



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

ASSESSMENT REPORT: Agright New Zealand OpCo 3 Limited

Date	15 June 2022	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference (Report reference)	202100774 BRF 22-386	Deadline	25 July 2022

Purpose

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

Action sought

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

Assessment timeframe requirements

A decision is required by 25 July 2022 to enable the decision to be communicated to the applicant in compliance with the prescribed assessment timeframe.

OIO Contacts

Name	Position	Contact	First contact
Daniel White	Manager, Applications	+64 4 460 0147	<input checked="" type="checkbox"/>
Craig Mundy-Smith	Senior Solicitor	+64 4 462 4467	<input type="checkbox"/>

A. Summary

1. The Applicant is a wholly owned subsidiary of Australian company Agright Pacific HoldCo Pty Ltd, which is the parent company of the Agright Group. The Agright Group is a joint venture between two New Zealand chicken farming entrepreneurs and Pacific Equity Partners investment funds. The ultimate aim of the Agright Group is to establish a series of modern broiler chicken farms across Australia and New Zealand, which will have a common corporate management, standardised practices, and be able to operate at scale.
2. The Applicant is seeking consent under the Act to acquire a broiler chicken farm at 1261 and 1374 Rakaia Highway, Chertsey, Mid Canterbury, which includes 112.41 hectares of land. The Applicant intends to [s 9(2)(b)(ii)] the number of chicken sheds on the land (from [s 9(2)(b)(ii)]) at a cost of [s 9(2)(b)(ii)], which will roughly [s 9(2)(b)(ii)] the productive capacity of the farm and create six additional jobs.
3. The farm has [s 9(2)(b)(ii)] chicken sheds [s 9(2)(b)(ii)] surrounded by a large amount of 'buffer land' [s 9(2)(b)(ii)]. [s 9(2)(b)(ii)] this land can only be used for growing silage.
4. This large amount of buffer land complicates the assessment of whether the benefits provided by the investment are substantial in proportion to the amount of farmland being acquired. The Applicant argues (and we agree) that when considering issues of proportionality, regard must be had to the fact that: the farm would not easily be converted to a use other than chicken farming; and that (for biosecurity reasons) a large portion of the farmland is locked into a marginally productive use.
5. For the reasons set out in this report, our recommendation is to **grant consent**.

Key information

Applicant	Agright New Zealand OpCo 3 Limited (Australia (53%); New Zealand (22.82%); Canada (10.57%); Luxembourg (9.09%); Cayman Islands (3.19%); USA (1.27%); Jersey (0.06%))
Vendors	Kiwi Free Range Limited (New Zealand 100%)
Land	112.41 hectares of land located at 1261 and 1374 Rakaia Highway, Chertsey, Mid Canterbury.
Consideration	[\$ [s 9(2)(b)(ii)]]
Sensitivity	Is more than 5 hectares of non-urban land
Relevant tests	Investor test: s18A Benefit to NZ test – farm land benefit test: s16(1)(c) & s16A(1), (1A), (1C) and (1D) National interest test: s16(1)(g)

Timing

6. The Overseas Investment Regulations 2005 specify the total assessment timeframe for this application is 100 days. This application is currently on day 73, therefore a decision is due to the applicant by 25 July 2022.

B. Decision

Core tests

7. I determine that:

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

Relevant overseas person	Role
Agright New Zealand OpCo 3 Limited	Applicant
Agright Pacific HoldCo Pty Limited (the Parent company)	The parent company of the Applicant
PEP Investor Administration Secure Assets A Pty Limited (Fund A Trustee)	Holds the largest ownership of the Applicant
PEP Investor Administration Secure Assets C Pty Limited (Fund C Trustee)	Holds a nearly 25% ownership stake in the Applicant

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

Individuals with control	Role
Daniel Keith Bryant ¹	Director of the Applicant and the Parent company
Andrew Hollis Stevens ²	Director of the Parent company
Matthew William Robinson	Director of the Applicant and the Parent company
Evan Roy Dwyer Hattersley	Director of the Applicant and the Parent company
Terry Tin Wai Miu Neeland	Director of the Applicant and the Parent company
Rickard Jan Rolf Gardell	Director of Fund A Trustee and Fund C Trustee
Timothy James Sims	Director of Fund A Trustee and Fund C Trustee
Antony John Duthie	Director of Fund A Trustee and Fund C Trustee
Simon David Pillar	Director of Fund A Trustee and Fund C Trustee
Wai Sum Kong	Director of Fund A Trustee

7.3 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.

¹ Daniel Bryant is a New Zealand citizen and is therefore not subject to the investor test.

