

To: Emma Kelly, Principal Advisor

ASSESSMENT REPORT: Holcim (New Zealand) Limited

Date	27 September 2023	Classification	IN CONFIDENCE: Commercially sensitive
LINZ reference	202300395	Deadline	4 October 2023

Purpose

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

Action sought

1. Review this report.
2. Determine whether to grant consent and, if so, on what conditions.
3. Indicate your decision from page 3.

Assessment timeframe requirements

4. A decision is required by 4 October 2023 to enable the decision to be communicated to the applicant in compliance with the prescribed statutory assessment timeframe.

Key information

Applicant	Holcim (New Zealand) Limited Switzerland (34%); North America (24%); UK and Ireland (9%); Continental Europe (9%); Various (24%).
Vendors	Mercer Sand Limited New Zealand (100%)
Land	A leasehold interest in approximately 53.3312 hectares of Land located at 67A Mercer Road, Pukekawa.
Consideration	\$3,500,000
Sensitivity	Is more than 5 hectares of non-urban land
Relevant tests	Investor test: s18A Benefit to NZ test – s16(1)(a), s16(1)(c) and s16A(1)(a)-(b). National interest test: s16(1)(g)

Timing

5. The Overseas Investment Regulations 2005 specify the total assessment timeframe for this application is 70 working days. This application is currently on day 65 therefore a decision is due to the applicant by 4 October 2023.

A. Decision

Core tests

6. I determine that:

6.1. The 'relevant overseas person' (ROP) is:

Relevant overseas person	Role
Holcim (New Zealand) Limited	Applicant

1.1 The 'individuals with control of the relevant overseas person' (IWC) are:

Individuals with control	Role
George Agriogiannis	Directors of Holcim (New Zealand) Limited
Gregory Robert Manson	
Kevin Larcombe	

6.2. None of the relevant overseas persons and individuals with control of the relevant overseas person have established any of the factors contained in section 18A(4) of the Act.

7. I am satisfied that the investor test in section 18A, as outlined in paragraphs 31-34 below, has been met.

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

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

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

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

National interest assessment

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

10. My ultimate decision is to grant consent subject to the conditions in the Proposed Decision in **Attachment 1**.

s.9(2)(a)

Emma Kelly

Principal Advisor (Overseas Investment - LINZ)

Date: 27 September 2023

B. Background and proposed transaction

11. Holcim (New Zealand) Limited (**Applicant**) seeks consent under the Act to acquire 100% of the business assets currently held by Mercer Sand Limited (**Vendor**)¹ to carry out its sand quarrying business at 67A Mercer Ferry Road, Pukekawa (**Quarry**).
12. As part of this transaction, the Applicant will acquire the equivalent of a leasehold interest in approximately 53.3312 hectares of land located at 67A Mercer Road, Pukekawa (**Land**) where the Quarry business is conducted.

Land

13. The Quarry occupies approximately 25.7 hectares of the Land. The remaining 27.6 hectares is made up of farm residences, land for crops and grazing, and native bush.
14. The Vendor operates the Quarry under a licence agreement² with the land owners, [REDACTED] s.9(2)(a) [REDACTED] (Licence Agreement).
15. The Quarry has an expected life of [REDACTED] s.9(2)(b)(ii) [REDACTED] based on the current estimated reserves of [REDACTED].
16. The Land is zoned rural under the Waikato District Operative Plan and is located approximately 50km south of Auckland and 50km north of Hamilton. The Land is non-urban land greater than 5 hectares, there are no fresh or seawater areas and it is part of the Waikato River flood plan.
17. An aerial photo showing the Land is below.

