



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

ASSESSMENT REPORT: **SunPork Holdings Pty Limited**

Date	19 May 2022	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference (Report reference)	202100803 (BRF 22-358)	Deadline	17 June 2022 (being 20 working days from the date of the report)

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 22 June 2022 to meet the statutory time frame. The contractual date for satisfaction of the OIO consent condition in the Agreement for Sale and Purchase is 23 August 2022. However, the Applicant has requested a decision by 31 May 2022. .

OIO Contacts

Name	Position	Contact	First contact
Daniel White	Manager Applications	+64 4 460 0147	<input checked="" type="checkbox"/>
Daniel Mumford	Senior Solicitor	+64 4 830 3959	<input type="checkbox"/>

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A. Summary

1. SunPork Holdings Pty Limited (**Applicant**) is part of a group of Australian companies known as the SunPork Group, which is a large pork producer based in Australia, supplying approximately 20% of all Australian pork, operating 43 farms in four states.
2. The SunPork Group holds 66.67% of the shares in PIC NZ Holdings Limited (**PIC NZ**), which owns five pig farming units in New Zealand comprising approximately 423 hectares of land. The Applicant seeks consent to acquire the remaining 33.33% of shares in PIC NZ, so that PIC NZ can operate more effectively.
3. The Applicant's strategic plan for PIC NZ is likely to include a [s 9(2)(b)(ii)] as well as the introduction ([s 9(2)(b)(ii)]) of new [s 9(2)(b)(ii)] technology with enhanced animal welfare benefits.
4. Taking into account the size of the Land and that a minority share interest is being acquired, we consider the overseas investment is likely to benefit New Zealand.
5. For the reasons set out in this report, our recommendation is to **grant consent**.

Key information

Applicant	SunPork Holdings Pty Limited Australia (100%)
Vendor	Rakino PE Limited New Zealand (100%)
Land	142.8540 hectares of land located at 562 Monument Road, North Waikato (Maramarua). 31.1608 hectares of land located at 118 Frost Road, Onewhero, Franklin (Tasman Park). 30.8922 hectares of land located at 715 Mitchells Road, Canterbury (Te Perita). 10.1778 hectares of land located at 207 Substation Road, Canterbury (Hororata). 208.5950 hectares of land located at 60 Pilbrow Road, Palmerston, North Otago (Meadowbank).
Consideration	\$13,000,000
Sensitivity	Is more than 5 hectares of non-urban land Includes the bed of a lake Includes residential land Includes land that is held for conservation purposes under the Conservation Act 1987 Adjoins land that is over 0.4 hectares and is held for conservation purposes under the Conservation Act 1987
Relevant tests	Investor test: s18A Benefit to New Zealand test – residential land outcome, farm land benefit test s16A(1C)

Timing

6. The applicant has requested a decision by 31 May 2022. The Overseas Investment Regulations 2005 specify the total assessment timeframe for this application is 100 days. This application is currently on day 77, therefore a decision is due to the applicant by 22 June 2022. We recommend a decision is made by 17 June 2022, being 20 working days from the date of this report.

B. Decision

Core tests

7. I determine that:

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

Relevant overseas person	Role
SunPork Holdings Pty Limited	Applicant and acquiring entity
SunPork Pty Limited	Parent company of the SunPork Group

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

Individuals with control	Role
Brian John McLean	Director of SunPork Holdings Pty Limited and SunPork Pty Limited
Kenneth Beauchamp Cameron	
Simon Alexander Hall	
Enzo Errol Allara	
Donald Clarendon Taylor	
Robert John Van Barneveld	
Janelle Marie Cashin	

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.