² Andrew Stevens is a New Zealand citizen and therefore not subject to the investor test.

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

Hon Dr Megan Woods

Hon Damien O'Connor

Agree Agree

Disagree Disagree

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

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

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

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

9.4 the benefit will be, or is likely to be, substantial in relation to one of more of the factors of high relative importance for farm land; and

9.5 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

10. I am satisfied, in relation to farm land advertising, that the criteria have been met, as set out in the report.

Hon Dr Megan Woods

Hon Damien O'Connor

Agree Agree

Disagree Disagree

National interest assessment

11. 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

My ultimate decision is to:

12.

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

13. The Applicant seeks consent to acquire approximately 112.41 hectares of sensitive farm land located at 1261 and 1374 Rakaia Highway, Chertsey, Canterbury (the Land) and associated farming assets located on the Land.

Land

14. The Land is currently operated as a broiler chicken farm. Broiler chickens are farmed for their flesh, rather than their eggs. The Land has shed capacity for approximately [s 9(2)(b)(ii)] chickens (subject to operating as a free range (lower bird density) or barn farm (higher bird density)).
15. There are [s 9(2)(b)(ii)] chicken sheds on the Land, together with associated farm infrastructure. The sheds are equipped with automation facilities which control the climate, weigh the birds, weigh feed, and deliver water.
16. There is a residential dwelling on the Land that is rented to an employee as a service tenancy, linked to their employment on the farm. Having an employee living on site means that the employee is available to respond to emergencies or technical problems in the sheds occurring outside normal working hours.
17. An aerial photograph of the land appears as Figure 1 below:



18. The purpose built chicken farming sheds are [s 9(2)(b)(ii)]

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

20. This prohibition prevents any livestock grazing on the Buffer Land³ as well as many potential horticultural activities, therefore ruling out many forms of 'productive capacity' for farm land on the Buffer Land.
21. The Buffer land is used for growing silage.

D. Application of the Act

22. The Land is sensitive because it is non-urban land over 5 hectares in size⁴ so consent is required.⁵ The following criteria for an investment in sensitive land apply to this application:⁶
- The investor test must be met.⁷
 - The benefit to New Zealand test must be met.⁸
 - Because the land is farmland, the criteria in sections 16(1), (1A) and (1C) of the Act must be met.
 - 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.⁹
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;¹⁰ and
 - determine that benefit will be, or is likely to be, substantial in relation to one of more of the factors of high relative importance for farm land¹¹ (unless the farm land benefit test is disapplied¹²); and
 - 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.

E. Applicant and investor test

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

Business Activities

25. The Applicant is a special purpose vehicle, and was incorporated on 1 November 2021 to undertake the investment.

³ Obviously, the only farming use for the remainder of the Land is the farming of chickens.

⁴ Table 1, Part 1, Schedule 1 of the Act.

⁵ Under sections 10(1)(a) and 12(a)(i) of the Act.

⁶ Set out in section 16(1) of the Act.

⁷ Section 18A / 16(1)(a) of the Act.

⁸ Section 16(1)(c)(ii) of the Act.

⁹ Section 16(1)(g) of the Act.

¹⁰ Section 16A(1)(a) of the Act.

¹¹ Section 16A(1C)(b) of the Act. This criterion applies because the Land is farm land over 5 ha in size.

¹² Section 16A(1D) of the Act.

Ownership

The Applicant

26. The Applicant is a wholly owned subsidiary of Australian company Agright Pacific HoldCo Pty Ltd (the **Parent company**) (via the wholly owned intermediary companies Agright Pacific MidCo 1 Pty Ltd, Agright Pacific MidCo 2 Ltd and Agright New Zealand Holdco Ltd (referred to as the **Applicant group**)).

The Parent company

27. The Parent company is 77.5% owned by Pacific Equity Partners Pty Ltd (**PEP**) investment funds and 22.5% owned by two New Zealand investors.

PEP funds

28. PEP is an Australian incorporated private equity fund manager which focuses on buyouts and late-stage expansion capital. PEP was established in 1998 and currently has approximately A\$6.8 billion in assets under management.
29. As the trustee for the Pacific Equity Partners Secure Assets Fund A, PEP Investor Administration Secure Assets A Pty Limited (**Fund A Trustee**) has a 47.81% stake in the Applicant. Due to its near majority ownership of the Applicant, Fund A Trustee has been included as a relevant overseas person (**ROP**).
30. As the trustee for the Pacific Equity Partners Secure Assets Fund C, PEP Investor Administration Secure Assets C Pty Limited (**Fund C Trustee**) has a 24.40% stake in the Applicant. Due to its nearly 25% ownership of the Applicant, Fund C Trustee has been included as a ROP.
31. The remaining 5.29% of PEP's ownership is held by PEP through investment holding companies and trustee entities of private equity funds.

