

Decision required under the Overseas Investment Act 2005: Since20181 Development Limited– Increased Housing and Non-Residential Use Test – 201900225

Date	6 December 2019
Security Level	Commercial: In Confidence
Priority	High
Case Number	201900225
Decision Required By	20 December 2019 (this is the OIA Condition date in the agreement for sale and purchase).

Contact for Telephone Discussion

Name	Position	Telephone	Contact
Michael Appleyard	Manager (Residential & Forestry)	04 830 3880	✓

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Executive Summary:

Applicant

1. Since20181 Development Limited (**Applicant**) is a New Zealand registered company, established in 2018. The Applicant is owned and controlled in substance by Mr Xijian Wu and his wife Ms Baoju Hu. Both individuals are Chinese citizens and hold New Zealand permanent resident visas. Mr Wu is a Chinese businessman who has been involved in developments in China and he is married to Ms Hu. The Applicant has a New Zealand based director named Bo (Matthew) Shen.
2. The Applicant is a property developer engaged in acquiring land and developing housing. One of the Applicant's directors has previous experience completing residential developments in China. This is the Applicant's first residential apartment development in New Zealand. The individuals with control of the Applicant, through companies they control, own four other residential properties in Auckland and are in the process of developing those properties into houses for sale.

Increased housing and non-residential use

3. The Applicant has applied for consent under the increased housing and non-residential use tests to purchase 0.0759 hectares of land at 20 Browns Bay Road, Rothesay Bay, Auckland (**Land**). The Land is residential (but not otherwise sensitive) land under the Overseas Investment Act 2005 (**Act**).
4. The Applicant already owns the two neighbouring properties at 16 and 18 Browns Bay Road, Rothesay Bay, Auckland (**Neighbouring Land**). The Applicant also has a current application for consent to buy 22 and 24 Beechwood Road, Rothesay Bay, Auckland (201900473) (**Adjoining Land**).
5. The Applicant plans to develop the Land, together with the Neighbouring Land and the Adjoining Land, into approximately 175 residential units and three commercial units across the five titles. This assessment relates only to the application to build 'Block A' which will sit on the Land and Neighbouring Land, consisting of 85 residential apartment dwellings and three commercial units.
6. The Applicant intends to retain and lease the three commercial units for businesses that service the residents of the apartments in the development (e.g. a dairy shop or laundry).
7. The Applicant also intends to rent out the currently tenanted dwelling on the Land until the commencement of construction of the development.
8. The Applicant anticipates completing construction in December 2025 and selling all the residential apartments in the development by December 2026.

Increased housing

9. As set out in this report, we are satisfied that the Applicant has satisfied all requirements under the Act for an increased housing consent. In particular, we are satisfied that:
 - (a) 1 or more of the increased housing outcomes will likely result from the proposed transactions under the consent, being an increase in the number of residential dwellings constructed on the residential land;
 - (b) the on-sale outcome is likely to occur; and
 - (c) the non-occupation outcome is likely to occur.

Non-residential use

10. As set out in this report, we are satisfied that the Applicant has satisfied all requirements under the Act for a non-residential use consent. In particular, we are satisfied that the Land is likely:

- (a) to be used for non-residential purposes in the ordinary course of business for the relevant business; and
- (b) not used, nor held for future use, for any residential purposes; but
- (c) the non-residential use will not occur within a short period of giving effect to the transaction;
- (d) the non-occupation outcome (as defined in clause 17) is likely to occur; and
- (e) within a specified period, the non-residential use outcome is likely to be met.

Investor test

- 11. We are satisfied that the relevant overseas persons and individuals with control meet the investor test; having relevant business experience and acumen, having demonstrated financial commitment to the investment, being of good character, and not being 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).
- 12. Open source background searches revealed that the Applicant was involved in four civil litigation cases in China but none had outcomes adverse to the Applicant. We have reviewed this matter and do not consider that it negatively affects the character of any of the individuals with control.

Conditions

- 13. We are also satisfied that all the relevant conditions required for the Increased Housing and Non-Residential Use consent have been imposed.
 - (a) Schedule 2, clause 18 – increased housing outcome and on-sale outcome; and
 - (b) Schedule 2, clause 18 – mandatory condition(s) imposed (non-residential use outcome and non-occupation outcome).

Recommendation

- 14. We recommend consent is **granted**.

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Decision:

15. I have determined that:

(a) the '**relevant overseas person**' is (collectively):

Entity / Person	Relationship
Since20181 Development Limited	Acquiring entity
Xinjian Wu	Individual with ultimate control/ ownership
Baoju Hu	Individual with ultimate control/ ownership

(b) the '**individuals with control of the relevant overseas person**' are (collectively):

Individual	Position
Xinjian Wu	Director of Applicant and co- investor
Baoju Hu	100% shareholder in the Applicant and co-investor

16. I have reviewed the application and all appendices, and the information set out in this report.

17. I am satisfied that the criteria for consent as set out in sections 16(1) (criteria for consent) and Schedule 2, clause 11 (increased housing test) and clause 13 (non-residential use test) are met. In particular, that:

Investor test

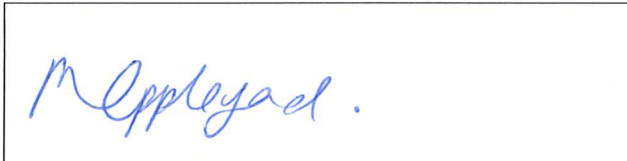
- (a) the relevant overseas person has, or (if that person is not an individual) the individuals with control of the relevant overseas person collectively have, business experience and acumen relevant to the overseas investment; and
- (b) the relevant overseas person has demonstrated financial commitment to the overseas investment; and
- (c) the relevant overseas person is, or (if that person is not an individual) all the individuals with control of the relevant overseas person are of good character; and
- (d) the relevant overseas person is not, or (if that person is not an individual) 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; and

Increased housing test

- (e) one or more of the increased housing outcomes will, or are likely to occur on the residential land, in this case being an increase in the number of dwellings on the land;
- (f) the non-occupation outcome will, or is likely to occur; and
- (g) the on-sale outcome will or is likely to occur.

Non-residential use

- (h) the relevant business (as determined in this report) is likely to continue for a reasonable period, given the circumstances and nature of the business; and
 - (i) the residential land will, or is likely to, be:
 - (i) used for non-residential purposes in the ordinary course of business for the relevant business; and
 - (ii) not used, nor held for future use, for any residential purposes, but
 - (iii) the non-residential use will not occur within a short period of giving effect to the transaction;
 - (iv) the non-occupation outcome (as defined in Schedule 2, clause 17) is likely to occur; and
 - (v) within a specified period, the non-residential use outcome is likely to be met.
18. The consent will be subject to the mandatory conditions imposed by Schedule 2, clause 18(2), being 1 or more of the increased housing outcomes, the on-sale outcome, and the non-occupation outcome and the non-residential use outcome.
19. Consent is granted in the form of the Proposed Decision in **Appendix 1**.



Michael Appleyard – Manager Applications
(Residential & Forestry)

Date

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Report of the Overseas Investment Office
on the application for increased housing and non-
residential use consent by
Since20181 Development Limited
Case: 201900225

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What is the Investment?

