



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

ASSESSMENT REPORT: The a2 Milk Company Limited

Date	27 May 2021	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference (Report reference)	202000875 (BRF 21-496)	Suggested deadline	18 June 2021 Requested deadline. 24 Sept 2021 Commercial deadline.

Purpose

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

Action sought

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

Commercial deadline

The Applicant advises that the sale and purchase agreement requires consent to be obtained by the 20th of any given month in order for completion of the transaction to occur at the end of that month.

OIO Contacts

Name	Position	Contact	First contact
Michael Appleyard	Manager, OIO	+64 4 830 3880	<input checked="" type="checkbox"/>
Craig Mundy-Smith	Senior Solicitor	+64 4 462 4467	<input type="checkbox"/>

A. Summary

1. The a2 Milk Company Limited¹ (the **Applicant**) is a dairy company which sells the 'a2 Milk' brand of products, made with milk from cows that produce milk naturally containing only the A2 beta casein protein type.²
2. The Applicant is a widely held company, founded in New Zealand and listed on the ASX and NZX. Approximately 71.94% of the Applicant's shares are owned by overseas persons.
3. The Applicant intends to acquire 75% of the ordinary shares in Matura Valley Milk Limited³ (**MVM**). MVM owns a milk processing plant (the **Factory**) and 30.5186 hectares of land located in Southland (the **Land**). The Land is sensitive because it is non-urban and exceeds 5 hectares, and almost two thirds of the Land is classed as residential (lifestyle).⁴
4. MVM is over 80% owned by a Chinese state-owned entity, the China Animal Husbandry Group (**CAHG**). [s 9(2)(b)(ii)]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
5. [Redacted]
[Redacted]
[Redacted]
[Redacted]
6. On 1 January 2018, the Infant and Toddler Milk Formula Registration Regulation took effect in China, forcing manufacturers and brands that could not meet the registration requirements out of the in-country sales market. The Regulation specifies that all infant formula products to be sold in China, whether domestically manufactured or imported, must obtain formula registration under China's SAMR Regs.
7. [s 9(2)(b)(ii)]
[Redacted]
[Redacted]
8. For the reasons set out in this report, our recommendation is to **grant consent**.

¹NZ company number 1014105.

²Some consumers find milk containing only the A2 beta casein protein type easier to digest. A1 and A2 beta-casein are genetic variants of the beta-casein milk protein that differ by one amino acid. The A1 beta-casein type is the most common type found in cow's milk in Europe (excluding France), the US, Australia and New Zealand. A genetic test, developed by the a2 Milk Company, determines whether a cow produces the A2 or A1 type protein in its milk. The test allows the a2 Milk Company to license milk producers once proven their cows produce only A2 beta-casein protein in their milk.

³NZ company number 2094638.

⁴ Full details of the Land and its sensitivities are set out in **Attachment 2**.

⁵ [s 9(2)(b)(ii)]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

⁶ The Factory produced [s 9(2)(b)(ii)] of nutritional powder (out of a potential production capacity of [s 9(2)(b)(ii)] of nutritional powder) and [s 9(2)(b)(ii)] of lower value commodity powders for the season ending in May 2020.

Key information

Applicant	The a2 Milk Company Limited (Australia (60.12%); New Zealand (28.06%); Hong Kong (SAR) (8.96%); Singapore (1.75%); Philippines (0.42%); United States of America (0.24%); Thailand (0.24%); Portugal (0.10%); United Kingdom (0.09%); Various (0.01%); Czech Republic (0.01%))
Vendor	Mataura Valley Milk Limited (People's Republic of China (82.62%); New Zealand (16.09%); Denmark (0.82%); Hong Kong (SAR) (0.47%))
Land	Approximately 30.5186 hectares of freehold land located at Ballast Road, Pease Street, and Waipahu Highway, Gore.
Consideration	\$268,505,625
Sensitivity	Is more than 5 hectares of non-urban land Includes residential land
Relevant tests	Investor test: s16(1)(a) & (2) ⁷ Benefit to NZ test – substantial and identifiable benefit; residential land outcome s16(1)(b) & (c), 16A(1)(b) & (c) National interest test: s16(1)(g)

Timing

9. Processing days for the application are set out in the table below. The applicant requested a decision by the start of the milking season on 1 June 2021, but was advised that this was not feasible due to the complexity of the application. As noted above, the commercial deadline is 24 September 2021. The OIO's processing time fell comfortably within our key performance indicators.

Quality Assurance	OIO Processing	Waiting for Applicant / Vendor	Third party consultation
6	29	14	41

B. Decision

Core tests

10. I determine that:

- 10.1 The 'relevant overseas person' is:

Relevant overseas person	Role
The a2 Milk Company Limited	Applicant

⁷ The application was received before 22 March 2021 when the new Investor Test set out in section 18A of the Act came into force. The Investor Test that must be applied to this application is, therefore, the test set out in section 19 of the Act (since repealed). The elements of that test are set out in the Table at paragraph 36 of this report.

