

To: Anneke Turton, Manager Applications, Overseas Investment Office

ASSESSMENT REPORT: Waste Management NZ Limited

Date	22 January 2020	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	201900389	Priority	High

Action Sought

Decision Maker	Action	Suggested Deadline
Anneke Turton Manager Applications, Overseas Investment Office	<ol style="list-style-type: none">1. Review the attached report and decide whether to grant consent to the application2. Forward the report and attachments to the Primary Assessor	Placeholder

LINZ Contacts

Name	Position	Contact number	First contact
Anneke Turton	Manager Applications	+64 27 597 2193	<input checked="" type="checkbox"/>
Sherlene Ho	Solicitor	+64 4 474 1017	<input type="checkbox"/>

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ASSESSMENT REPORT: Waste Management NZ Limited

Overview

Purpose

1. We seek your decision on the application by Waste Management NZ Limited under the Overseas Investment Act 2005 (the **Act**) to acquire approximately 4.7838 hectares of land located at 1232 State Highway 1, Wayby Valley, Wellsford, Auckland.
2. This decision is delegated as the consideration involved for the transaction is less than \$2 million, as per the designation and delegation letter to Land Information New Zealand dated 17 October 2018. The application for consent is under the benefit to New Zealand test, and the 'substantial and identifiable' criterion applies. This is because the land adjoins previous land acquired by Waste Management NZ Limited, which together is non-urban land larger than five hectares.

Key information

Applicant	Waste Management NZ Limited (China, People's Republic of 83.12%; Hong Kong (SAR) 16.88%;
Vendors	Phillipa Doris Izard-Price, Kenneth Ian Price and James Sidney Wiles (New Zealand 100%)
Consideration	\$1,700,000
Application type	Sensitive land – includes residential (Benefit to New Zealand - S&I)
Relevant tests	Investor test (s16(2)(a)-(d) of the Act) Benefits test – substantial and identifiable benefits (s16(1)(c)(ii) and s16A of the Act)

3. Please refer to the A3 in **Attachment 6** for overview tables summarising the application and the Overseas Investment Office's (**OIO's**) assessment.

Provisional recommendation

4. Our provisional recommendation is to **grant consent**.
5. As background context to this application, we note that:
 - a. This application relates to the purchase of buffer land to supplement an earlier application by the Applicant, being case 201720096. Case 201720096 was an application to purchase 656.9413 hectares of land at Mahurangi Forest, Mahurangi, Auckland and 363.5567 hectares of land at 1282 State Highway 1, Wayby Valley, Wellsford, Auckland for the purpose of developing a new landfill operation.

6. If you agree to grant consent, we recommend that you make the determinations set out in paragraphs 7 to 11 below.



Sherlene Ho
Solicitor

Date: 22 / 01 / 2020

Decision

7. I determine that:

7.1 the '**relevant overseas person**' is (collectively): Beijing Capital Group NZ Investment Holding Limited and Waste Management NZ Limited.

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

Individual	Role
Fujing Li	Director of Beijing Capital Group NZ Investment Holding Limited
Guoxian Cao	
Yiran Li	
Bin Yang	
Graham David Mulligan	
Thomas Harvey Nickels	Director of Beijing Capital Group NZ Investment Holding Limited and Waste Management NZ Limited
Hengjie Zhang	
Hans Evan Geoffrey Maehl	Director of Waste Management NZ Limited

- 7.3 the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment;
 - 7.4 the relevant overseas person has demonstrated financial commitment to the overseas investment;
 - 7.5 all the individuals with control of the relevant overseas person are of good character; and
 - 7.6 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 (which sections list certain persons not eligible for visas or entry permission under the Immigration Act); and
8. I am satisfied that the investor test in section 16(2)(a) to (d), as outlined in paragraph 7 above, has been met; and
 9. I am satisfied, in relation to the benefits test, that:
 - 9.1 the criteria for consent in sections 16 and 16A have been met;
 - 9.2 the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
 - 9.3 the benefit will be, or is likely to be, substantial and identifiable.
 10. I am satisfied that the appropriate residential land outcome is the 'residential purposes incidental to a relevant business' and that the requirements of this outcome is satisfied.
 11. Consent is granted to the investment in the form of the Proposed Decision in **Attachment 1**.

s 9(2)(a)

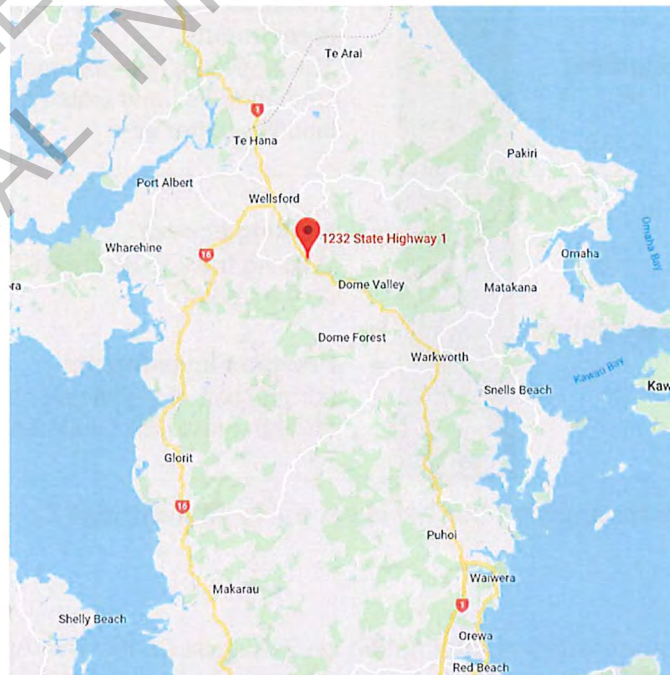
Anneke Turton

Manager Applications (Overseas Investment Office)

