


**Decision required under the Overseas
Investment Act 2005: Waste Management NZ Ltd**

Date	19 February 2015
Security Level	Commercial: In Confidence
Priority	High
Report/Case Number	1252 / 201420046
Consent Requested By	27 February 2015 – The Applicant's solicitor may negotiate an extension

Instructions

	Action Sought	Suggested Deadline
Minister for Land Information	<ol style="list-style-type: none"> 1. Sign the attached memorandum 2. Forward the memorandum and annexure to the Associate Minister of Finance 	26 February 2015
Associate Minister of Finance	<ol style="list-style-type: none"> 1. Sign the attached memorandum 2. Forward the memorandum and annexure to the Overseas Investment Office 	05 March 2015

Contact for Telephone Discussion

Name	Position	Telephone (wk)	Cellphone	First Contact
David Viviers	Team Manager	04 460 2795	s 9(2)(a)	✓
Jenna Reid	Senior Solicitor	04 460 0152		✓

Executive Summary:

Applicant

1. Waste Management NZ Limited ("**Applicant**") is a New Zealand incorporated company, ultimately owned by Beijing Capital Group Company Limited, a Beijing state-owned enterprise ("**Beijing Capital**").
2. In June 2014, Beijing Capital was granted consent by Ministers to acquire the 100% of the shares of Transpacific Industries Group Finance (NZ) Limited ("**Transpacific Industries NZ**"), a large recycling, waste management and industrial services company in New Zealand with a number of subsidiary companies (OIO application 201410015) ("**Previous Investment**"). The purchase price for the shares was \$950 million.
3. The Applicant then changed its name from Transpacific Industries NZ to Waste Management NZ Limited on 30 June 2014.
4. Under the Previous Investment, Beijing Capital acquired 50% of the shares of Living Earth Limited ("**Living Earth**"), an organic waste recycling company that operates two processing sites in New Zealand (on Puketutu Island, Auckland and in Bromley, Christchurch).
5. The Applicant intends to acquire the remaining 50% of the shares of Living Earth, which requires consent as it has an interest in approximately 19 hectares of leasehold land.

Vendor

6. The vendor is Forte Investments 2004 Limited ("**Vendor**"), which was the original joint venture partner with the Applicant when it was Transpacific Industries NZ.

Investment

7. Following the Previous Investment and the change in ownership of the Applicant, the Vendor decided to exit the joint venture and sell its shares to the Applicant.

Investment Plan

8. The Applicant intends to create efficiencies for Living Earth through utilising the Applicant's supply agreements for fuel and other capital items (such as vehicles), as well as using the Applicant's corporate services. The Applicant also intends to introduce more advanced composting technology and offer "build, own and operate" model facilities, which would save Councils the capital cost of building a greenwaste and/or foodwaste facility.

Benefit

9. The Overseas Investment Office considers that the proposed overseas investment will or is likely to benefit New Zealand (or any part of it or group of New Zealanders) having regard to the following factors:
 - (a) Greater efficiency or productivity (section 17(2)(a)(iv))
 - (b) New Zealand's image (regulation 28(c))
 - (c) Previous investments (regulation 28(e))
 - (d) Advance significant Government policy or strategy (regulation 28(f))
 - (e) Enhance the viability of other investments (regulation 28(g))
10. The Overseas Investment Office considers that benefit is likely to be substantial and identifiable.

11. Ministerial consent is required under the "Designation and Delegation Letter" of 22 April 2009 as Ministers have not delegated their power to the Overseas Investment Office to make decisions where the relevant land is sensitive for the reasons listed in Appendix Two. Although the relevant land is leased by the Applicant (and would therefore usually be delegated to the regulator under paragraph 4(a)(iii)), the Overseas Investment Office considers that the better approach is to treat paragraph 4(a)(iv) of the Designation and Delegation Letter as taking precedence, as the land contains multiple sensitivities.
12. The Overseas Investment Office recommends that consent be granted to this Application.

Annexures:

13. Report of the Overseas Investment Office on the proposed overseas investment ("Report").
14. Application for consent with supporting material ("Application").

Instructions:

15. Ministers must grant consent to this overseas investment if they are satisfied that all of the criteria in section 16 of the Overseas Investment Act 2005 ("the Act") are met. They must decline to grant consent if they are not satisfied that all of the criteria in section 16 are met. Ministers must not take into account any criteria or factors other than those identified in sections 16 and 17, and regulation 28 of the Overseas Investment Regulations 2005 ("the Regulations").
16. In the attached Report the Overseas Investment Office identifies each of the criteria and factors under sections 16 and 17, and regulation 28 that Ministers are required to consider in this case.

"Benefit to New Zealand criteria"

17. In this case, section 16 requires Ministers to decide, among other things, whether they are satisfied in relation to the following "benefit to New Zealand" criteria:
 - (a) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined under section 17 (section 16(1)(e)(ii)); and
 - (b) that benefit will be, or is likely to be, substantial and identifiable (section 16(1)(e)(iii)).
18. The application of the benefit to New Zealand criteria involves the exercise of Ministerial judgement. The fact that responsibility for making this decision has been conferred on Ministers confirms that this is a high-level decision with significant policy content. That is also apparent from the language and content of the factors that must be considered, many of which require a high degree of evaluative judgement, and are not capable of quantification or calculation.

19. In applying the benefit to New Zealand criteria, Ministers are required to consider each of the factors in section 17(2), determine which of the factors are relevant to the investment, and have regard to the relevant section 17(2) factors. The relative importance to be given to each factor is a matter to be determined by Ministers. In particular, the Act does not require economic factors to be given more weight than non-economic factors, or vice versa. It is a matter for you, in carrying out your overall evaluation, to decide what weight to give to each factor.
20. The decision concerning whether the benefit to New Zealand, or any part of it or group of New Zealanders, is substantial and identifiable under section 16(1)(e)(iii), involves a collective assessment of the relevant factors.

Justice Miller's "with and without test"

Economic factors

21. The High Court in *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147 ("*Tiroa E*") requires the "economic benefit" factors in section 17(2)(a) to be assessed on the basis of a "counterfactual test". That is, Ministers must consider with respect to each section 17(2)(a) factor whether the overseas investment is likely to result in a benefit to New Zealand over and above any benefit that will or is likely to result even if the investment does not proceed. It is only the additional benefit from the overseas investment that is relevant when applying the "benefit to New Zealand" criteria.

Non-economic factors

22. Although the position is not free from doubt, the better view is that the same question – will this benefit be achieved even if the overseas investment does not occur – should be asked in relation to the other "non-economic" factors listed in section 17(2)(b)-(e). The High Court judgment suggested¹ that there could be a benefit in respect of the non-economic factors even if the same benefit would be achieved in the absence of the investment. But as the Court noted², it is not easy to see how a benefit that will happen anyway could be regarded as substantial for the purposes of section 16(1)(e)(iii). We consider that Ministers should not treat benefits that are likely to be achieved in any event as contributing to the "substantial and identifiable benefit" criterion.

Regulation 28 factors

23. With regard to the factors in regulation 28 of the Overseas Investment Regulations 2005, Miller J noted that:

The criteria listed in reg 28 deal, for the most part, with benefits that only an overseas buyer could provide or what may be loosely described as strategic considerations, so they do not require a counterfactual analysis.³
24. Many of the factors in regulation 28 are incapable of having a counterfactual analysis applied to them. However, as recognised by Miller J, there are some factors that may require a counterfactual analysis. The Overseas Investment Office has applied a counterfactual analysis where appropriate.

¹ *Tiroa E* at [36].
² *Tiroa E* at [38].
³ *Tiroa E* at [36].

