The following people have been given the following consent:

Case	202200050
Consent	The Consent holder may acquire the Land subject to the Conditions set out below.
Consent holder/s	Microsoft 6399 New Zealand Limited (Company number 7985599). We will also refer to each Consent holder and the Consent holders together as <b>you</b> .
Land	Approximately 6.5 hectares of freehold land located at [ s 9(2)(b)(ii) ] [ s 9(2)(b) ] Auckland, to be subdivided from Records of Title [ s 9(2)(b)(ii) ] [ s 9(2)(b) ] and [ s 9(2) [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] [REDACTED]
Timeframe	You have until [ s 9(2)(b)(ii) ] 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 Toitū Te Whenua Land Information New Zealand as **LINZ, us or we**.

**Act** means the Overseas Investment Act 2005.

**Data Centre** means a centralised location where cloud computing and networking equipment is concentrated for the purpose of storing and processing large amounts of data.



### 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: Apply for and obtain relevant consents</b>	
You must lodge and obtain all necessary approvals, permits or consents required to construct the Data Centre. If you do not, standard condition 6 will apply and we may require you to dispose of the Land.	30 July [s] [REDACTED]
<b>Special condition 2: Construct and operate the Data Centre</b>	
You must commence construction of the Data Centre.	31 January [s] [REDACTED] 9(2)
You must complete the construction of the Data Centre and begin operating the Data Centre.	30 June [s] [REDACTED]
You must introduce at least \$180 million in capital expenditure to construct the Data Centre. This includes legal and environmental due diligence, planning and design, approval and building permits, construction and IT computing fit out equipment and installation.	30 June [s] [REDACTED]
Once you have completed construction of the Data Centre you must continue to operate the Data Centre.	At all times
If you do not, standard condition 6 will apply and we may require you to dispose of the Land.	
<b>Special Condition 3: Use the Land for non-residential purpose</b>	
The primary use of the Land is for the operation of the Data Centre. You agree to not do anything that would result in the Land being used for residential purposes. If you do not, standard condition 6 will apply and we may require you to dispose of your interest in the Land.	At all times

## 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 conduct the inspection,</li> </ol> </li> </ol>	At all times

<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 not unsuitable to invest in New Zealand</b>	
<p>You, and to the extent that you are not an individual, the Individuals Who Control You must remain not unsuitable to own or control the Assets in accordance with section 18A(1) of the Act.</p> <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 more than 25% of you or of a person who itself owns or controls more than 25% of you, and</li> <li>(c) are members of the governing body of the people referred to in paragraph (b) above.</li> </ul>	<p>At all times</p>



**Standard condition 5: tell us about changes that affect you, the people who control you, or people you control**

You must tell us in writing if any of the following events happens to any of the Consent holders:

Within 20 working days after the change

1. You become aware that you and/or any Individual Who Controls you establishes any of the investor test factors listed in section 18A(4) of the Act.
2. You cease to be an overseas person or dispose of all or any part of the Land.
3. Your New Zealand Service Address changes. This is the address you provided us in your application as the address which we will send any legal document we need to serve on you.

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

Some of the special conditions were key to the decision to give consent. If we consider you have failed to comply with one of those Special conditions in a material way we may require you to dispose of the Land.

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

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

**Value the Land:** obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.

Within six weeks of the date of our notice.

**Market the Land:** instruct a licensed real estate agent to actively market the Land for sale on the open market.

Within six weeks of the date of our notice.

**Dispose of the Land:** dispose of the Land to a third party who is not your associate.

Within six months of our notice.

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

Within nine months of our notice.