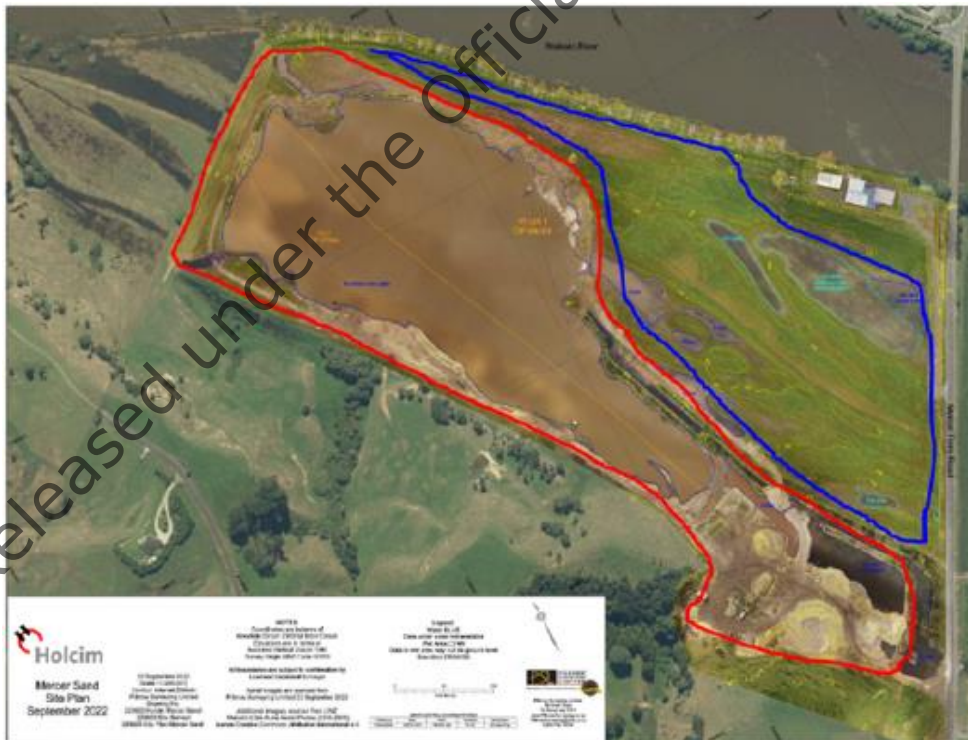


Figure 1. Aerial photo of the Land. The area outlined in red is the Quarry and the area outlined in blue is the cropping and/or grazing area prior to dredging operations advancing into this area.

¹ Trading as Mercer Sand Quarry.

² Dated 22 March 2004 and varied by deed of assignment of licence dated 24 February 2016.

C. Application of the Act

18. The Land is sensitive because it is non-urban land over 5 hectares in size³ so consent is required.⁴ The following criteria for an investment in sensitive land apply to this application:⁵
- The investor test must be met.⁶
 - The benefit to New Zealand test must be met.⁷
 - You must also note whether the investment is a transaction of national interest and, if so, whether the Minister of Finance has decided that the investment is contrary to New Zealand's national interest.⁸
19. In order to satisfy the benefit to New Zealand test, the decision-maker must:
- determine that the overseas investment will, or is likely to, benefit New Zealand;⁹ and
20. We assess the investor test in **Part D**, the benefit to New Zealand test in **Part E**, and discuss national interest matters in **Part F**.

D. Applicant and investor test

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

Business Activities

22. The Applicant has operated in New Zealand since 1888. Its current product offerings include cement, aggregates, technical and testing services along with non-controlling interest in, ready-mix concrete through AML Concrete and Atlas Resources.
23. The Applicant owns and leases land within New Zealand. It currently has one quarry in Hawkes Bay, cement depots in Dunedin, Lyttelton, Nelson, Wellington, New Plymouth, and import terminals in Timaru and Auckland. Its head office is located in Christchurch.

Ownership

24. The Applicant's sole shareholder is Fernhoff Limited, a wholly owned subsidiary of publicly listed Swiss company Holcim Limited.¹⁰
25. As a result of being publicly listed, Holcim Limited has a diverse and everchanging shareholding. Thomas Schmidheiny, the former chairman of Holcim Limited, holds 8.14% of shares in Holcim Limited. The remaining 91.86% of shares are held by various shareholders with less than 5% each, including 34% held by Swiss investors and 24% held by North American investors.
26. A diagram of the intended ownership structure is in **Attachment 2**.

³ Table 1, Part 1, Schedule 1 of the Act.

⁴ Under sections 10(1)(a) and 12(a)(i) of the Act.

⁵ Set out in section 16(1) of the Act.

⁶ Section 18A / 16(1)(a) of the Act.

⁷ Section 16(1)(c)(ii).

⁸ Section 16(1)(g) of the Act.

⁹ Section 16A(1)(a) of the Act.

¹⁰ Incorporated in Switzerland on 4 August 1930.

Control

27. The Applicant's directors instruct the management team and are responsible for making decisions for the investment. The directors of the Applicant are Kevin Larcombe, Gregory Manson, and George Agriogiannis. The management team consists of two of the directors, Kevin Larcombe and Gregory Manson.

28.

29.

s.9(2)(ba)(i)

Relevant overseas person and individuals with control

30. We recommend that the 'relevant overseas person' is solely the Applicant, Holcim (New Zealand) Limited.

31. We recommend that the 'individuals with control of the relevant overseas person' (IWC)¹¹ are:

Individuals with control	Role
George Agriogiannis	Directors of Holcim (New Zealand) Limited
Gregory Robert Manson*	
Kevin Larcombe*	

* These individuals are either New Zealand Citizens or ordinarily resident in New Zealand and therefore were not required under the Act to meet the investor test.