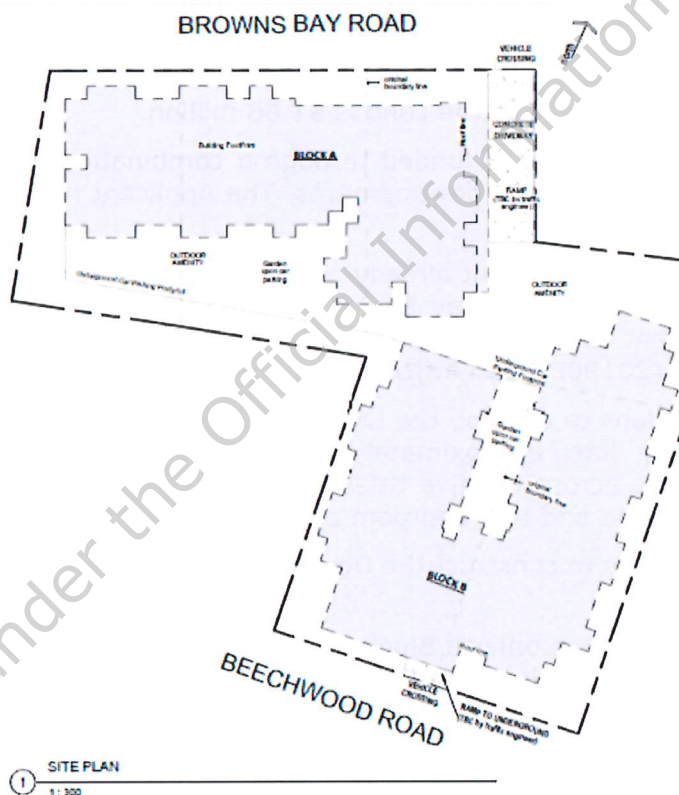
Applicant	Since20181 Development Limited The People's Republic of China 100%
Application	Increased Housing and Non-Residential Use Consent
Vendor	Darren Paul Porteous (New Zealand 100%)
Consideration	\$1.68 million
Recommendation	Grant consent

Description of the Investment

1. Since20181 Development Limited (**Applicant**) wishes to acquire the property located at 20 Browns Bay Road, Rothesay Bay, Auckland, currently comprised in record of title, NA1925/3 described as Part Lot 6, Block XI deposited plan 10801 (approximately 0.0759 hectares (**Land/ Investment**)).
2. The Applicant entered into a sale and purchase agreement to purchase the property on 11 November 2018. The sale and purchase agreement is conditional upon consent under the Overseas Investment Act 2005 (**Act**) being granted.
3. The total purchase price for the Land is \$1.68 million.
4. The purchase price is being funded through a combination of shareholder capital and the sale of other residential developments. The Applicant may use some bank funding, if required.
5. Depicted below, the Applicant already owns the two neighbouring properties at 16 and 18 Browns Bay Road, Rothesay Bay, Auckland (**Neighbouring Land**). The Applicant also has a current application for consent to buy 22 and 24 Beechwood Road, Rothesay Bay, Auckland (201900473) (**Adjoining Land**).
6. The Applicant plans to develop the Land, together with the Neighbouring Land and the Adjoining Land, into approximately 175 residential apartment units and three commercial units across the five titles (**Development**). The residential dwellings will be a mixture of one and two-bedroom apartments.
7. The Applicant plans to construct the Development as two six level apartment buildings; Block A and Block B.
8. This application relates only to Block A which will be constructed on the Land and the Neighbouring Land. Block A will consist of approximately 85 residential apartment units and three commercial units (**Commercial Units**). Application 201900473 is a separate application that relates to the Applicant constructing Block B on the Adjoining Land.
9. The Applicant anticipates obtaining the required consents by mid-2022 to immediately begin construction of the Development after, completing the Development in December 2025 and having sold all residential units by December 2026.
10. See the aerial view of the land that will form the Development below showing:
 - (a) the Land (subject to this application) labelled in red text,
 - (b) the Neighbouring Land labelled in black text; and
 - (c) the Adjoining Land labelled in pink text.



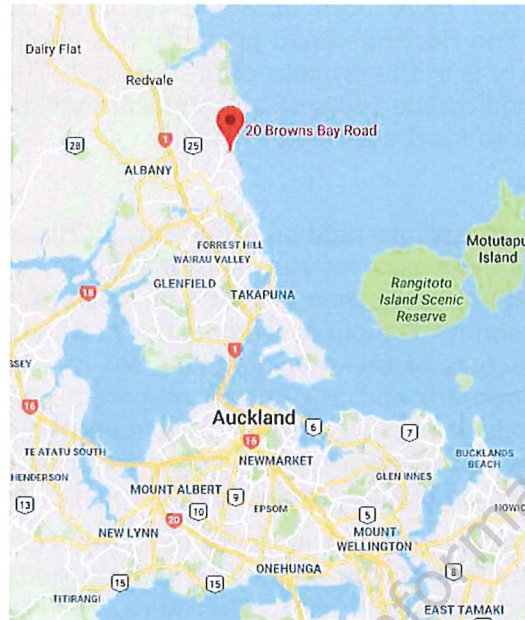
11. See also the layout of Block A and B in the architect's diagram below:



Sensitive assets

12. Consent is required because the Applicant is an overseas person and the proposed transaction will comprise the acquisition of residential (but not otherwise sensitive) land.
13. The Applicant has no existing interest in the Land, but, as explained above, already owns the Neighbouring Land. The Applicant has submitted a separate application for consent to buy the two Adjoining Land (201900473) which, together with the Land, the Applicant intends to develop as one development. The second application was accepted for processing much later than the current application (6 September 2019) and is still being assessed and will be decided later.
14. The Applicant did not require Overseas Investment Act consent to acquire the Neighbouring Land as the agreements for sale and purchase were entered into prior to the changes to Act relating to residential land came into force.

15. The Applicant's sensitive land certificate confirms that the Land is categorised as 'Residential – Terrace Housing and Apartment Building' and is residential (but not otherwise sensitive) land under the Overseas Investment Act 2005.
16. See the Google Maps image below showing the location of the Development within the context of Auckland:



Who is making the Investment

Applicant

Who the Applicant is

17. Since20181 Development Limited (**Applicant**) is a New Zealand registered company (company number 6963113), established in 2018. The Applicant is a property developer; their business is acquiring land, developing housing and selling houses and apartments to the public. While this is the first development of this scale in New Zealand, the IWCs have relevant experience in China and will hire expert consultants to assist with the investment. Also, the IWCs are currently undertaking small-scale (of approximately four houses) residential developments in New Zealand.
18. The individuals with control of the Applicant (as identified below) (**IWCs**) own several other properties in New Zealand, through related companies, some which are currently being developed, or intend to be developed, into small residential subdivisions.
19. This is the Applicant's first residential apartment development in New Zealand. One of the Applicant's directors, Mr Xinjian Wu, has previous experience completing residential developments in China. Mr Wu has been involved in the development of a retirement building, and an approximately 50,000 square metre apartment building in China.