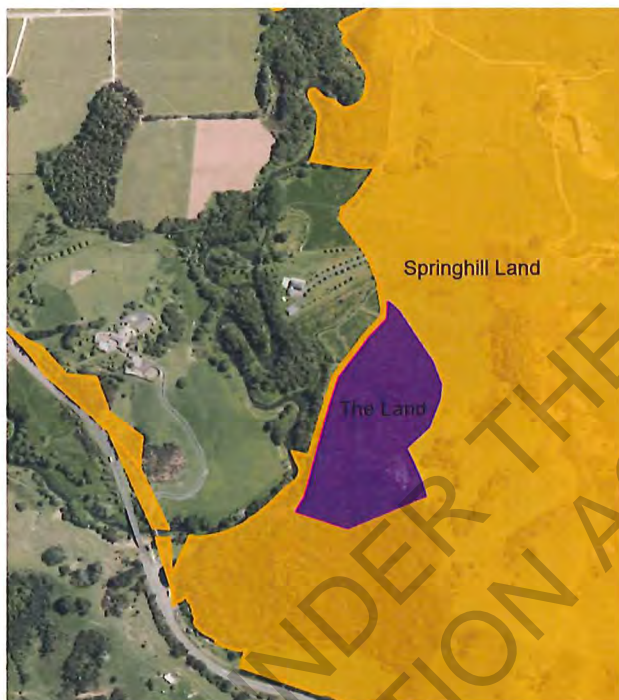
Date: 22 / 01 / 2020

Executive summary

12. Waste Management NZ Limited (the “**Applicant**”) is seeking consent to acquire a freehold interest of approximately 4.7838 hectares of land located at 1232 State Highway 1, Wayby Valley, Wellsford, Auckland (the “**Land**”).
13. An aerial view of the Land can be illustrated as follows:



14. The Land is surrounded by land which was purchased by the Applicant last year, known as the Springhill Land and Matariki Land, on which the Applicant intends to develop a landfill.



15. The Land is a residential lifestyle block held by a family trust known as Pip's Trust (the "**Vendor**").
16. The Applicant intends to use the Land as buffer land for their proposed landfill. It is to be included with the rest of the adjoining buffer land, being Springhill Land.
17. The benefits to New Zealand that may result from this investment include:

<p>Strong weighting</p>		<ul style="list-style-type: none"> • Enhance the viability of other overseas investments The Applicant has planned a landfill on adjoining land and this Land would be added as part of the landfill's buffer land.
<p>Moderate weighting</p>		<ul style="list-style-type: none"> • Walking access Walking track to be created through the bush area on the Land. • Previous investments Introduction of significant capital into New Zealand through previous investments.

18. Guidance for applying the Act is set out in **Attachment 2**.

Timing

19. The OIO received this application on 2 August 2019. The Applicant requires consent by March 2020 as per their further terms of sale in the Agreement for Sale and Purchase dated 17 July 2019.

20. Processing days for the application to date are:

Quality Assurance	OIO Processing	Waiting for Applicant / Vendor	Third party consultation
7	59	13	34

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Applicant and investor test

21. This section describes the Applicant, and whether the investor test criteria in the Act are likely to be met.

Who is making the investment

22. The Applicant is one of New Zealand's biggest recycling and waste service companies, servicing industrial, government, and commercial customers.
23. The Applicant has several existing landfills throughout New Zealand including the Redvale landfill in Dairy Flats, Auckland ("**Redvale Landfill**"). The Applicant was granted consent in 2018 to acquire approximately 1,020 hectares of land adjoining the current Land to develop the Proposed Landfill to replace the Redvale Landfill which is set to reach capacity by 2026.