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

Individuals with control	Role
Warwick Lynton Every-Burns	Board member of Applicant
Philippa Mary Greenwood	Board member of Applicant
David Lovat Gordon Hearn	Board member of Applicant
Julia Cecile Hoare	Board Member of Applicant
Chienling (Bessie) Lee	Board Member of Applicant
Race Strauss	Member of executive committee with responsibility for MVM
Shareef Yaseen Khan	Member of executive committee with responsibility for MVM
David Landi Bortolussi	Member of executive committee with responsibility for MVM

10.3 The individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment.

10.4 The relevant overseas person has demonstrated financial commitment to the overseas investment.

10.5 All the individuals with control of the relevant overseas person are of good character.

10.6 Each individual with control of the relevant overseas person is not an individual of the kind referred to in sections 15 or 16 of the Immigration Act 2009 (which list certain persons not eligible for visas or entry permission under that Act).

11. I am satisfied that the investor test in section 16(2)(a)-(d), as outlined in paragraphs 10.3 to 10.6 above, has been met.

Hon Dr Megan Woods

Hon Damien O'Connor

Agree

Agree

Disagree

Disagree

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

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

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

12.3 the benefit will be, or is likely to be, substantial and identifiable; and

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

Hon Dr Megan Woods

Hon Damien O'Connor

Agree

Agree

Disagree

Disagree

National interest assessment

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

Hon Dr Megan Woods

Hon Damien O'Connor

Noted

Noted

Decision about whether to grant or decline consent

14. My ultimate decision is to:

Hon Dr Megan Woods

Hon Damien O'Connor

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

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

Grant consent with amended conditions provided on:

Grant consent with amended conditions provided on:

Decline consent

Decline consent

Hon Dr Megan Woods

Hon Damien O'Connor

Date: / /

Date: / /

Released under the Official Information Act 1982

C. Background and proposed transaction

Background to the Transaction

15. The principal asset of MVM is its milk processing factory, which is located off Waipahi Highway near Gore, Southland. The Factory was opened in November 2018 and incorporates a number of modern design features.



Figure 1 - The Factory

16. Prior to construction of the Factory, MVM anticipated a significant portion of sales of its nutritional powder products being made direct into China, via online and offline direct in-country sales to Chinese consumers.

17. The Factory was not designed to have on-site blending and canning facilities. [s 9(2)(b)(i)]

[REDACTED]

18. MVM has incurred substantial losses since production began. [s 9(2)(b)(ii)]

[REDACTED]

[REDACTED]. MVM recorded an EBIT loss of close to \$30 million in each of the 2018/19 and 2019/20 seasons [s 9(2)(b)(ii)]

The Transaction

19. The Applicant is a dairy company which markets and distributes 'a2 Milk' branded products. The Applicant seeks consent to acquire up to 100% of the shareholding of MVM⁸, which will bring with it, control over the assets of MVM, including the Land and the Factory. The acquisition of the Factory will allow the Applicant to increase its manufacturing capacity of infant nutritional products.⁹

⁸ As explained at paragraphs 3 and 4 above, the Applicant seeks to acquire 75% of the shares initially and may seek to acquire up to 100% [s 9(2)(b)(ii)]

⁹ [s 9(2)(b)(ii)]

20. The Applicant proposes to acquire 75% of the shareholding of MVM for approximately \$268.5 million through:

- The transfer of ordinary shares from minor shareholders¹⁰ and CAHG;
- The issue of shares in MVM.¹¹

collectively, (“the **Transaction**”).

21. At the conclusion of the Transaction the shareholding in MVM will be split 75:25 between the Applicant and CAHG. [s 9(2)(b)(ii)]

D. Application of the Act

22. The Land is sensitive because it is non-urban land over 5 ha in size and contains residential land,¹³ so consent is required.¹⁴ The following criteria for an investment in sensitive land apply to this application:¹⁵

- The investor test must be met.¹⁶
- The benefit to New Zealand test must be met.¹⁷
- 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.¹⁸

23. 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 NZ;¹⁹ and
- determine that benefit will be, or is likely to be, substantial and identifiable;²⁰ and
- because the Land is residential:
 - determine a residential land outcome;²¹
 - apply conditions of consent for the residential land outcome;²² and
 - be satisfied that those conditions are likely to be met.²³

24. We assess the investor test in Part E, the benefit to New Zealand test in Part F, the farm land offer test in Part G, and discuss national interest matters in Part H.

¹⁰ Including the farmers supplying milk for processing, and various ‘investor’ shareholders.

¹¹ [s 9(2)(b)(ii)]

¹² See paragraph 4 and footnote 5 above.

¹³ Table 1, Part 1, Schedule 1 of the Act.

¹⁴ Under sections 10(1)(a) and 12(a)(i) of the Act.

¹⁵ Set out in section 16(1) of the Act.

¹⁶ Section 16(1)(a) of the Act. The application was received before 22 March 2021 when the new Investor Test set out in section 18A of the Act came into force. The Investor Test that must be applied to this application is, therefore, the test set out in section 19 of the Act (since repealed). The elements of that test are set out in the Table at paragraph 36 of this report.

¹⁷ Section 16(1)(e) of the Act.

¹⁸ Section 16(1)(g) of the Act.

¹⁹ Section 16A(1)(a) of the Act.

²⁰ Section 16A(1)(b) of the Act. This criterion applies because the Land is non-urban land over 5 ha in size.

²¹ Section 16B(3)(a). The Act specifies a range of outcomes to choose from in clause 19, Schedule 2 of the Act.

²² Section 16B(3)(a): The Act specifies a range of conditions that must be imposed depending the chosen residential outcomes in clause 19, Schedule 2 of the Act.

²³ Section 16A(1)(c) of the Act.