Conditions

25. Conditions may be imposed on any consent that is granted, under section 25. The attached Report recommends some conditions that Ministers may wish to consider imposing in this case.
26. If you wish to make any changes to the conditions of consent, those changes should be discussed with the Overseas Investment Office, and the other Minister, before being finalised.

Decision

27. The decision that you are required to make should be based on information available to you that you consider is sufficiently reliable for that purpose. The information that the Overseas Investment Office has taken into account in making its recommendation is summarised in the attached Report.
28. If you propose to disagree with the decision of the other Minister, you should discuss your proposed decision with the Overseas Investment Office and the other Minister.
29. If required, staff from the Overseas Investment Office are available to brief you on the Office's recommendations.

Recommendations:

30. I recommend that you:

(a) determine that:

- (i) the 'relevant overseas person' is (collectively) Beijing Capital Group Company Limited and Waste Management NZ Ltd; and
- (ii) the 'individuals with control of the relevant overseas person' are:
 - The directors of Beijing Capital Group Company (Su Zhaohui, Li Songping, Yan Li, Wu Lishun, Liu Yongzheng, Xie Dechun, Liu Xiaoguang, Shen Jianping, Song Fengjing, and Wang Hao); and
 - The directors of Waste Management NZ Ltd (Hans Evan Geoffrey Maehl, Thomas Harvey Nickels, and Bin Yang).
- (iii) the individuals with control of the relevant overseas person collectively have, business experience and acumen relevant to the overseas investment; and
- (iv) the relevant overseas person has demonstrated financial commitment to the overseas investment; and
- (v) all the individuals with control of the relevant overseas person are of good character; and
- (vi) each individual with control of the relevant overseas person is not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009; and
- (vii) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
- (viii) the benefit will be, or is likely to be, substantial and identifiable.

(b) and accordingly you are satisfied that the criteria for consent in section 16 have been met; and

Associate Minister of Finance:

Satisfied

Not Satisfied

Minister for Land Information:

Satisfied

Not Satisfied

(c) grant consent to the overseas investment subject to the conditions in Appendix 1 of the Report.

Associate Minister of Finance:


Consent Granted

Consent Declined

Minister for Land Information:

Consent Granted

Consent Declined




Associate Minister of Finance

Date



Minister for Land Information

Date



David Viviers - Team Manager
Overseas Investment Office

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Report of the Overseas Investment Office
on the application for consent by
Waste Management NZ Ltd
Case: 201420046

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Summary of Key Information

Applicant	Waste Management NZ Ltd (China, People's Republic of 100.0%)
Vendor	Forte Investments 2004 Limited (New Zealand 80.33%, Various 19.67%)
Consideration	\$8,801,000
Recommendation	Grant Consent

Application

1. For consent for Waste Management NZ Ltd ("**the Applicant**"), or a 100% subsidiary of the Applicant, to give effect to:
 - (a) An overseas investment in sensitive land, being the Applicant's acquisition of rights or interests in up to 100% of the shares of Living Earth Limited which owns or controls:
 - (i) a leasehold interest in approximately 12 hectares of land at 600 Island Road, Puketutu Island; and
 - (ii) a leasehold interest in approximately 7.1067 hectares of land at 40 Metro Place, Bromley, Christchurch.

("the Investment")

Applicant

2. The Applicant is a New Zealand incorporated company, ultimately owned by Beijing Capital Group Company Limited, a Beijing state-owned enterprise ("**Beijing Capital**").
3. In June 2014, Beijing Capital was granted consent by Ministers to acquire the shares of Transpacific Industries Group Finance (NZ) Limited ("**Transpacific Industries NZ**"), a large recycling, waste management and industrial services company in New Zealand with a number of subsidiary companies (OIO application 201410015) ("**Previous Investment**"). The purchase price for the shares was \$950 million.
4. The Applicant changed its name to Waste Management NZ Limited on 30 June 2014.
5. The Applicant either wholly owns or has a 50% controlling interest in at least 20 New Zealand companies as set out in the organisational structure diagram attached at Appendix 3 of this Report.
6. Beijing Capital is a Beijing state-owned enterprise, owned by the State-owned Assets Supervision and Administration Commission of the Beijing Municipality (Beijing SASAC), a special commission of the People's Republic of China under the control of the State Council which oversees Chinese state-owned enterprises in the Beijing Municipality.
7. Beijing Capital was formed in 1994, and reorganised in 1995 when it was amalgamated with 16 other state owned enterprises in Beijing. Beijing Capital is a large conglomerate with three core business areas:
 - (a) Urban infrastructure development: including water treatment, waste management, environmental infrastructure and highway construction;
 - (b) Real estate: including urban residential developments and construction; and

- (c) Financial services and investments: including investment banking, private equity, loan guarantees and mergers and acquisitions.
8. The Applicant is ultimately wholly-owned by Beijing Capital, through:
- (a) Beijing Capital's wholly-owned subsidiary company, BCG ChinaStar International Investment Limited ("**BCG ChinaStar**"), a limited liability company incorporated in Hong Kong on 8 July 1993; and
 - (b) a wholly-owned subsidiary of BCG ChinaStar, BCG NZ Investment Holding Limited, a Hong Kong incorporated limited liability company.
9. The Applicant is New Zealand's leading recycling and waste management company. The Applicant provides a range of environmental services to industrial, municipal and commercial customers. The Applicant and its subsidiaries operate across the following principal divisions:
- (a) Solid Waste: This division specialises in the collection, transportation, disposal of solid commercial and municipal waste, including landfill and transfer station operation, resource recovery and recycling.
 - (b) Environmental Recovery Services: This division supplies parts cleaning machines and associated services, collects, transports and disposes of all workshop and paint shop waste, and collects, transports and processes waste hydrocarbon oils.
 - (c) Organics: This division offers a range of advanced waste technology solutions for processing source separated organics (primarily food and green waste) and other organic wastes.
 - (d) Technical Services: This division specialises in the collecting, treatment, recycling and disposal of medical, liquid and hazardous waste.
 - (e) Recycling: This division specialises in the collection and recycling of paper, cardboard, plastics and metals.

Background to the Investment

10. The Previous Investment included acquiring 50% of the shares in Living Earth Limited ("**Living Earth**"), which was a joint venture between Transpacific Industries and Forte Investments 2004 Limited ("**the Vendor**").
11. Living Earth is one of New Zealand's leading organic waste recycling companies. It operates two processing sites in New Zealand: 12 hectares on Puketutu Island, Auckland ("**Puketutu Island Land**") and 7.1067 hectares at 42 Metro Place, Bromley, Christchurch ("**Metro Place Land**").
12. Living Earth receives greenwaste from the Auckland region and processes it into a range of compost and compost products. It also processes untreated wooden pallets to become a high quality mulch product into a high quality mulch product. In Christchurch, Living Earth operates the Christchurch Organics Process Plant under contract with the Christchurch City Council. The plant processes kerbside organics (greenwaste and food waste) from the residents of Christchurch and creates high quality organic compost.
13. Annually, Living Earth takes over 100,000 tonnes of garden and food waste, thereby preventing that waste going to landfill.

Outline of the Investment

14. Under the joint venture agreement entered into between Transpacific Industries and the Vendor, and under the constitution of Living Earth, the Vendor has put option rights in relation to its shares. Put option rights give the owner of the right an option, but not an obligation, to sell a specified amount of securities held at a specified price within a specified time.
15. The Vendor informed the OIO that the change of ownership of Transpacific Industries led the shareholders of the Vendor to the conclusion that rather than exercising the constitutional rights mentioned above, its preference was for the Vendor to exit the business and sell its interest in Living Earth by negotiation with the Applicant.
16. On 8 August 2014, the Applicant and the Vendor entered into a conditional sale and purchase agreement for the shares in Living Earth ("the Agreement").

