

To: Pedro Morgan – Lead Advisor, Overseas Investment

## ASSESSMENT REPORT: Germinal Holdings New Zealand Limited

<b>Date</b>	16 November 2022	<b>Classification</b>	IN CONFIDENCE: Commercially sensitive
<b>LINZ reference</b>	202200246	<b>Deadline</b>	Applicant's requested date: 10 November 2022 Statutory timeframe: 25 November 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.
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 November 2022 to enable the decision to be communicated to the applicant in compliance with the prescribed assessment timeframe.

### Key information

<b>Applicant</b>	<b>Germinal Holdings New Zealand Limited</b> (United Kingdom, 100%)
<b>Vendor</b>	<b>Broadfield Farm Limited</b> (New Zealand, 100%)
<b>Land</b>	Approximately 4.1134 hectares of land located at of freehold land located at the Tancreds Road, Lincoln, Canterbury.
<b>Consideration</b>	\$775,000
<b>Sensitivity</b>	More than 5 hectares of non-urban land
<b>Relevant tests</b>	Investor test: s18A Benefit to NZ test – farm land benefit test s16A(1C); s16(1)(c)(ii) & s16A(1)(a) Farm land offer test: s16(1)(f) Residential land outcome: s16B

### Timing

4. The Overseas Investment Regulations 2005 specify the total assessment timeframe for this application is 100 working days. This application is currently on day 93, therefore a decision is due to the applicant by 25 November 2022.

## A. Decision

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### Core tests

5. I determine that:

5.1 The '**relevant overseas person**'(**ROP**) is solely the Applicant, Germinal Holdings New Zealand Limited

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

Individuals with control	Role
Brendon John Adam	Director of Germinal Holdings NZ Limited
William John Gilbert	
John William Stephen Gilbert	

5.3 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.

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

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

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

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

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

7.4 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; and

7.5 the farm land offer criteria have been met.

### National interest assessment

8. 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.

### Decision

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



Pedro Morgan

Lead Advisor (Overseas Investment)

Date: 16-Nov-2022

## B. Background and proposed transaction

10. Germinal Holdings New Zealand Limited (the **Applicant**) seeks consent under the Act to acquire approximately 4.1134 hectares of freehold land located on Tancred's Road, Lincoln, Canterbury (the **Land or Lot 1**) from the Vendor.
11. The Applicant is a New Zealand incorporated company<sup>1</sup> wholly owned by Germinal Holdings Limited<sup>2</sup> which is a 6<sup>th</sup> generation family-owned company founded in Belfast, Northern Ireland which specialises in the breeding of clover and grass, with a focus on sustainable varieties.
12. The Applicant acquired the neighbouring land (**Lot 2**) comprising of approximately 4.2032 hectares and has gained retrospective consent under the Act for this acquisition<sup>3</sup>. The Applicant submits that if they purchased just Lot 2 then they would be at capacity within just 4-5 years, which would restrict its ability to grow in New Zealand.
13. The Applicant intends to use the Land for its plant breeding and seed production business.
14. The Land does not contain or adjoin any fresh or seawater areas. The following image shows the Land outlined in purple labelled "Lot 1" with the adjoining "Lot 2" processed as a retrospective application.



Figure 1-Aerial photo of Lot 1 showing its proximity to Lot 2

<sup>1</sup> Incorporated in 2002 -company number 1243888

<sup>2</sup> a company incorporated in Northern Ireland

<sup>3</sup> Case 202200276, consent granted on 10 August 2022.



## C. Application of the Act

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15. The Land is sensitive because it is non-urban land over 5 hectares in size<sup>4</sup> so consent is required.<sup>5</sup> The following criteria for an investment in sensitive land apply to this application:<sup>6</sup>
- The investor test must be met;<sup>7</sup>
  - The benefit to New Zealand test must be met;<sup>8</sup>
  - The farm land must have been offered for sale on the open market<sup>9</sup>, unless exempt<sup>10</sup>;
  - 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;<sup>11</sup>
16. 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;<sup>12</sup> and
  - because the Land is also residential:
    - determine a residential land outcome<sup>13</sup>;
    - apply conditions of consent for the residential land outcome (that also caters for the potential long-term accommodation facility); and
    - be satisfied that those conditions are likely to be met<sup>14</sup>.
  - 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 land<sup>15</sup> (unless the farm land benefit test is disapplied<sup>16</sup>); and
17. We assess the investor test in Part D, the benefit to New Zealand test in Part E, and discuss national interest matters in Part F.