Summary of investor test

32. The relevant overseas persons and individuals with control established none of the factors contained in section 18A(4) of the Act, therefore our conclusion is that **the investor test has been met.**

E. Investment plan and benefit to NZ test

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

Current state (counterfactual)

34. The Land is subject to a Licence Agreement and various resource consents which have allowed the Vendor to operate the Quarry for the last six years. The Quarry currently produces [REDACTED] s.9(2)(b)(ii) per annum and is sold into the Auckland and Waikato market for [REDACTED]

35. There are [REDACTED] FTEs in addition to the [REDACTED] s.9(2)(b)(ii) who manages the Quarry. As the [REDACTED]

¹¹ Section 15.

36.

s.9(2)(b)(ii)

Investment plan

37. The Applicant will continue to use the Land to operate the Quarry and will upgrade the Quarry's plant and equipment to increase its efficiency and annual output.

38. The Quarry currently produces

s.9(2)(b)(ii)

The Applicant submits that this investment will result in an increased supply of natural sand

s.9(2)(b)(ii)

39. The Applicant intends to

s.9(2)(b)(ii)

that will

The Applicant submits that the

40. The Applicant claims the investment will increase jobs by

however,

will likely

s.9(2)(b)(ii)

suggests the Applicant's

LINZ consider that the investment will likely only bring nominal benefit

through

41.

s.9(2)(b)(ii)

42. The Applicant will acquire the Quarry

s.9(2)(b)(ii)

Summary of benefits

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

44. Factors that we considered were either not relevant to the investment, or the benefit to New Zealand was not sufficient to be relied on, are noted in **Attachment 4**.

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

¹² Based on the limited information the Vendor has provided.

Summary assessment: benefit to NZ test

46. This table assesses the benefits to NZ likely to result from the investment and the relative weight to be given to each.

Relevant benefit factors		Applicant's claims: what they intend to do	Current state counterfactual	LINZ analysis: strength/weakness		Proposed special conditions and reporting requirements
				Indicative strength	Summary	
Economic benefits s17(1)(a)	Increase in productivity or export receipts	Increase natural sand output to approximately s.9(2)(b)(ii) when all upgrades are completed.	The Quarry currently produces s.9(2)(b)(ii) per annum.	Moderate	The Quarry has an expected life of s.9(2)(b)(ii) based on the current estimated reserves, of s.9(2)(b)(ii)	Impose land use condition.
	Capital expenditure	Invest s.9(2)(b)(ii) in plant and equipment upgrades.	s.9(2)(b)(ii)		The investment will bring benefit through increased capital expenditure	Impose date to complete expenditure.
	Introduction of technology	Installation of s.9(2)(b)(ii) This will s.9(2)(b)(ii)	s.9(2)(b)(ii)		This method will save up to s.9(2)(b)(ii) which will help maintain and secure the supply of materials. However, the s.9(2)(b)(ii)	Impose date to complete upgrades.

Relevant benefit factors		Applicant's claims: what they intend to do	Current state counterfactual	LINZ analysis: strength/weakness		Proposed special conditions and reporting requirements
				Indicative strength	Summary	
Advance of a significant government policy s17(1)(e)		Maximising the Quarry's output will give effect to or advance the Government Statement Policy on Housing and Urban Development. ¹³	The Quarry currently supplies the construction industry in the Auckland and Waikato regions s.9(2)(b)(ii)	Weak	New Zealand's construction industry has a limited supply of construction materials, and the Quarry is s.9(2)(b)(ii) which in turn is likely to increase the performance of the construction industry and increase the supply of houses.	No conditions recommend.
Environmental Benefits s17(1)(b)	Protection of indigenous flora (vegetation)	Deliver an ecological protections program s.9(2)(b)(ii) Including: <ul style="list-style-type: none"> • convert part of the property into a community lake • plant indigenous vegetation along the shore of the lake • create habitats suitable for indigenous fauna • plant 75,000 trees 	s.9(2)(b)(ii)	Weak	The investment will bring some environmental benefit through s.9(2)(b)(ii)	No conditions recommended.

¹³ <https://www.hud.govt.nz/our-work/government-policy-statement-on-housing-and-urban-development/>

Consultation and submissions about the investment

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

Conclusion – benefit to NZ test

Key benefits

48. After considering the application, we are satisfied that the investment is likely to result in the benefits considered above. In particular, the upgrades to the Quarry's plant and equipment will benefit the construction industry as it will increase the supply of natural sand by approximately [REDACTED] s.9(2)(b)(ii) [REDACTED] the investment will also advance significant government policy by supplying key materials to the residential construction industry.
49. As discussed in Part E, LINZ consider that the benefits claimed in relation to jobs and environmental benefits are limited.