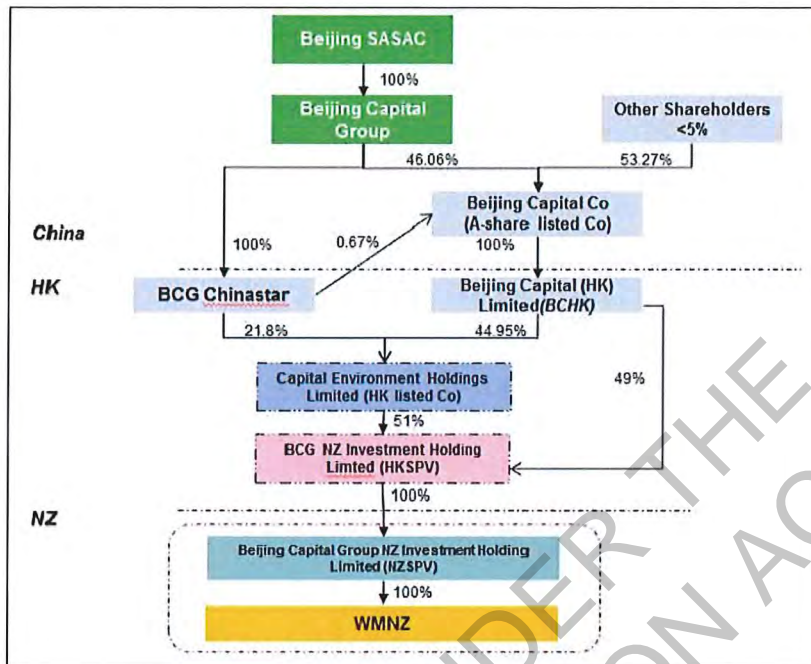
Overview of assessment: investor test

Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
Relevant overseas persons (ROP) and individuals with control (IWC) confirmed	Test met	ROP & IWC identified	Paras 24-30 Section 15 of the Act.
Collectively have business experience and acumen relevant to the investment	Test met	The IWCs have experience relevant to the investment.	Paras 31-33 Sections 16(2)(a) of the Act.
ROP demonstrated financial commitment	Test met	The Applicant has demonstrated financial commitment by entering into an Agreement for Sale and Purchase of the Land.	Sections 16(2)(b) of the Act.
Good character	Test met	We are satisfied that the ROP/IWC are of good character.	Paras 34-36 and Attachment 5. Sections 16(2)(c) of the Act.
Not an individual of the kind ineligible for a visa or entry permission under ss 15 or 16 of the Immigration Act 2009	Test met	Statutory declarations provided confirming that each individual is not of the kind referred to in ss 15 or 16 of the Immigration Act. No additional assessment required.	Sections 16(2)(d) of the Act.

Ownership and control of the Applicant

24. The Applicant is ultimately majority owned by State-owned Assets Supervision and Administration Commission of the Beijing Municipality ("**Beijing SASAC**"). Beijing SASAC is a state-owned enterprise. The remainder of the ultimate beneficial ownership of the Applicant is widely held.
25. The Applicant refers some high-level decision-making to Beijing Capital Group NZ Investment Holding Limited, a holding company registered in New Zealand.

26. A simplified ownership structure of the Applicant is set out below, depicting the intermediate companies between the Applicant and Beijing SASAC:



27. Two of the Applicant's parent entities are listed on a stock exchange:
- Beijing Capital Co is listed on the Shanghai Stock Exchange and specialises in water supply, sewerage treatment, and pipe network construction; and
 - Capital Environment Holdings Limited is listed on the Hong Kong Stock Exchange and provides waste management solutions and environmental infrastructure services in China.
28. The Applicant submits that other than the representatives on the board of Beijing Capital Group NZ Investment Holding Limited, none of the Hong Kong or China based companies have any involvement in the Applicant's decision-making.
29. We have determined that the 'relevant overseas person' (ROP) is (collectively):

ROP	Relationship
Beijing Capital Group NZ Investment Holding Limited	The immediate parent of the Applicant
Waste Management NZ Limited	The Applicant

30. We have determined that the 'individuals with control of the relevant overseas person' (IWC) are:

IWC	Role
Fujing Li	Director of Beijing Capital Group NZ Investment Holding Limited
Graham David Mulligan	
Bin Yang	
Yiran Li	
Guoxian Cao	
Thomas Harvey Nickels	Director of Beijing Capital Group NZ Investment Holding Limited and Waste Management NZ Limited
Hengjie Zhang	
Hans Evan Geoffrey Maehl	Director of Waste Management NZ Limited

Business experience and acumen

s16(2)(a) and 18(1)(a) of the Act.

The relevant overseas person, or the individuals with control of the relevant overseas person, must have business experience and acumen relevant to the overseas investment. There is considerable flexibility in determining what is relevant and 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.

31. In this case, the **Investment** can be described as the purchase of buffer land for a planned landfill nearby.
32. We have reviewed the biographical information provided by the Applicant for each of the individuals with control and note that:
- collectively, the directors of the Applicant have extensive experience in investment and business administration, including waste management; and
 - collectively, the individuals with control have accumulated experience in the environmental industry, infrastructure, engineering, and business administration.
33. Having regard to the above, we are satisfied that the individuals with control of the relevant overseas persons collectively have business experience and acumen relevant to the overseas investment.

Good character assessment

s16(2)(c) and 18(1)(c) of the Act.

The decision maker must be satisfied that the individuals with control are of good character. Section 19 of the Act specifies that the decision maker must take the following factors into account (without limitation):

- offences or contraventions of the law by A, or by any person in which A has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not);
- any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

34. 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. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations 1957.

35. The Applicant disclosed certain matters that we have previously considered in the Applicant's earlier applications.¹ We consider that those matters do not impact on the good character of the individuals with control of the relevant overseas person.
36. We have also conducted open source background checks on the relevant overseas person and individuals with control. Matters that were disclosed by the Applicant or identified through open sources searches since consent no. 201720096 that gave rise to character concerns were: an unjustified dismissal claim, Environmental Court charges, and a road accident. Our searches are discussed further in **Attachment 6**.
37. After further investigation and consideration of these matters, we do not consider that the matters impact on the good character of the individuals with control of the relevant overseas person. Overall, we consider that the matters were of low connection to the ROPs/IWCs and were of low relevance to this investment.
38. Therefore, we are satisfied that the individuals with control are of good character.