The New Zealand Investors

32. Daniel Bryant (a New Zealand citizen) has a 12.50% ownership stake in the Applicant. Daniel Bryant is an executive employee of the Applicant Group and a Director of the Applicant and the Parent company.
33. Andrew Stevens (a New Zealand citizen) has a 10.00% ownership stake in the Applicant. Andrew Stevens is an executive employee of the Applicant Group and a Director of the Parent company.

Ownership by country

34. Ownership of the Applicant by country is as follows:
- Australia (53%)
 - New Zealand (22.82%)
 - Canada (10.57%)
 - Luxembourg (9.09%)
 - Cayman Islands (3.19%)
 - USA (1.27%)
 - Jersey (0.06%)
35. A diagram of the intended ownership structure is in **Attachment 2**.

Control

36. The Applicant is controlled by its directors, being the New Zealand investor Daniel Bryant, and senior executives of PEP.
37. The Parent company is the ultimate holding company of the Applicant group. Therefore, the directors of the Parent company will exercise control over the Applicant and are required to approve the decision to enter into the proposed transaction.
38. Fund A Trustee and Fund C Trustee have similar directors (the only difference being that Wai Sum Kong is not also a director of Fund C Trustee). The directors of Fund A Trustee exercise control over the investment decisions made by Pacific Equity Partners Secure Assets Fund A. The directors of Fund C Trustees exercise control over the investment decisions made by Pacific Equity Partners Secure Assets Fund C. Due to Fund A Trustee having nearly 50% ownership of the Applicant and Fund C Trustee having nearly 25% ownership of the Applicant, their directors are considered to be IWC.

Relevant overseas person and individuals with control

39. We recommend that the 'relevant overseas person' is collectively:

Relevant overseas person	Role
Agright New Zealand OpCo 3 Limited	Applicant
Agright Pacific HoldCo Pty Limited	The parent company of the Applicant
PEP Investor Administration Secure Assets A Pty Limited	Holds the largest ownership of the Applicant
PEP Investor Administration Secure Assets C Pty Limited	Holds a nearly 25% ownership stake in the Applicant

40. We recommend that the 'individuals with control of the relevant overseas person'¹³ are:

Individuals with control	Role
Daniel Keith Bryant ¹⁴	Director of the Applicant and the Parent company
Andrew Hollis Stevens ¹⁵	Director of the Parent company
Matthew William Robinson	Director of the Applicant and the Parent company
Evan Roy Dwyer Hattersley	Director of the Applicant and the Parent company
Terry Tin Wai Miu Neeland	Director of the Applicant and the Parent company
Rickard Jan Rolf Gardell	Director of Fund A Trustee and Fund C Trustee

¹³ Section 15.

¹⁴ Daniel Bryant is a New Zealand citizen and is therefore not subject to the investor test.

¹⁵ Andrew Stevens is a New Zealand citizen and therefore not subject to the investor test.

Timothy James Sims	Director of Fund A Trustee and Fund C Trustee
Antony John Duthie	Director of Fund A Trustee and Fund C Trustee
Simon David Pillar	Director of Fund A Trustee and Fund C Trustee
Wai Sum Kong	Director of Fund A Trustee

Summary of investor test

41. The relevant overseas persons and individuals with control established none of the factors contained in section 18A(4) of the Act.
42. For the reasons set out above, our conclusion is that **the investor test has been met.**

F. Investment plan and benefit to NZ test

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

Investment plan

44. The Applicant's intends to develop a significant trans-Tasman chicken growing business, primarily through further acquisitions and greenfield developments.
45. The majority of broiler farms in New Zealand are privately owned and operated, with the owners typically owning one or a small number of farms, residing on or near the farm and running the day-to-day farming operations with the assistance of one or two staff. As a result, there is a natural constraint on farm operators actively pursuing production growth (either through acquiring new farms, or constructing additional capacity), and similarly significant capital investment is relatively uncommon.
46. The intention of the Applicant Group is to establish a series of modern broiler chicken farms across Australia and New Zealand that is able to realise economies of scale through standardisation and consistency across farms. The Applicant submits that having standard practices will promote efficiency of operations and provide a reliable supply of birds to processors (such as Tegel and Inghams).
47. Therefore, the acquisition of the Land (in addition to the earlier acquisition of the New Zealand Investor's farm (in Case 202100636)) is important because it allows the Applicant Group to establish sufficient scale in New Zealand.
48. The Applicant intends to continue the free-range chicken farming on the Land. The existing arrangements with [REDACTED] will continue. [s 9(2)(b)(ii)]
49. The sheds are operating at their maximum current capacity, and to increase capacity at the farm it is necessary to construct additional sheds. Permission has been obtained from [REDACTED] to bring additional supply online, and to make up that supply through the construction of [s 9(2)(b)(ii)] which would [s 9(2)(b)(ii)] the Land's broiler chicken production.