Rationale for the Investment

17. The acquisition of the 50% of the shares in Living Earth that the Applicant does not presently own will enable the Applicant to maximise efficiencies in its own operations as well as the operations of Living Earth. There have been considerable disparities between the joint venture parties in Living Earth in respect of capacity to raise or introduce capital so as to invest in the company for growth and improvement of its business and its services and products.
18. Bringing Living Earth within the group of companies that are subsidiaries of the Applicant will enable the Applicant to better maximise the potential for growth and improvement in the performance, efficiency and productivity of Living Earth.

Sensitive Land

19. The target company has interests in sensitive land. See Appendix 2.

Assessment Process

20. We have sought sufficient information from the Applicant for us to be assured about the accuracy of the information supplied and have sought sufficient evidence from the Applicant for us to be able to judge whether the criteria and factors that apply are met.
21. We did not consider it necessary to seek input from third parties in order to verify the information or evidence gathered.
22. We have determined that the:
 - (a) **'relevant overseas person'** is (collectively) Beijing Capital Group Company Limited and Waste Management NZ Ltd; and
 - (b) **'individuals with control of the relevant overseas person'** are:
 - (i) The directors of Beijing Capital Group Company (Su Zhaohui, Li Songping, Yan Li, Wu Lishun, Liu Yongzheng, Xie Dechun, Liu Xiaoguang, Shen Jianping, Song Fengjing, and Wang Hao); and
 - (ii) The directors of Waste Management NZ Ltd (Hans Evan Geoffrey Maehl, Thomas Harvey Nickels, and Bin Yang).
23. Note that the directions the Minister of Finance has given to the Overseas Investment Office on the relative importance of certain factors are not binding on you. It is a matter for you, in carrying out your overall evaluation, to decide what weight to give to each factor.

Counterfactual Analysis

24. In *Tiroa E*, the Court made specific reference to the counterfactual assessment to be made. Miller J recognised that the statute's perspective is forward looking and that, "if it is to isolate the economic benefits attributable to the overseas investment, the counterfactual must similarly be forward looking, requiring that the OIO ask what will happen if the investment is not made".⁴ Miller J also suggested that the "status quo may serve as the counterfactual under s 17(2)(a) only if Ministers think it likely that in the hands of another owner or owners, the farms will remain in their present state".⁵
25. To establish the appropriate counterfactual in this case, the OIO has considered what the likely state of affairs would be without the Investment. The Applicant advises that:
- (a) The Applicant submits that there are potentially two likely counterfactuals in the event the OIO does not consent to the Proposed Transaction:
 - (i) the Vendor sells the shares to a (hypothetical) New Zealand purchaser; or
 - (ii) the Vendor retains ownership of the shares (in effect, that the status quo is maintained).
 - (b) The High Court in the *Tiroa E* decision recognised that the status quo may serve as the counterfactual where it seems likely that the status quo will remain if the overseas investment is not made.
 - (c) The Applicant submits that the only two likely counterfactuals to the Investment are the shares being purchased by a hypothetical New Zealand purchaser, or the status quo remains. In either event the opportunity for New Zealand to realise the key benefits associated with the Investment would be lost. In addition, the fact that many of the shareholders in the Vendor are nearing retirement is likely to mean (in the case of the status quo remaining) that constraints on further investment in Living Earth as a joint venture will only become more pronounced.
26. From the information provided, the OIO considers that the most likely state of affairs without the Investment is that the status quo will continue in the short to medium term. In particular:
- (a) The OIO notes that the Vendor is seeking to sell its 50% interest in Living Earth to its joint venture partner. The OIO considers it likely that, in the short to medium term, it is likely that the Vendor would retain ownership of its shares. However, it is likely that at some stage, it would seek to sell those shares to an alternative purchaser, in the event that the Applicant was unable or unwilling to acquire them.
 - (b) Due to the circumstances of the sale of the shares to the Applicant, the shares have not been put up for sale on the open market and therefore, we do not know what level of interest there would be from alternative New Zealand purchasers. However, for the purposes of the counterfactual assessment required, we have assumed that, in the longer term, if the Investment did not proceed, the Vendor's shares may be eventually acquired by an alternative New Zealand purchaser or purchasers.

⁴ *Tiroa E* at [37].

⁵ *Tiroa E* at [42].

Criteria set out in section 16

27. s16(1)(a) Overseas Investment Act 2005

Does the relevant overseas person, or (if that person is not an individual) do the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to that overseas investment?	✓
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Applicant's Claims:

The directors of the relevant overseas person, including the Applicant, have extensive experience, understanding and knowledge about waste management businesses.

In addition a senior management employee of the Applicant who is also a minority shareholder in Living Earth (Mr David Perkins) will be appointed to a role overseeing Living Earth, whose senior management will report to him. His 5 years of experience as General Manager of Living Earth will add considerably to the business experience and acumen made available to the Applicant.

OIO Assessment:

The Court of Appeal has confirmed that the wording of this criterion allows considerable flexibility in determining what business experience and acumen is relevant to a proposed investment. More or less specific expertise may be required depending on the nature of the investment. Business experience and acumen that contributes to an investment's success may be treated as relevant even though the investor may have to supplement its experience and acumen by utilising the experience and acumen of others to ensure the investment succeeds.

In this case, the Investment can be described as the acquisition of the remaining shares in a business enterprise, Living Earth, which has a leasehold interest in two properties where recycling and organic waste facilities are operated.

It is noted that the Beijing Capital Group's business activities include waste management involving the collection, transportation and disposal of solid commercial and municipal waste, including landfill and transfer station operation, resource recovery and recycling.

Further, the Applicant has direct experience of Living Earth, as it has been a 50% shareholder since mid 2014. Also, the Applicant will be retaining Mr Perkins, the current General Manager of Living Earth, to supplement its business experience in relation to the Investment.

The OIO is therefore satisfied that the individuals with control have significant industry experience and business acumen that is directly relevant to running Living Earth.

28. s16(1)(b) Overseas Investment Act 2005

Has the relevant overseas person demonstrated financial commitment to the overseas investment?	✓
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Applicant's Claims:

The Applicant has expended considerable sums in engaging professional advisors to assist it in considering, carrying out due diligence, negotiating and entering into the Investment. The Applicant has also allocated cash resources to meet its financial commitments to the Vendor under the Investment.

OIO Assessment:

The 'financial commitment' criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the Investment (intentions are not sufficient).

In this case, the OIO is satisfied that the relevant overseas person has demonstrated financial commitment by:

1. Incurring due diligence costs in connection with the proposed transaction;
2. Entering into an agreement for sale and purchase to acquire the shares;
3. Engaging professional advisers; and
4. Previously acquiring the initial 50% interest in Living Earth Limited (reference 201410015)

29. s16(1)(c) Overseas Investment Act 2005

Is the relevant overseas person, or (if that person is not an individual) are all the individuals with control of the relevant overseas person, of good character?	✓
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Applicant's Claims:

On 12 February 2015, Thomas Harvey Nickels, director of the Applicant, made a statutory declaration attesting to the good character of all the directors of the relevant overseas person.

OIO Assessment:

The Applicant has provided a statutory declaration stating that all the individuals with control of the relevant overseas person are of good character. The OIO is satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957. The OIO has also conducted open source background checks on those individuals and found nothing relevant.

Further, Beijing Capital received consent under the Act for the Previous Investment in 2014 and it is an ongoing condition of that consent that the individuals with control of Beijing Capital remain of good character.

Therefore, the OIO is satisfied that the individuals with control of the relevant overseas person are of good character.