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<sup>4</sup> Note that because it is associated with Lot 2 (ie associated land) consent is required as together= non urban land over 5 hectares.

<sup>5</sup> Under sections 10(1)(a) and 12(a)(i) of the Act.

<sup>6</sup> Set out in section 16(1) of the Act.

<sup>7</sup> Section 18A / 16(1)(a) of the Act.

<sup>8</sup> Section 16(1)(c)(ii). The alternative is the relevant overseas person or each of the individuals with control is a NZ citizen or resident, which is not applicable to the proposed investment.

<sup>9</sup> Section 16(1)(f) of the Act.

<sup>10</sup> Section 20(1)(a) or (b) of the Act.

<sup>11</sup> Section 16(1)(g) of the Act.

<sup>12</sup> Section 16A(1)(a) of the Act.

<sup>13</sup> Section 16B(3)(a). The Act specifies a range of outcomes to choose from in clause 19, Schedule 2 of the Act.

<sup>14</sup> Section 16A(1)(c) of the Act.

<sup>15</sup> Section 16A(1C)(b) of the Act. This criterion applies because the Land is farm land over 5 ha in size.

<sup>16</sup> Section 16A(1D) of the Act.

## D. Applicant and investor test

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

### Business Activities

19. Germinal Holdings specialises in the breeding of clover and grass, with a focus on sustainable varieties. It operates a substantial research and development program in the United Kingdom, Ireland and New Zealand, including at its research and development station at Insignis Park in Christchurch<sup>17</sup>, and develops its products with commercial partners in over 25 other countries.
20. In New Zealand, Germinal Holdings Limited has operated in New Zealand since 2002 via its two wholly owned New Zealand subsidiaries, being:
  1. the Applicant; and
  2. Germinal New Zealand Limited, a wholly owned subsidiary of the Applicant; (together the **Germinal Group**)
21. The Applicant is also a 50% shareholder in Cates Grain & Seed, which operates in the domestic and international grain and seed market based in Mid Canterbury<sup>18</sup>.
22. The Applicant is a member of the New Zealand Plant Breeding and Research Association and is actively involved in the National Forage Variety Trials across New Zealand.

### Ownership

23. The Applicant is wholly owned by Germinal Holdings Limited which is beneficially owned by a number of individual shareholders in the United Kingdom. None of these shareholders hold a greater than 25% interest.<sup>19</sup>
24. A diagram of the ownership structure is in **Attachment 2**.

### Control

25. The Applicant's directors exercise control over the Applicant and were responsible for approving the acquisition of the Land, will be responsible for approving significant capital and operating expenditure in respect of the Land and would be responsible for the decision to divest the Land<sup>20</sup>.
26. For the purposes of the investment, Germinal Holdings Limited is a passive investor which will exercise no control over the Land.

### Relevant overseas person and individuals with control

27. We recommend that the '**relevant overseas person**'(ROP) is solely the Applicant, Germinal Holdings New Zealand Limited.

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<sup>17</sup> At this site, Germinal is building its current variety portfolio, and testing new varieties as part of its New Zealand breeding programme.

<sup>18</sup> The Applicant received consent for this acquisition under case 200220089.

<sup>19</sup> [s 9(2)(a)]

<sup>20</sup> Future day to day decisions relating to the Land will be made by the Applicant's directors and by the local General Manager.