E. Applicant and investor test

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

Relevant overseas person

26. The Applicant is a widely held company, founded and tax resident in New Zealand. It is listed on the ASX and NZX. The Applicant sells dairy products under the a2 Milk brand domestically and for export. Because more than 25% of its shares are owned by overseas persons, it is an overseas person under section 7(2)(c) of the Act.
27. The Applicant is purchasing the shares in MVM directly, rather than through a subsidiary.
28. For these reasons, we recommend that the 'relevant overseas person' (**ROP**) is solely the Applicant, the a2 Milk Company Limited.

ROP	Role
The a2 Milk Company Limited	Applicant

Control and experience

29. The Applicant's entry into the Transaction only required formal approval from its Board.²⁴ The Board is responsible for the overall governance and operations of the Applicant, guiding the Applicant's strategic direction, monitoring risk, and overseeing the activities of management.
30. The Board has delegated authority to bind the Applicant and take general responsibility for the day-to-day management and leadership of the Applicant to the Chief Executive Officer.
31. The Board delegates certain functions to committees. The committees make recommendations to the Board and have no decision-making power, except where expressly authorised by the Board.
32. The executive committee comprises the senior management of the Applicant. Only certain members of the executive committee will be responsible for MVM. While the executive committee will be involved in the management of MVM, their level of autonomy is still limited with significant, strategic, and key governance decisions requiring the approval of the CEO and the Board.

²⁴ There is no requirement for shareholder approval of the Transaction, as the Transaction does not constitute a "major transaction" (as that term is defined in the Companies Act 1993) or meet the required thresholds under the relevant NZX or ASX listing rules.

33. Thus, we recommend that the ‘individuals with control of the relevant overseas person’ (IWC)²⁵ are:

IWC	Role
Warwick Lynton Every-Burns	Board member of Applicant
Philippa Mary Greenwood	Board member of Applicant
David Lovat Gordon Hearn	Board member of Applicant
Julia Cecile Hoare	Board Member of Applicant
Chienling (Bessie) Lee	Board Member of Applicant
Race Strauss	Chief Financial Officer of Applicant, Member of executive committee with responsibility for MVM
Shareef Yaseen Khan	Chief Operations Officer of Applicant, Member of executive committee with responsibility for MVM
David Landi Bortolussi	Chief Executive Officer of Applicant, Member of executive committee with responsibility for MVM

34. The IWC have held senior executive roles and have experience and skills including: executive management, accountancy, corporate law, finance, sales and marketing, and strategy development in consumer goods in international markets. [s 9(2)(b)(ii)]

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

Good character

35. The OIO undertook an open-source search of the relevant overseas persons and individuals with control. We are satisfied that the relevant overseas person is / individuals with control are of good character; and that the statutory declaration as to good character can be relied on.
36. The matters we have identified and considered are detailed in **Attachment 3**.

Summary of investor test

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

Investor test criteria ²⁶	OIO assessment	
	Risk	Summary
IWC collectively have business experience and acumen relevant to the investment. Section 16(2)(a)	Test met	Very experienced directors with relevant experience. Existing MVM management team being retained

²⁵ Section 15.

²⁶ Statutory references are to the Investor Test provisions that were in force immediately prior to 22 March 2021.

Investor test criteria ²⁶	OIO assessment	
	Risk	Summary
Relevant overseas person demonstrated financial commitment. Section 16(2)(b)	Test met	Applicant has entered into a binding agreement, made ASX and NZX market announcements and incurred legal fees.
All IWC are of good character. Section 16(2)(c)	No concerns	We are satisfied the IWC are of good character. See Attachment 3 .
No IWC is an individual of the kind ineligible for a visa or entry permission under ss 15 or 16 of the Immigration Act 2009. Section 16(2)(d)	Test met	Statutory declarations have been provided confirming that each IWC is not of the kind referred to in ss 15 or 16 of the Immigration Act 2009.

F. Investment plan and benefit to NZ test

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

Investment plan

39. The Applicant's investment plan is to process a2 milk at the Factory to produce a2 branded milk products, including infant milk formula products, and export those into s 9(2)(b)(ii)
40. The Applicant owns an approximately 20% stake in Synlait Milk Limited (NZ company number 1600872) (**Synlait**). a2 branded milk products have been processed in Synlait facilities since 2012. s 9(2)(b)(ii)
41. The Applicant also has a strategic relationship with Fonterra that links Fonterra's global milk pool and supply chain, manufacturing capability and in-market sales and distribution capacity with the Applicant.
42. The Applicant has established distribution networks linking it to the Chinese market. The Chinese market makes up a large proportion of the world's infant formula market and there is a growing demand for high quality products from approved suppliers.²⁷ The Applicant is licensed (under the SAMR Regs) to sell its infant formula products in China.
43. s 9(2)(b)(ii)
44. The Applicant proposes to:
- pay off MVM's bank debt from its cash reserves;

²⁷ A 2008 Chinese milk scandal involved milk and infant formula along with other food materials and components being adulterated with melamine. The chemical was used to increase the nitrogen content of diluted milk, giving it the appearance of higher protein content in order to pass quality control testing. Of an estimated 300,000 victims, 6 babies died from kidney stones and other kidney damage and an estimated 54,000 babies were hospitalized. The issue raised concerns about food safety and political corruption in China and led, ultimately, to the introduction of tighter controls, including the SAMR Regs.