Provisional conclusion – Investor test

39. Our provisional conclusion is that the investor test is met.

Investment and benefits test

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

Summary of the proposed transaction and the Investment Plan

The proposed transaction

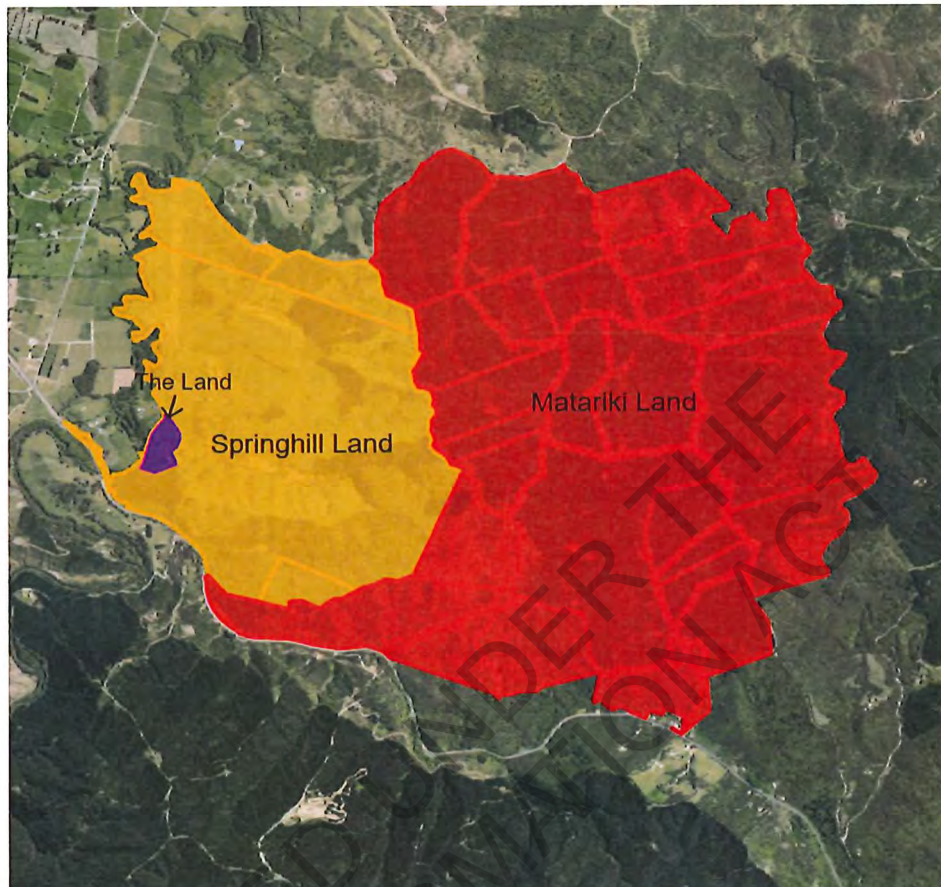
41. The Applicant and the Vendor entered into an agreement for sale and purchase for the Land on 17 July 2019 (the "**SPA**"), conditional upon the Applicant obtaining consent required under the Overseas Investment Act 2005.
42. The Land was held by James Sidney Wiles, Kenneth Ian Price, and Phillipa Doris Izzard-Price (the "**Vendors**") as trustees of Pip's Trust. The Land was formerly a family home and is the only asset in the trust. The Land was formerly part of a larger farm that was subdivided. Since the subdivision, the Land has been used as a lifestyle block only, with the exception of some sheep grazing to control the grass.
43. The Vendors received little interest when they had put the Land up for sale on the market. The Vendors approached the Applicant directly to acquire the Land after the Applicant had announced the development of the Proposed Landfill.

Investment plan summary

44. The Applicant intends to use the Land as buffer land to the Proposed Landfill.
45. The Land is physically located within Springhill Land. The Land is landlocked but for an easement granting a right of way over Springhill Land. The Land will be combined with the Springhill Land to increase the buffer land area for the Proposed Landfill.
46. The Land would be included in the same management plan as Springhill Land.

¹ 201720096

47. An illustration of the Land, Springhill Land, and Matariki Land is as per below.



What is likely to happen without the investment (Counterfactual)

48. We have determined that the most likely counterfactual is that an adequately funded alternative New Zealand purchaser will acquire the Land for the purpose of using it as a lifestyle property.
49. There are two key questions to determine what is likely to occur without the Investment:
- a. who is likely to own the Land? and
 - b. what is the likely use of the Land?

Who is likely to own the Land?

50. The Vendor had landscaped and tidied up the Land in 2017 with the intention of selling. New Zealand Transport Agency then signalled its intention to secure the adjoining property for the construction of the Warkworth Wellsford Motorway, with viaduct over the Land's driveway. The Vendor submits that this negatively impacted the saleability of the Land.
51. The Vendor submits that during the auction for the Land, no bids were made and there were no subsequent offers. The Land remained on the market with little interest.
52. In 2018, the Applicant announced the development of the Proposed Landfill on the adjoining land.

53. The Vendor submits that this announcement further adversely impacted the sale of the Land. For this reason, they approached the Applicant directly to acquire the Land as they do not wish to retain the Land in the long term.

What is the likely use of the Land?

54. If the Applicant did not purchase the Land, we consider the Land will likely be sold to an adequately funded Alternative New Zealand Purchaser (“ANZP”) as a residential lifestyle block. Despite the early difficulties with the sale of the Land, we consider that the Land will still be sold to the ANZP in the long term.

Consultation and submissions about the investment

Consultation with New Zealand Walking Access Commission

55. The Applicant has consulted directly with New Zealand Walking Access Commission (“WAC”) and they have come to a mutual agreement.
56. Please refer to paragraphs 76-82 for details of the agreed position.