28. We recommend that the 'individuals with control of the relevant overseas person' (IWC)<sup>21</sup> are:

Individuals with control	Role
Brendon John Adam	Director of the Applicant
William John Gilbert	
John William Stephen Gilbert	

### Summary of investor test

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

## E. Investment plan and benefit to NZ test

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

### Investment plan

32. The Applicant intends to provide additional space to carry out its plant breeding and seed production business. They consider the Land suitable location to carry out this business, as it is:
- a) of sufficient size to achieve the scale necessary for the profitable operation of its business;
  - b) highly suitable for the growing of crops, and for testing seeds in a New Zealand environment; and
  - c) in an ideal location, as it is near to the Applicant's other New Zealand operations, and close to Lincoln University, providing the Applicant with convenient access to the University's resources.
33. The Applicant intends to construct a (s 9(2)(b) (m)) building on the Land, comprising an office, machinery sheds, a laboratory and to construct a (s 9(2)(b) (m)) controlled glasshouse<sup>22</sup> in addition to the development from Lot 1.
34. The Applicant develops products with commercial partners in over 25 different countries, and accordingly looks to produce products that grow in a range of different conditions. It is therefore important that it tests and develops seeds in a number of different countries. Germinal presently carries out seed testing in the UK, Ireland and New Zealand, and is actively looking for new sites to grow its operations. The Applicant will trial its varieties out on farms around New Zealand and considers that testing under real-life pressures in a range of local farming systems is essential to ensure it delivers farmers with robust, top-performing products.
35. The Land presents an opportunity to acquire a suitable new site to expand its operations in New Zealand. The Land will be used for several purposes:

<sup>21</sup> Section 15.

<sup>22</sup> regulates temperature and humidity inside the greenhouse in all growing climates to ensure that the crops can thrive and even live past their "season"

- a) primarily as a forage variety testing and plant breeding site. The primary focus of this testing operation is to develop more efficient and climate smart agricultural products;
- b) As the base of the Applicant's New Zealand research and development operations, together with Lot 2. The Applicant intends to base its "Germinal Horizon" New Zealand research and development site on the Land, in order to develop, test and fine tune products better adapted to the New Zealand market and climate. Germinal ultimately endeavours to develop such products to benefit New Zealand farmers; and
- c) For customer demonstration purposes. As the site is located close to many of the Germinal Group's New Zealand customers, the Applicant intends to welcome customers on to the Land and demonstrate its products in a real-life environment.

### **Current state (counterfactual)**

36. The Vendor is using the Land to graze sheep and supports approximately 4.5 stock units. The Land does not support any FTE other than the sole shareholder of the Vendor who manages the Land and does not export any goods from the Land.

### **Residential land outcome**

37. The most appropriate residential land outcome to require is 'Use for non-residential purposes'<sup>23</sup>, for which a condition must be imposed that requires the residential land is not used, nor held for future use, for residential dwellings or long-term accommodation facilities.

### **Farm land benefit test**

38. 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.<sup>24</sup>
39. There are no grounds for disapplying the farm land benefit test in section 16A(1D). Accordingly, as required by the Act, we have treated the following factors as having high relative importance:<sup>25</sup>
- a) 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
  - b) the oversight or participation factor (section 17(1)(f)).
40. For the farm land benefit test to be met, the Applicants 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.

### **Summary of benefits**

41. 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.
42. 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**.

<sup>23</sup> Clause 19(2), row 2, Schedule 2 of the Act.

<sup>24</sup> 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.

<sup>25</sup> Section 16A(1C)(a).



43. 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.
44. Consultation undertaken in our assessment is discussed following the table.

### Summary assessment: benefit to NZ test

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

<b>Relevant Benefit factor</b>	<b>Economic benefits</b> (High relative importance factor)
<b>Indicative Strength</b>	<b>Strong</b>
<b>Proposed special conditions</b>	<p>Special Condition 1: Construct the buildings</p> <p>Special condition 2: Introduce at least [ s 9(2)(b)(ii) ] into New Zealand</p> <p>Special condition 3: Create new jobs</p>