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 Applicant is exempt from the criteria (an exemption from the farm land offer criterion was granted on 13 April 2022), 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

12. 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

Date: / /



Hon Damien O'Connor

Date: 21 / 5 / 22

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C. Background and proposed transaction

13. SunPork Holdings Pty Limited (**Applicant**) is part of a group of Australian companies known as the SunPork Group. The SunPork Group is the largest pork producer in Australia, supplying approximately 20% of all Australian pork, operating 43 farms in four states.
14. The SunPork Group own a 66.67% share in PIC NZ which owns five pig farming units in New Zealand comprising approximately 423.7 hectares of freehold land ("**Land**") via a subsidiary company. The Applicant seeks consent under the Act to acquire 25A shares (being the remaining 33.33% of shares) in PIC NZ.
15. The Land is comprised of the following farms:
 - a 142.8 ha [s 9(2)(b)(ii)] in Maramarua, North Waikato;
 - a 31.2 ha [s 9(2)(b)(ii)] in Onewhero, South Auckland;
 - a 30.8 ha [s 9(2)(b)(ii)] in Hororata, Canterbury;
 - a 10.2 ha [s 9(2)(b)(ii)] in Hororata, Canterbury, and
 - a 208.6 ha [s 9(2)(b)(ii)] in Palmerston, North Otago.
16. The Applicant intends to acquire the remaining shares to streamline and simplify the ownership of PIC NZ, so that PIC NZ can operate more effectively and can pursue its strategic development plan.

D. Application of the Act

17. The Land is sensitive because it is non-urban land over 5 hectares in size, includes the bed of a lake, includes residential land, includes land that is held for conservation purposes under the Conservation Act 1987, and adjoins land that is over 0.4 hectares and is held for conservation purposes under the Conservation Act 1987 so consent is required.¹ The following criteria for an investment in sensitive land apply to this application:²
 - The investor test must be met.³
 - The benefit to New Zealand test must be met.⁴
 - The farm land must have been offered for sale on the open market⁵, unless exempt⁶.
 - 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.⁷
18. In order to satisfy the benefit to New Zealand test, the decision-maker must:
 - determine that the overseas investment will, or is likely to, benefit New Zealand,⁸ and

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

² Set out in section 16(1) of the Act.

³ Section 18A / 16(1)(a) of the Act.

⁴ Section 16(1)(e).

⁵ Section 16(1)(f) of the Act.

⁶ Section 20(1)(a) or (b) of the Act. An exemption from the farm and offer criterion was granted on 13 April 2022 (case 202100804).

⁷ Section 16(1)(g) of the Act.

⁸ Section 16A(1)(a) of the Act.

- 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 land⁹ (unless the farm land benefit test is disapplied¹⁰); and
 - because the Land is residential:
 - determine a residential land outcome;¹¹
 - apply conditions of consent for the residential land outcome; and
 - be satisfied that those conditions are likely to be met.¹²
19. The Land includes fresh or seawater interests (being the bed of a river), however as the registered proprietor of the relevant records of title will not change (it is the underlying ownership of the entities that own the Land that will change), the automatic condition relating to fresh and seawater areas does not apply.¹³
20. 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

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

Business Activities

22. SunPork Aotearoa Pty Limited (**SP Aotearoa**), which is wholly-owned by SunPork Pty Limited (**SunPork Pty**) and is part of the Sunpork Group, directly holds the 66.67% share in PIC NZ, which owns five pig farming units in New Zealand comprising approximately 423.7 hectares of freehold land (plus two leasehold sites). If the share acquisition proceeds, SP Aotearoa will transfer the remaining shares in PIC NZ to the Applicant (or itself be transferred to the Applicant).

Ownership

23. The Applicant is owned by three Australian families: [s 9(2)(a)]
 [REDACTED]
 [REDACTED]
 [REDACTED]
24. The Applicant is an overseas person because it is wholly-owned by an Australian company¹⁴ and overseas persons hold more than 25% of its shares.¹⁵
25. A diagram of the intended ownership structure is in **Attachment 2**.

Control

26. The Applicant and SunPork Pty are controlled by their respective boards of directors. However, the board for each company contains the same seven directors.
27. In accordance with delegations in place for all activities of the SunPork Group, the acquisition of PIC NZ shares required the approval of the board of SunPork Pty, and the same authority would be required for the disposal of PIC NZ shares.
28. PIC NZ will be managed by its board of directors.

