

Decision required under the Overseas Investment Act 2005: Since20181 Development Limited– Increased Housing Test – 201900473

Date	19 December 2019
Security Level	Commercial: In Confidence
Priority	High
Case Number	201900473
Decision Required By	20 December 2019 (this is the extended 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 are New Zealand permanent resident visa holders. Mr Wu is a Chinese businessman who has been involved in developments in China. 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 these properties into houses for sale.

Increased housing

3. The Applicant has applied for consent under the increased housing pathway to purchase two adjoining properties at 22 and 24 Beechwood Road, Rothesay Bay, Auckland, totalling 0.2024 hectares of freehold land, (**Land**). The Land is residential (but not otherwise sensitive) land under the Overseas Investment Act 2005 (**Act**).
4. The Applicant already owns the three adjacent properties at 16, 18 and 20 Browns Bay Road, Rothesay Bay, Auckland (**Browns Bay Road Properties**). The Overseas Investment Office recently granted consent to the Applicant to purchase 20 Browns Bay Road (201900225).
5. The Applicant plans to develop the Land, together with the Browns Bay Road Properties into approximately 175 to 200 residential units and three commercial units across the five titles. This assessment relates only to the application to build 'Block B' which will sit on the Land (and a small part of the land at 16 Browns Bay Road), consisting of 90 residential apartment dwellings. All three proposed commercial units will be contained in Block A, which will be constructed on the Browns Bay Road Properties. The Applicant was granted consent to acquire the land at 20 Browns Bay Road in December 2019 (201900225).
6. The Applicant anticipates completing construction in December 2025 and selling all the residential apartments in the development by December 2026.
7. 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.

Investor test

8. 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).

9. Open source background searches revealed that the Applicant was involved in five civil litigation cases in China but none had outcomes adverse to the individuals with control of the Applicant. We have reviewed these matters and do not consider that it negatively affects the character of any of the individuals with control.

Conditions

10. We are also satisfied that all the relevant conditions required for the increased housing consent have been imposed pursuant to schedule 2, clause 18 – increased housing outcome, on-sale outcome and non-occupation outcome.

Recommendation

11. We recommend consent is **granted**.

Decision:

12. 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

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

14. 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) is met. In particular, that:

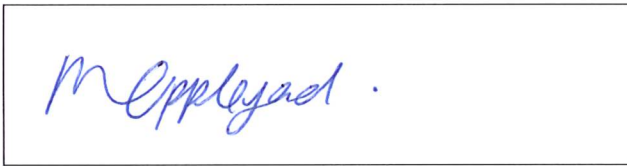
Investor test

- (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.
15. 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.
16. 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 consent by
Since20181 Development Limited
Case: 201900473

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What is the Investment?

Applicant	Since20181 Development Limited The People's Republic of China 100%
Application	Increased Housing Consent
Vendor	Mark Sheridan Spencer, Rebecca Anne Spencer and Fiona Margaret Cottam (as trustee of the Spencer No 1 Family Trust); and Mark Sheridan Spencer, Rebecca Anne Spencer (personally).
Consideration	\$4.2 million
Recommendation	Grant consent

Description of the Investment

1. Since20181 Development Limited (**Applicant**) wishes to acquire a freehold interest in the property located at 22 and 24 Beechwood Road, Rothesay Bay, Auckland, currently comprised in records of title, NA55B/1175 and NA343/210, described respectively as Lot 23 Block XI Deposited Plan 10801 and Lot 22 Block XI Deposited Plan 10801 (**Land / Investment**). The Land is 0.2024 hectares.

Transaction

2. The Applicant is purchasing the Land from a common vendor (described below) through two interdependent sale and purchase agreements, both dated 25 July 2019. Both agreements have almost identical conditions, including being conditional upon consent under the Overseas Investment Act 2005 (**Act**) being granted.
3. For the purpose of this application, the purchase of the Land is treated as one transaction because:
 - (a) it relates to two adjoining properties
 - (b) although there are two agreements for sale and purchase, they are almost identical and are interdependent; and
 - (c) although the registered legal owners are different, there is a common vendor; one property is owned by the two individuals in their personal capacity and the other these same two individuals are beneficiaries of the family trust that holds the property (and are two of the three registered owners). The third individual is an independent trustee of the trust.
4. The total purchase price for the Land is \$4.2 million (Each property is being sold for \$2.1 million).
5. The purchase price (and the construction of the development) is being funded through a combination of funds from the individuals with control of the Applicant (**IWCs**), sale of smaller scale residential developments owned by companies controlled by the IWC and a small amount of bank funding (if required). The sources of funds are outlined in more detail below at paragraphs 67 to 88.