<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>

### Reporting conditions

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

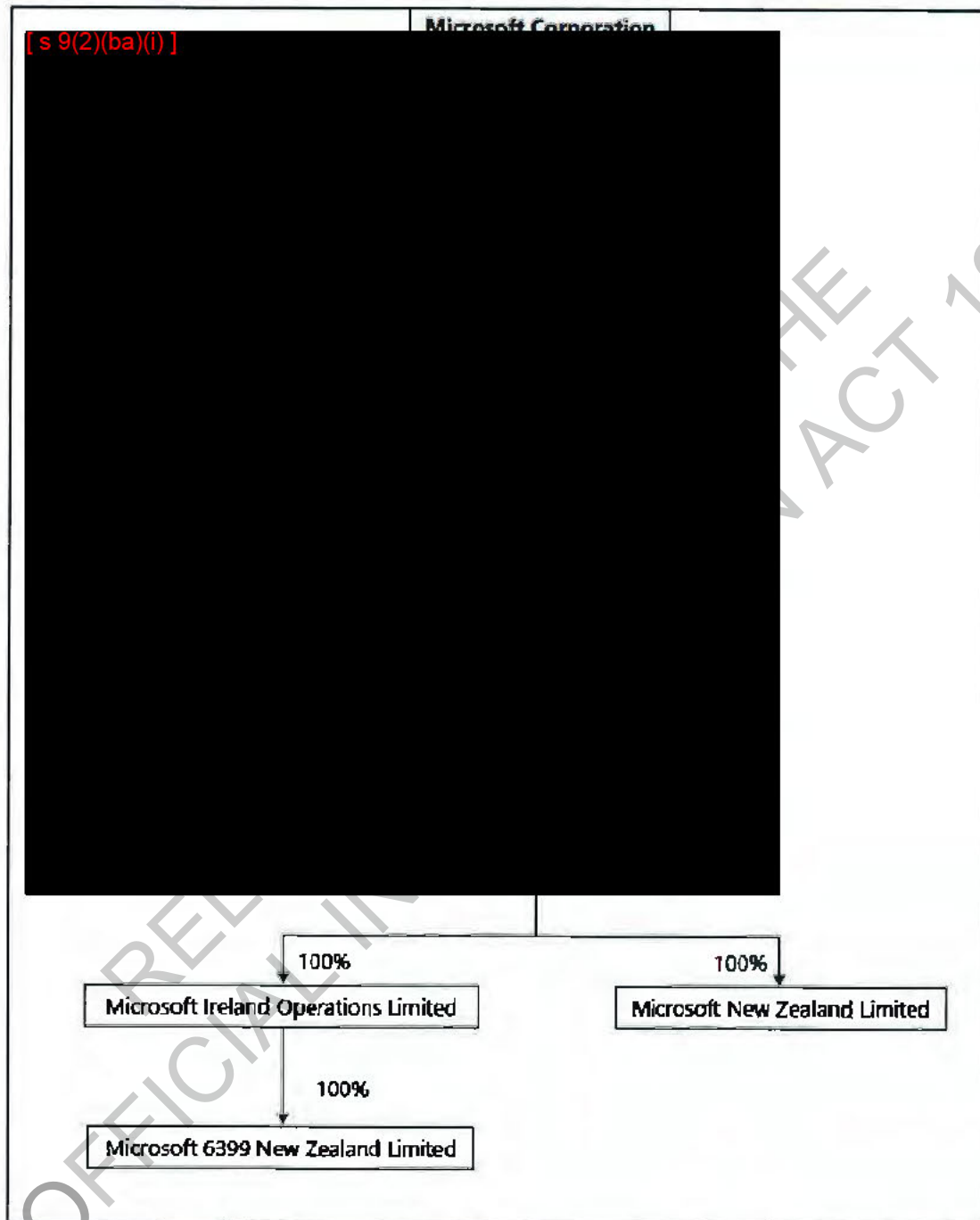
You must lodge **reports**. They must:

1. be sent to [oiomonitoring@linz.govt.nz](mailto:oiomonitoring@linz.govt.nz) by these dates:
  - (a) Year one: 31 January 2028
  - (b) Year two: 31 January 2029
  - (c) Year three: 31 January 2030
  - (d) Year four: 31 January 2031
2. contain information about:
  - (a) your progress in implementing the special conditions, and
  - (b) your progress on procuring a contractor to build the data centre;
  - (c) the amount of funds, detailed by specific use, introduced for development of the Data Centre; and
  - (d) the number of FTE employees and contractors including their salaries.
3. follow the format of the template report published on our website at <https://oio.linz.govt.nz/oio-consent-monitoring>

If requested in writing by LINZ, 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 consent was granted or
- (b) the conditions of this consent.

## ATTACHMENT 2 – INTENDED OWNERSHIP STRUCTURE



### ATTACHMENT 3 – OTHER BENEFIT FACTORS

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

We considered that the factors below were either not relevant to the investment, or the benefit to New Zealand was not likely or sufficient to be relied on for the purposes of our assessment.

Factor	Reason not relevant or insufficient
<b>Economic benefits</b>	<b>Insufficient Claims</b> – While we are satisfied that the economic benefit factor is met overall (for the reasons set out in the benefit table), we are not satisfied that the Proposed Investment is likely to result in increased efficiency. In particular, the Applicant submits that the development of a data centre on the Land will lead to greater efficiency in the use of the Land and of its wider business. However, the applicant has been unable to show with sufficient certainty exactly how this will benefit New Zealand therefore the benefit to New Zealand is not sufficient to be relied on.
<b>Environmental benefits</b>	<b>Not relevant</b> – we are not aware of any areas of indigenous vegetation or fauna on the Land.
<b>Public access</b>	<b>Not relevant</b> – there will be no public access on the Land.
<b>Historic heritage</b>	<b>Not relevant</b> – there is no historic heritage listed on the Land.
<b>Significant government policy</b>	<b>Not relevant</b> – The Applicant has not identified a significant government policy that proposed investment will not give effect to or advance.
<b>Oversight or participation by New Zealanders</b>	<b>Not met</b> – We are not satisfied that the Proposed Investment is likely to result in increased oversight or participation by New Zealanders. The Applicant has made several submissions including that the Applicant's parent is a publicly listed company enabling New Zealanders to acquire shares in the Applicant and the jobs to be created under the economic benefit factor will be created for New Zealanders. However from an ownership and control perspective we consider there is minimal participation and involvement by New Zealanders. the benefit to New Zealand is not sufficient to be relied on.
<b>Consequential benefits</b>	<b>Not relevant</b> – No other consequential benefits to New Zealand are likely to flow from the Proposed Investment.
<b>Extraction of water for bottling</b>	<b>Not relevant</b> – there are no proposals for water bottling.

#### ATTACHMENT 4 – PHOTOS AND MAPS

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



RELEA  
OFFICIAL INFO



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