Consultation with the Department of Conservation

57. The Department of Conservation is supportive of the terms reached between the Applicant and WAC.

Submissions

58. No third party submissions were sought or received.

Residential land outcome – ‘residential purposes incidental to a relevant business’

59. The Land is residential land as it comprises approximately 4.7838 hectares of lifestyle land. There is also a modern dwelling on the Land. When an investment requiring consent under the Act includes residential land, a residential outcome must apply to the Land and conditions of consent imposed ensuring this outcome.
60. There are several residential land outcomes available (as set out in clause 19, Schedule 2 of the Act), including: ‘on-sale’, ‘use for non-residential purposes’, ‘operation of a long term accommodation facility on the residential land’, ‘increased residential dwellings’, ‘residential purposes incidental to a relevant business’, ‘occupation as main home or residence’, ‘operation of existing share equity, rent-to-buy, or rental arrangements’, and ‘any other case’. Each residential outcome has a specific set of conditions that must be imposed on the investment if that outcome is considered to be appropriate.
61. We consider that the appropriate residential land outcome in this instance is residential land outcome 5, the “incidental residential use outcome” as defined in clause 14, Schedule 2 of the Act. That is that “the residential land will be, or is likely to be (or will, or is likely to, continue to be) used for residential purposes but only in support of the relevant business, where the relevant business is not (or is only exceptionally) in the business of using land for residential purposes.”
62. We consider the “relevant business” to be the Applicant’s waste management business in New Zealand and, in particular, the Proposed Landfill business. The Applicant has submitted that it does not consider the dwelling to be an advantage or asset in relation to the Land. Its purpose in acquiring the Land is simply as buffer land to the Proposed Landfill. The Applicant intends for the dwelling to only be

available for its employees or for independent third party private rental accommodation.

63. The Applicant is not in the business of using land for residential purposes, but rather for waste management. The acquisition of the Land to use as buffer land in support of the Proposed Landfill business is part of the Applicant's ordinary course of the business. The acquisition will support the Proposed Landfill business. The land will form part of the buffer zone between the Proposed Landfill and neighbouring rural and residential areas to screen potential effects like odour, noise, dust and visual appearance. The acquisition of the Land will also mean that the Vendors will not submit in opposition to the Applicant's applications for consent under the Resource Management Act or other consents in relation to the Proposed Landfill.
64. In considering the incidental residential use outcome, we have taken the following factors into account:
- a. the Land is being acquired as buffer land. There is unlikely to be a reasonable alternative to the acquisition of the Land for the Applicant's business. A separate sale of the residential premises and rezoning of the balance of the Land to no longer be lifestyle land would require a subdivision of the Land and rezoning, which would be costly and take time. Any new owner of the residential premises may be able to oppose resource consent applications relating to the Proposed Landfill, which could impact on the Proposed Landfill business;
 - b. the residential land is beside land forming part of the Applicant's Proposed Landfill business. The Land is almost surrounded by the Springhill Land, which will form buffer land to the Proposed Landfill.
 - c. the use of residential land for residential purposes will be as accommodation for staff engaged in the Applicant's Proposed Landfill business, or for independent third parties as private rental accommodation.
65. We are therefore satisfied that the appropriate residential land outcome is the 'residential purposes incidental to a relevant business' and that the Investment satisfies the requirements of that outcome.

"Rural land" directive

66. The "rural land" directive does not apply as this is the acquisition of land that is non-urban under 5 hectares in size (excluding any associated land). The Land itself is non-urban and measures 4.7838 hectares.

Overview of assessment: investment and benefit test

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Enhance the viability of other overseas investments	The Applicant has acquired the surrounding Springhill land and Matariki land. A new landfill is planned for the Matariki land, while the Springhill land is to act as buffer land. The Land would be added to the Springhill land as further buffer land.	An ANZP is likely to continue utilising the Land as a lifestyle block and may oppose resource consents for landfill.	High weighting	The inclusion of this Land to the buffer land would lessen opposition from the immediate neighbours to the landfill.	The Applicant must continue to use Land for the purpose of buffer land.	Paras 69-75
Walking access	The Land has been included in the existing Springhill Land and Matariki Land consultation with the New Zealand Walking Access Commission ("WAC") that was required as part of application 201720096. The Applicant has had initial consultations with WAC and has agreed to create a walking track through the bush area along the southern boundary of the Land in addition to its proposed access from the initial consent. The walking track alignment is to be determined through consultations with WAC and the Department of Conservation ("DOC"). The walking track will also be	No walking access would be created on the Land itself as the Land would remain a lifestyle property used for residential	Moderate weighting	The Applicant is likely to create walking access on the Land. This walking access will be aligned with the walking access created on adjoining properties.	The Applicant must create a walking track through the bush area along the southern boundary of the Land and consult WAC and DOC regarding the alignment of the walking track.	Paras 76-82

	aligned with walking access on Springhill Land and Matariki Land.					
Previous investments	The Applicant has previously invested in New Zealand's waste and recycling industries, leading to the introduction of significant capital into New Zealand.	N/A	Moderate weighting	The Applicant has undertaken previous investments in New Zealand's waste and recycling industries and has introduced significant capital into New Zealand.	N/A	Paras 83-89

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67. The section below sets out our discussion in relation to factors under which we consider the proposed investment is likely to result in benefit to New Zealand.
68. Factors that we considered were either not relevant to the investment, or the benefit to New Zealand was not sufficient enough to be relied on, are discussed in **Attachment 3**.