30. s16(1)(d) Overseas Investment Act 2005

Is the relevant overseas person, or (if that person is not an individual) is each individual with control of the relevant overseas person, not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009?	✓
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Applicant's Claims:

On 12 February, Mr Nickels made a statutory declaration attesting that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.

OIO Assessment:

Section 15 of the Immigration Act specifies that certain convicted or deported persons are not eligible for a visa or permission to enter or be in New Zealand. Section 16 provides a power to deny a visa or permission to enter New Zealand for other specified reasons, such as if the individual is likely to be a threat or risk to security or public order.

The Applicant has provided a statutory declaration stating that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009. The OIO is satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957. The OIO has also conducted open source background checks on those individuals and found nothing relevant.

Further, Beijing Capital received consent under the Act for the Previous Investment in 2014 and it is an ongoing condition of that consent that the individuals with control of Beijing Capital do not become individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.

Therefore, the OIO is satisfied that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.

31. s16(1)(e)(ii) Overseas Investment Act 2005

Will the overseas investment benefit, or is it likely to benefit, New Zealand (or any part of it or group of New Zealanders)?	✓
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OIO Assessment:

The proposed overseas investment will or is likely to benefit New Zealand (or any part of it or group of New Zealanders) having regard to the following factors:

Overseas Investment Act 2005

17(2)(a)(iv) – Greater efficiency or productivity

Overseas Investment Regulations 2005

28(c) – New Zealand's image

28(e) – Previous investments

28(f) – Advance significant Government policy or strategy

28(g) – Enhance the viability of other investments

32. s16(1)(e)(iii) Overseas Investment Act 2005

Will the benefit be, or is the benefit likely to be, substantial and identifiable?	✓
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OIO Assessment:

In *Tiroa E*, Miller J says (at [39]):

The Act does not require that benefits be quantified, however, only that the Ministers be satisfied, for farm land, that substantial and identifiable benefits are likely to flow from the overseas investment. It is a matter of inquiring, for each claimed economic benefit, whether it is likely to happen absent the overseas investment and is substantial and identifiable. The weighing of economic benefits among themselves and against non-economic benefits requires not calculation but Ministerial judgment.

As noted in the Instructions above, the decision concerning whether the benefit to New Zealand, or any part of it or group of New Zealanders, is substantial and identifiable under section 16(1)(e)(iii), involves a collective assessment of the relevant factors).

Having considered the factors (or parts of them) in section 17 of the Act and Regulation 28 the OIO considers that the proposed benefits are likely to be substantial and identifiable.

Factors Set Out in section 17

33. s17(2)(a)(i) Overseas Investment Act 2005

Will the overseas investment result in, or is it likely to result in, the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost?	Not Relevant
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Applicant's Claims:

The Applicant does not foresee any alteration of Living Earth's current employment or management arrangements and therefore the Applicant does not expect the Investment will result in any immediate growth of new job opportunities in New Zealand.

OIO Assessment:

The OIO considers that this factor is not relevant as it is not likely the Investment will result in the creation of job opportunities in New Zealand.

34. s17(2)(a)(ii) Overseas Investment Act 2005

Will the overseas investment result in, or is it likely to result in, the introduction into New Zealand of new technology or business skills?	x
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Applicant's Claims:

The Investment represents part of the opportunity presented by the Beijing Capital acquisition of the Applicant to introduce into New Zealand some world-class technologies and innovations, as well as the expertise of leading professionals in the waste management industry, and to realise a range of economic and environmental benefits from these technologies and business skills.

Technology

As set out in the application by Beijing Capital for the Previous Investment, the relationships with other industry participants globally gives the Applicant (through Beijing Capital) access to a number of world-leading waste management technologies and global waste management technology providers.

s 9(2)(b)(ii)



Business skills

The Applicant submits it can bring substantial management expertise, project experience, and financial support to Living Earth as a wholly owned subsidiary in a much more efficient manner than as a joint business partner. Such business skills will not only enhance Living Earth's performance, but also have the potential to enhance the protection of New Zealand's natural environment, through enhanced waste management strategies.

The Applicant can leverage its waste management expertise for the benefit of Living Earth (and, ultimately, New Zealand) through its skills in the following areas:

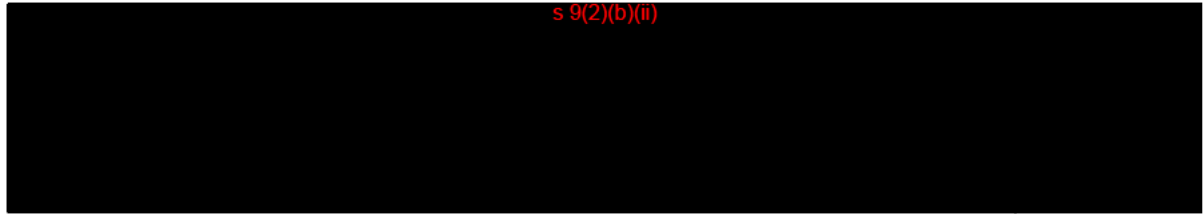
- (a) implementing and operating various waste management technologies; and
- (b) waste-to-energy projects.

Overall, the Applicant submits that the Investment will help the development of New Zealand's organic waste management sector by adopting world class management, operations and technical skills.

OIO Assessment:

The OIO is not satisfied that this factor has been met.

The new technology identified above was referred to in the previous application by Beijing Capital (application 201410015) and it is a condition of that consent that they introduce that technology into New Zealand within a specified period.



Therefore, this factor is not met as new technology is likely to occur with or without the Investment.

However, it is acknowledged that the Applicant may introduce this technology into the Living Earth business if the Investment proceeds, which may assist Beijing Capital to meet its conditions under the Previous Investment of introducing the new technology into New Zealand.

The OIO is also not satisfied that the Applicant has identified new business skills that it will introduce into New Zealand as a result of this Investment.

35. s17(2)(a)(iii) Overseas Investment Act 2005

Will the overseas investment result in, or is it likely to result in, increased export receipts for New Zealand exporters?	Not Relevant
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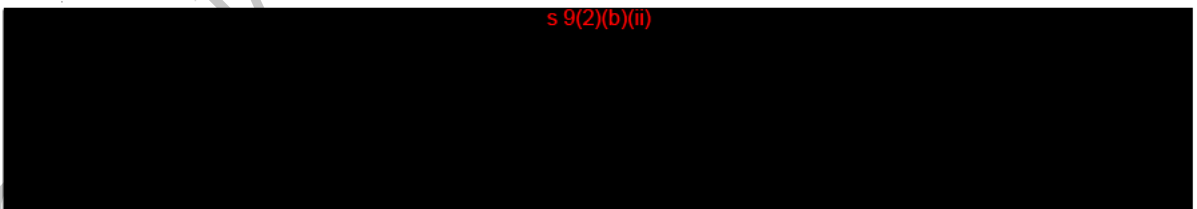
OIO Assessment:

The OIO considers that this factor is not relevant, as the Investment does not relate to export products.

36. s17(2)(a)(iv) Overseas Investment Act 2005

Will the overseas investment result in, or is it likely to result in, added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand?	✓
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Applicant's Claims:



The Applicant considers that the Investment will or is likely to result in greater efficiency or productivity or enhanced domestic services in New Zealand, with the following being examples:

- (a) The joint venture structure of Living Earth has up until now resulted in business barriers that would not exist if Living Earth was a full subsidiary of the Applicant, with access to:

- (i) input supply;

- (ii) group procurement;
- (iii) corporate support services;
- (iv) capital; and
- (v) lower cost accommodation.