Proportionality

50. We have undertaken our assessment having regard to the sensitivity of the Land and the nature of the overseas investment transaction, reflecting the proportional nature of the benefit to New Zealand test. In this application, [REDACTED] s.9(2)(b)(ii) [REDACTED]
51. The Land is 53.3312 hectares which includes the Quarry area of approximately 25.7 hectares. The Land is non-urban land and is currently operated as a Quarry. The land is not sensitive for any other reason.
52. Taking into account the limited interest being acquired, the size of the Land, its sensitivity, and current use, we consider the overseas investment is likely to benefit New Zealand. The overall level of benefit is moderate on a proportionate basis.

F. Not a transaction of national interest

53. The investment does not involve a transaction of national interest under the mandatory criteria of the Act.¹⁴ This is because the investment does not involve a non-NZ government investor, or an investment in a strategically important business (as defined in the Act).
54. We have not referred this transaction to the Minister of Finance for him to call it in for a national interest assessment on a discretionary basis.¹⁵ He has therefore not declined consent to the transaction.
55. We are directed¹⁶ that the starting point is the assumption that overseas investment is in New Zealand's national interest and that we should only seek the Minister of Finance to exercise his discretion for a national interest assessment if the proposed investment:
- could pose risks to New Zealand's national security or public order
 - would grant an investor significant market power within an industry or result in vertical integration of a supply chain
 - has foreign government or associated involvement that was below the 10 per cent threshold for automatic application of the national interest test, but granted that

¹⁴ Under s 20A of the Act.

¹⁵ Section 20B of the Act.

¹⁶ Ministerial Directive Letter (24 November 2021).

government (and/or its associates) disproportionate levels of access to or control of sensitive New Zealand assets

- would have outcomes that were significantly inconsistent with or would hinder the delivery of other Government objectives
- raises significant Treaty of Waitangi issues, or
- relates to a site of national significance (e.g. significant historic heritage).

56. We do not consider that this investment engages any of these risk factors.

G. Conclusion

57. After considering the application, our view is that:

- the investor test has been met; and
- the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
- the benefit is proportionate to the sensitivity of the land and the nature of the transaction; and
- the transaction is not considered to be a transaction of national interest.

58. Therefore, we consider that the criteria for consent in section 16 have been met and our recommendation is to **grant consent**.

s.9(2)(a)

Eva Hansen

Advisor Applications
Overseas Investment - LINZ

Date: 15 / 09 / 2023

H. List of Attachments

1. Proposed Decision
2. Intended ownership structure
3. Other benefit factors

ATTACHMENT 1 PROPOSED DECISION

Consent for Overseas Person to Acquire Sensitive New Zealand Land

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

Consent

Decision date: 27 September 2023

The following people have been given the following consent:

Case	202300395
Consent	The Consent Holder may acquire the leasehold interest in the Land subject to the Conditions set out below.
Consent Holder/s	Holcim (New Zealand) Limited (Company Number 142904) We will also refer to each Consent Holder as you .
Land	<ol style="list-style-type: none">approximately 20.3771 hectares of land located at Part Lot 1 DP 84084, contained in Record of Title NA40B/858 (Part Cancelled) (North Auckland).approximately 32.9541 hectares of land located at Lot 2 DP 377644, contained in Record of Title 311680 (North Auckland).
Timeframe	You have until 30 September 2024 to acquire the leasehold interest Land.

Conditions

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

In the Consent and the Conditions, we refer to Toitū Te Whenua Land Information New Zealand as **LINZ, us or we**.

Definitions

Act means the Overseas Investment Act 2005.

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.

Mercer Quarry means the quarry located at 67A Mercer Road, Pukekawa.

Quarry Operations means operations undertaken in association with the Mercer Quarry and includes extraction, processing and restoration.

Special Conditions

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

Details	Required date
Special condition 1: Complete upgrades	
You must install on the Land s.9(2)(b)(ii)	By s.9(2)(b)(ii)
If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of your interest in the Land.	
Special condition 2: Introduce capital expenditure into New Zealand	
You must spend at least s.9(2)(b)(ii) on upgrades referred to in Special condition 1 and on any additional upgrades to the plant and equipment to increase the output and efficiency of the Quarry Operations.	By s.9(2)(b)(ii)
Special condition 3: Land use	
You must operate the Land as a quarry.	At all times.
If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of your interest in the Land.	