Enhance the viability of other overseas investments

There are three key elements to this factor (reg28(g) of the Regulations):

- The relevant overseas person must have undertaken **other overseas investments**.
- The overseas investment must **enhance the ongoing viability** of the other overseas investments.
- The enhancement in viability that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

69. We consider that the acquisition of the Land is likely to enhance the viability of the Applicant's proposed investment on the adjoining land being the Proposed Landfill.
70. The Proposed Landfill is infrastructure that is required to replace the Applicant's existing Redvale Landfill that is set to reach capacity by 2026.
71. The Applicant has begun its application for resource consent which required public notification due to the proposed land use. This notification has attracted negative attention for much of the local community many of which are proposed to the Proposed Landfill.
72. The Land is the closest in proximity to the Proposed Landfill and likely to be one of the most affected. With the location of the Land, and the Land being the most proximate residential property to the new landfill site, the acquisition of the Land would ensure that the Vendor does not submit in opposition to the resource consent application.
73. The Land would also add to the amount of buffer land for the Proposed Landfill. The Land would be included as part of Springhill Land.

Counterfactual

74. An ANZP would likely retain the Land as a lifestyle block, and therefore would likely submit in opposition to the resource consent application. This could lead to a delay in the Proposed Landfill proceeding.
75. We consider that the acquisition of the Land by the Applicant will lead to the Proposed Landfill receiving less opposition from the adjoining land owners and residents.

Walking access

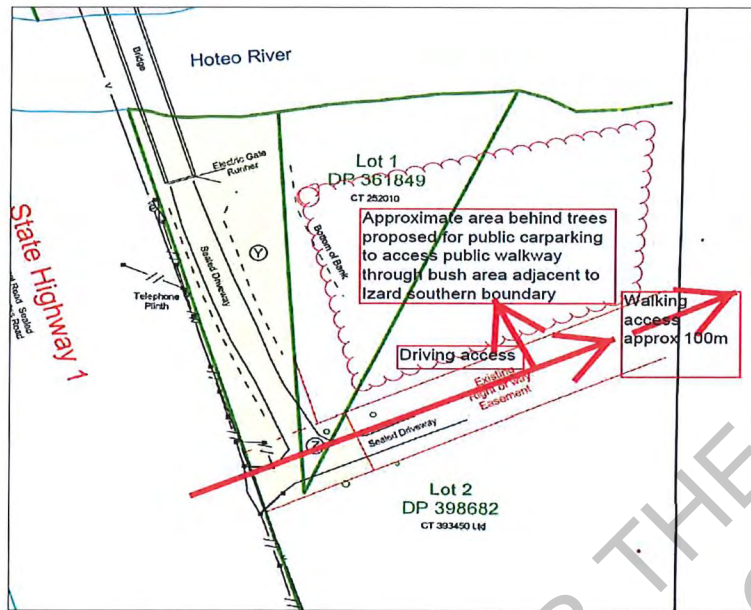
There are four key elements to this factor (s17(2)(e) of the Act):

- There must be **adequate mechanisms** in place or proposed to **provide, protect or improve walking access**.
- The walking access must be over the **relevant land**.
- The walking access must be **available to the public** or any section of the public.
- The provision, protection or improvement of walking access that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

76. The Applicant is proposing to add the Land to the buffer area comprised in Springhill Land.
77. The Applicant intends to include the Land in its consultation with the New Zealand Walking Access Commission ("**WAC**") for Springhill Land and Matariki Land as per Special Condition 3 in case 201720096.
78. In complying with Special Condition 3 in case 201720096, the Applicant has had initial consultations with WAC regarding public access onto the land contained in Records of Title 393450 and 252010, as shown on the map below. These parcels are part of Springhill Land and surrounds the Land.



79. As part of the consultation, the Applicant has agreed to create a public access easement and a public carpark on the aforementioned parts of Springhill Land. This is as illustrated below.



80. The Applicant has included the Land in their consultation with WAC and extend the area of access provided to the public. Accordingly, the Applicant has agreed to the following:
- to create a walkway easement from the carpark to and through the bush area along the southern boundary of the Land; and
 - to create a walking track through the bush area along the southern boundary of the Land. This walking track alignment is to be determined through further consultations with WAC and the Department on Conservation (“DOC”).
81. The bush area along the southern boundary of the Land is shown below.



Counterfactual

82. We consider that an ANZP is unlikely to create walking access on the Land as it will likely be used as a residential home.

Previous investments

There are two key elements to this factor (reg28(e) of the Regulations):

- The relevant overseas person must have previously undertaken investments;
- The previous investments must have been, or are, of benefit to New Zealand.

83. The Applicant has previously undertaken investments in New Zealand's waste and recycling industries, including the following:

- developing the Redvale Energy Park and Landfill;
- developing and operating the Kate Valley Landfill;
- developing and operating the Burdwood Resource Recovery Park;
- designing, developing, and operating the Whitford Sanitary Landfill;
- purchasing, developing, and operating the Bonny Glen landfill; and
- purchasing the Tirohia Landfill in 2016 for further development and improvements.

84. The Applicant claims that its previous investments have resulted in positive returns for New Zealand. We have considered the Applicant's previous investments and agree that they have resulted in tangible benefits to New Zealand.

85. In 2014, the Applicant applied to obtain leasehold interest in Puketutu Island.² The Applicant made [REDACTED] s 9(2)(b)(i)

86. Capital Environment Holdings Limited applied to purchase 51% of the shares in Beijing Capital Group NZ Investment Holdings Limited. In complying with their consent conditions for this transaction, 24 new jobs were created between 2017 and 2019.