Input Supply: Under the current joint venture structure, the Applicant collects greenwaste via its Sunshine business unit. Sunshine has a supply contract with Living Earth for disposal of greenwaste. Living Earth then processes that greenwaste into compost. The supply chain is not optimised for the whole business. Information does not flow freely from the Applicant to Living Earth or vice versa.

Value is unequally split between Sunshine and Living Earth. In addition, strategy is not integrated. The Investment will allow the Applicant to improve these arrangements and thereby improve efficiencies.

Group Procurement: Living Earth currently procures fuel independently of the Applicant's group deal and pays a significant premium. As a wholly owned subsidiary of the Applicant, Living Earth would have full access to all of the Applicant's supply deals both for operating expenses and capital expenses such as vehicles.

Corporate Support Services: Currently Living Earth carries its own independent head office resource or subcontracts for functions such as technical, financial, HR, and IT support. Overhead costs for Living Earth could be reduced by these functions being incorporated into the Applicant's corporate support services. Service quality would also improve with access to specialists rather than relying on generalists.

Capital: Living Earth is capital constrained and tends to lease rather than own plant and equipment, even if leasing is capital inefficient. The Investment will allow the capital resources available to the Applicant to be utilised by Living Earth as a wholly owned subsidiary.

Accommodation: Living Earth would be able to relocate its administration offices into office accommodation within existing facilities occupied by the Applicant in due course.

OIO Assessment:

The OIO is satisfied that overall this factor is met.

Added market competition

Added market competition means adding more players and/or supply (quantity or quality) in a market that benefits consumers in New Zealand.

The OIO considers that this part of the factor is not relevant, as the Investment will not result in added market competition.

Greater efficiency or productivity

Greater efficiency is the improvement of use of an existing resource or asset (i.e. improving the input/output ratio).

Greater productivity is increasing the amount of goods or services produced. Increases in productivity typically result from increased efficiency and the introduction of new technology or business skills or the introduction of capital to expand the existing operations.

The OIO considers that, without the Investment, it is likely that the status quo will continue in the short to medium term.

The OIO is satisfied that the Investment is likely to result in greater efficiency or productivity. In particular, the ability of Living Earth to use the Beijing Capital group's supply arrangements is likely to reduce costs for Living Earth, including in relation to decreased fuel costs and other operating and capital expenses. The Applicant may also be able to assist Living Earth reduce its overhead expenses through shared corporate services and accommodation.

The OIO is therefore satisfied that this factor has been met.

Enhanced domestic services

Domestic services are enhanced if the quality or quantity of an existing service is improved, or a new service is introduced. The service may be "down-stream" from the investment being considered. "Services" applies only to services, and does not include goods.

As discussed under 'Consequential Benefits' below, Living Earth intends to bid for a new operation in Auckland. However, it is too early to know whether it is likely to be successful. Further, it is not clear that the bid would only be made with the Investment. The OIO therefore does not consider that the Investment is likely to result in enhanced domestic services.

37. s17(2)(a)(v) Overseas Investment Act 2005

Will the overseas investment result in, or is it likely to result in, the introduction into New Zealand of additional investment for development purposes?	x
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Applicant's Claims:

As a long term strategic investor in the Applicant, Beijing Capital intends to continue to invest in developing the Applicant's current waste management assets and to support additional investment in growth and environmental initiatives, as well as other investment opportunities that may be identified including new opportunities that arise in other parts of New Zealand to develop greenwaste and foodwaste composting plants.

OIO Assessment:

The OIO considers that this factor has not been met as the Applicant has not identified any specific additional investments for development purposes that are likely to result from the Investment.

38. s17(2)(a)(vi) Overseas Investment Act 2005

Will the overseas investment result in, or is it likely to result in, increased processing in New Zealand of New Zealand's primary products?	Not Relevant
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OIO Assessment:

The OIO considers that this factor is not relevant as the Investment does not relate to primary products.

39. s17(2)(b) Overseas Investment Act 2005

Are there, or will there be, adequate mechanisms in place for protecting or enhancing existing areas of significant indigenous vegetation and significant habitats of indigenous fauna?	Not Relevant
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OIO Assessment:

The OIO considers that this factor is not relevant as the relevant land does not contain any areas of significant indigenous vegetation or habitats of indigenous fauna.

40. s17(2)(c) Overseas Investment Act 2005

Are there, or will there be, adequate mechanisms in place for protecting or enhancing existing areas of significant habitats of trout, salmon, protected wildlife and game, and providing, protecting or improving walking access to those habitats?	Not Relevant
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OIO Assessment:

The OIO considers that this factor is not relevant as the relevant land does not contain areas of significant habitats of trout, salmon, or protected wildlife or game.

41. s17(2)(d) Overseas Investment Act 2005

Are there, or will there be, adequate mechanisms in place for protecting or enhancing historic heritage within the relevant land?	Not Relevant
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OIO Assessment:

The OIO considers that this factor is not relevant as the land does not contain any historic heritage.

42. s17(2)(e) Overseas Investment Act 2005

Are there, or will there be, adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land, or a relevant part of that land, by the public or any section of the public?	Not Relevant
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OIO Assessment:

The OIO considers that this factor is not relevant as the relevant land is not suitable for walking access due to the industry being undertaken on the land.

43. s17(2)(f) Overseas Investment Act 2005

Has any foreshore, seabed, riverbed, or lakebed been offered to the Crown?	Not Relevant
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OIO Assessment:

The OIO considers that this factor is not relevant, as the relevant land does not include any special land for the purposes of the Act.

44. r28(a) Overseas Investment Regulations 2005

Will the overseas investment result in, or is it likely to result in, other consequential benefits to New Zealand (whether tangible or intangible benefits (such as, for example, additional investments in New Zealand or sponsorship of community projects))?	Unknown
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Applicant's Claims:*Corporate and social responsibility*

Beijing Capital has a strong focus on corporate and social responsibility and its operations focus on integrating economic, social and environmental values. Beijing Capital's business philosophy is "to pursue excellence and reward the community".

Beijing Capital actively participates in various charities and other welfare activities in the community, especially in education:

(a) During the last few years, Beijing Capital has donated over RMB 20 million (NZD\$4 million) to assist a range of community organisations;

(b) Beijing Capital has also donated millions of RMB to the poor and also to those who suffer from natural disasters (including donating RMB 12 million (NZD\$2.5 million) to relief work after the Sichuan earthquake in May 2008, and RMB 3.5 million (NZD\$700,000) during the SARS epidemic);

(c) In April 2008, Beijing Capital and Beijing Charity Association established the "Capital Charity Fund", which Beijing Capital committed to donate RMB 1 million (NZD\$200,000) to every year for the next 5 years; and

(d) In 2005, Beijing Capital worked with other entrepreneurs to establish the first environmental protection organisation established by entrepreneurs in China - the Society Entrepreneur Ecology.

Beijing Capital has also provided support for a range of cultural and economic events, including the 2000 Beijing Economic Conference, the Sixth World Cities Summit, and the 2008 Olympics in Beijing.

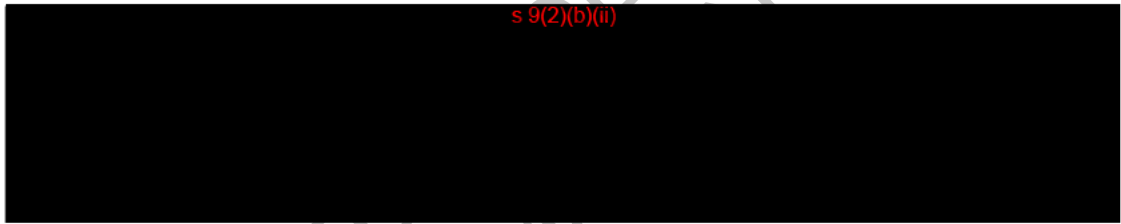
The Applicant submits that Beijing Capital continually seeks opportunities to undertake similar initiatives in China, and through the Applicant proposes to seek opportunities to participate in similar activities in New Zealand.