¹⁰ Earnings before interest, taxes, depreciation, and amortization

50. According to the Applicants obtaining permission from [redacted] for this construction was not a forgone conclusion and is a reflection of the good relationship between the Applicant Group and [redacted].
51. The proposed land use is:

KFR Property		
Land use	Current (ha)	Proposed (ha)
Broiler chicken farm	10ha	10ha
New broiler chicken sheds	0ha	[redacted]
Growth for silage	101.41ha	[redacted]
Farm manager / staff dwellings	1ha	1ha
Total	112.41ha	112.41ha

Figure 2 - Proposed land use

Current state (counterfactual)

52. The Land is operated as a broiler chicken farm, with [s 9(2)(b)(ii)] purpose-built combination barn or free-range sheds. The sheds are [s 9(2)(b)(ii)]. The broiler sheds on the Land are purpose-built, and cannot be adapted for any other agricultural purpose. [s 9(2)(b)(ii)]. The Land is therefore only able to be used as a chicken growing farm without substantial investment.

Farm land benefit test

53. This investment involves the acquisition of farm land exceeding 5 hectares in area. As a result, the farm land benefit test applies unless you decide it need not be met for one of the reasons set out in the Act.¹⁷
54. None of the grounds for disapplying the farm land benefit test in section 16A(1D) are likely to apply to the investment.
55. Accordingly, as required by the Act, we have treated the following factors as having high relative importance:¹⁸
- the economic benefits factor (section 17(1)(a)) and, in particular, the creation or retention of jobs, introduction of technology or business skills, increased export receipts, and increased processing of primary products; and
 - the oversight or participation factor (section 17(1)(f)).
56. For the farm land benefit test to be met, the applicant must demonstrate, in relation to one or more of those factors of high relative importance, that the benefits of the investment are of a size or nature that represent a substantial benefit to New Zealand.

¹⁷ Section 16A(1C)-(1D). You may decide not to apply the farm land benefit test if: the transaction is minor or technical; the transaction does not materially change the level of ownership or control that the relevant overseas person has over the asset; or the farm land has no or limited productive capacity as farm land and will, or is likely to, be used promptly, as a result of the overseas investment, for industrial or commercial development (for example, a supermarket) or for the construction of 1 or more buildings that, taken together, will consist of 20 or more new residential dwellings.

¹⁸ Section 16A(1C)(a).

Summary of benefits

57. 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.
58. 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 3**.
59. 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 (except where the farm land benefit test requires a factor to be given high relative importance). This report sets out our assessment to guide your consideration, however it is not determinative.
60. Consultation undertaken in our assessment is discussed following the table.

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Summary assessment: benefit to NZ test

61. 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	OIO analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
Economic benefits (High relative importance factor)	Additional investment for development purposes The Applicant will construct [REDACTED] additional sheds of the same size as those currently on the Land at an approximate CAPEX spend of [REDACTED]. As noted above this will be subject to market conditions and future market demand.	Additional investment for development purposes No additional investment.	Strong	Additional investment for development purposes An additional [REDACTED] in additional investment	Obtain resource consents Build sheds Introduce additional spending of [REDACTED] Create at least 3 senior FTE roles
	Increased productivity of the Land Following construction, the sheds will, in aggregate, increase production of the Land by approximately [REDACTED] birds per annum.	Increased productivity Status quo continues		Increased productivity of the Land An increase in productivity of approximately [REDACTED] birds per annum. While this could potentially result in increased export receipts, the ultimate choice of whether to use the birds for domestic or export markets is at the discretion of [REDACTED], rather than the Applicant.	