- improve the on-site laboratory facilities at the Factory to enable on-site testing; and
- assess the opportunity to install blending & canning capabilities at the Factory (these are likely to be required in order for the Factory's products to meet the requirements of the SAMR Regs).

45. [s 9(2)(b)(ii)]
[Redacted]

46. [Redacted]

What is likely to happen without the investment (Counterfactual)

The Applicant's submissions on the counterfactual

47. The Applicant notes that out of the six largest milk processing companies that collect and process milk in New Zealand, three are considered "overseas persons" under the Act, (being Synlait, Westland Dairy Company and Oceania Dairy), and three are New Zealand based: Fonterra, Open Country Dairy (**Open Country**) and Tatua Co-Operative Dairy Company (**Tatua**).
48. Tatua operates out of the Waikato region, so it is unlikely that it would be looking to expand into Gore. The Applicant notes that both Fonterra and Open Country have competing facilities in close proximity to the Factory. The Applicant submits that it is therefore unlikely that an alternative New Zealand purchaser (**ANZP**) could be found.
49. The Applicant therefore submits that the appropriate counterfactual is the status quo, noting that MVM will not be in a position to move to a financially sustainable business model or to make any meaningful investment in the short to medium term.

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

50. [Redacted]

51. [Redacted]

[Redacted]

52. [Redacted]

53. [Redacted]

Consultation with MPI regarding counterfactual

54. We consulted with the Ministry of Primary Industries (**MPI**) to assess (amongst other things) whether the counterfactual proposed by the Applicant and Vendor was realistic. MPI's assessment was that of the three likely ANZPs: Fonterra was not currently looking for additional production capacity; Open Country's business model focussed more upon commodity powders; and Tatua was presently focusing on the Waikato region. MPI considered it would be unlikely, given MVM's financial performance, that a ANZP from outside the dairy industry would be interested in investing in MVM.
55. MPI confirmed that MVM would be likely to be facing significant financial losses for the foreseeable future. The operating costs of the Factory mean that while the Factory could be profitable producing infant formula (which presently sells for \$ [s 9(2)(b)(ii)])²⁸ it is not profitable producing commodity milk powder (which sells for \$ [s 9(2)(b)(ii)]).²⁹
56. MPI note that CAHG does not have an established dairy product distribution network in China and is not a dedicated dairy company.³⁰ CAHG is likely to continue to underwrite MVM in the short term.³¹

Our Assessment

57. We consider that the appropriate counterfactual is the status quo. MVM has been unable to secure another strategic investor and it appears no ANZP exists at this time or is likely to in the short to medium term. [s 9(2)(b)(ii)]

Consultation with MPI regarding benefits

58. [s 9(2)(b)(ii)]
- 59.
60. MPI confirmed that the Applicant has an established distribution network [s 9(2)(b)(ii)] . The Applicant was trading in a high value, branded product, albeit in an increasingly competitive market.
61. MPI also confirmed that the export receipt projections provided by the Applicant were realistic, [s 9(2)(b)(ii)] .
62. [s 9(2)(b)(ii)]

²⁸ This is the 'free on board' export price, not the retail price.

²⁹ This is the 'free on board' export price, not the retail price.

³⁰ Its business includes: livestock & poultry breeding, veterinary vaccines & pharmaceuticals, feeds and feed additives, feed grass, sustainable animal farming, dairy products, bee products, pet products, fertilizers, pesticides, plant seeds, chemical products, instruments and equipment.

³¹ At least until June 2021.

³² [s 9(2)(b)(ii)]

63. MPI was not able to comment on whether the number of jobs created by the lab was correct, but noted that it was more likely that benefit to be delivered by the Applicant would be provided by preserving existing jobs at the Factory.

Summary of benefits

64. 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.
65. 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**.
66. In applying the benefit to New Zealand criteria, you are required to consider each of the benefit factors and determine which of them are relevant. The weight and relative importance to be given to each factor is a matter to be determined by you as the decision-maker. This report sets out our assessment to guide your consideration, however it is not determinative.
67. Under the terms of the Ministerial directive letter,³³ the 'rural land directive' applies to this investment.³⁴ The benefit factors Ministers have directed should be given high relative importance are noted in the table below.³⁵

³³ Dated 28 November 2017, paragraphs 13-17.

³⁴ Because the investment involves the acquisition of non-urban land over 5 hectares in size (excluding any associated land) and excludes 'forest land'.

³⁵ The factors that we have given high relative importance are: jobs, new technology or business skills, increased export receipts, increased processing of primary products, and oversight and participation by New Zealanders.

Summary assessment: benefit to NZ test

68. 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	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
Job opportunities <i>(high relative importance)</i>	Applicant will pay MVM's bank debt. 78 existing jobs at the factory will be retained. The construction of the laboratory will create 11 new FTE roles. [s 9(2)(b)(ii)]	Existing jobs retained in short term due to CAHG underwriting debt, but the jobs may be in jeopardy in medium term. No new jobs created.	Medium	The payment of MVM's existing debt and construction of the laboratory will preserve jobs in the short to medium term. [s 9(2)(b)(ii)]	Special Condition 1 – Applicant to retain the [s 9(2)(b)(ii)]
Oversight and participation by New Zealanders <i>(high relative importance)</i>	The Applicant is dual listed on the NZX and ASX. It is subject to NZX listing rules requiring at least two New Zealand directors. New Zealanders own 28.06% of the Applicant.	N/A	Medium	The extent of New Zealand control will increase as a result of the investment, and the strength of the overseas ownership blocks will be reduced. MVM is currently 82.62% Chinese owned, with 75% of the shares being owned by CAHG.	No condition proposed.