⁹ Section 16A(1C)(b) of the Act. This criterion applies because the Land is farm land over 5 ha in size.

¹⁰ Section 16A(1D) of the Act.

¹¹ Section 16B(3)(a). The Act specifies a range of outcomes to choose from in clause 19, Schedule 2 of the Act.

¹² Section 16A(1)(c) of the Act.

¹³ Section 25D of the Act.

¹⁴ Section 7(2)(b) of the Act.

¹⁵ Section 7(2)(d)(i) of the Act.

Relevant overseas person and individuals with control

29. We recommend that the 'relevant overseas person' (ROP) is (collectively):

Relevant overseas person	Role
SunPork Holdings Pty Limited	Applicant and acquiring entity
SunPork Pty Limited	Parent company of the SunPork Group

30. We recommend that the 'individuals with control of the relevant overseas person' (IWCs)¹⁶ are:

Individuals with control	Role
Brian John McLean	Director of SunPork Holdings Pty Limited and SunPork Pty Limited
Kenneth Beauchamp Cameron	
Simon Alexander Hall	
Enzo Errol Allara	
Donald Clarendon Taylor	
Robert John Van Barneveld	
Janelle Marie Cashin	

Summary of investor test

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

F. Investment plan and benefit to New Zealand test

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

Investment plan

34. The Applicant intends to acquire the remaining shares in PIC NZ to streamline and simplify the ownership of PIC NZ, so it can operate more effectively.

35. [s 9(2)(b)(ii)]
[Redacted text]

36. If the Applicant wholly-owns PIC NZ, it can pursue its strategic plan for the company. This is likely to include a [s 9(2)(b)(ii)] [Redacted text] as well as the introduction ([s 9(2)(b)(ii)] [Redacted text]) of new [s 9(2)(b)(ii)] technology with enhanced animal welfare benefits.

¹⁶ Section 15.

Current state (counterfactual)

37. PIC NZ is part of a group of Australian companies known as the PIC NZ Group, which is a part of the SunPork Group. The main business of the PIC NZ Group in New Zealand includes:
- the genetic breeding of pigs;
 - the supply of breeding stock and pig semen to pig producers in New Zealand;
 - the improvement of pig livestock; and
 - the production of pork products.
38. PIC NZ operates its pig genetics business under licence [s 9(2)(b)(ii)]
[REDACTED]
As a result, the PIC NZ Group has access to a worldwide network of technology companies in the area of genetic technology.
39. The Applicant submits that PIC Australia is the Australian market leader in the area of pig genetics and pig products, with approximately [REDACTED] % of the market share in this industry. The Applicant also submits that PIC NZ is the leading swine genetics business in New Zealand with approximately [REDACTED] % market share.
40. PIC NZ is the parent company of three New Zealand subsidiaries:
- Bardfield Farms Limited (which owns the pig farms on the Land);
 - PIC New Zealand Limited (the operating company that holds the licence for genetic technology [s 9(2)(b)(ii)] [REDACTED]); and
 - Maramarua Pork Limited (established in 2019 to operate PIC NZ Group's farms in the North Island, [s 9(2)(b)(ii)] [REDACTED]).

Farm land benefit test

41. 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
42. 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)).
43. 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

44. 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.
45. 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**.
46. 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.
47. Consultation undertaken in our assessment is discussed following the table.