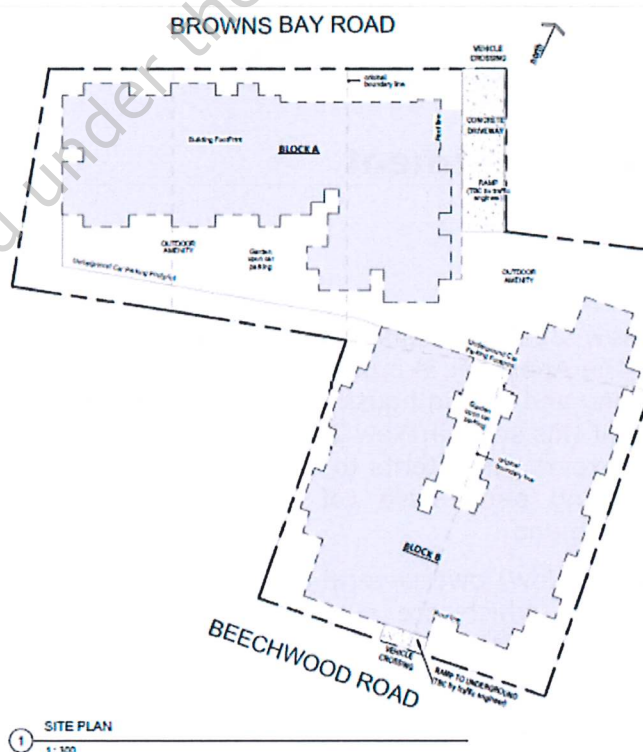
Development plans

6. The Applicant already owns the two neighbouring properties at 16 and 18 Browns Bay Road, Rothesay Bay, Auckland. The Applicant recently was granted consent under the Act to acquire 20 Browns Bay Road (201900225). Together these three Browns Bay Road properties are referred to as the **Browns Bay Road Properties**.
7. The Applicant plans to develop the Land, together with the Browns Bay Road Properties, into approximately 175 to 200 residential apartment dwellings and three commercial units across the five titles (**Development**). The residential dwellings will be a mixture of one and two-bedroom apartments.

8. The Applicant plans to construct the Development as two six level apartment buildings; Block A and Block B. This application relates only to Block B which will be constructed on the Land. Block B will consist of 90 residential apartment units.
9. Block A will consist of approximately 85 residential apartment units and three commercial units. 201900225 is a separate application that relates to the Applicant constructing Block A on the Browns Bay Road Properties.
10. The Applicant anticipates obtaining the required consents by mid-2022 to then immediately begin construction of the Development after, completing the Development in December 2025 and having sold all residential units by December 2026.
11. See the aerial view of the land that will form the Development below showing:
 - (a) the Land (subject to this application) in pink text; and
 - (b) the Browns Bay Road Properties in red and black text.

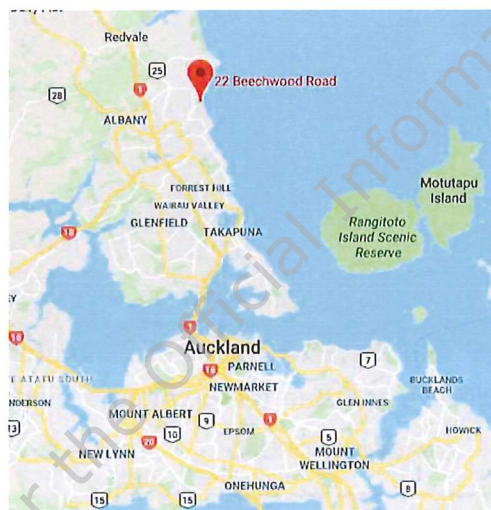


12. See also the layout of Block A and B in the architect's diagram below:



Sensitive assets

13. 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.
14. The Applicant has no existing interest in the Land, but, as explained above, already owns the Browns Bay Road Properties. The Applicant was granted consent to purchase the adjacent property at 20 Browns Bay Road (201900225) in December 2019. The Applicant plans to develop the Browns Bay Road Properties together with the Land, into one development containing two buildings.
15. The Applicant did not require consent to acquire the properties at 16 and 18 Browns Bay Road as the agreements for sale and purchase were entered into prior to the changes to Act relating to residential land came into force.
16. The Land has a property category of “residential” under the Auckland Council’s district valuation role and is therefore residential (but not otherwise sensitive) land under the Overseas Investment Act 2005.
17. 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

18. The 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.
19. The IWCs (as identified below) 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.