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 interest in the land	
<p>You must acquire the interest in 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 interest in 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 interest in the Land, not your subsidiary, trust, or other entity. 	As stated in the Consent
Standard condition 2: Tell us when you acquire interest in the Land	
<p>You must tell us in writing when you have acquired the interest in the Land. Include details of:</p> <ol style="list-style-type: none"> 1. the date you acquired the interest in the Land (Settlement), 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the interest in 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.</p> <p>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), (b) remain there as long as is reasonably required to conduct the inspection, (c) gather information, 	At all times

Details	Required date
<p>(d) conduct surveys, inquiries, tests, and measurements,</p> <p>(e) take photographs and video records, and</p> <p>(f) do all other things reasonably necessary to carry out the Inspection.</p> <p>2. Take all reasonable steps to facilitate an Inspection including:</p> <p>(a) directing your employees, agents, tenants, or other occupiers to permit an Inspector to conduct an Inspection,</p> <p>(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> <p>3. During an Inspection:</p> <p>(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,</p> <p>(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 not unsuitable to Invest in New Zealand	
<p>You, and to the extent that you are not an individual, the Individuals Who Control You must remain not unsuitable to own or control the Assets in accordance with section 18A(1) of the Act.</p> <p>The Individuals Who Control You are individuals who:</p> <p>(a) are members of your governing body</p> <p>(b) directly or indirectly, own or control more than 25% of you or of a person who itself owns or controls more than 25% of you, and</p> <p>(c) are members of the governing body of the people referred to in paragraph (b) above.</p>	<p>At all times</p>

Details	Required date
Standard condition 5: Tell us about changes that affect you, the people who control you, or people you control	
<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 become aware that you and/or any Individual Who Controls you establishes any of the investor test factors listed in section 18A(4) of the Act. 2. You cease to be an overseas person or dispose of all or any part of the Asset. 3. Your New Zealand Service Address changes. This is the address you provided us in your application as the address which we will send any legal document we need to serve on you. 	<p>Within 20 working days after the change</p>
Standard condition 6: Dispose of your leasehold interest in the Land if you do not comply with key special conditions	
<p>If all or part of this Standard Condition 6 applies to a special condition, we have said so in that special condition.</p> <p>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 your leasehold interest in the Land.</p> <p>We will give you written notice if we require you to dispose of your leasehold interest in the Land. After we have given you notice, you must:</p>	
Dispose of the interest in Land: dispose of your leasehold interest in the Land to a third party who is not your associate.	<p>Within six months of our notice</p>
<p>Report disposal to us: send us, in writing, evidence of the following:</p> <ol style="list-style-type: none"> (a) that you have disposed of your leasehold interest in the Land, and (b) that the purchaser is not your associate. 	<p>Within one month after your leasehold interest in the Land has been disposed of</p>

Reporting conditions

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

In addition to Settlement reporting (as set out in Standard Condition 2), you must provide LINZ with reports detailing the progress of the investment. The reports must:

1. be submitted via our [Webform](#) by these dates:
 - a. 30 November 2026
 - b. 30 November 2028
2. contain information about:
 - a. your progress in implementing the special conditions (which can include photographs, maps or aerial imagery as evidence of compliance with relevant conditions).
3. follow the format of the template annual report published on our website.

If requested in writing by LINZ, the Consent Holder(s) must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:

- a. the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the Consent was granted, or
- b. the conditions of this Consent.

Power to vary reporting date

The dates on which reports are due to be provided may be changed by agreement between LINZ and the Consent Holder, provided that this power may not be used to give a time extension for an individual report.

Power to narrow scope of reports

LINZ may temporarily or permanently waive the requirement to report on a particular matter.

Power not to require further reporting

LINZ may waive the requirement to submit a report and may waive the requirement for future reporting.

ATTACHMENT 2 – INTENDED OWNERSHIP STRUCTURE



Released under the Official Information Act 1982

ATTACHMENT 3 – OTHER BENEFIT FACTORS

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

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

Factor	Reason not relevant or insufficient
Public access	Not relevant Under the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016, public access during quarry activities would not be appropriate given the business activities that will be conducted on the Land.
Historic heritage	Not relevant No historic heritage has been identified.
Oversight or participation by New Zealanders	Not relevant The Land is 100% New Zealand owned and the Vendor is 100% New Zealand owned. Giving the Applicant a leasehold interest in the Land will reduce the oversight and participation by New Zealanders in comparison to the counterfactual.
Consequential benefits	Not relevant No consequential benefits have been identified. We note they have reclaimed economic benefits in this section of the investment plan.

Released under the Official Information Act 1982