87. In 2016,
- the Applicant applied for consent to acquire the Tirohia Landfill.³ In 2018 alone, the Applicant introduced [REDACTED] s 9(2)(b)(i)

- as per the condition in case 201620068, the Applicant donated [REDACTED] s 9(2)(b)(ii)

88. In 2017, the Applicant applied for consent to lease sensitive land at 11 Springs Road, East Tamaki, Auckland.⁴ By 6 May 2019, the Applicant had spent [REDACTED] s 9(2)(b)(ii)

² 201420046

³ 201610125

⁴ 201720110

Conclusion

89. We consider that the Applicant's investment have benefitted New Zealand, particularly through the introduction of significant capital for development purposes, the creation of jobs, and enhancing of services for New Zealanders.

Provisional conclusion – benefits test

90. For consent to be granted, the Applicant must demonstrate:
- a. that the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
 - b. that the benefit will be, or is likely to be, substantial and identifiable.
91. We have undertaken our assessment having regard to the characteristics of the land and the nature of the interest being acquired (reflecting the proportional nature of the benefits test).

Provisional conclusion

92. After careful consideration of the application, we are satisfied that the Investment is likely to result in the following benefits to New Zealand, namely the enhancement of the viability of the Applicant's other overseas investments, namely the Applicant's investment in the surrounding Springhill Land and Matariki Land, the Applicant's previous investments, and the creation of walking access for the public.
93. Our provisional view is that the Applicant has met the benefits test. On balance, we consider that, taking into account the size and nature of the Land being 4.7838 hectares of lifestyle land adjoining the Proposed Landfill, the Investment is likely to result in substantial and identifiable benefit to New Zealand.
94. Overall, when examined together, we consider that the benefits of the investment are likely to be **substantial and identifiable**.

Provisional recommendation

95. Our provisional recommendation is to **grant consent**, as we consider that the investor test and the benefits test have been met.
96. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and to paragraphs 7 to 11 of this Assessment Report to record your decision.

List of Attachments

1. Proposed Decision
2. Guidance for Applying the Act
3. Other Benefit Factors
4. Sensitive Land Details
5. Good Character Searches and Analysis
6. Overview Tables for Waste Management NZ Limited 201900389

List of other documents in the Bundle

- A. Application
- B. Investment Plan (Appendix 1 of the Application)

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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: 22 January 2020

The following people have been given the following consent:

Case	201900389
Consent	Waste Management NZ Limited may acquire the Land subject to the Conditions set out below.
Consent holder/s	Waste Management NZ Limited We will also refer to each Consent Holder and the Consent Holders together as you .
Land	A freehold interest in approximately 4.7383 hectares at 1232 State Highway 1, Wayby Valley, Wellsford, Auckland comprised in record of title 233954.
Timeframe	You have 12 months from the date of consent to acquire the Land.

Conditions

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

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

Special conditions

You must comply with the following **special conditions**. These apply specifically to this Consent and were considerations that particularly influenced us to give consent:

Details	Required date
Special condition 1: Buffer Land	
<p>1. You must use the Land as buffer land for the landfill that is proposed to be developed on the adjoining land.</p> <p>2. If you do not comply with this Special Condition, Standard Condition 6 applies and we may require you to dispose the Land.</p> <p>You must meet the cost required to fulfil this condition.</p>	At all times.
Special condition 2: Access Conditions	
<p>Public Access</p> <p>1. You must create a public access easement through the land contained in Record of Title (RT) 393450 onto the land contained in RT 252010.</p> <p>You must meet the cost required to fulfil this condition.</p>	As soon as possible and § 9(2)(b)(ii)
<p>Public Carpark</p> <p>1. You must create a public carpark on the properties contained in RT 393450 and RT 252010.</p> <p>2. You must consult with the New Zealand Walking Access Commission ("WAC") and the Department of Conservation ("DOC") on the alignment and scale of the carpark within three months from the date of consent.</p> <p>You must meet the cost required to fulfil this condition.</p>	<p>1. As soon as possible and § 9(2)(b)(ii)</p> <p>2. Within three months of this consent being granted.</p>
<p>Walking Access</p> <p>1. You must create a walkway easement from the carpark to and through the bush area along the southern boundary of the</p>	1. As soon as possible and § 9(2)(b)(ii)

<p>Land.</p> <p>2. You must create a walking track through the bush area along the southern boundary of the Land.</p> <p>3. You must consult with WAC and DOC on the alignment of the walking track within three months from the date of consent.</p> <p>You must meet the cost required to fulfil this condition.</p>	<p>2. As soon as possible and s 9(2)(b)(ii)</p> <p>3. Within three months of this consent being granted.</p>
Special condition 3: Use Land for Incidental Residential Use	
<p>1. The primary use of the Land is as buffer for the landfill on Matariki Land. You must use the Land for this purpose and for residential purposes only in support (by way of buffer) of operating the landfill on Matariki Land, including either accommodation for workers or rental to independent third parties who are not associates of your company.</p> <p>2. If you do not comply with this Special Condition, Standard Condition 6 applies and we may require you to dispose the Land.</p>	<p>At all times.</p>
Special condition 4: Non-Occupation Outcome for Residential Land	
<p>1. You must comply with the non-occupation outcome as defined in clause 17, Part 5 of Schedule 2 of the Overseas Investment Act 2005 in respect of the Land.</p> <p>2. None of the following people may occupy the Land for residential purposes:</p> <ul style="list-style-type: none"> a) You, Waste Management NZ Limited; b) Any person with a 25% or more ownership or control interest in any of the people in (a); c) Any overseas person who occupies the Land other than on arm's length terms⁵; d) Any overseas person who has a beneficial interest in, or beneficial entitlement to the relevant interest in the Land; and e) If (a) is a trust, any beneficiary, direct or indirect, who may benefit under the trust at the trustees' discretion. <p>3. If you do not comply with this Special Condition, Standard Condition 6 applies and we may require you to dispose of the Land.</p>	<p>At all times.</p>