New facility bid

Living Earth has previously limited its form of contract that can be offered to Councils (such as Christchurch City Council) to "design build operate" ("**DBO**") contracts in which the capital for the development of the facility is provided by the Council and the Council owns the asset.

Under the Living Earth joint venture structure there has always been an imbalance in access to capital between the joint venture partners. This has effectively limited capital investment in Living Earth. If Living Earth was a wholly owned subsidiary of the Applicant, it would be able to offer a "build own operate" ("**BOO**") form of contract in which capital is provided by the Applicant and the Applicant owns the facility. The Applicant has access to substantial capital to fund those large facilities, and a BOO option will be attractive, particularly to Councils, given the current financial constraints and priorities under which Councils are operating in particular in respect of infrastructure investment capital.

Living Earth is currently in a process of preparing a bid for Auckland Council for the provision of a new organics processing facility and service. This will be a significant facility for the Auckland region for the processing and recycling of waste. If the Investment proceeds, the bid that Living Earth is going to make will offer two options, namely:



Both options will require an estimated minimum capital expenditure of

s 9(2)(b)(ii)

The benefit to New Zealand is that with the capital that can be accessed by the Applicant, Living Earth (as a wholly owned subsidiary of the Applicant) will be able to offer to Auckland Council a BOO contract in its bid, meaning that Living Earth would pay for and own the facility with the saving to Auckland Council of the capital expenditure. Without the Investment, Living Earth would not be in a position to offer a BOO proposal and would have to bid it as a DBO (as previously carried out in Christchurch).

s 9(2)(b)(ii)

OIO Assessment:*Corporate responsibility*

The OIO notes that Beijing Capital has made numerous donations to a variety of charities, organisations and causes. However, as no sponsorships or donations have been identified that are likely to result from this Investment, the OIO is not satisfied that this factor has been met.

New facility bid

The OIO considers that the BOO operating model in relation to the bid for the new organics processing facility for Auckland City Council has the potential to be a consequential benefit to New Zealand, as it could save the Council the significant capital cost of building a facility.

However, the bid will be part of a competitive bidding process and Living Earth may not ultimately be the successful bidder. Further, the OIO has not been informed of all the details relating to the proposed bid and intended facilities to determine that it would be likely to be a consequential benefit to New Zealand. The OIO is therefore not satisfied that this factor has been met:

45. r28(b) Overseas Investment Regulations 2005

Is the relevant overseas person a key person in a key industry of a country with which New Zealand will, or is likely to, benefit from having improved relations?	x
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Applicant's Claims:

Beijing Capital is one of China's Top 500 Enterprises and is one of the largest waste management companies in China, with a range of treatment facilities throughout China and a treatment capacity in excess of 8,000 tonnes of municipal solid waste per day.

Waste management is a key industry in New Zealand (as recognised in "The New Zealand Waste Strategy - reducing harm, increasing efficiency" published by the Ministry for the Environment) and Beijing Capital is a key person from China, New Zealand's second largest trading partner (with bilateral trade amounting to \$12.7 billion in the year ended September 2011, and total exports to China having tripled between 2008 and 2012 - from \$2.1 billion to \$6.1 billion), and a country with which New Zealand will benefit from having improved relations.

As the ultimate owner of the Applicant, Beijing Capital is able to bring to the Applicant, and to Living Earth, the benefits of its key role in waste management.

OIO Assessment:

This factor applies where a person with high standing and influence is involved in an industry which has a material impact on the economy. The key person's involvement in the industry must be more than as a regular (or even prominent) player. They must be in a position to materially contribute to an improvement in the relations between New Zealand and the other country.

The Applicant has made the same submission in relation to this factor as Beijing Capital did for its previous application. In relation to that application, the OIO considered that Beijing Capital had provided insufficient information on whether the waste industry is a key industry in China.

As no further information has been provided to demonstrate that the relevant overseas person is a key person in a key industry in a country with which New Zealand is likely to benefit from improved relations, the OIO considers that this factor has not been satisfied.

46. r28(c) Overseas Investment Regulations 2005

Will refusal adversely affect, or likely adversely affect, New Zealand's image overseas or its trade or international relations, or result in New Zealand breaching any of its international obligations?	✓
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Applicant's Claims:

Refusing this application may adversely impact on New Zealand's image or its trade or international relations, since the Applicant is a highly-reputable international organisation with considerable financial resources and relevant expertise, and there are numerous benefits to New Zealand in continuing to attract further investment from such a high calibre investor.

Investors of the scope and calibre of the Applicant's ultimate owner Beijing Capital add significant value to the New Zealand business environment, and, if consent were refused in the context of the Proposed Transaction, this may adversely affect how New Zealand's overseas investment regime is perceived and, consequently, the likelihood of attracting further investment from China and other major trading nations, or inward investment from other investors of similar calibre.

OIO Assessment:

The OIO considers it unlikely that a decline of this application would result in New Zealand breaching any of its international obligations.

However, the OIO is of the view that a decline is likely to adversely affect New Zealand's image overseas or its trade or international relations, as this Investment is an extension of the Beijing Capital's Previous Investment of just under s 9(2)(b)(i)

Under the Previous Investment, Beijing Capital acquired the shares of Transpacific Industries, including 50% of the shares of Living Earth, with the consent of the Ministers. Having made the large Previous Investment, the OIO considers that a decline to the Applicant's acquisition of the remaining shares of Living Earth is likely to adversely affect New Zealand's image, as it could limit Beijing Capital's ability to extend the benefits it claimed in relation to the Previous Investments (such as the introduction of new technology) to the Living Earth business.

47. r28(d) Overseas Investment Regulations 2005

Will granting the application for consent result in, or is it likely to result in, the owner of the relevant land undertaking other significant investment in New Zealand?	Not Relevant
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OIO Assessment:

The OIO has not been provided with any information concerning what investments may be undertaken by the Vendor.

48. r28(e) Overseas Investment Regulations 2005

Has the relevant overseas person previously undertaken investments that have been, or are, of benefit to New Zealand?	✓
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Applicant's Claims:

The Applicant has made substantial previous investments in the New Zealand waste and recycling industry, to the point where it is the leading waste management and recycling business within New Zealand.

OIO Assessment:

The OIO is satisfied that the relevant overseas person has made investments in New Zealand that are of benefit through employment, and the provision of waste facilities and services.

49. r28(f) Overseas Investment Regulations 2005

Will the overseas investment give effect to or advance, or is it likely to give effect to or advance, a significant Government policy or strategy?	✓
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Applicant's Claims:

New Zealand's trade and investment relationship with China is part of New Zealand's broader Economic Growth Agenda, with the goal of delivering greater prosperity, security and opportunity to New Zealanders.

The 2012 "NZ Inc China Strategy - Opening doors to China" is the New Zealand government's strategy to strengthen economic, political and security relationship with China (and is the second in the government's series of NZ Inc strategies). This strategy reflects China as an important trading partner, and is "New Zealand's first whole-of-government plan to guide the development of its bilateral relationship with China".³ The NZ Inc China Strategy identifies five strategic goals for developing New Zealand's relationship with China:

- (a) Retain and build a strong and resilient political relationship with China.
- (b) Double two-way goods trade to \$20 billion by 2015.
- (c) Grow services trade with China (education by 20%, tourism by at least 60%, and other services trade) by 2015;
- (d) Increase bilateral investment to levels that reflect the growing commercial relationship with China.
- (e) Grow high quality science and technology collaborations with China to generate commercial opportunities.