Relevant benefit factors	Applicant's claims: what they intend to do	Current state	OIO analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
	<p>Jobs At least three new corporate FTE will be created, including the roles of: Head of Business Development and Executive Chairman; a financial controller; and a New Zealand operations manager.</p> <p>There will be an additional 3 FTE roles associated with the operation of the sheds (manager, assistant manager and farm labourer, mirroring the roles for the existing sheds).</p> <p>An additional 16 FTE for six months created during the construction of the sheds.</p>	<p>Jobs No new jobs.</p>		<p>Jobs Six permanent new FTEs are likely to be created.</p> <p>Three of the FTE jobs are for quite senior corporate positions. While these jobs are less directly related to the acquisition of the Land, the roles would not be created without the acquisition (because the acquisition allows the Applicant Group to establish sufficient scale in New Zealand).</p> <p>The creation of these roles has not been claimed as a benefit in previous applications and will not be accepted as a benefit in future applications.</p> <p>Sixteen temporary (six month) FTE roles will be created as a result of the construction of the sheds.</p>	

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Relevant benefit factors	Applicant's claims: what they intend to do	Current state	OIO analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
	<p>More reliable supplier of primary products for processing [s 9(2)(b)(ii)] birds per annum equates to a 10% increase in [s 9(2)(b)(ii)] processing of broiler chickens</p>	<p>More reliable supplier of primary products No increase in production.</p>		<p>More reliable supplier of primary products for processing [s 9(2)(b)(ii)] birds per annum equates to a 10% increase in [s 9(2)(b)(ii)] processing of broiler chickens</p>	
	<p>Additional market competition Through introduction of well-funded participant.</p>	<p>Additional market competition Market competition unchanged.</p>		<p>Additional market competition Not met – insufficient data to show additional market competition of any significance from this transaction.</p>	

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Relevant benefit factors	Applicant's claims: what they intend to do	Current state	OIO analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
	<p>New Technology If the technology is successfully implemented at the Wardville Property, the Applicant Group may adopt it on the Land as well. There may be difficulties in adopting this technology in Canterbury given meteorological / climatic differences between that region and the Waikato.¹⁹</p>	<p>New Technology No new technology.</p>		<p>New Technology Not met – speculative and subject to contingencies</p>	
	<p>Reduced risk of illiquid assets Broiler chicken farms require specialist equipment, and are difficult to sell.</p>	<p>Reduced risk of illiquid assets Chicken farm may not be able to be sold</p>		<p>Reduced risk of illiquid assets Not met- this sub-criteria is not intended to apply to assets of this kind.</p>	

¹⁹ The Applicant acknowledges that solar panel technology exists in New Zealand presently. However, the Applicant is not aware of it having been used in this manner before (ie in combination with a bio-diesel generator as an alternative fuel source to natural gas and/or diesel-powered generators on a scale required to power a commercial chicken farm operation).

Relevant benefit factors	Applicant's claims: what they intend to do	Current state	OIO analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
	<p>Key economic capacity improved The Proposed Transaction represents, at a fundamental level, the establishment of a Trans-Tasman business, headed by two agricultural entrepreneurs who will leverage their significant expertise to build a scale Trans-Tasman broiler chicken-farming business. Without these foundational transactions, being this and case number 202100636, the Applicant Group will have no platform from which to build its New Zealand business.</p>	<p>Key economic capacity improved No capacity increases.</p>		<p>Key economic capacity improved Not met – While this may ultimately arise from a Trans-Tasman business empire this is unlikely to arise from this transaction alone.</p>	
Consequential benefits	<p>Foundational transaction The intention of the Agright Group (which will be managed by the NZ owners) is to establish a series of modern broiler chicken farms across Australia and New Zealand under the trading name 'Agright'.</p>	<p>Foundational transaction N/A</p>	Weak	<p>Foundational transaction The transaction will assist Agright in its long-term goal to establish a series of modern broiler chicken farms across Australia and New Zealand under the trading name 'Agright'.</p>	N/A
	<p>Previous investments The Applicant is a special purpose vehicle of PEP, who have previously invested in New Zealand.</p>	<p>Previous investments N/A</p>		<p>Previous investments Not met – no previous investment by the Applicant.</p>	

Consultation and submissions about the investment

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

Residential land outcome

63. The most appropriate residential land outcomes to require is 'incidental residential use',²⁰ for which conditions must be imposed that only allow the Land to be used for residential purposes if these are in support of the relevant business.

64. As the Land is currently used for employee accommodation, we can also be confident that the Land will continue to be used for this use. (See **Attachment 1** for the proposed conditions.)

Conclusion – benefit to NZ test

Key benefits

65. After considering the application, we are satisfied that the investment is likely to result in the benefits considered above. In particular, the investment is likely to result in economic benefits arising directly and indirectly from the construction and installation of the new shed including:

- An additional [s 9(2)(b)(ii)] for investment purposes;
- An increase in productivity of approximately [s 9(2)(b)(ii)] birds per annum;
- Six permanent and sixteen temporary FTE positions; and
- An increase of [s 9(2)(b)(ii)] in broiler chickens processed by [s 9(2)(b)(ii)].