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Summary assessment: benefit to New Zealand test

48. This table assesses the benefits to New Zealand 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	<p>Introduction of new technology</p> <p>The investment is likely to result in the introduction of [s 9(2)(b)(ii)] into New Zealand (patented by the Applicant and developed in Australia) to [s 9(2)(b)(ii)]</p>	<p>Introduction of new technology</p> <p>The pig farms do not have [s 9(2)(b)(ii)] in place.</p>	Strong	<p>Introduction of new technology</p> <p>The investment is likely to result in new technology on the pig farms. The [s 9(2)(b)(ii)] help improve animal welfare by [s 9(2)(b)(ii)]</p>	<p>Introduce [s 9(2)(b)(ii)] on at least one of the PIC NZ Group's farms.</p>
	<p>Increased productivity:</p> <p>The investment will lead to unified shareholding in PIC NZ, resulting in greater efficiency and productivity. The proposed [s 9(2)(b)(ii)] programme should increase productivity. [s 9(2)(b)(ii)] is likely to lead to reduced medicinal costs and elimination of other diseases (approximately \$[s 9(2)(b)(ii)] per year).</p>	<p>Increased productivity:</p> <p>The current shareholders of PIC NZ have different objectives for PIC NZ, which hinders current productivity. The [s 9(2)(b)(ii)] programme has not been implemented.</p>		<p>Increased productivity:</p> <p>The SunPork Group's ownership of PIC NZ is likely to lead to increased productivity, especially as it is likely to result in the [s 9(2)(b)(ii)] programme.</p>	<p>Report on:</p> <ul style="list-style-type: none"> increased productivity, increased processing, progress of introduction of [s 9(2)(b)(ii)] number of jobs retained

Relevant benefit factors	Applicant's claims: what they intend to do	Current state	OIO analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
	<p>Increased processing of primary products There are currently no (or negligible) live pigs or pork products exported from New Zealand, so an increase in pork production is likely to lead to increase in processing by third party domestic pork processors.</p>	<p>Increased processing of primary products The current annual level of pork production from the PIC NZ Group is [s 9(2)(b)(ii)] million kgs.</p>		<p>Increased processing of primary products The increased production of pigs is likely to result in increased processing as any additional pork produced is likely to be processed for consumption.</p>	
	<p>Reduced risk of illiquid assets If the shares are not acquired by the Applicant the shares could be stranded, as the shares are for a minority interest (no obvious buyer for the shares), and the Applicant has a pre-emptive right to acquire the shares that is unlikely to be waived.</p>	<p>Reduced risk of illiquid assets The shares in PIC NZ are owned by the SunPork Group and the Vendor, with the SunPork Group holding a pre-emptive right to acquire the shares.</p>		<p>Reduced risk of illiquid assets The unified shareholding of PIC NZ will prevent the Vendor's shareholding in PIC NZ becoming stranded. However, as there remains the possibility of an alternative New Zealand investor, we consider this has a weak level of benefit.</p>	
	<p>New or retained jobs [s 9(2)(b)(ii)] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]</p>	<p>New or retained jobs The PIC NZ Group currently employs [s 9(2)(b)(ii)] equivalent (FTE) employees across</p>		<p>New or retained jobs The investment may result in the current PIC NZ Group jobs being retained. However, as there remains the possibility that these jobs could remain without the</p>	

Relevant benefit factors	Applicant's claims: what they intend to do	Current state	OIO analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
		its New Zealand operations.		investment, we consider this has a weak level of benefit.	
Significant government policy	<p>The investment is likely to advance or support the New Zealand Animal Welfare Strategy.</p> <p>If the National Animal Welfare Advisory Committee (NAWAC) review results in a workable Model Code for Practice for Pig Production, the Applicant will look to introduce [s 9(2)(b)(ii)]</p> <p>[REDACTED]</p> <p>The [s 9(2)(b)(ii)]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>The pig farms do not have [s 9(2)(b)(ii)] in place, and so do not support or advance the government policy on animal welfare as it relates to pig production.</p>	Moderate	<p>The investment is likely to lead to the introduction of [REDACTED] [s 9(2)(b)(ii)] that are likely to support government policy on animal welfare.</p>	<p>Report on the progress of introduction of [s 9(2)(b)(ii)]</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	
Consequential benefits	If the investment proceeds, the [s 9(2)(b)(ii)] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	Weak	[REDACTED]	[REDACTED]