20. 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 was the director of a company that undertook the development of a retirement building, and an approximately 50,000 square metre apartment building in China.

Companies controlled by the IWCs undertaking small scale residential developments in New Zealand

21. 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.
22. 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. Four houses constructed at 32 Newhaven Terrace are currently for sale and the Applicant stated that the houses constructed at 8 Pax Avenue are scheduled to start being sold soon.
23. 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 85 to 88.
24. 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?

25. All the shares in the Applicant are held by Baoju Hu, a Chinese citizen, who holds a New Zealand permanent resident visa. Ms Hu is not an ordinary resident in New Zealand, 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.
26. While the Applicant's 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?

27. 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 because he is not ordinarily resident in New Zealand.

28. The Applicant has stated that Mr Wu and Ms Hu make the major decisions in relation to the Investment; including approving funding, acquisition and divestment, and capital and operating expenditure. 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.
29. 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.
30. 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 is the acting project manager and it plans to appoint a project manager by the end of December 2020. It states his role is to assist in the acquisition and management of the investments in the Since Development Group. The Applicant stated that his duties include liaising with council, professionals and solicitors.
31. 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.
32. Xinjian Wu and Baoju Hu approve significant capital and operating expenditure and approved the acquisition of the Investment. Based on the Applicant's submissions, 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

33. 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

34. 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.

35. In this case, the overseas investment can be described as the acquisition of a relatively small residential property, to be developed along with the Browns Bay Road Properties. The properties will be developed into a medium sized apartment block containing largely residential units for sale.
36. 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:
37. Xinjian Wu has:
 - a) completed studies in business administration at Beijing Science Technology and Management College; and
 - b) business experience as he owned furniture manufacturing businesses in China; and
 - c) 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.
38. Ms Hu has no apparent business experience and acumen that is relevant to the Investment.
39. The Applicant plans to supplement their business experience and acumen by using a professional project manager and other professionals. The Applicant stated that Mr Zou is the acting project manager and 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.
40. Only one of the IWCs has demonstrated any significant business experience and acumen relevant to the Investment and this is largely China based. However, we consider 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.

41. The 'financial commitment' criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the investment (intentions are not sufficient).

42. In addition to the preparation costs of this application, the Applicant has purchased the Browns Bay Road Properties to develop, together with the Land, into one apartment development. The Applicant has paid a deposit of \$420,000 for the Investment. The Applicant has also incurred costs and engaged other professionals for the investment to undertake due diligence; and to prepare a pre-design by an architect; and feasibility study by a planner.
43. 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.

44. 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

45. The Applicant revealed five civil lawsuits in China where companies controlled by Mr Wu were involved as defendants.
46. The five civil law suits in China involved Mr Wu's company Beijing Feiyu Commerce and Trade Limited being sued for:
- (a) two separate construction contract disputes. The first lawsuit was withdrawn by the plaintiff and in the second the plaintiff lost the case and the appeal was dismissed.
 - (b) a network infringement dispute. 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.
47. Overall, none of the civil law suits resulted in findings adverse to Mr Wu's companies.

Applicant comment

48. The Applicant does not consider that the civil disputes impact Mr Wu's good character.

View

49. We have considered these incidents and Mr Wu's involvement. These matters, being civil litigation against Mr Wu's companies, are relevant to our assessment of good character but we do not consider they have causal connection with any action or inaction by Mr Wu. Further, we note no claims in any of the five civil lawsuits were substantiated before courts and were resolved without adverse findings against the individual with control's companies. Therefore, we do not consider they affect Mr Wu's fitness to have this investment.
50. Having reviewed these matters, overall, we are **satisfied** that the individuals with control are of good character.