66. The investment also represents an important step in establishing economies of scale for the Agright business.

Proportionality

67. We have undertaken our assessment having regard to the sensitivity of the Land and the nature of the overseas investment transaction, reflecting the proportional nature of the benefit to NZ test. The Land in question is farm land used for the farming of broiler chickens. [s 9(2)(b)(ii)]

68. The Applicant argues (and we agree) that when considering issues of proportionality, regard must be had to the fact that:

- the farm would not easily be converted to a use other than chicken farming (because of the existing sheds and the cost of repurposing the Land²¹); and
- that (for biosecurity reasons) a large portion of the farmland is locked into a marginally productive use [s 9(2)(b)(ii)]

69. Taking into account the size of the Land and the limits on its use for other purposes, we consider the overseas investment is likely to benefit New Zealand.

Farm land benefit test

70. In relation to the farm land benefit test, the benefits are likely to be substantial in relation to one of the factors of high relative importance, namely economic factors.

²⁰ Clause 19(2), row 5, Schedule 2 of the Act.

²¹ Converting the Land to another use would mean that the sheds could no longer be used (because this would breach the Processing Agreement). Demolishing the sheds would be a waste of a very expensive asset.

G. Farm land offer test

71. Because the Land is farm land,²² we note that it was advertised for sale on the open market with the required information for a period exceeding 30 working days²³ on TradeMe, RealEstate.co.nz and Colliers websites²⁴ and in The Press newspaper.²⁵
72. We are therefore satisfied the regulations requiring the farm land to be offered for acquisition on the open market have been complied with.²⁶

H. Not a transaction of national interest

73. The investment does not involve a transaction of national interest under the mandatory criteria of the Act.²⁷ 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).
74. 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.²⁸ He has therefore not declined consent to the transaction.
75. We are directed²⁹ 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 more than 25 per cent ownership or control interest threshold for automatic application of the national interest test, but granted that government (and/or its associates) disproportionate levels of access to or control of sensitive New Zealand assets;
 - would have outcomes that were significantly inconsistent with or would hinder the delivery of other Government objectives;
 - raises significant Treaty of Waitangi issues; or
 - relates to a site of national significance (e.g. significant historic heritage).
76. We do not consider that this investment engages any of these risk factors

I. Conclusion

77. 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

²² Currently being used primarily for broiler chicken farming (see the definition of farm land in s 6 of the Act).

²³ For deadline private treaty sale, closing on 28 January 2022.

²⁴ From 18 November 2021.

²⁵ On 27 November 2021.

²⁶ Overseas Investment Regulations 2005, regulations 5 to 10.

²⁷ Under s 20A of the Act.

²⁸ Section 20B of the Act

²⁹ Ministerial Directive Letter (24 June 2021).

- the benefit is proportionate to the sensitivity of the land and the nature of the transaction; and
- the benefit will be, or is likely to be, substantial and identifiable;
- the conditions relating to residential land to be imposed on the consent will be, or are likely to be, met; and
- the farm land offer test has been met; and
- the transaction is not considered to be a transaction of national interest.

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

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



Daniel White
Manager, Applications
Overseas Investment Office

Date: 15/06/2022

J. List of Attachments

1. Proposed Decision
2. 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: [date]

The following people have been given the following consent:

Case	202100774
Consent	The Consent holder may acquire the Land subject to the Conditions set out below.
Consent holder	Agright New Zealand OpCo 3 Limited (Company number 8254923) We will also refer to the Consent holder as you.
Land	A Freehold Interest in approximately 112.41 hectares of land contained in Records of Title CB10F/1387, CB40B/1123, CB18F/667 and CB14B/268 (Canterbury), with legal descriptions Lot 3 Deposited Plan 28756; Lot 2 Deposited Plan 69487; Rural Section 40903; and Lot 7 Deposited Plan 33071.
Timeframe	You have until 31 August 2023 to acquire the Land.

Conditions

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

In the Consent and the Conditions, we refer to the Overseas Investment Office as **OIO, us or we**.

Act means the Overseas Investment Act 2005.

Approved incidental residential use means farm employee accommodation with incidental residential tenancies.

New sheds means [s 9(2)(b)(ii)] broiler chicken sheds on the Land having a capacity of at least [s 9(2)(b)(ii)] chickens.