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Consultation and submissions about the investment

New Zealand Pork

49. In undertaking our assessment, we consulted with the New Zealand Pork Industry Board (**NZ Pork**) about the application. NZ Pork is the statutory industry board that works to support New Zealand's commercial pig farmers.
50. NZ Pork are aware of the SunPork Group due to its current role in the New Zealand pig production industry. NZ Pork noted that the rationale for the investment makes sense, and full ownership of PIC NZ will allow the SunPork Group to focus on its strategic plan (including the [s 9(2)(b)(ii)] programme).
51. NZ Pork advised that the Applicant's proposed benefits appear credible and feasible based on the information provided and their knowledge of the industry. NZ Pork also noted that the application did not appear to raise any major points of concern or unreasonable claims.

Fresh or seawater areas

52. As noted above in paragraph 19, the Land includes fresh or seawater interests (being the bed of a river), however as the registered proprietor of the relevant records of title will not change (it is the underlying ownership of the entities that own the Land that will change), the automatic condition relating to fresh and seawater areas does not apply.¹⁹

Proposed conditions

53. The investment relates to the acquisition by a majority shareholder in the remaining shares of a company. Many of the benefits relate to improvements in existing processes (such as productivity and processing levels) and support of government policy, so we consider it appropriate to condition the Applicant to report on its progress on these matters. We consider the special condition requiring the Applicant to introduce [s 9(2)(b)(ii)] technology ([s 9(2)(b)(ii)]) is likely to result in substantial benefit.

Residential land outcome

54. The transaction involves one parcel of residential land as defined in the Act, being the Hororata farm, and therefore residential land outcomes must be determined for this parcel of residential land.
55. The Hororata farm contains a house that is used to accommodate the site manager, and the remainder of the farm is used as a [s 9(2)(b)(ii)]
56. We consider that the most appropriate residential land outcome for the Hororata farm residential land is:
 - for the land containing the dwelling, the 'incidental residential use' outcome. Sch 2, cl 19(2)(c)(5) of the Act requires that conditions be imposed requiring that the residential land is used for residential purpose but only in support of the relevant business, where the relevant business is not in the business of using land for residential purposes; and
 - for the land used as a [s 9(2)(b)(ii)] the 'non-residential use' outcome. Sch. 2, cl 19(2)(c)(2) of the Act requires that conditions be imposed requiring that the residential land is not used, nor held for future use, for residential dwellings or long-term accommodation facilities.

¹⁹ Section 25D of the Act.

Conclusion – benefit to New Zealand test

Key benefits

57. After considering the application, we are satisfied that the investment is likely to result in the benefits considered above. In particular:
- **Introduction of technology** –likely to result in the introduction of [s 9(2)(b)(ii)] into New Zealand that can help improve animal welfare during pig production.
 - **Increased productivity** – greater efficiency and productivity, especially as it is likely to result in the [s 9(2)(b)(ii)] programme.
 - **Increased processing** – increased pig production is likely to result in increased processing.
 - **Advance significant government policy** – likely to lead to the introduction of [s 9(2)(b)(ii)] that are likely to support government policy on animal welfare.

Proportionality

58. We have undertaken our assessment having regard to the sensitivity of the Land and the nature of the overseas investment transaction, reflecting the proportional nature of the benefit to New Zealand test. The Land is non-urban land greater than five hectares and it is currently used as farm land, specifically pig breeding and production. The SunPork Group currently owns 66.67% of the shares in PIC NZ, so the investment relates only to the acquisition of the remaining 33.33% shares.
59. Taking into account the size of the Land that a minority share interest is being acquired in PIC NZ, and the resulting technology and productivity that will likely result from the Applicant investing but not with the existing shareholder, we consider the overseas investment is likely to benefit New Zealand.