### Capital investment

<b>Applicant's claims: what they intend to do</b>	<b>Current state</b>
<p>Invest a total of [ s 9(2)(b)(ii) ] by spending :</p> <p>(a) [ s 9(2)(b)(ii) ] on constructing a facility to house offices, a seed laboratory and to store machinery. This will be approximately [ s 9(2)(b)(ii) ]</p> <p>(b) [ s 9(2)(b)(ii) ] on constructing a [ s 9(2)(b)(ii) ] glasshouse;</p> <p>(c) [ s 9(2)(b)(ii) ] to purchase new machinery; and</p> <p>(d) [ s 9(2)(b)(ii) ] to fund its expanded seed testing operations on the Land, over a period of five years.</p>	No additional investment.
<b>LINZ analysis</b>	The Applicant is committed to spend approximately [ s 9(2)(b)(ii) ] which will result in increased productivity. The building will be expected to be completed by mid-2024.



## New Jobs

Applicant's claims: what they intend to do	Current state
<p>Total of 1 permanent FTE and at least 14 temporary FTE made up of:</p> <p>(a) <b>one full-time position (1 FTE)</b> , ideally for a PHD or graduate student;</p> <p>(b) <b>two part-time positions (0.15FTE in the spring, and 0.05FTE in the late autumn)</b> including for a local property maintenance company and a general maintenance person; and</p> <p>(c) <b>14 temporary jobs for construction workers (14FTE)</b>, during the construction of the new building.</p>	<p>The sole shareholder of the Vendor manages the Land herself.</p>
<b>LINZ analysis</b>	<p>The Applicant intends to source the worker for the one full time position from Lincoln University if possible. As remuneration, the Applicant intends to fund the study of this student. This will occur within one year of obtaining consent.</p> <p>The Applicant will employ 14 temporary workers for 10 months which will equate to 1 FTE for each of those workers.</p>

## Increased productivity and enhanced viability

Applicant's claims: what they intend to do	Current state
<p>The purchase of new machinery such as a forage plot harvester and irrigation machinery will increase the area of operation for the Applicant which will increase its scale of production and enhance the viability of its existing business as they will be able to continue to grow and expand their business.</p>	<p>Improvements are \$500 of fertilizer on the Land in the last two years.</p>
<b>LINZ analysis</b>	<p>The Applicants business model is to develop new products that improve the long-term environmental sustainability of livestock, and that increase the productivity of the agricultural sector, by decreasing the inputs required to produce primary products.</p> <p>The Applicant submits that if they purchased just Lot 2 then they would be at capacity within just 4-5 years, which would restrict its ability to grow in New Zealand.</p> <p>The Applicant wants to produce a greater number of products which it considers would result in a substantial benefit to New Zealand farmers, including by increasing the range of products to which they have access.</p>

<b>Relevant Benefit factor</b>	<b>Consequential benefits</b>	
<b>Indicative Strength</b>	<b>Moderate</b>	
<b>Proposed special conditions</b>	No conditions recommended	
<b>Applicant's claims: what they intend to do</b>		<b>Current state</b>
<p>The Applicant wants to focus on creating forage varieties that are better for the environment (reducing methane and ammonia emissions from stock) than conventional forage varieties. This will enable farmers to produce more effectively and reduce farmers reliance on less environmentally friendly inputs. They are developing ne forage that may replace soy for vegetarian food.</p> <p>In particular, the Applicant will test several varieties of high sugar grasses. These increased sugar levels change rumen fermentation patterns, allowing grazing animals to absorb more energy from the feed. This means more protein is converted into milk and meat, and less is excreted into the environment.</p>		Grazes sheep and applies \$500 of fertilizer on the Land in the last two years.
<b>LINZ analysis</b>	<p>MPI was consulted on this claim and is referred to in paragraphs 46-50 of this report.</p> <p>MPI's Science advisors believe it is reasonable to expect an emission reduction from the adoption of new ryegrass as stated in the investment plan, however, they note that the reductions may potentially be less than those forecasted in the plan. MPI discussed studies from themselves and DairyNZ which showed a trend in decreased methane is not always consistent over seasons.</p>	

<b>Relevant Benefit factor</b>	<b>Government Policy</b>	
<b>Indicative Strength</b>	<b>Moderate</b>	
<b>Proposed special conditions</b>	No conditions recommended.	