Companies controlled by the IWCs undertaking other developments in New Zealand

20. The IWCs, through companies they control, own four other residential properties in Auckland that are in the process of being developed into houses for sale. The Applicant states that the sale and purchase agreements relating to these properties were entered prior to the changes that brought residential land into the Act.
21. Two of the properties are in the advanced stages of being developed into four houses on each property. These properties are in Auckland, located at 32 Newhaven Terrace, Mairangi Bay and 8 Pax Avenue, Forrest Hill.

22. Both properties have resource and building consents and are under construction. The Applicant predicts building will be completed by the end of 2019. The Applicant plans to sell the properties following completion. More details about these properties is outlined at paragraphs 79 to 82.
23. The two other Auckland properties located at 19 Hastings Road, Mairangi Bay and 719 Beach Road, Browns Bay have both obtained resource consent for subdivision and engineering approval. The Hastings Road property has applied for building consent and the Beach Road property is in the process of preparing it. The Applicant anticipates that the companies controlled by the IWCs of the Applicant will be able to construct and sell both properties in time to fund the Development.

Who owns the Applicant?

24. All the shares in the Applicant are held by Baoju Hu, a Chinese citizen, who holds a New Zealand permanent resident visa. Ms Hu had not lived in New Zealand for 183 days in the past 12 months before the agreement for sale and purchase was signed, therefore she is an overseas person for the purposes of the Act. She is married to Mr Xinjian Wu, who is one of two directors of the Applicant. Mr Wu is a businessman who has been involved in land development and a furniture manufacture business in China. In New Zealand these individuals control at least ten other companies and a family trust. Some of these companies own property that is being developed into small scale residential houses (e.g. four houses on a subdivided site), as mentioned above.
25. While the shares are recorded in the name of Ms Baoju Hu, information provided with the application indicates that Mr Wu and Ms Hu are married and confirms the shares in the Applicant are relationship property. Therefore, Ms Hu and Mr Wu (through his relationship property interest) *both* have actual ownership and control of the Applicant. Our view is that together they are, in substance, co-investors and have been treated as such for the purposes of our assessment.

Who controls the Applicant?

26. The Applicant has two directors, Xinjian Wu and Bo (Matthew) Shen. They are both Chinese citizens holding New Zealand permanent resident visas. Xinjian Wu is an overseas person as defined in the Act.
27. The Applicant has stated that Mr Wu makes the major decisions in relation to the Investment. We consider Mr Shen is a director primarily for the purpose of complying with the requirement for New Zealand companies to have a New Zealand resident director. Based on the Applicant's representations regarding Mr Shen's role as a New Zealand resident director, we have not included Mr Shen in our selection of IWCs.
28. Up until July 2019 Bo (Matthew) Shen was responsible for the day-to-day management of the Investment, at which time Zhou (Daniel) Zou took over Mr Shen's role as site manager of the Investment.
29. The Applicant stated that Mr Zou had been involved with a company associated with the Applicant since July 2018 and had been working as a site manager for Mr Wu's 8 Pax Avenue development. The Applicant stated that Mr Zou has no authority to make decisions and his duties include liaising with council, professionals and solicitors.
30. The Applicant confirmed that neither Mr Shen nor Mr Zou have a financial interest in the Applicant. We therefore based on the Applicant's submissions, consider both to be employees of the Applicant.
31. Xinjian Wu and Baoju Hu can approve significant capital and operating expenditure and approved the acquisition of the Investment. We do not view Mr Shen or Mr Zou as having a significant level of control over the Applicant or the Investment to be considered an IWC. Therefore, we have excluded them from our IWC selection.

Relevant Overseas Person

32. For the reasons set out in the preceding paragraphs, we have determined that the 'relevant overseas person' (**ROP**) is (collectively):

Entity / Person	Relationship
Since20181 Development Limited	Acquiring entity
Xinjian Wu	Individual with ultimate control/ ownership
Baoju Hu	Individual with ultimate control/ ownership

Individuals with Control

33. For the reasons set out in the preceding paragraphs, in the circumstances relating to this specific overseas investment, we have determined that the 'individuals with control of the relevant overseas person' (**IWC**) are:

Individual	Position
Xinjian Wu	Director of Applicant and Co-investor
Baoju Hu	100% shareholder in Applicant and Co-investor

Investor test

Business Experience and acumen s16(2)(a)

The relevant overseas person, or the individuals with control of the relevant overseas person, must have business experience and acumen relevant to the overseas investment. There is considerable flexibility in determining what is relevant and more or less specific expertise may be required depending on the nature of the investment. Business experience and acumen that contributes to an investment's success may be treated as relevant even though the investor may have to supplement its experience and acumen by utilising the experience and acumen of others to ensure the investment succeeds.

34. In this case, the overseas investment can be described as the acquisition of a relatively small residential property, to be developed (along with Neighbouring Land and Adjoining Land, subject to consent application 201900473). The properties will be developed into a medium sized apartment block containing largely residential units for sale and the Commercial Units, for lease.
35. We have reviewed the biographical information provided by the Applicant for each of the individuals with control who will be involved in the management and control of the applicant and note the following:
36. Xinjian Wu has:
- completed studies in business administration at Beijing Science Technology and Management College; and
 - business experience as he owned furniture manufacturing businesses in China; and
 - land development experience during his time as a Chinese government official and through his own companies that have developed multi apartment buildings of approximately 50,000 meters of floor area in China; and

- d) has obtained resource consent to develop four other residential properties into small-scale residential developments of four or more dwellings on each.
37. Ms Hu has no apparent business experience and acumen that is relevant to the Investment.
38. The Applicant plans to supplement their business experience and acumen by using a professional project manager and other professionals. The Applicant has not yet employed a project manager as the Investment is in its early stage but states it plans to appoint one by the end of December 2020. An architect and planner have been engaged and have submitted plans and a preliminary design in relation to the application.
39. Only one of the two IWCs have demonstrated any significant business experience and acumen relevant to the Investment and this is largely China based. However, in our view the Applicant has demonstrated that they are supplementing their business experience and acumen through the use of professionals. Having regard to this, we are (on balance) **satisfied** that the individuals with control *collectively* have business experience and acumen relevant to the overseas investment.

Financial Commitment s16(2)(b)

The financial commitment criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the overseas investment.

40. The 'financial commitment' criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the investment (intentions are not sufficient).
41. In addition to the preparation costs of this application, the Applicant has purchased the Neighbouring Land to develop, together with the Land (and entered into agreements to buy the Adjoining Land, subject to OIO consent 201900473), into one apartment development. The Applicant has also incurred costs and engaged other professionals for the investment to undertake a diligence investigation; and to prepare a pre-design by an architect; and feasibility study by a planner.
42. Having regard to the above, we are **satisfied** that the relevant overseas person has demonstrated financial commitment to the overseas investment.