Other matters

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

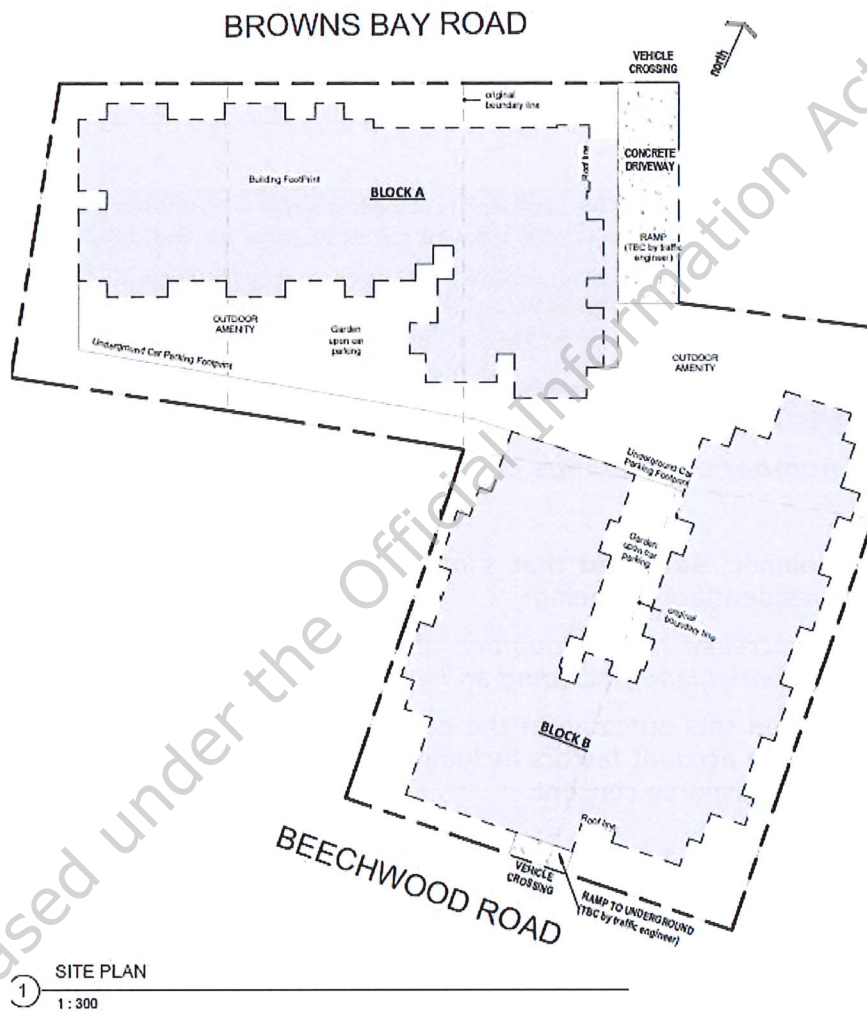
View

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 the context of the development being in its early stages, 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 B on the Land, as part of a wider Development with the Browns Bay Road Properties.
58. As explained above, the Applicant already owns two of the Browns Bay Road Properties (and will shortly acquire the remaining 20 Browns Bay Road property for which it was granted consent (201900225)).
59. The Applicant plans to develop the Land into Block B. This assessment relates solely to Block B, which will comprise approximately 90 new residential apartment units.
60. As there are two existing large detached dwellings currently on the Land, the Applicant anticipates increasing the **net** number of dwellings on the Land by 88 residential dwellings.
61. If the Applicant does not receive consent for Block B, we understand that it plans to adjust its plans and undertake a smaller development and would just proceed with constructing Block A (which is subject to consent 201900225).

62. The Applicant anticipates beginning construction of the development soon after obtaining the required consents by mid-2022, completing construction in December 2025 and having sold all residential units by December 2026.
63. The Applicant plans to develop the Land, together with the Browns Bay Road Properties as one development.
64. The two large detached dwellings on the Land are being tenanted out on a periodic basis. These dwellings will need to be demolished or removed prior to the construction of the Development.
65. The following images show the planned layout of Block A on the Browns Bay Road Properties and Block B on the Land, with some small area of overlap onto the property at 16 Browns Bay Road:



Timeline

66. The Applicant has provided the following timeline for the Development showing the milestone dates for obtaining relevant consents and construction:
 - (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 of all the residential units: by the end of December 2026.

Resource Consent not yet obtained but professionals preliminary reports prepared

- 67. The development is in its early stages and we note that resource consent is not due to be lodged for at least another 12 months and construction is not due to begin for another two years.
- 68. The Applicant has taken preliminary steps such as commissioning a planner; Avant Planning (the **Planner**) and an architect: Urban Design and Forrest Architectural (the **Architect**).
- 69. 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 Browns Bay Properties. The Planner notes the letter does not provide a full assessment of the effects of the development on adjoining residences or the environment.
- 70. 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 will make the decision whether it is a limited notified resource consent 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.
- 71. We consider, based on the third-party submission and enquiry received in relation to the other application (201900225) in opposition of the whole development, it is likely that some local residents will oppose the application for consent, leading to delays in the progress of the Development.
- 72. We therefore recommend some flexibility in the consent conditions to account for delays in the resource consenting process.
- 73. We also recommend making the consent conditional on its receipt of resource consent being obtained but have not specified a period of time due to the uncertainty about when resource consent will commence. If resource consent is not successfully obtained, the Applicant could then be required to dispose of the Land.