Special conditions

You must comply with the following **special conditions**. These either: apply specifically to this Consent and were considerations that particularly influenced us to give consent; or apply specifically to consents for incidental residential use:

Details	Required date
Special condition 1: Obtain resource consents	
<p>You must</p> <ul style="list-style-type: none">a) Apply for all necessary resource consents under the Resource Management Act 1991 (or any replacement legislation) required for the operation of the New shedsb) Obtain all necessary resource consents under the Resource Management Act 1991 (or any replacement legislation) required for the operation of the New sheds. <p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	<ul style="list-style-type: none">a) By 1 January 2024b) By 1 July 2025
Special condition 2: Construct sheds	
<p>You must construct the New sheds.</p> <ul style="list-style-type: none">a) You must begin constructionb) You must complete construction <p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	<ul style="list-style-type: none">a) By 1 July 2026b) By 1 July 2028
Special condition 3: Introduction of capital for development purposes	
<p>You must introduce into New Zealand additional capital of at least [s 9(2)(b)(ii)], to be spent on developments on the Land (including but not limited to the New sheds).</p> <p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	By 1 July 2028

Special condition 4: Create 3 senior FTE roles	
You must create at least 3 senior FTE roles (being Head of Business Development and Executive Chairman; a financial controller; and a New Zealand operations manager).	By 1 July 2028
Special condition 5: use the Land for an incidental residential purpose	
You must use CB40B/1123 (Canterbury) for the Approved incidental residential use. If you do not, standard condition 6 will apply and we may require you to dispose of the Land.	On-going commencing on the date of consent.
Special condition 6: restrictions on occupation of the Land	
The individuals who control you (as defined in standard condition 4) may not occupy the Land for residential purposes. For the purposes of this condition, a person occupies the land for residential purposes if they use the land for accommodation, regardless of whether: (a) the period of accommodation is short or long term (b) the accommodation is or temporary or permanent. If any of the people named above occupy the land for residential purposes, 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 Land	
You must acquire the Land: 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	As stated in the Consent

<p>2. using the acquisition, ownership and control structure you described in your application.</p> <p>Note, only you – the named Consent holder – may acquire the Land, not your subsidiary, trust or other entity.</p>	
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. 	<p>As soon as you can, and no later than two months after Settlement</p>
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.</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 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>
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 Land. 3. Your New Zealand Service Address changes. This is the address you provided us in your application as the address which we will send any legal document we need to serve on you. 	<p>Within 20 working days after the change</p>

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

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

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

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

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

Within six weeks of the date of our notice.

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

Within six weeks of the date of our notice.

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

Within six months of our notice.

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

Within nine months of our notice.

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

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

Report disposal to us: send us, in writing, evidence:

- (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.

Within one month after the Land has been disposed of.

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:

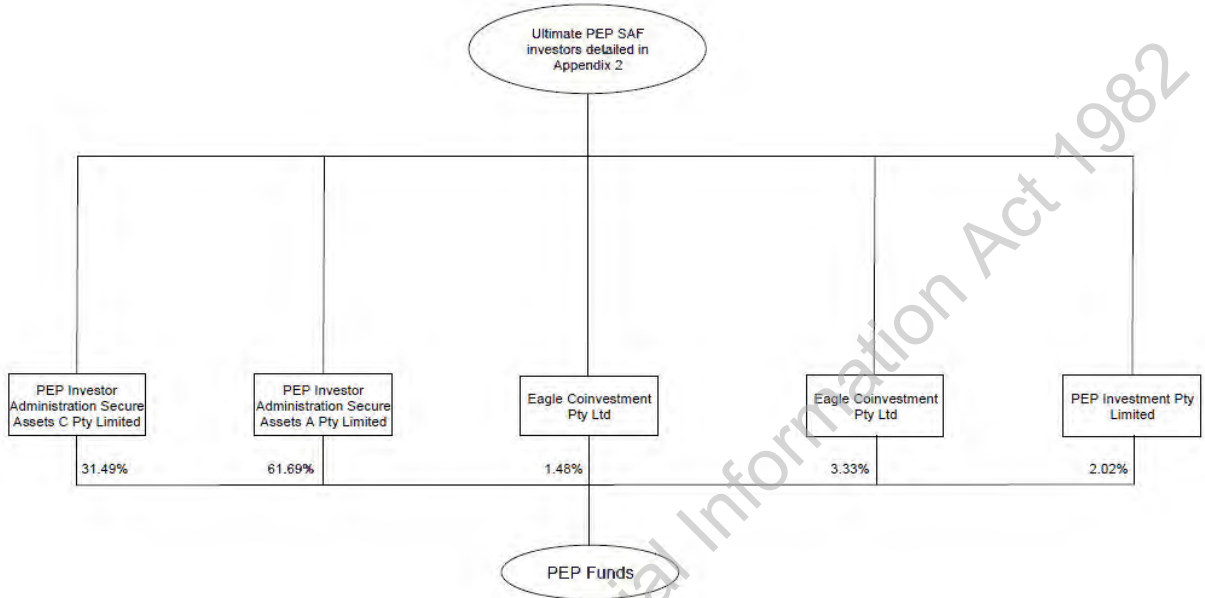
1. be sent to **oiomonitoring@linz.govt.nz** by these dates:
 - (a) Year two: 31 August 2024
 - (b) Year four: 31 August 2026
 - (c) Year six: 31 August 2028
2. contain information about:
 - (a) your progress in implementing the special conditions;
 - (b) your progress on the construction of the New sheds, including the process of obtaining all relevant consents;
 - (c) the amount, broken down, invested for development purposes; and
 - (d) the number of full-time equivalent (FTE) roles associated with the Land and what these roles are. The report should contain payroll or other evidence showing the number of FTE employees/positions.
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:

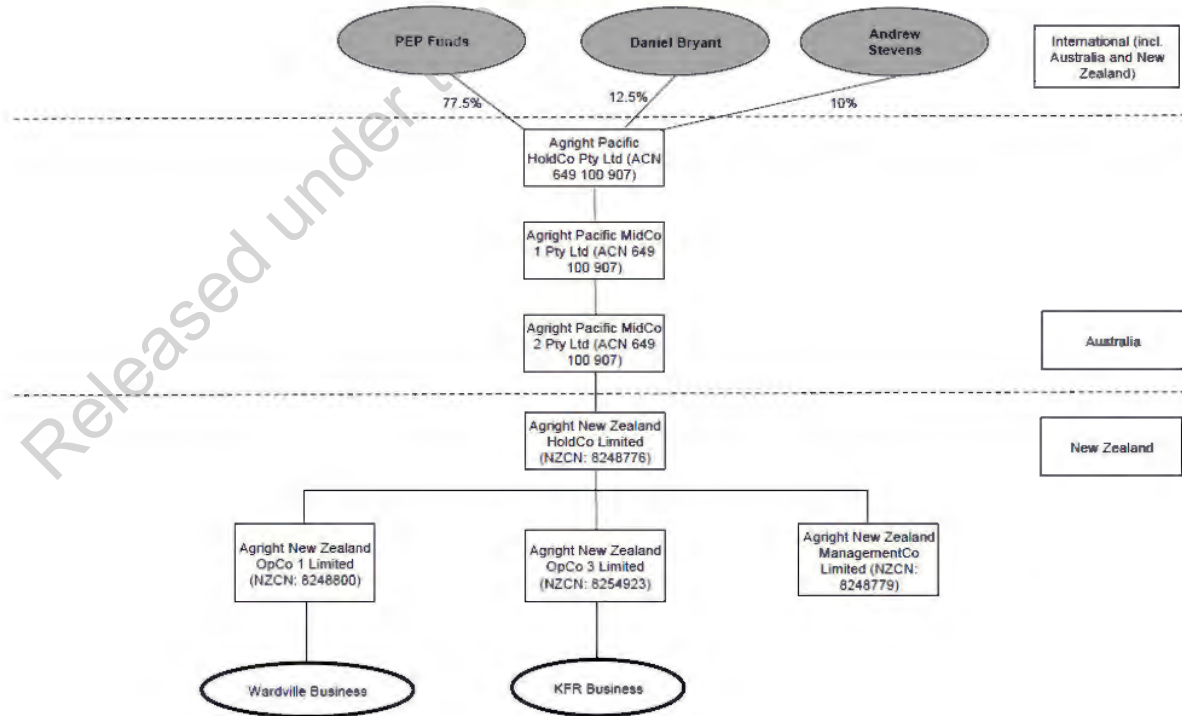
- (a) the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the content was granted or
- (b) the conditions of this consent.

ATTACHMENT 2 – OWNERSHIP STRUCTURE

Part B: PEP Funds structure diagram



Part B: Applicant Group Structure Diagram



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
Environmental benefits	Not relevant – no environmental benefits will occur as a result of this investment
Public access	Not relevant – no public access benefits will occur as a result of this investment
Historic heritage	Not relevant – no historic heritage will be affected as a result of this investment
Significant government policy	Not Met - the investment will not advance any identified Government policy.
Oversight or participation by New Zealanders	Not Met - the way this factor is currently interpreted means that any reduction in New Zealand participation will result in this factor not being met. Here the New Zealand ownership of the Land goes down from 100% to 29.2%

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