Good Character s16(2)(c)

The decision maker must be satisfied that the individuals with control are of good character. Section 19 of the Act specifies that the decision maker must take the following factors into account (without limitation):
 (a) offences or contraventions of the law by A, or by any person in which A has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not);
 (b) any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

43. The Applicant has provided a statutory declaration stating that the individuals with control are of good character, have not committed an offence or contravened the law as described above and know of no other matter that reflects adversely on their fitness to have the Investment. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957.

Findings

44. Our open source background checks on the Applicant revealed four civil lawsuits in China where companies controlled by Mr Wu were involved as defendants. The four civil law suits in China involved Mr Wu's company, Beijing Feiyu Commerce and Trade Limited being sued for:
- (a) delay of contract payment for a construction project. The plaintiff lost the case and the appeal was dismissed.

- (b) a network infringement. This case was withdrawn by the plaintiff; and
- (c) two disputes under a sale and purchase agreements. In one the court rejected the plaintiff's case and the other the plaintiff withdrew their claims.

45. Overall, none of the civil law suits resulted in findings adverse to Mr Wu's companies.

Applicant comment

46. The Applicant provided comment about the litigation. The Applicant confirmed that all the cases and there was no judgement against Mr Wu.

47. The Applicant did not consider these lawsuits to affect the Applicant's good character.

View

48. We have considered this incident and Mr Wu's involvement, and have found that the four civil lawsuits are now resolved without adverse findings against the individual with control's companies. We consider that the matter is not relevant and does not affect Mr Wu's fitness to have this investment.

49. Having reviewed these matters, overall we are **satisfied** that the individuals with control are of good character.

Other matters

50. We also note that the Applicant states Mr Wu and Ms Hu received their New Zealand permanent resident visas. The Applicant states this process involved supplying Immigration New Zealand with documents for the sale of shares and audited accounts of Mr Wu's furniture company in China. The Applicant confirms these documents were accepted. The Applicant claims the sale of Mr Wu's furniture company is the origin of some of the funds for this investment. We understand that Immigration New Zealand are likely to have checked to ensure that the source of the funds required to be invested under this type of visa were legitimate. We note that the test applied by Immigration New Zealand and we apply under the Act are very different, and not comparable.

51. During the assessment process we consulted with other agencies regarding the IWCs of the Applicant, however, we did not receive any information that would preclude us from making a decision under the criteria of the Act.

Immigration Act s16(2)(d)

Section 15 of the Immigration Act specifies that certain convicted or deported persons are not eligible for a visa or permission to enter or be in New Zealand. Section 16 provides a power to deny a visa or permission to enter New Zealand for other specified reasons, such as if the individual is likely to be a threat or risk to security or public order.

52. The Applicant has provided a statutory declaration stating that none of the individuals with control are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957.

53. We have also conducted open source background checks on those individuals and found nothing relevant to this criterion.

54. Therefore, we are **satisfied** that none of the individuals with control are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.

Increased housing test

Increased housing test

Schedule 2, clause 11, specifies that the increased housing test is met if the relevant Ministers are satisfied that 1 or more of the increased housing outcomes will, or are likely to, occur on the residential land, being:

- (a) an increase in the number of residential dwellings constructed on the residential land;
- (b) construction of, or increase in the number of dwellings in, a long-term accommodation facility;

(c) development works on the land to support the doing of either (a) or (b).

Relevant Ministers must also be satisfied that the on-sale outcome (unless exempt) and the non-occupation outcome will, or are likely to, occur.

Increase in the number of dwellings constructed on the residential land

View

55. We are, on balance, **satisfied** that 1 of the increased housing outcomes is *likely* to occur on the residential land being:

(i) *an increase in the number of residential dwellings constructed on the residential land (including an increase from 0)*

56. We have assessed this outcome in that context of the development being in the early stages of development, taking into account factors including the Applicant's current funding and plans toward obtaining resource consent.

Analysis

57. This application relates only to the development of Block A on the Land, as part of a wider Development with the Neighbouring Land and Adjoining Land.

58. As explained above, the Applicant already owns the two neighbouring properties at 16 and 18 Browns Bay Road, Rothesay Bay, Auckland (Neighbouring Land). The Applicant also has a current application for consent to buy 22 and 24 Beechwood Road, Rothesay Bay, Auckland (201900473) (Adjoining Land).

59. The Applicant plans to develop the Land, together with the Neighbouring Land into Block A. This assessment relates solely to Block A, which will comprise approximately 85 new residential apartment units and three commercial units.

60. If the Applicant does not receive consent for the Adjoining Land, we understand that it plans to adjust its plans and undertake a smaller development. We understand that if this occurred then the Applicant would just proceed with Block A.

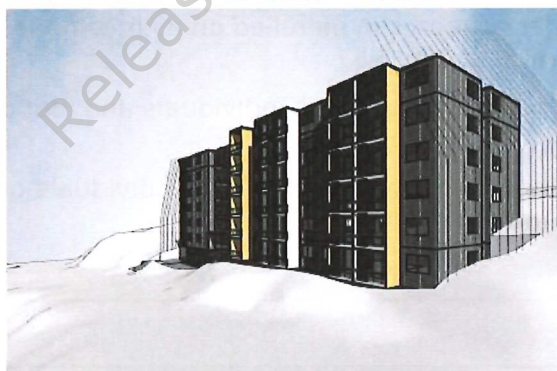
61. The Applicant anticipates beginning construction on Block A soon after obtaining the required consents by mid-2022, completing construction in December 2025 and having sold all residential units by December 2026.

62. The Applicant plans to develop the Land, together with the Neighbouring Land and the Adjoining Land as one development.

63. There is currently one house on the Land that is being tenanted out on a periodic basis.

64. The following images show the planned layout of the block of apartment dwellings on the Land and the Neighbouring Land:

VIEW OF BLOCK A FROM NORTH-WEST ALONG BROWNS BAY ROAD



VIEW OF BLOCK A FROM NORTH-EAST ALONG BROWNS BAY ROAD



Image from pre-design by the Architect showing the proposed development in 3D from different angles.

Timeline

65. The Applicant has provided the following timeline for the Development showing the milestone dates for obtaining relevant consents and construction (provided OIO consent is granted prior to 2 December 2019):
- (a) Design refinement, preparation for resource consents and building consents and submit to council for approval: 17 December 2020.
 - (b) Obtain Resource consents and building consents by 17 June 2022.
 - (c) Construction: will start immediately after resource consents and building consents are obtained and will be completed by the end of 17 December 2025;
 - (d) Completion of sale: by the end of December 2026.