Farm land benefit test

60. In addition to the benefit test set out in s16A(1)(a), the Applicant must also satisfy the modified benefit test for farm land.²⁰ This requires that two factors are given high relative importance, the oversight and participation factor and the economic benefits factor (and, in particular, the creation or retention of jobs, introduction of technology or business skills, increased export receipts, and increased processing of primary products). To satisfy this test, one or both of these factors need to be of a size or nature that represent a substantial benefit to New Zealand.
61. We consider in this case that the level of benefit under the economic factor is substantial, particularly when considering the likely benefit resulting from the increased processing (and the introduction of the new technology, [s 9(2)(b)(ii)] [REDACTED]). In these circumstances, we consider these likely benefits are of a size or nature that represent a substantial benefit to New Zealand and that the modified benefit test for farm land is therefore met.

G. Farm land offer test

62. The Applicant was granted an exemption from the farm and offer criterion on 13 April 2022.

²⁰ Section 16A(1)(c) of the Act.

63. The Applicant sought the exemption because it wants to acquire the remaining shares in PIC NZ in accordance with a pre-emptive right (pursuant to a Shareholders Agreement) to acquire any shares that the Vendor proposes to sell. The Applicant would be extremely unlikely and unwilling to waive its rights so that a third party could acquire the Vendor's shares in PIC NZ.
64. If the exemption was not granted, the Vendor would be required to advertise the relevant section 12 interest, being a minority shareholding in PIC NZ. We considered that such advertising would not be genuine as the shares would not genuinely be available for New Zealanders to acquire in these circumstances (due to the SunPork Group's ability to effectively block the sale via its pre-emptive rights to acquire the shares). Accordingly, we considered that an exemption in these circumstances was appropriate.
65. We are therefore satisfied that section 16(1)(f) does not apply to this overseas investment.

H. Not a transaction of national interest

66. The investment does not involve a transaction of national interest under the mandatory criteria of the Act.²¹ 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).
67. 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.²² He has therefore not declined consent to the transaction.
68. We are directed²³ 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,
 - 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).
69. We do not consider that this investment engages any of these risk factors.

I. Conclusion

70. After considering the application, our view is that:
- the investor test has been met; and

²¹ Under s 20A of the Act.

²² Section 20B of the Act

²³ Ministerial Directive Letter dated 24 November 2021.

- the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
- the benefit is proportionate to the sensitivity of the Land and the nature of the transaction; and
- the 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
- the conditions relating to residential land to be imposed on the consent will be, or are likely to be, met; and
- the Land has been exempted from the farm land offer test; and
- the transaction is not considered to be a transaction of national interest.

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



Daniel White
Manager, Applications
Overseas Investment Office

Date: 19 / 05 / 2022

J. List of Attachments

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

ATTACHMENT 1 PROPOSED DECISION

Consent for Overseas Person to Acquire Sensitive New Zealand Land

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

Consent

Decision date: [date]

The following people have been given the following consent:

Case	202100803
Consent	The Consent holder may acquire the Assets subject to the Conditions set out below.
Consent holder/s	SunPork Holdings Pty Limited (Australian company number 652 750 019) We will also refer to each Consent holder and the Consent holders together as you .
Assets	25A shares in PIC NZ Holdings Limited (Company number 1911145) that indirectly owns the Land (via its wholly-owned subsidiary Bardfield Farms Limited)
Land	(i) A freehold interest in 142.8540 hectares of land located at 562 Monument Road, North Waikato (Maramarua), contained in Record of Title SA24A/1334 (South Auckland). (ii) A freehold interest in 31.1608 hectares of land located at 118 Frost Road, Onewhero, Franklin (Tasman Park), contained in Record of Title SA286/274 (South Auckland). (iii) A freehold interest in 30.8922 hectares of land located at 715 Mitchells Road, Canterbury (Te Perita), contained in Record of Title 469166 (Canterbury). (iv) A freehold interest in 10.1778 hectares of land located at 207 Substation Road, Canterbury (Hororata), contained in Record of Title CB319/149 (Canterbury).