New Zealand's relationship with China is viewed as being "crucial" in delivering the Government's Economic Growth Agenda and, for the purposes of increasing bilateral investment, the NZ Inc China Strategy states (at page 25) that:

Avenues for increasing investment in New Zealand include Chinese state-owned enterprises, which could provide investment capital for strategic resource development and infrastructure funding.

New Zealand's relationship with China is also of particular significance for the purposes of growing technology and attracting knowledge and skill to New Zealand. In a speech in April 2013 to the New Zealand China Partnership Forum in China, the Honourable Steven Joyce, Minister for Economic Development stated (in reference to the recent Chinese investments in New Zealand in Synlait Milk, PGG Wrightson and Haier), that:

Investment like this brings new ideas and new capital into an economy. It is a vote of confidence in the quality of New Zealand's workforce, its institutions, its technology and its innovative products and services.

International investment is also often a conduit for the introduction of new technology and skills, and can assist entry by New Zealand firms into global supply chains and international markets. It can supplement domestic savings and drive growth in employment and economic outputs.

The lack of Chinese investment in New Zealand was discussed by the Honourable Bill English, the Minister of Finance, in a speech to the New Zealand Contemporary China Research Centre in August 2012, stating that:

This year marks 40 years since the establishment of diplomatic and trade relations between China and New Zealand.

And in 2008 our relationship took another step when our Free Trade Agreement was signed, the first between China and a member of the OECD. Since then trade between our countries has increased substantially, but direct investment, however, has remained small.

Today I'll discuss the importance to New Zealand of trade and foreign investment with China.

This transaction (as a further additional investment following the acquisition earlier this year of the Applicant by Beijing Capital) is aligned with the New Zealand Government's strategy for promoting Chinese direct investment in New Zealand.

OIO Assessment:

Under the Previous Investment, it was found that that investment of approximately \$950 million to acquire the shares in the Transpacific Industries Group was likely to give effect to or advance a significant Government policy or strategy, namely the NZ Inc China Strategy. The OIO considers that the current application to acquire the remaining shares in Living Earth is an extension of that Previous Investment.

MFAT has advised that the NZ Inc China Strategy is the second in a series (after India) of NZ Inc country strategies that are part of the government's 120-point economic development action plan. The strategies set priorities for New Zealand's operations in our key markets, with the aim of strengthening our economic, political and security relationships with countries and regions, encourage people to people links and two-way investment.

The China Strategy identifies five strategic goals for furthering New Zealand's relationship with China, one of which is to increase bilateral investment to levels that reflect the growing commercial relationship with China.

New Zealand would benefit from increased Foreign Direct Investment from China, and Outward Direct Investment into China. MFAT advised that current total Chinese investment in New Zealand is very low compared to investment from other countries such as Australia. Sectors of demonstrated or possible interest include food and beverage, natural resources, agri-tech, cleantech, high-value manufacturing, IT and infrastructure projects.

The OIO is therefore satisfied that the Investment will continue to give effect to a significant Government strategy, namely the NZ Inc China Strategy.

50. r28(g) Overseas Investment Regulations 2005

Will the overseas investment enhance, or is it likely to enhance, the ongoing viability of other overseas investments undertaken by the relevant overseas person?	✓
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Applicant's Claims:

The Applicant is currently the holder of 50% of the shares in Living Earth through a joint venture agreement with the Vendor. The Vendor is owned by private individual investors and there is a considerable disparity between the two joint venture partners in terms of access to investment capital to invest in Living Earth and access to world leading technology. The disparity is exacerbated by the fact that many of the shareholders in the Vendor are approaching retirement and their capacity and inclination towards new investment will be considerably different to that of the Applicant, particularly since its acquisition by Beijing Capital. In many cases the disparity between joint venture partners is a constraint on investment and improvement in such a company and the ongoing viability of the Applicant's existing investment in Living Earth will be improved by efficiencies and the ability to introduce new technology that might otherwise not be available to Living Earth other than to a wholly owned part of the Beijing Capital group.

OIO Assessment:

This factor recognises that some investments may not otherwise meet the threshold in their own right, but nonetheless support or enhance an earlier investment by the applicant.

The OIO considers that the acquisition of the remaining 50% of the shares of Living Earth is likely to support or enhance its earlier investment in Living Earth by giving it better access to capital and enabling it to bid as either a design, own and operate model, or a design, build, own and operate model for organic waste facilities and services.

51. r28(h) Overseas Investment Regulations 2005

Will the overseas investment assist, or is it likely to assist, New Zealand to maintain New Zealand control of strategically important infrastructure on sensitive land?	Not Relevant
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OIO Assessment:

The OIO considers that this factor is not relevant as the relevant land does not contain any strategically important infrastructure.

52. r28(i) Overseas Investment Regulations 2005

Will New Zealand's economic interests be adequately promoted by the overseas investment?	✘
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Applicant's Claims:

As discussed above, New Zealand's economic interests are likely to be advanced by:

- (a) the flow on effect of new technology being introduced;

- (b) greater efficiency gains for New Zealand's largest waste management company; and
- (c) greater investment in the largest waste management company in New Zealand.

OIO Assessment:

The OIO has considered the four matters listed in this factor:

Whether New Zealand will become a more reliable supplier of primary products in the future (r28(i)(i)):

This consideration is not relevant as the Investment does not relate to primary products.

Whether New Zealand's ability to supply the global economy with a product that forms an important part of New Zealand's export earnings will be less likely to be controlled by a single overseas person or its associates (r28(i)(ii)):

This consideration is not relevant as the Investment does not relate to exports.

Whether New Zealand's strategic and security interests are or will be enhanced (r28(i)(iii)):

This consideration is not relevant as the Investment does not relate to any of New Zealand's strategic or security interests.

Whether New Zealand's key economic capacity is or will be improved (r28(i)(iv)):

The OIO considers that this is a reasonably small investment and is unlikely to have any material impact on New Zealand's key economic capacity.

The OIO is therefore not satisfied that this factor has been met.

53. r28(j) Overseas Investment Regulations 2005

To what extent will New Zealanders be, or are likely to be, able to oversee or participate in the overseas investment and any relevant overseas person?	x
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Applicant's Claims:

The Living Earth senior management are New Zealanders and the Applicant intends to retain members of Living Earth's senior management post completion of the Investment. Hence at a day-to-day operational level the Living Earth business will remain controlled by New Zealanders. Furthermore, the Investment will result in David Perkins from the Applicant taking a direct supervisory role in the management of Living Earth, therefore adding to the presence of New Zealanders in the management of Living Earth.

OIO Assessment:

The OIO has considered the six matters listed under this factor:

Whether there is or will be any requirement that 1 or more New Zealanders must be part of a relevant overseas person's governing body (r28(j)(i)):

There is no requirement for a New Zealander to be part of the Applicant's or Beijing Capital's governing bodies.

Whether a relevant overseas person is or will be incorporated in New Zealand (r28(j)(ii)):

The Applicant is incorporated in New Zealand, however, Beijing Capital is not.

Whether a relevant overseas person has or will have its head office or principal place of business in New Zealand (r28(j)(iii)):

The Applicant has its principle place of business in New Zealand, however, Beijing Capital's principal place of business is in China.

Whether a relevant overseas person is or will be a party to a listing agreement with NZX Limited or any other registered exchange that operates a securities market in New Zealand (r28(j)(iv)):

Neither the Applicant nor Beijing Capital will be a party to a listing agreement with NZX Limited or another registered exchange that operates a securities market in New Zealand.

The extent to which New Zealanders have or will have any partial ownership or controlling stake in the overseas investment or relevant overseas person (r28(j)(v)):

New Zealanders will not have any partial ownership of the Applicant or Beijing Capital.