Applicant's claims: what they intend to do	Current state
<p>The Applicant submits that this will advance these policies:</p> <p>(a) Carbon Zero Carbon Climate Change Response (Zero Carbon) Amendment Act 2019 that the investment will allow New Zealand to adapt to the effects of climate change.</p> <p>(b) The Ministry for the Environment's Emissions Reduction Plan.</p> <p>The Applicant intends to undertake several initiatives that will lower New Zealand's greenhouse gas emissions. In particular, the Applicant is focused on the production of innovative forage varieties that improve the long-term sustainability of livestock production through reductions in methane and ammonia emissions.</p> <p>(c) The Ministry for Business, Innovation and Employment's Economic Plan, dated September 2019<sup>26</sup></p>	N/A
<b>LINZ analysis</b>	<p>The investment is likely to advance government policies focused on the economy, reduce emissions and addressing climate change through the Zero Carbon submission.</p> <p>This is given a moderate rating due to the inclusion of reducing emissions and focusing on long-term sustainable products.</p>

### Consultation and submissions about the investment

46. In undertaking our assessment, we consulted with the Ministry of Primary Industries (MPI). MPI's animal policy team and science advisors have provided comments on the Applicant's proposal on the use of high sugar ryegrass in New Zealand.
47. MPI's animal policy team has confirmed that the use of high sugar ryegrass has been implemented on farms previously as a means to reduce the methane emissions from sheep and cattle. There is other similar work being conducted in this space by other industry groups into developing ryegrass strains to reduce their methane emissions.
48. MPI's Science advisors believe it is reasonable to expect an emission reduction from the adoption of new ryegrass as stated in the Applicants submissions, however, they note that the reductions may potentially be less than those forecasted in the plan.

<sup>26</sup> The claim aligns with the major initiatives the Applicant intends to undertake will increase the productivity of New Zealand's economy, by increasing economic output, economic efficiency and the efficient utilisation of New Zealand resources.



49. MPI has previously funded a three-year study looking at High Sugar Grasses compared to other perennial or diploid or tetraploid ryegrasses for their methane emissions and nitrous oxide emissions related to nitrogen content. DairyNZ funded farm trials for ryegrass strains for the Dairy sector. In lab conditions the high sugar ryegrass was found to reduce methane yields for sheep.
50. In trials, although there was a trend to produce less methane per unit of dry matter intake by high sugar ryegrasses, this was not always consistent over seasons or in comparison to other ryegrasses. Variations of farm conditions caused variations in the extent to which this reduction occurred. Further testing under field conditions in New Zealand will continue to assist in developing a more reliable measure of how much of a reduction could be achieved through high sugar ryegrass strains.
51. As a result of this consultation, we are satisfied that the benefits, as shown in the table above are feasible.

## Conclusion – benefit to NZ test

### *Key benefits*

52. 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 benefits arising directly and indirectly from the investment, including:
- a) Investment in New Zealand of [s 9(2)(b)(ii)]
  - b) Creation of 1 permanent FTE and at least 14 temporary FTE;
  - c) Reduction in carbon emissions; and
  - d) Advancement of the Government's climate change policies.

### *Proportionality*

53. 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. This Applicant is acquiring approximately four hectares of land which is only classified for the purposes of this application as 'non urban land larger than 5 hectares' due to its proximity to Lot 2, it would otherwise be solely residential land.
54. Taking into account the size of the Land, current land use of the Land and the nature of the interest being acquired, we consider that the benefits are proportionate to the sensitivity of the Land and the nature of the investment.

### *Farm land benefit test*

55. In relation to the farm land benefit test, the benefits are likely to be substantial in relation to one or more factors of high relative importance.

## F. Farm land offer test

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56. Because the Land is farm land<sup>27</sup>, we note that it must be advertised for sale on the open market with the required information for a period exceeding 30 working days, within the 12 months preceding the earlier of either the date the application is made, or the date the transaction that requires consent is entered into.

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<sup>27</sup> Currently being used primarily for livestock and agricultural purposes (see the definition of farm land in s 6 of the Act).