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
Greater efficiency or productivity	The construction of a laboratory for testing and grading powder. An increase in productivity through a transition to the manufacture in the Factory of predominately or exclusively nutritional powder branded [s 9(2)(b)(ii)]	Testing and grading is outsourced to remote third-party laboratories, thereby adding delays (of three to five days) to product release.	Weak	Some efficiency gains due to the construction of the laboratory. The remaining projected increase in productivity is dependent upon there being a warehouse and a canning and blending facility, which the Applicant has not committed to.	Special Condition 2 – Applicant to spend a [s 9(2)(b)(ii)] to upgrade the on-site laboratory facilities at the Factory.
Additional investment for development purposes	The Applicant will commit to a laboratory upgrade at a cost of [s 9(2)(b)(ii)] million.	None of this construction would take place.	Weak	Additional capital expenditure on the laboratory. [s 9(2)(b)(ii)]	Special Condition 2 – Applicant to spend a [s 9(2)(b)(ii)] to upgrade the on-site laboratory facilities at the Factory.
Advance significant government policy or strategy	The investment is consistent with the Government's commitment to building strong regional economies and ensuring that provincial regions, such as Southland, are able to attract skilled workers.	N/A	Weak	Expanding the Factory's operations will assist with attracting highly qualified staff to the Southland community. The dairy industry accounts for 14.8% of the Southland regional economy. ³⁶	No condition proposed.

³⁶ NZIER final report to Dairy Companies Association of New Zealand, October 2018.

Contingent benefits

69. We have taken a conservative approach and have not credited the Applicant with benefits resulting from developments they have not fully committed to. This substantially reduces the relative weighting of the benefits we have found will be made out. We acknowledge however, that it is open to Ministers to take a different view, and credit likely benefits as well as committed benefits.³⁷

Residential land outcome

70. As the Land includes residential land, you must determine a residential land outcome;³⁸ apply conditions of consent for the residential land outcome;³⁹ and be satisfied that those conditions are likely to be met.⁴⁰

71. There were two dwellings on the Land:

- a cottage, which has now been demolished (the **Cottage**); and
- a house which is to be refurbished to provide temporary accommodation and working facilities for the primary use of visiting MVM employees, advisors and directors (the **House**).

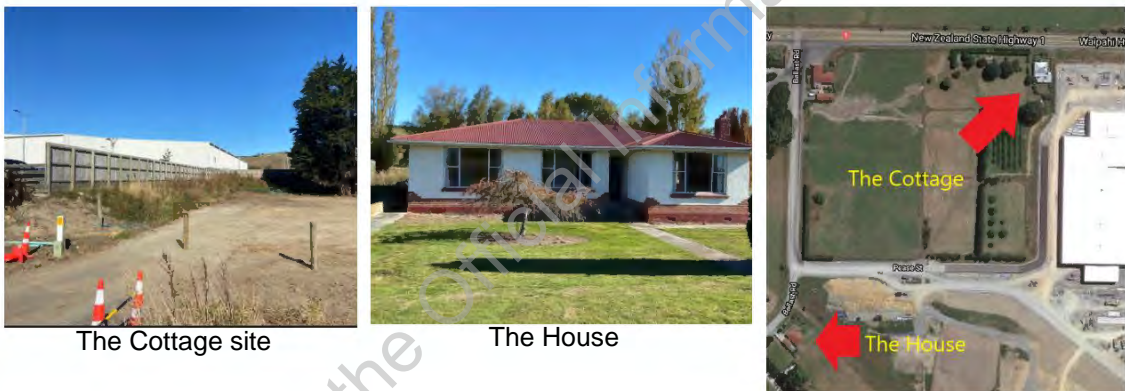


Figure 2 - The House and the Cottage

72. We consider the most appropriate residential land outcomes are:

- 'incidental residential use',⁴¹ (in respect of the residential land relating to the House⁴²) for which conditions must be imposed that require: that the residential land is used for residential purposes only in support of the relevant business, where the relevant business is not in the business of using land for residential purposes,⁴³ and the land is acquired in the usual course of business; and
- 'use for non-residential purposes',⁴⁴ (in respect of the remaining residential land⁴⁵) for which conditions must be imposed that require: that the residential land is used for non-residential purposes in the ordinary course of business for MVN.

73. We have set out corresponding consent conditions in **Attachment 1**.

³⁷ The test in the Act is that Ministers must determine whether the overseas investment will or is likely to result in benefit.

³⁸ Section 16B(3)(a). The Act specifies a range of outcomes to choose from in clause 19, Schedule 2 of the Act.

³⁹ Section 16B(3)(a): The Act specifies a range of conditions that must be imposed depending the chosen residential outcomes in clause 19, Schedule 2 of the Act.

⁴⁰ Section 16A(1)(c) of the Act.

⁴¹ Clause 19(2), row 3, Schedule 2 of the Act.

⁴² Being the land comprised in record of title SLA1/1238.

⁴³ Clause 14(1) Schedule 2 of the Act.

⁴⁴ Clause 19(2), row 2, Schedule 2 of the Act.