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>.

74. The Architect developed pre-design plans outlining the Development, including layout drawings of one to two-bedroom apartments within. See the image below of a pre-design image of Block B:



VIEW OF BLOCK B FROM SOUTH-EAST ALONG BEECHWOOD ROAD

Financial Details

Cost

75. The estimated cost of the whole development is between \$45 and \$50 million. As the final design has not yet been completed a quantity surveyor report has not been undertaken.
76. The Applicant will fund the Development through a combination of shareholder capital and the sale of other small-scale residential developments. The Applicant may use some bank funding, if required.

Funding

77. We are satisfied based on the below analysis that the Applicant is likely to have sufficient funding to achieve the increased housing outcome.
78. The Applicant stated it is funding the development through:
- (a) \$25 million of injected by the IWC;
 - (b) \$500 thousand in bank funding (if required); and
 - (c) \$24.5 million through the sale of other residential developments.
- (total: \$50 million)

Source of funds

79. The Applicant stated that the \$25 million injected from the IWC comes from the sale of Mr Wu's shares in one of his businesses in China (Beijing Feiyu Commerce and Trade Company Limited) and profit from the sale of furniture from Mr Wu's company Jinfei Mahogany Furniture Factory.
80. The Applicant stated that \$11 million of the funds are in bank accounts which the IWC have control over and are loans to companies within the Since group of companies controlled by the IWC. The Applicant stated these companies are required to repay the shareholder (Ms Hu) whenever requested.

81. The other \$14 million belongs to the family trust controlled by the IWCs. The Applicant confirmed that the trustees of the trust (Ms Hu and Bo Shen) are authorised to use the funds toward the Development.

Potential funding

82. The Applicant 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 banks or financial institutions in New Zealand to complete the development.
83. The Applicant stated that the IWCs have contacted a finance company who indicated that it is willing to finance the development, however, no formal evidence was provided.
84. 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

85. 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.
86. 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.
87. 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.
88. Based on the solely Applicant's statements, we consider that the sales of the four properties will contribute around \$24.5 million to the Development.

Condition(s)

89. 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)
90. The Applicant has stated that Block B of the Development, which will be situated on the Land, with a small part encroaching on the 16 Browns Bay Road property, will consist of 90 residential dwellings. We recommend as a condition of consent that the Applicant must increase the number of residential dwellings constructed on the Land and 16 Browns Bay Road property by 80. This number allows some flexibility in the Applicant's design process and to recognise there are two large detached existing dwellings on the Land would mean a net increase of 88 residential dwellings.
91. 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 24 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) dispose of all interests in the Land, as soon as practicable and no later than 31 December 2026.

92. The above construction milestones are consistent with the milestones imposed under consent 201900225.
93. 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.
94. 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.
95. We also recommend imposing a condition of consent that requires the Applicant to appoint a professional project manager with the relevant skills and experience by 31 December 2020. We recommend this condition because the Applicant has represented that it will appoint such a project manager by the end of December 2020 and we believe such a condition goes to ensuring that the increased housing outcome and associated milestone conditions are met.

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

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

Analysis

97. 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.
98. The Applicant provided a sales proposal from a reputable real estate in support of their application.

Condition(s)

99. In this case, under **Part 5 of Schedule 2 (clause 18)**, the decision maker, as a condition of consent, must impose an on-sale outcome (as defined in section 17, above).
100. We recommend the Applicant be given until 31 December 2026 to sell all interests in 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 Land. This time period recognises that there are at least 90 residential units that need to be sold (175 to 200 units in the Development), which may take some time.

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

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

Analysis

102. The Applicant confirmed that none of the persons of the class as described in clause 17 of Schedule 2 of the Act will occupy the residential dwellings.

Conditions

103. A non-occupation outcome condition must be imposed per Schedule 2, clause 19. We recommend this consent use the wording of that outcome (Schedule 2, clause 17).