Resource Consent not yet obtained but professionals preliminary reports prepared

66. With reference to the above timeline the Applicant provided, we consider that the development is in the early stages. We note that resource consent is not due to be lodged for at least another 10 months and construction is not due to begin for another two years. This progress is not unusual for a development at this stage.
67. We consider the Applicant has taken preliminary steps required such as commissioning a planner; Avant Planning (the **Planner**) and an architect: Urban Design and Forrest Architectural (the **Architect**).
68. The Planner provided a letter to the Applicant's lawyer discussing the general feasibility of the project from a planning perspective. The letter concludes that overall the proposed development on the Land is "generally feasible and appropriate in principle for the purposes of residential intensification". The Planner also notes the benefits of developing the Land along with the Neighbouring Land. The Planner notes the letter does not provide a full assessment of the effects of the development on adjoining residences or the environment.
69. The Planner notes that the resource consent process is likely to be complex and may be limited notified' to neighbours. As such, the Planner estimates it could take between 12 and 16 months from the date of lodging to obtain resource consent. The council may determine that it is a limited notified application. This would mean persons the council determines to be adversely affected by the application for resource consent are notified and can then make submissions.¹ The Planner indicated the 12 to 16-month timeframe excludes appeal periods, which may take an additional six to nine months.
70. We consider, based on the third-party submission and an enquiry received (discussed below at 122 to 134 and submission quoted in Appendix 3), it is likely that some local residents will oppose the application for consent, leading to delays in the progress of the Development. We therefore recommend some flexibility in the consent conditions to account for delays in the resource consenting process.

¹ Ministry for the Environment "Information on Resource Management Processes: Information for applicants and submitters: Notified resource consents" (October 2017) at p2 <www.mfe.govt.nz>.

71. The Architect prepared a feasibility report for the Land, along with another feasibility report for the Neighbouring Land to develop as one development. The Architect also developed pre-design plans outlining the Development, including layout drawings of one to two-bedroom apartments within. See the image below:

16 ,18 & 20 BROWNS BAY ROAD ROTHEsay BAY 0630



ISSUED FOR	
PRE DESIGN	
PROJECT	
16 & 18 Browns Bay Road Rothsay Bay 0630	
DATE	
1/02/2019 9:47:29 PM	
DRAWING LIST:	
A001	COVER
A101	SITE PLAN
A102	SITE DRAINAGE PLAN
A103	SITE CONDITION 03
A200	FLOOR PLAN - GROUND FLOOR
A204	APARTMENT TYPES - ONE BED
A205	APARTMENT TYPES - TWO BED
A702	PERSPECTIVE
A703	Unnamed

Financial Details

Cost

72. The total cost of the development on the Land and Neighbouring Land will be approximately \$40 million. The estimated cost of the whole development is between \$46 and \$50 million. As the final design has not yet been completed a quantity surveyor report has not been undertaken.
73. The Applicant will fund the Development through a combination of shareholder capital and the sale of other residential developments. The Applicant may use some bank funding, if required.

Funding

74. We are satisfied based on the below analysis that the Applicant is likely to have sufficient funding to achieve the increased housing outcome.
75. The Applicant stated it is funding the development through:
- \$25 million of shareholder provided funds;
 - \$500 thousand in bank funding (if required); and
 - \$24.5 million through the sale of other residential developments.
- (total: \$50 million)

Shareholder funds

76. The Applicant provided statements dated 9 September 2019 from the ASB bank showing that together the Applicant, its shareholder (Ms Hu) and an associated company with the same directors and shareholder (Fujianbao Development Limited) hold term deposits totalling at least \$25 million.

Funding

77. The Applicant originally stated that they intended to fund the development through their own funds in China and New Zealand. The Applicant continued by saying that if the funds could not be transferred from China to New Zealand then “they will borrow money from financial institutions in New Zealand to complete the development”.
78. We note that any funding that may be sought is likely to be minimal in the context of funding the investment.

Sale of other developments

79. The Applicant stated that it intends to contribute \$24.5 million to the funding of the development through the sale of other developments that are owned by companies controlled by the IWCs.
80. Specifically, the Applicant intends to sell a total of four developments, two sites are nearing completion; 32 Newhaven Terrace, Mairangi Bay, Auckland and 8 Pax Ave, Forrest Hill, Auckland. Both properties have approved resource and building consent/s and due to be completed by the end of 2019.
81. The further two sites are at 19 Hastings Road, Mairangi Bay and 719 Beach Road, Browns Bay. Both have obtained both resource consent for subdivision and engineering approval. The Hastings Road property has applied for building consent and the Beach Road property is in the process of preparing it. The Applicant anticipates that it will be able to construct and sell both properties in time to fund the Development.
82. The Applicant states that the sales of the four properties will contribute around \$24.5 million to the Development.

Condition(s)

83. In this case, under **Part 5 of Schedule 2 (clause 18)**, the following condition must be imposed for the increased housing test:
- 1 or more increased housing outcomes (as that outcome is defined in clause 11)
84. The Applicant has stated that Block A of the Development, which will be situated on the Land and Neighbouring Land, will consist of 85 residential dwellings. To allow some flexibility in the Applicant’s design process and to recognise there are existing dwellings on the Land and Neighbouring Land, we recommend as a condition of consent that the Applicant must increase the number of residential dwellings constructed on the Land and Neighbouring Land by 75.
85. We also recommend milestone conditions, which have been based on the Applicant’s comments and the planned development timeline, these include:
- a) lodge the required resource consents and building consents by 31 December 2020;
 - b) commence construction of the development 12 months from date resource consent commences;
 - c) complete construction of the development by 31 December 2025; and
 - d) complete sales for all residential dwellings in the development, as soon as practicable and no later than 31 December 2026.
86. We also recommend the following conditions to ensure that the Applicant is on schedule with construction of the development:
- (a) The Applicant confirm to us whether the resource consent process requires a limited notification or is subject to a hearing process by 31 January 2021; and
 - (b) The Applicant to confirm to us that it is on schedule to meet the construction completion milestone by 31 January 2023.

87. We also recommend making it clear that if all relevant resource consents and building consents required to construct the Development are not obtained then we may require disposal of the Land.

On-sale outcome

Schedule 2, clause 17 states the on-sale outcome is that, within a specified period, the relevant overseas person disposes of all relevant interests in residential land.

Schedule 2, clause 11(2), specifies that the on-sale outcome does not apply if:

- (a) the increased housing outcome is the construction of, or increase in the number of dwellings in, a long-term accommodation facility on residential land and
- (b) relevant Ministers are satisfied that the long-term accommodation facility is likely to operate from the land within a specified period, to the extent relevant Ministers are satisfied the land is likely to be used for those operations.

View

88. We are **satisfied** that the on-sale outcome is likely to occur in relation to the residential dwellings.

Analysis

89. The Applicant proposes to sell all the residential units from the development of the land after the development is completed in around December 2025. The Applicant anticipates sales will take approximately a year, ending December 2026.

Condition(s)

90. In this case, under **Part 5 (18) of Schedule 2**, the decision maker, as a condition of consent, must impose an on-sale outcome (as defined in section 17, above).
91. We recommend the Applicant be given until 31 December 2026 to sell all residential units on the land. We consider it appropriate to allow the Applicant an additional year from the completion of construction to dispose of all interests in the residential dwellings on the Land. This time period recognises that there are at least 85 residential units that need to be sold, which may take some time.
92. The condition refers only to the divesting the residential dwellings. This recognises that the Commercial Units will be retained by the Applicant for non-residential use purposes.