⁴⁵ Being the land comprised in records of title 9485, SL76/193, SL7D/900, SL9D/174, SLB4/405 and SLB4/682.

74. We are satisfied that the use of the residential land will be likely to meet the non-residential use and incidental residential use outcomes.
75. The use of the House for temporary accommodation for visiting employees will satisfy the incidental non-residential use condition because the use of the House is for accommodation for staff, advisors and directors of MVM who are engaged in MVM's business; and will also involve non-residential purposes in support of MVM's business (i.e. use for overflow office space and providing a training venue).⁴⁶ The House was acquired in the ordinary course of business.

Conclusion – benefit to New Zealand test

76. We have undertaken our assessment having regard to the characteristics of the Land and the nature of the interest being acquired, reflecting the proportional nature of the benefit to New Zealand test. The Applicant is acquiring up to 100% of the shares in, and overall control of, MVM, which holds a freehold interest in 30.5186 hectares of non urban land surrounding the Factory.
77. Determining whether the investment is likely to result in substantial and identifiable benefit is ultimately a matter to be decided by Ministers and involves the exercise of Ministerial judgement. Ministers also have discretion under section 17(1)(c) of the Act to determine the relative importance to be given to each relevant factor (or part).
78. In addition, while the OIO must follow the rural land directive in the Ministerial Directive Letter, Ministers have discretion as to whether to apply the rural land directive and, therefore, the relative importance they give different benefit factors.
79. After considering the Application, we are satisfied that the investment is likely to result in the benefits considered in Part F above compared to the level of benefit that is likely to result from the counterfactual.
80. Our assessment of the benefits was undertaken in light of the nature, size, and sensitivity of the Land. The Land included in the transaction comprises some residential land, and some areas of more than 5 hectares of non-urban land. The non-urban land is used as buffer land around the Factory.
81. We consider the overseas investment is likely to benefit New Zealand and that the benefits are substantial and identifiable.

G. Land is not farm land

82. Farm land means land (other than residential (but not otherwise sensitive) land) used exclusively or principally for agricultural, horticultural, or pastoral purposes, or for the keeping of bees, poultry, or livestock.⁴⁷

⁴⁶ MVM has a condition that requires it to develop the House for this use

⁴⁷ Section 6 of the Act.

83. Prior to the construction of the Factory, the Land was farm land (as can be seen in Figure 3 below, with the Land's boundaries outlined in yellow). When MVM applied for OIO consent to acquire the Land⁴⁸ in 2015, it was required to advertise the Land for sale in accordance with the regulations.



Figure 3 - Land boundaries

84. Below is a more recent (post 2018) satellite image showing the completed Factory.



Figure 4 – Satellite view of the Factory

85. The construction of the Factory, has, in our view, changed the principal or exclusive use of the Land. It is now used principally or exclusively for the operation of a milk processing plant and so is not farm land.
86. MVM has advised that all of the land that it owns around the processing plant is used as 'buffer zone' land to reduce potential sources of contamination and assist in managing the risks in the operation of the dairy processing plant. The 'buffer zone' also reserves land for future factory development opportunities (such as the planned canning facility). MVM has granted a grazing licence over the buffer land in favour of a third party.⁴⁹ While grazing is a use that falls within the definition of farm land in the Act, we do not consider the principal use of the Land to be grazing. Rather, as above, we consider it is the operation of a milk processing plant.
87. We have advised the Applicant that we consider, on the basis of the above, that the Land is **not** now farm land.

⁴⁸ Consent 201520108

⁴⁹ A licence to occupy approximately 13.2327 hectares of the 'buffer zone' for the purpose of grazing sheep.

H. Not a transaction of national interest

88. The investment does not involve a transaction of national interest under the mandatory criteria of the Act.⁵⁰ 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).
89. 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.⁵¹ He has therefore not declined consent to the transaction.
90. We are directed⁵² 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 government (and/or its associates) disproportionate levels of access to or control of sensitive New Zealand assets; or
 - would have outcomes that were significantly inconsistent with or would hinder the delivery of other Government objectives.
91. We do not consider that this investment engages any of these risk factors.

I. Conclusion

92. 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 will be, or is likely to be, substantial and identifiable; and
 - the conditions relating to residential land to be imposed on the consent will be, or are likely to be, met;
 - the land is not farm land so advertising in accordance with the Regulations was not required; and
 - the transaction is not considered to be a transaction of national interest.
93. Our recommendation is to **grant consent**.
94. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and from page 3 of this Assessment Report to record

⁵⁰ Under s 20A of the Act.

⁵¹ Section 20B of the Act

⁵² Supplementary Ministerial Directive Letter (8 June 2020).

your decision.



Michael Appleyard
Manager, Applications
Overseas Investment Office

Date: 27/05/2021

J. List of Attachments

1. Proposed Decision and Conditions
2. Sensitive land details
3. Good character assessment
4. Other benefit factors

Released under the Official Information Act 1982

ATTACHMENT 1 PROPOSED DECISION

Consent for Overseas Person to Acquire Sensitive New Zealand Land

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

Consent

Decision date: [date]

The following people have been given the following consent:

Case	202000875
Consent	The Consent holder may acquire the Assets subject to the Conditions set out below.
Consent holder/s	The a2 Milk Company Limited (company number 1014105). We will also refer to each Consent holder and the Consent holders together as you .
Assets	Up to, and including, 100% of the shares in Mataura Valley Milk Limited (MVM), which has direct freehold interests in the Land.
Land	Approximately 30.5186 hectares of land located at Ballast Road, Pease Street and Waipahu Highway, Gore, being the land contained in records of title SL9D/346, 437018, 437017, 437019, 9485, SL76/193, SL7D/900, SL9D/174, SLA1/1238, SLA1/210, SLA3/1409, SLB4/1186, SLB4/405, SLB4/406, SLB4/682 and SL117/69.
Timeframe	You have until 31 December 2022 to acquire the Assets.