57. This advertising occurred prior to, and within 12 months of, the signing of the sale and purchase agreement. Advertising of the Land was completed before the sale and purchase agreement was entered into. It was advertised on two mediums from 29 January 2022 by TradeMe and The Press on the open market both locally and nationally through advertising on the internet and in printed media.
58. These advertisements both contained:
- a) a general description of Lot 1;
  - b) a statement that Lot 1 was available for acquisition;
  - c) that offers were sought from potential purchasers; and
  - d) stated the contact details of the Vendor.
59. **We are therefore satisfied** the regulations requiring the farm land to be offered for acquisition on the open market have been complied with.<sup>28</sup>

## **G. Not a transaction of national interest**

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60. The investment does not involve a transaction of national interest under the mandatory criteria of the Act.<sup>29</sup> 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).
61. 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.<sup>30</sup> He has therefore not declined consent to the transaction.
62. We are directed<sup>31</sup> 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).
63. We do not consider that this investment engages any of these risk factors.

## **H. Conclusion**

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

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<sup>28</sup> Overseas Investment Regulations 2005, regulations 5 to 10.

<sup>29</sup> Under s 20A of the Act.

<sup>30</sup> Section 20B of the Act

<sup>31</sup> Ministerial Directive Letter (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 and identifiable; and
  - the farm land offer test has been met; and
  - the conditions relating to residential land to be imposed on the consent will be, or are likely to be, met;
  - the transaction is not considered to be a transaction of national interest.
65. Therefore, we consider that the criteria for consent in section 16 have been met and our recommendation is to **grant consent**.



Jessica Te Whaiti-Finch  
**Advisor - Overseas Investment**

Date: 16 / 11 / 2022

## **I. List of Attachments**

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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	202200246
Consent	The Consent holder may acquire the Land the Land subject to the Conditions set out below.
Consent holder/s	Germinal Holdings New Zealand Limited (company number 1243888) We will also refer to each Consent holder and the Consent holders together as <b>you</b> .
Land	A freehold Interest in approximately 4.1134 hectares of land located at Lot 1 Deposited Plan 545549, contained in Record of Title 928072 (Canterbury).
Timeframe	You have until 31 December 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 Toitū Te Whenua Land Information New Zealand as **LINZ, us or we**.

**Act** means the Overseas Investment Act 2005.

**Buildings** means: a) one building to house offices, a seed laboratory and to store machinery on the Land of at least [s 9(2)(b)] and b) one controlled glasshouse on the Land of at least

[s 9(2)(b)]

## 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
<b>Special condition 1: Construct the buildings</b>	
<p>You must:</p> <ul style="list-style-type: none"><li>a. Start construction on the Land of a Buildings;</li><li>b. Finish construction of the Buildings; and</li><li>c. Operate a plant breeding and seed production business on the Land.</li></ul> <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"><li>a) by [ s 9(2)(b)(ii) ]</li><li>b) by [ s 9(2)(b)(ii) ]</li><li>c) At all times</li></ul>
<b>Special condition 2: Introduce capital into New Zealand</b>	
<p>You must introduce into New Zealand at least:</p> <ul style="list-style-type: none"><li>a. [ s 9(2)(b)(ii) ] to be spent carrying out Special Condition 1a</li><li>b. [ s 9(2)(b)(ii) ] acquiring machinery to be used in the business operating on the Land</li></ul> <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"><li>a) by [ s 9(2)(b)(ii) ]</li><li>b) By [ s 9(2)(b)(ii) ]</li></ul>
<b>Special condition 3: Use the Residential Land for a non-residential purpose</b>	
<p>You must not use or hold the Residential Land for any residential purposes.</p> <p>If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Residential Land.</p>	<p>At all times</p>

## 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
<b>Standard condition 1: acquire the Land</b>	
<p>You must acquire the Land:</p> <ul style="list-style-type: none"><li>1. by the date stated in the Consent.</li></ul>	<p>As stated in the Consent</p>