Non-occupation outcome

Schedule 2, clause 17 states the non-occupation outcome is that, for so long as the relevant overseas person has a relevant interest in the residential land, none of the following occupy the land:

- (a) the relevant overseas person (A)
- (b) any overseas person who has a 25% or more ownership or control interest in A (B)
- (c) any overseas person (C) who occupies the land on other than on arm's-length terms
- (d) any overseas person who has a beneficial interest in, or beneficial entitlement to, the relevant interest in the residential land
- (e) if A is a trust, a person who may (directly or indirectly) benefit under the trust at the discretion of the trustees.

View

93. We are **satisfied** that the non-occupation outcome is likely to occur.

Analysis

94. The Applicant confirms that "neither the applicant or the shareholder or directors of the applicant will live in any of the units from the development of the land".

Conditions

95. We recommend as a condition of consent that the wording of Schedule 2, clause 17 be imposed.

Non-residential use test

96. The Applicant has applied for consent under the Non-Residential and Increased Housing tests as the Applicant proposes to retain the Commercial Units to lease out to businesses that will service the residents of apartments in the development.
97. This section describes our assessment of the investment against the requirements of the Non-Residential Use Test.

Relevant business

View

98. We are satisfied the Applicant's business of property development and investment is likely to continue for a reasonable period of time, given the circumstances and nature of the business.

Analysis

99. The relevant Ministers may determine the relevant business for the purposes of considering an investment under the non-residential use test. This process is set out in Schedule 2, clause 12:

12 What is the relevant business

- (1) This clause applies if an overseas investment is being considered under the non-residential use test or the incidental residential use test.
- (2) The relevant Ministers may determine which 1 or more of the following is the *relevant business*:
- (a) a business of the relevant overseas person (A);
- (b) a business of a person (B) if A owns or controls the relevant interest in the residential land primarily for B to use the residential land in that business.
- (3) However, in making that determination, the relevant Ministers must be satisfied that the business is likely to continue for a reasonable period of time, given the circumstances and nature of the business.

100. We consider that the decision maker should determine the business of the Applicant as the property development and investment in broad terms (under clause Schedule 2, clause 12(1)).
101. The Applicant plans to rent out the dwelling on the Land until the commencement of construction works. The Applicant has represented that construction is due to begin soon after obtaining the required consents which are expected to be obtained before mid-2022. We consider this can fit within the Applicant's relevant business.
102. The relevant business of the Applicant should be determined broadly to accommodate the Applicant's plan to rent out the Commercial Units.
103. The Applicant plans to have the Commercial Units tenanted by businesses that will service the apartment residents such as a store, restaurant and laundry.
104. The decision maker must be also satisfied that the relevant business, as a property development and investment business, is likely to continue for a reasonable period of time, given the circumstances and nature of the business.
105. Based on the representations provided by the Applicant we are **satisfied** that the relevant business is likely to continue for a reasonable period of time.

Non-residential use

106. The non-residential use test is set out in Schedule 2, clause 13.

Schedule 2, clause 13 specifies that the non-residential test is met if the relevant Ministers are satisfied that the residential land will be, or is likely to be (or will, or is likely to, continue to be)—

- (a) used for non-residential purposes in the ordinary course of business for the relevant business; and

(b) not used, nor held for future use, for any residential purposes.

These are together referred to as the **non-residential use outcome**.

Where the relevant Ministers are *not satisfied* that the non-residential use outcome will, or are likely to, occur within a short period after the overseas investment is given effect under the transaction, they may determine that the non-residential use test is met if—

(a) either—

(i) the relevant Ministers are satisfied that the non-occupation outcome (as defined in clause 17) will, or is likely to, occur; or

(ii) the incidental residential use test is applied for and met in respect of the residential land; and

(b) the relevant Ministers are satisfied that, within a specified period, the non-residential use outcome will be, or is likely to be, met.

View

107. **We are satisfied** the non-residential use test under Schedule 2, clause 13 is met in respect of the Land.

108. There are two relevant land uses:

(a) **Residential tenancy**: the Land has a dwelling used for a residential tenancy. The Applicant intends to continue this use until the dwelling is demolished or removed before construction starts.

(b) **Commercial leasing**: The Applicant intends to lease the Commercial Units for light commercial use (e.g. dairy, laundry, restaurant) after the development is complete (estimated to be the end of 2025).

109. For each of these Land uses, we are not satisfied the non-residential outcome is likely to be met within a short period of the Land being acquired. In this situation, per the terms of clause 13(2), **we have determined** the non-residential outcome is **met** because:

(a) **we are satisfied** the non-occupation outcome is likely to occur (per clause 13(2)(a)(i)) (**Non-Occupation Test**); and

(b) **we are satisfied** that, within a specified period, the non-residential use outcome is likely to be met (being that the Land is):

(i) used for non-residential purposes in the ordinary course of business for the relevant business; and

(ii) not used, or held for future use, for any residential purposes;

per clause 13(2)(b) (**Extended Non-Residential Use Test**).

Analysis

Tenanted Dwelling on the Land

110. The Applicant informed us that there is an existing fixed term tenancy agreement for the dwelling on the Land expiring on 24 May 2020. After the expiry of the tenancy, the Applicant intends to rent the dwelling on a periodic basis before the dwelling is demolished and construction begins. The Applicant stated that construction is due to begin “immediately” after obtaining the required consents which are expected to be obtained before mid-2022.

111. We consider the Applicant renting out the dwelling on the Land to be a residential purpose that appears likely to continue for at least two years after the Applicant acquires the Land.

112. For this land use, we are not satisfied the non-residential use test is likely to be met within a 'short period' after the Land is acquired. While the Act does not define 'short period', we consider in these circumstances two years does not fall within the meaning of these words, in the context of this development.
113. Per the terms of clause 13(2), we may nonetheless determine this test is met if the Non-Occupation Test and Extended Non-Residential Use Test are met:
- (a) For the Non-Occupation Test, we have considered and applied this test in respect of the development above at paragraphs 93 to 95. We therefore rely on that analysis and consider this criterion is met. This will be imposed as a condition of consent and apply during the period preceding the demolition or removal of the dwelling.
 - (b) For the Extended Non-Residential Use Test, we consider that:
 - (i) the residential use of the dwelling will cease upon it being demolished or removed (approximately or before December 2021) after which construction works will start. These works are within the Applicant's usual and ordinary course of business and are not a residential purpose; and
 - (ii) after the dwelling has been demolished or removed, the residential use will cease; and
 - (iii) the Applicant should have the dwelling vacant by 31 December 2021 in preparation for removal or demolition and this will constitute the 'specified period' from which we have measured the non-residential use outcome occurring.

We recommend that the Applicant ensure the tenanted dwelling be vacant by 31 December 2021. This is because the Applicant has not specified when the demolition or removal will occur and therefore construction begins. Setting this date as a milestone condition ensures that the non-residential use will occur within a specified period.