The extent to which ownership or control of the overseas investment or of a relevant overseas person is or will be dispersed amongst a number of non-associated overseas persons (r28(j)(vi)):

Beijing Capital is a Beijing state-owned enterprise.

In conclusion, the OIO considers that New Zealanders will have no participation or oversight of the Investment or relevant overseas person at an ownership or control level. The OIO is therefore not satisfied that this factor has been met.

Third Party Submissions

54. No third party submissions were received.

Appendix 1 – Conditions of Consent

Consent is granted subject to the following conditions:

1. The consent will lapse if the Investment has not been acquired by and transferred to the Applicant within twelve months of the date of consent.
2. The Applicant must notify the Overseas Investment Office in writing as soon as practicable, and no later than twelve months from the date of consent, whether settlement of the acquisition of the Investment took place. If settlement of the acquisition of the Investment did take place, the notice must include:
 - (a) the date of settlement;
 - (b) final consideration paid (plus GST, if any);
 - (c) the structure by which the acquisition was made, and who acquired the Investment;
 - (d) where applicable, copies of transfer documents and settlement statements; and
 - (e) any other information that would aid the Overseas Investment Office in its function to monitor conditions of consent.
3. The Applicant, or the individuals with control of the Applicant, must:
 - (a) continue to be of good character; and
 - (b) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.
4. The Applicant must notify the Overseas Investment Office in writing within 20 working days if:
 - (a) the Applicant, or (if the Applicant is not an individual) any individual with control of the Applicant:
 - (i) ceases to be of good character; or
 - (ii) commits an offence or contravenes the law (whether convicted or not); or
 - (iii) becomes aware of any other matter that reflects adversely on the Applicant's fitness to have the Investment; or
 - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
 - (b) any person in which the Applicant, or any individual with control of the Applicant has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the law (whether convicted or not); or
 - (c) the Applicant:
 - (i) ceases to be an overseas person; or
 - (ii) disposes of the Investment.
5. The Applicant must report in writing annually to the Overseas Investment Office detailing progress the following:
 - (a) Any efficiencies created for Living Earth Limited as a result of the Investment; and
 - (b) The outcome of the bid by Living Earth Limited to the Auckland City Council for a new organics processing facility and services.
6. The first report referred to in condition 5 is due on 1 November 2016 and the final report is due on 1 November 2017.

7. If requested in writing by the Overseas Investment Office, the Applicant 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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Appendix 2 – Sensitive Land

1. 600 Island Road, Puketutu Island

Land Interest	Leasehold Interest (12.0000 hectares)
CTs	561232 (North Auckland)
Sensitivity	Is more than 5 hectares of non-urban land
	Is on an island (other than North or South Island, but including the islands adjacent to the North or South Island)
	Includes land that a district plan or proposed district plan under the Resource Management Act 1991 provides is to be used as a reserve, as a public park, for recreation purposes, or as open space
	Adjoins the foreshore
	Adjoins land that is over 0.4 hectares and is listed, or in a class listed, as a reserve, a public park, or other sensitive area by the regulator under s37

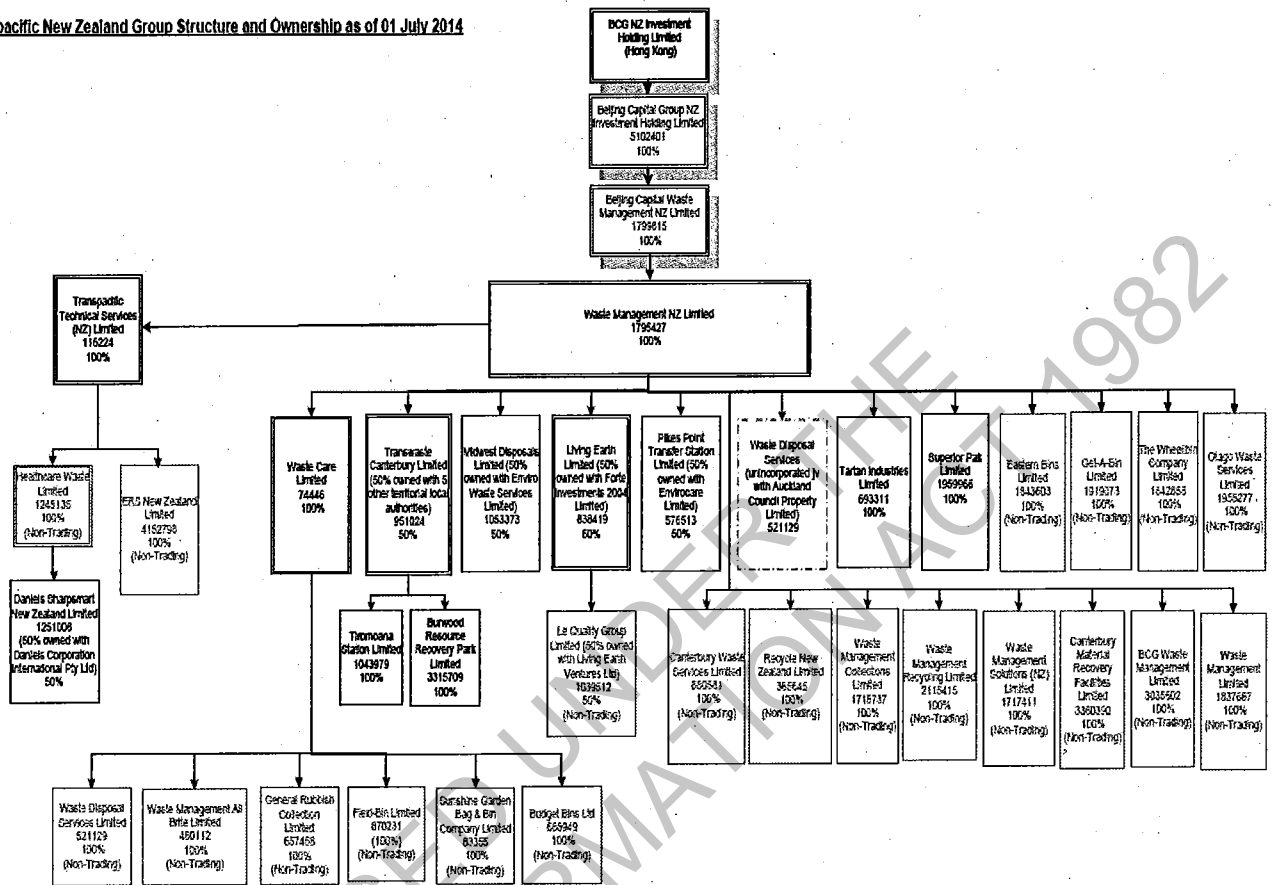
2. 40 Metro Place, Bromley, Christchurch

Land Interest	Leasehold Interest (7.1067 hectares)
CTs	CB19A/1192 (Canterbury)
Sensitivity	Adjoins land that is over 0.4 hectares and is listed, or in a class listed, as a reserve, a public park, or other sensitive area by the regulator under s37

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Appendix 3 – Applicant Organisation Structure

Transpacific New Zealand Group Structure and Ownership as of 01 July 2014



Key

- Australian Group Parent Entities
- NZ Group Holding Company
- NZ Group Trading Entities
- NZ Group Active Entities (For Tax Purposes Only)
- NZ Group Trading Joint Ventures and Partnership
- Trading Subsidiaries or Joint Ventures of NZ Group Joint Ventures
- NZ Group Non Trading Entities

Note: Numbers recorded on the diagram are the company numbers for Companies Office purposes. Please refer to the separate table for IRD numbers for the relevant entities with registered IRD accounts.

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