<p>2. If you do not, your Consent will lapse or become invalid and you must not acquire the Land, and</p> <p>3. 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>	
<b>Standard condition 2: tell us when you acquire the Land</b>	
<p>You must tell us in writing when you have acquired the Land. Include details of:</p> <ol style="list-style-type: none"> <li>1. the date you acquired the Land (<b>Settlement</b>),</li> <li>2. consideration paid (plus GST if any),</li> <li>3. the structure by which the acquisition was made and who acquired the Land, and</li> <li>4. copies of any transfer documents and Settlement statements.</li> </ol>	<p>As soon as you can, and no later than two months after Settlement</p>
<b>Standard condition 3: allow us to inspect the Land</b>	
<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"> <li>5. Allow a person we appoint (<b>Inspector</b>) to: <ol style="list-style-type: none"> <li>(a) enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (<b>Inspection</b>),</li> <li>(b) remain there as long as is reasonably required to conduct the inspection,</li> <li>(c) gather information,</li> <li>(d) conduct surveys, inquiries, tests and measurements,</li> <li>(e) take photographs and video records, and</li> <li>(f) do all other things reasonably necessary to carry out the Inspection.</li> </ol> </li> <li>6. Take all reasonable steps to facilitate an Inspection including: <ol style="list-style-type: none"> <li>(a) directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection,</li> </ol> </li> </ol>	<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>7. 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>	
<b>Standard condition 4: remain not unsuitable</b>	
<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 <b>Individuals Who Control You</b> 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>
<b>Standard condition 5: tell us about changes that affect you, the people who control you, or people you control</b>	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <p>8. 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.</p> <p>9. You cease to be an overseas person or dispose of all or any part of the Land.</p> <p>10. 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>	<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

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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 a **report**. This must:

11. be sent to **oio@linz.govt.nz** on the following dates:
  - (a) 1 October 2024.
  - (b) 1 October 2029.
12. contain information about:
  - (a) your progress in implementing the Special conditions;
  - (b) the progress on expenditure on the buildings.
13. follow the format of the template report published on our website (see <https://oio.linz.govt.nz/oio-consent-monitoring>).

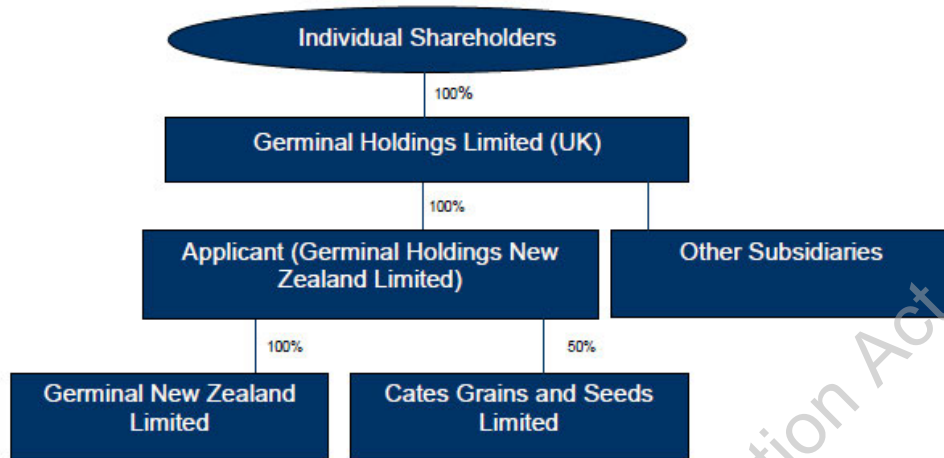
If requested in writing by the LINZ, the Consent Holder(s) must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:

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



## ATTACHMENT 2 –OWNERSHIP STRUCTURE

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## ATTACHMENT 3 – OTHER BENEFIT FACTORS

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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	We consider that there is some crossover with the benefits created under the consequential benefit factor and as such have not considered the benefit twice
Public access	Not relevant
Historic heritage	Not relevant as there are no items of historic heritage on the Land
Oversight or participation by New Zealanders	Not met as the Land is going from 100% NZ ownership to 100% UK ownership

Released under the Official Information Act 1982