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.

Definitions

Act means the Overseas Investment Act 2005.

Regulations means the Overseas Investment Regulations 2005.

Factory means MVM's milk processing plant.

FTE means full-time equivalent.

Residential Land means the land contained in records of title SLA1/1238, 9485, SL76/193, SL7D/900, SL9D/174, SLB4/405 and SLB4/682.

Relevant Business means the business operations of MVM at the Factory.

Incidental Residential Use Land means the residential land comprised in record of title SLA1/1238.

Approved Incidental Residential Use means temporary accommodation and working facilities for the primary use of MVM employees, advisors and directors.

Non-Residential Use Land means the residential land comprised in records of title 9485, SL76/193, SL7D/900, SL9D/174, SLB4/405 and SLB4/682.

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: create and retain jobs	
You must:	
(a) retain [s 9(2)(b)(ii)] existing in the Factory as of the date of your acquisition of at least 75% of the shares in MVM [s 9(2)(b)(ii)]; and	[s 9(2)(b)(ii)]
(b) create [s 9(2)(b)(ii)] in the Factory.	[s 9(2)(b)(ii)]

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

Special Condition 2: capital expenditure

You must [s 9(2)(b)(ii)] upgrade of the on-site laboratory facilities at the Factory.

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

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

Special Condition 3: use the Incidental Residential Use Land for the Approved Incidental Residential Use

You may only use the Incidental Residential Use Land for the Approved Incidental Residential Use and in support of the Relevant Business, which does not include the provision of accommodation services to the general public.

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

At all times MVM holds an interest in the Incidental Residential Use Land.

Special Condition 4: use the Non-Residential Use Land for non-residential purposes

You must use the Non-Residential Use Land for non-residential purposes in the ordinary course of business for the Relevant Business.

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

At all times.

Standard Conditions

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

Details	Required date
Standard Condition 1: acquire the Assets	
You must acquire the Assets: <ol style="list-style-type: none">by the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Assets, andusing the acquisition, ownership and control structure you described in your application.	As stated in the Consent

<p>Note, only you – the named Consent holder – may acquire the Assets, not your subsidiary, trust or other entity.</p>	
<p>Standard Condition 2: tell us when you acquire the Assets</p>	
<p>You must tell us in writing when you have acquired the Assets.</p> <p>Include details of:</p> <ol style="list-style-type: none"> 1. the date you acquired the Assets (Settlement), 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the Assets, and 4. copies of any transfer documents and Settlement statements. 	<p>As soon as you can, and no later than two months after Settlement</p>
<p>Standard Condition 3: allow us to inspect the Land</p>	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions.</p> <p>We will give you at least two weeks' written notice if we want to do this.</p> <p>You must then:</p> <ol style="list-style-type: none"> 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, (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. 2. Take all reasonable steps to facilitate an Inspection including: <ol style="list-style-type: none"> (a) directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection, 	<p>At all times</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 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. 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>The Individuals Who Control You are individuals who:</p> <ol style="list-style-type: none"> (a) are members of your governing body, (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 (c) are members of the governing body of the people referred to in paragraph (b) above. 	<p>At all times</p>
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>	<p>Within 20 working days after the change</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 more than 25% 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 more than 25% 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>Standard Condition 6: dispose of the Land if you do not comply with key special conditions</p>	
<p>Some of the Special Conditions were key to the decision to give consent. If we consider you have failed to comply with one of those Special Conditions in a material way we may require you to dispose of the Land.</p> <p>If all or part of this Standard Condition 6 applies to a special condition, we have said so in that condition.</p> <p>We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:</p>	
<p>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"> (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>

Released under the Official Information Act 2002

Reporting Conditions

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

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

1. be sent to **oiomonitoring@linz.govt.nz** by these dates:
 - (a) Year one: 31 January 2023
 - (b) Year two: 31 January 2024
 - (c) Year three: 31 January 2025
 - (d) Year four: 31 January 2026
 - (e) Year five: 31 January 2027
2. contain information about:
 - (a) your progress in implementing the Special Conditions,
 - (b) details of what the Residential Land has been used for,
 - (c) the number of FTE jobs associated with the Land, what those roles are, including any increase or decrease from the previous year and the reason for the increase or decrease, or any change in the nature of the roles and the reason for this change. The report should contain payroll or other evidence showing the number of FTE employees/positions;
 - (d) details of your feasibility work on the potential expansion of the warehouse / canning and blending facility; and
3. follow the format of the template 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 content was granted or
- (b) the Conditions of this consent.