Third party submissions

104. No third-party submissions were received in relation to this application.

105. We did receive a third-party submission in relation to the application to acquire the Browns Bay Road property, which will form part of the same development. Please refer to the decision in relation to this (201900225).

Consent criteria

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

Recommendation

107. We recommend that consent is granted.

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Appendices

APPENDIX 1 - PROPOSED DECISION	20
APPENDIX 2 - SENSITIVE LAND	21

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Appendix 1 - Proposed Decision

Supplied separately - See Objective file A3884672.

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Appendix 2 - Sensitive Land

22 and 24 Beechwood Road, Rothesay Bay, Auckland

Land Interest	Freehold Interest (each title being approximately 0.1012 hectares - a total of approximately 0.2024 hectares)
Record of Title(/s)	NA55B/1175 and NA343/210
Sensitivity	Residential (but not otherwise sensitive) land

Released under the Official Information Act 1982

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: 19 December 2019

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

Case	201900473
Consent type	One-off Consent (increased housing) 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 a total of 0.2024 hectares of freehold land at 22 and 24 Beechwood Road, Rothesay Bay, Auckland, being the land currently contained in records of title NA55B/1175 and NA343/210.
Relevant business	Property investment and development (including commercial leasing).
Use-by Date	30 December 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.

Development means the apartment building you will construct on the Land and 16 Browns Bay Road that will contain at least 80 new residential dwellings.

Regulations means Overseas Investment Regulations 2005.

16 Browns Bay Road means the land owned by the Consent Holder at 16 Browns Bay Road, Rothesay Bay, Auckland currently comprised in title 574969, described as Lot 2 Deposited Plan 451219. The Consent Holder anticipates that the Development will predominantly be located on the Land with some encroachment onto 16 Browns Bay Road.

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 16 Browns Bay by at least 80 residential dwellings. For clarity, you must increase the number of residential dwellings constructed on each of the records of title that currently comprise the Land. 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
<p><i>Milestone 1</i></p> <p>Submission of all required resource consents and building consents for starting the Development</p>	By 24 December 2020
<p><i>Milestone 2</i></p> <p>Confirm to us whether the resource consent process requires a limited notification or is subject to a hearing process.</p>	By 31 January 2021
<p>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.</p>	
<p><i>Milestone 3</i></p> <p>Commencement of construction of the Development</p>	Within 12 months from the date resource consent commences
<p><i>Milestone 4</i></p> <p>Confirm to us that you are on schedule to meet Milestone 5</p>	By 31 January 2023
<p><i>Milestone 5</i></p> <p>Completion of construction of the Development</p>	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: Appoint a professional project manager</p>	
<p>You must appoint a professional project manager with the relevant skills and experience to manage the Development.</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>By 31 December 2020</p>
<p>Special Condition 5: On sale outcome</p>	
<p>You must dispose of all your interests in 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. 	
<p>Standard Condition 4: remain of good character</p>	
<p>You and the Individuals Who Control You:</p> <ul 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	
<p>Some of the special conditions were key to the decision to give consent. If we consider you have failed to comply with one of those special conditions in a material way we may require you to dispose of the Land. For the avoidance of doubt, if the Land cannot be disposed of without the 16 Browns Bay Road land, then we may require you to dispose of the 16 Browns Bay Road land also.</p> <p>If all or part of this Standard Condition 6 applies to a special condition, we have said so in that condition.</p> <p>We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:</p>	
<p>Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.</p>	<p>Within six weeks of the date of our notice.</p>
<p>Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.</p>	<p>Within six weeks of the date of our notice.</p>
<p>Dispose of the Land: dispose of the Land to a third party who is not your associate.</p>	<p>Within six months of our notice.</p>
<p>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.</p>	<p>Within nine months of our notice.</p>
<p>Report to us about marketing: 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>Report disposal to us: send us, in writing, evidence:</p> <ul style="list-style-type: none"> (d) that you have disposed of the Land, (e) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor), (f) the purchaser is not your associate. 	<p>Within one month after the Land has been disposed of.</p>

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 2021 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; and
 - (d) the Consent Holder's progress with selling the completed residential dwellings, including evidence of the sales.
3. follow the format of the template annual report published on our website.

In addition to your annual reporting obligations outlined above, you must notify us in writing (with supporting evidence) within 20 working days of the date on which:

- (a) you appoint a professional project manager as required by Special Condition 4 (including a curriculum vitae outlining their relevant professional experience);
- (b) you submit your final application for resource or building consent to the relevant authority (whichever is later); and
- (c) your resource consent commences.

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.