	(v) A freehold interest in 208.5950 hectares of land located at 60 Pilbrow Road, Palmerston, North Otago (Meadowbank), contained in Records of Title OT175/228, OT18B/852, OT202/124, OT5A/692 (Otago).
Timeframe	You have until 30 June 2023 to acquire the Assets.

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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.

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: Introduce [s 9(2)(b)(ii)]	
<p>[s 9(2)(b)(ii)]</p> <p>you must introduce [s 9(2)(b)(ii)] technology on at least one pig farm that comprises part of the Land.</p> <p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	By [s 9(2)(b)(ii)]
Special condition 2: Use the dwelling on the Land for an incidental residential purpose	
<p>You must only use the dwelling located on the land in Record of Title [s 9(2)(b)(ii)] to accommodate the site manager in support of the [s 9(2)(b)(ii)] business operated on that land (that is not, or only incidentally, in the business of using land for residential purposes).</p> <p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	At all times
Special condition 3: Use the Land for non-residential purposes	
<p>The primary used of the land contained in Record of Title [s 9(2)(b)(ii)] (excluding the dwelling on the land) is for the operation of a [s 9(2)(b)(ii)] business. You agree to not do anything that would result in this land (excluding the dwelling on the land) being used for residential purposes.</p> <p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	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	
<p>You must acquire the Assets:</p> <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, and using the acquisition, ownership and control structure you described in your application. <p>Note, only you – the named Consent holder – may acquire the Assets, not your subsidiary, trust or other entity.</p>	As stated in the Consent
Standard condition 2: tell us when you acquire the Assets	
<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"> the date you acquired the Assets (Settlement), consideration paid (plus GST if any), the structure by which the acquisition was made and who acquired the Assets, and copies of any transfer documents and Settlement statements. 	As soon as you can, and no later than two months after Settlement
Standard condition 3: allow us to inspect the Land	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions.</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"> Allow a person we appoint (Inspector) to: <ol style="list-style-type: none"> enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (Inspection), 	At all times

<ul style="list-style-type: none"> (b) remain there as long as is reasonably required to conduct the inspection, (c) gather information, (d) conduct surveys, inquiries, tests and measurements, (e) take photographs and video records, and (f) do all other things reasonably necessary to carry out the Inspection. <p>2. Take all reasonable steps to facilitate an Inspection including:</p> <ul style="list-style-type: none"> (a) directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection, (b) being available, or requiring your employees, agents, tenants or other occupiers to be available, at all reasonable times during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required. <p>3. During an Inspection:</p> <ul style="list-style-type: none"> (a) we will not compel you and your employees, agents, tenants or other occupiers to answer our questions or to let us look at, copy or take away documents, (b) our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection. 	
Standard condition 4: remain 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> <ul 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

You must tell us in writing if any of the following events happens to any of the Consent holders:

Within 20 working days after the change

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.

Standard condition 6: dispose of your interest in 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.

<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>

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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 July 2023;
 - (b) Year three: 31 July 2025;
2. contain information about:
 - (a) your progress in implementing the Special conditions;
 - (b) the number of FTE employees retained within the PIC NZ Group (including Bardfield Farms Limited, PIC New Zealand Limited, and Maramarua Pork Limited) across its New Zealand operations; and
 - (c) your level of productivity for pig production for the preceding 12 month period ending 30 June; 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 consent was granted or
- (b) the conditions of this consent.

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ATTACHMENT 2 – INTENDED OWNERSHIP STRUCTURE

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

Relea

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 – there are no known areas of significant indigenous vegetation or significant habitats of indigenous fauna the Land.
Public access	Not relevant – there are no known public access ways over the Land.
Historic heritage	Not relevant – there are no known areas of historic heritage on the Land.
Oversight or participation by New Zealanders	Not met – the investment will result in a net reduction in New Zealand ownership.
Extraction of water for bottling	Not relevant – there are no proposals for water bottling.

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