Commercial Units to be Leased

114. After the development completes, the Applicant intends to lease the Commercial Units for light commercial use (e.g. dairy, laundry or restaurant).
115. The Applicant confirmed that the non-residential use will commence immediately after the development is completed, which is estimated to occur around December 2025.
116. For this land use, we are not satisfied the non-residential use test is likely to be met within a 'short period' after the Land is acquired. Further to the above, we consider a five year or longer term to be beyond the meaning of 'short period'.
117. Per the terms of clause 13(2), we may nonetheless determine this test is met if the Non-Occupation Test and Extended Non-Residential Use Test are met:
- (a) For the Non-Occupation Test, we have considered and applied this test in respect of the development above at paragraphs 93 to 95. We therefore rely on that analysis and consider this criterion is met. This will be imposed as a condition of consent and apply at all times.
 - (b) For the Extended Non-Residential Use Test, we consider that:
 - (i) the leasing of premises for light commercial use is a non-residential use of land and, having had regard to the nature of the Applicant's business as a property developer (and commercial lessor), consider this use to be within the ordinary scope of business; and

- (ii) following the completion of the development, the Applicant will begin leasing the Commercial Units to third parties for light commercial use, which we do not consider is a residential purpose; and
- (iii) have used the period starting after the development is complete as the 'specified period' against which we have measured the non-residential use outcome occurring.

We have recommended a general requirement that any units the Applicant retains must not be used for any future residential purposes, which attaches to units once they have been built and retained.

Conditions

Mandatory Non-Residential Use Test

118. In this case, under **Part 5 of Schedule 2 (clause 18)**, the following condition must be imposed for the non-residential use test:

- a condition to ensure that the non-residential use outcome will likely result within a specified period – as above, the dwelling will be vacated by 31 December 2021 so they can be demolished or removed as part of the increased housing milestone conditions and the commercial units must not be used for non-residential purposes in the ordinary course of business;
- We have also made it clear that the Applicant is able to tenant the property until 31 December 2021.
- a condition to ensure the non-occupation outcome occurs for so long as the Applicant has an interest in the residential land (per Schedule 2, clause 18(2)).

119. **Special Condition 4** will ensure that this requirement is met.

120. If this condition is not complied with, the Applicant may be required to dispose of the land.

Consent criteria

121. As detailed above, we are satisfied that the criteria in sections 16(1) and Schedule 2, clause 11 and 13 are met, and therefore that consent should be granted.

Third Party Submissions

122. One third party submission and one related enquiry were received.

Third party submission

123. A third-party submission was received from a member of the local community.

124. The submitter was concerned about the impact that the proposed development will have on nearby residents/community. The concern was about Browns Bay Road being unsuitable for large scale development because the area does not have the proper infrastructure.

125. The submitter was also concerned that the drawing of the building misrepresented what is allowed without resource consent, an issue he says he has raised with the "REA".

126. The submitter also had a broader concern that "the consequences of this heavy development is going to be a lowering of living standards for New Zealanders who live in this area only to line the pockets mostly of rich foreign developers".

127. The submitter provided a document explaining in more detail the opposition to the unitary plan, images of a sign advertising the development and an article reporting the real estate agent received for selling a house with unconsented building work.

128. We reiterate that we can only consider matters which are relevant to the criteria under the Act. We also note that the Land is currently zoned Residential - Terraced Housing and Apartment Building, which the Applicant's planner says is consistent in principle with the Applicant's proposed development.

129. We informed the submitter that these are concerns that may be more appropriately raised in the context of the Resource Management Act consent process.

130.

Enquiry

131. An enquiry was made from a local member of parliament's office.

132. The inquirer inquired about our processes and indicated that there was building community opposition to the development. We responded to their queries.

View

133. Together the third-party submission and the enquiry indicated that there is likely to be community opposition to the development.

134. We have considered the third-party submission and the enquiry and notified the applicant of the sentiment of community opposition expressed in the submission and the inquiry against the development. We have also drafted a condition of consent requiring the Applicant to confirm whether the resource consent process will be limited notified or appealed, and therefore lead to possible delays to the development timeline.

Recommendation

135. We recommend that consent is granted.

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Appendices

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Appendix 1 - Proposed Decision

Supplied separately - See Objective file A3749746.

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Appendix 2 - Sensitive Land

20 Browns Bay Road, Rothesay Bay, Auckland

Land Interest	Freehold Interest (approximately 0.759 hectares)
Record of Title(/s)	NA1925/3
Sensitivity	Residential (but not otherwise sensitive) land

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Appendix 3 - Third Party Submission

“Attention Catlin,

I understand that you are possibly presently considering the case for a purchase of a development site at 16/18/20 Browns Bay road, Browns Bay, Auckland 0630.

See an attached picture of the advertisement outside the property.

This potential development is having a significant knock on impact to the nearby residents/community which is an established residential area. The proposed drawing they are showing is a misrepresentation of what is allowed without a resource consent and I have raised the issue with the R.E.A. The agent involved has been recently fined by the REA, see attachment from the NZ Herald this week.

The unitary plan has created an area that has been zoned inappropriately for the purposes of the plan. I also attach a detailed explanation of our opposition to development of Beechwood road which is being affected by the proposed development on Browns Bay Road. The wider issue is that Browns Bay has also been earmarked for heavy scale development without properly designing the infrastructure to service the community there. The section framed by Browns Bay Road/ Beechwood Road has been zoned for Terrace Housing/Apartments – which means 5 stories, or even up to 8 stories, but this specific location is very hilly and not particularly suitable to large scale development due to access issues and the squeeze on resources in Browns Bay. Browns Bay is serviced almost entirely by Beach Road which is a single lane road which will be difficult to widen. But the unitary plan is going to allow thousands more units to be built in this area without any thought to how this will work in practice. I know this is outside of your remit, but the consequences of this heavy development is going to be a lowering of living standards for New Zealanders who live in this area only to line the pockets mostly of rich foreign developers.

I have written this submission in a hurry as I understand that time might be of the essence, so I have more to say about this matter if given an opportunity.

We are organising a local residents group to fight the council zoning, and any development in this area, based on our conversations so far we are going to garner significant support to oppose development in Beechwood and Browns Bay Road. Thanks for considering this case.

p.s. Below is an excerpt from my submission to the REA:

“The picture displays an apartment complex that would be higher than what is physically possible without resource consent and therefore is a misrepresentation to the public. The proposed design shown with large black boxes on top is also highly ugly, unlikely to be the design and seemingly purposeless. It has caused great distress to people in the area due to its significant impact on neighbours and the community at large and could be deemed to be scaremongering. Additionally I understand that the purchaser is still awaiting approval from the OIA.

You can also see when comparing the artist's impression that this building is also going to rid the road of a number of carparks when compared to the current situation – this would also require substantial consents, and I wonder if this is even possible and again is therefore misleading.”

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: 6 December 2019

The following people have been given the following **consent**:

Case	201900225
Consent type	One-off Consent (increased housing and non-residential use) for an overseas investment in sensitive land.
Consent holder/s	Since20181 Development Limited (company number 6963113) (You or the Consent Holder)
Consent	The Consent Holder may acquire the Land subject to the Conditions set out below.
Land	The following residential (but not otherwise sensitive) land: Approximately 0.0759 hectares of freehold land at 20 Browns Bay Road, Rothesay Bay, Auckland, being the land currently contained in record of title NA1925/3.
Relevant business	Property investment and development (including commercial leasing).
Use-by Date	30 November 2020

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 include conditions that we must impose under the Act.