Released under the Official Information Act 1982

ATTACHMENT 2 – SENSITIVE LAND

1. Land at Ballast Road, Pease Street and Waipahu Highway, Gore:

Land Interest	Freehold Interest (approximately 30.5186 hectares)
Records of title	SL9D/346, 437018, 437017, 437019, 9485, SL76/193, SL7D/900, SL9D/174, SLA1/1238, SLA1/210, SLA3/1409, SLB4/1186, SLB4/405, SLB4/406, SLB4/682 and SL117/69.
Sensitivities	Is more than 5 hectares of non-urban land, Includes residential land (records of title 9485, SL76/193, SL7D/900, SL9D/174, SLA1/1238, SLB4/405 and SLB4/682).

Released under the Official Information Act 1982

ATTACHMENT 3 – GOOD CHARACTER ASSESSMENT

The OIO undertook an open-source search of the relevant overseas persons (ROP) and individuals with control (IWC). The table below summarises the matters we identified:

					Matter	Mitigating factors	Assessment
1. Civil proceedings					<p>Various legal claims made in Australia (including by the Australian Broadcasting Corporation) and the United States (including by the National Milk Producers Federation) challenging promotional material relating to alleged claims made about the nutritional properties of A2 milk from 2015 up to and including most recent claims made in 2019.</p>	<p>Applicant has vigorously defended claims and has won or settled all cases. In July 2019, the US Federal Trade Commission formally determined to forego a formal investigation into the matter and the Applicant considers the matter closed.</p>	Low concerns
<i>Proximity</i>	Low	Med	High	<p>No proof of wrongdoing. Applicant continues to assert that there is a scientific basis for its nutritional claims.</p>			
<i>Credibility</i>	Low	Med	High				
<i>Timing</i>	Old	<10yrs	<3yrs				
<i>Mitigation</i>	High	Med	Low				
2. Regulatory compliance					<p>In 2003, the Commerce Commission investigated allegations made by Fonterra that the Applicant's promotional material was false and misleading in that it claimed that A1 beta casein protein has been excluded, when trace amounts remained in A2 milk.</p>	<p>Following a warning from the Commerce Commission, the Applicant and its licensed A2 milk producers agreed to amend their promotional material to remove any statements that implied the complete exclusion of the A1 beta casein protein from the Applicant's A2 milk products.</p>	Low concerns
<i>Proximity</i>	Low	Med	High	<p>Any concern that the IWC may have breached regulations is balanced by subsequent compliance and improvements.</p>			
<i>Credibility</i>	Low	Med	High				
<i>Timing</i>	Old	<10yrs	<3yrs				
<i>Mitigation</i>	High	Med	Low				

3. Civil proceedings				<p>Various legal claims relating to Treasury Wines while under the directorship of Warwick Every Burns, as follows:</p> <p>(a) The company faced a class-action lawsuit from Australian shareholders in 2013 after oversupply issues forced six million bottles of wine to be poured down the drain.</p> <p>(b) Proceedings in 2020 allege that the company breached its continuous disclosure obligations under the ASX Listing Rules and the Corporations Act and that it engaged in misleading or deceptive conduct in contravention of the Corporations Act and the ASIC Act</p>	<p>(a) Settled without admission of liability after A\$49m settlement payment.</p> <p>(b) Treasury Wines strongly denies any and all allegations made against it and is vigorously defending the proceedings.</p>	<p>Low concerns</p> <p>No proof of wrongdoing by IWC. Plaintiffs do not allege that IWC was involved in wrongdoing.</p>
<i>Proximity</i>	Low	Med	High			
<i>Credibility</i>	Low	Med	High			
<i>Timing</i>	Old	<10yrs	<3yrs			
<i>Mitigation</i>	High	Med	Low			

Released under the Official Information Act 2000

ATTACHMENT 4 – OTHER BENEFIT FACTORS

The table below lists other factors in the Act and regulations 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
New technology or business skills – s17(2)(a)(ii) (high relative importance factor)	Not relevant – no new technology is being introduced.
Increased export receipts – s17(2)(a)(iii) (high relative importance factor)	Not met – replicates claims made and considered in increased efficiency factor.
Increased processing of primary products – s17(2)(a)(vi) (high relative importance factor)	Not relevant – the investment will not result in additional processing.
Indigenous vegetation/fauna – s17(2)(b)	Not relevant – there is no indigenous vegetation or fauna present on the Land.
Trout, salmon, wildlife and game – s17(2)(c)	Not relevant – there are no fish or wildlife present on the Land.
Historic heritage – 17(2)(d)	Not relevant – there are no historic sites on the Land.
Walking access – s17(2)(e)	Not relevant – as this is a working factory, walking access is not appropriate.
Offer to sell seabed/foreshore/riverbed to the Crown – s17(2)(f)	Not relevant – there is no special land on the Land.
Consequential benefits – reg 28(a)	Not relevant – no consequential benefits are claimed.
Key person in a key industry – reg 28(b)	Not relevant – no key person is involved in the investment.
Affect image, trade or international relations – reg 28(c)	Not relevant – New Zealand's image and relations will not be affected by the investment.
Owner to undertake other significant investment – reg 28(d)	Not relevant – The Vendors will not be undertaking any investment.
Previous investments – reg 28(e)	Not met – The Applicant has not undertaken any investments requiring OIO consent.
Enhance the viability of other investments – r28(g)	Not relevant – the investment is not likely to enhance the viability of other investments.
Strategically important infrastructure – reg 28(h)	Not relevant – the investment does not involve strategically important infrastructure.
Economic interests – reg 28(i)	Not relevant – New Zealand's economic interests are unlikely to be affected by the investment.