Definitions

Act means Overseas Investment Act 2005

Commercial units means three commercial units in the Development that the Consent Holder will retain and commercially lease to third parties.

Development means the apartment building you will construct on the Land and Neighbouring Land that will contain at least 75 new residential dwellings.

Neighbouring Land means the land owned by the Consent Holder at 18 and 16 Browns Bay Road, Rothesay Bay, Auckland comprised in titles NA322/102 and 7322913 which, together with the Land, will form the Development.

Regulations means Overseas Investment Regulations 2005

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

Details	Required date
Special Condition 1: Increased Housing Outcome	
You must use the Land to increase the number of residential dwellings constructed on the Land and Neighbouring Land by at least 75 residential dwellings. If you do not comply with this Special Condition, Standard Condition 6 will apply and we may require you to dispose of the Land.	At all times
Special Condition 2: Milestones	

You must complete the following milestones with regard to the development of the Land:

Milestone condition	Date for completion
<i>Milestone 1</i> Submission of all required resource consents and building consents for starting the Development	By 31 December 2020
<i>Milestone 2</i> Confirm to us whether the resource consent process requires a limited notification or is subject to a hearing process.	By 31 January 2021
If you do not obtain all relevant resource consents and building consents required to construct the Development, then Standard Condition 6 will apply and we may require you to dispose of the Land.	
<i>Milestone 3</i> Commencement of construction of the Development	Within 12 months from the date resource consent commences
<i>Milestone 4</i> Confirm to us that you are on schedule to meet Milestone 5	By 31 January 2023
<i>Milestone 5</i> Completion of construction of the Development	By 31 December 2025

If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.

Special Condition 3: Non-occupation outcome

None of the following people may occupy the Land for residential purposes:

- (a) You
- (b) Any overseas person with a 25% or more ownership or control interest in any of the people in (a).
- (c) Any overseas person who occupies the Land other than on arm's length terms.¹
- (d) Any overseas person who has a beneficial interest in, or beneficial entitlement to, the relevant interest in the Land.

At all times

¹ 'At arms length terms' has the meaning in clause 17, Part 5, Schedule 2 of the Overseas Act 2005. In summary it means terms, for example under a lease (or other contract), that are on a reasonable commercial basis.

<p>(e) If (a) is a trust, any beneficiary (direct or indirect) who may benefit under the trust at the trustees' discretion.</p> <p>If you do not comply with this Special Condition, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	
<p>Special Condition 4: use the Land for the non-residential purposes</p>	
<p>You must use the Commercial units for non-residential purposes in the ordinary course of business for the relevant business of the Consent Holder.</p> <p>You must not use or hold the Commercial units for any future residential purposes.</p> <p>If you do not comply with this Special Condition, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	<p>At all times</p>
<p>For the avoidance of doubt, you may continue to have tenants occupy the dwelling that is currently located on the Land.</p> <p>Nothing in this condition should be read to conflict with the Consent Holder's requirements under the Residential Tenancies Act 1986.</p>	<p>Until 31 December 2021</p>
<p>Special Condition 5: On sale outcome</p>	
<p>You must dispose of all interests in all the residential dwellings on the Land.</p> <p>If you do not comply with this Special Condition, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	<p>As soon as practicable and no later than 31 December 2026</p>

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
Standard Condition 1: acquire the Land	
<p>You must acquire the Land:</p> <ol style="list-style-type: none"> 1. by the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Land, and 2. using the acquisition, ownership and control structure you described in your application. Note, only you – the named Consent Holder - may acquire the Land, not your subsidiary, trust or other entity. 	As stated in the Consent
Standard Condition 2: tell us when you acquire the Land	
<p>You must tell us in writing when you have acquired the Land. Include details of:</p> <ol style="list-style-type: none"> 1. the date you acquired the Land (Settlement), 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the Land, and 4. copies of any transfer documents and Settlement statements. 	As soon as you can, and no later than two months after Settlement
Standard Condition 3: allow us to inspect the Land	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions. We will give you at least two weeks' written notice if we want to do this. You must then:</p> <ol style="list-style-type: none"> 1. Allow a person we appoint (Inspector) to: <ol style="list-style-type: none"> (a) enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (Inspection), 	At all times

<ul style="list-style-type: none"> (b) remain there as long as is reasonably required to conduct the inspection, (c) gather information, (d) conduct surveys, inquiries, tests and measurements, (e) take photographs and video records, and (f) do all other things reasonably necessary to carry out the Inspection. <p>2. Take all reasonable steps to facilitate an Inspection including:</p> <ul style="list-style-type: none"> (a) directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection, (b) being available, or requiring your employees, agents, tenants or other occupiers to be available, at all reasonable times during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required. <p>During an Inspection:</p> <ul style="list-style-type: none"> (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, (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. 	
Standard Condition 4: remain of good character	
<p>You and the Individuals Who Control You:</p> <ol style="list-style-type: none"> 1. must continue to be of good character, and 2. must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009. <p>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.</p> <p>The Individuals Who Control You are individuals who:</p> <ul style="list-style-type: none"> (a) are members of your governing body, 	<p>At all times</p>

<p>(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</p> <p>(c) are members of the governing body of the people referred to in paragraph (b) above.</p>	
<p>Standard Condition 5: tell us about changes that affect you, the people who control you, or people you control</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"> 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. 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 section 15 or 16 of the Immigration Act 2009 (see Standard Condition 4). 3. You cease to be an overseas person or dispose of all or any part of the Land. 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"> (a) becomes bankrupt or insolvent (b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or (c) becomes subject to any form of external administration. 	<p>Within 20 working days after the change</p>

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.

We may also require you to execute a security deed before you may acquire the Land. The security deed:

1. must be in the form we require,
2. must be executed and delivered to us before you acquire the Land,
3. gives us power to appoint a receiver to dispose of the Land if you do not do that as required by this Standard Condition 6,
4. will provide, among other things, that if we appoint a receiver, the receiver may dispose of the Land, deduct his or her costs from the proceeds of sale, and pay the remainder to you.

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.

Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.

By the last day of every March, June, September and December after our notice or at any other time we require.

<p>Report disposal to us: send us, in writing, evidence:</p> <ul style="list-style-type: none">(a) that you have disposed of the Land,(b) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor),(c) the purchaser is not your associate.	<p>Within one month after the Land has been disposed of.</p>
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Reporting conditions

We may need information from you about how your investment plan is tracking so we can monitor your progress against the Conditions.

In addition to Standard Condition 2, every year, you must lodge an annual report. It must:

1. be sent to **oiomonitoring@linz.govt.nz** by 31 January every year starting 2020 until 2027 or such other date as advised by the Overseas Investment Office in writing.
2. contain information about:
 - (a) your progress in implementing and complying with the special conditions;
 - (b) your progress in obtaining the necessary resource, subdivision and any other consents required to allow the Land to be developed for residential purposes;
 - (c) the Consent Holder's progress starting, carrying out, and completing construction;
 - (d) the Consent Holder's progress with selling the completed residential dwellings, including evidence of the sales.
2. follow the format of the template annual report published on our website.

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 Consent was granted or
- (b) The conditions of this Consent.

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