⁵ At arm's length terms has the meaning in clause 17, Part 5, Schedule 2 of the Overseas Investment Act 2005. In summary, it means terms (for example, under a lease) that are on a reasonable commercial basis.

Standard conditions

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

Details	Required date
Standard condition 1: acquire the Land	
<p>You must acquire the Land:</p> <ol style="list-style-type: none"> 1. by the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Land, and 2. using the acquisition, ownership and control structure you described in your application. <p>Note, only you – the named Consent holder - may acquire the Land, not your subsidiary, trust or other entity.</p>	As stated in the Consent
Standard condition 2: tell us when you acquire the Land	
<p>You must tell us in writing when you have acquired the Land. Include details of:</p> <ol style="list-style-type: none"> 1. the date you acquired the Land (Settlement), 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the Land, and 4. copies of any transfer documents and Settlement statements. 	As soon as you can, and no later than two months after Settlement
Standard condition 3: allow us to inspect the Land	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions.</p> <p>We will give you at least two weeks' written notice if we want to do this.</p> <p>You must then:</p> <ol style="list-style-type: none"> 1. Allow a person we appoint (Inspector) to: <ol style="list-style-type: none"> (a) enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (Inspection), (b) remain there as long as is reasonably required to 	At all times

<p>conduct the inspection,</p> <ul style="list-style-type: none"> (c) gather information, (d) conduct surveys, inquiries, tests and measurements, (e) take photographs and video records, and (f) do all other things reasonably necessary to carry out the Inspection. <p>2. Take all reasonable steps to facilitate an Inspection including:</p> <ul style="list-style-type: none"> (a) directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection, (b) being available, or requiring your employees, agents, tenants or other occupiers to be available, at all reasonable times during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required. <p>3. During an Inspection:</p> <ul style="list-style-type: none"> (a) we will not compel you and your employees, agents, tenants or other occupiers to answer our questions or to let us look at, copy or take away documents, (b) our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection. 	
<p>Standard condition 4: remain of good character</p>	
<p>You and the Individuals Who Control You:</p> <ul style="list-style-type: none"> 1. must continue to be of good character, and 2. must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009. In summary, these sections describe convicted or deported people who are not eligible for visa or entry permission to enter or be in New Zealand and people who are considered likely to commit an offence or to be a threat or risk to security, public order or the public interest. <p>The Individuals Who Control You are individuals who:</p> <ul style="list-style-type: none"> (a) are members of your governing body, (b) directly or indirectly, own or control 25% or more of you or of a person who itself owns or controls 25% or more of you, and 	<p>At all times</p>

<p>(c) are members of the governing body of the people referred to in paragraph (b) above.</p>	
<p>Standard condition 5: tell us about changes that affect you, the people who control you, or people you control</p>	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <ol style="list-style-type: none"> 1. You, any Individual Who Controls You, or any person in which you or any individual who controls you hold (or at the time of the offence held) a 25% or more ownership or control interest commits an offence or contravenes the law anywhere in the world. This applies whether or not you or they were convicted of the offence. In particular, please tell us about any offences or contraventions that you are charged with or sued over and any investigation by enforcement or regulatory agencies or professional standard bodies. 2. An Individual Who Controls You ceases to be of good character; commits an offence or contravenes the law (whether they were convicted or not); becomes aware of any other matter that reflects adversely on their fitness to have the Land; or becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (see standard condition 4). 3. You cease to be an overseas person or dispose of all or any part of the Land. 4. You, any Individual Who Controls You, or any person in which you or any Individual Who Controls You hold (or at the time of the event held) a 25% or more ownership or control interest: <ol style="list-style-type: none"> (a) becomes bankrupt or insolvent (b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or (c) becomes subject to any form of external administration. 	<p>Within 20 working days after the change</p>
<p>Standard condition 6: dispose of the Land if you do not comply with key Special conditions</p>	
<p>Some of the special conditions were key to the decision to give consent. If we consider you have failed to comply with one of those Special conditions in a material way we may require you to dispose of the Land.</p> <p>We may also require you to execute a security deed before you may acquire the Land. The security deed:</p>	

<ol style="list-style-type: none"> 1. must be in the form we require, 2. must be executed and delivered to us before you acquire the Land, 3. gives us power to appoint a receiver to dispose of the Land if you do not do that as required by this Standard condition 6, 4. will provide, among other things, that if we appoint a receiver, the receiver may dispose of the Land, deduct his or her costs from the proceeds of sale, and pay the remainder to you. <p>If all or part of this Standard condition 6 applies to a Special condition, we have said so in that condition.</p> <p>We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:</p>	
<p>Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.</p>	<p>Within six weeks of the date of our notice.</p>
<p>Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.</p>	<p>Within six weeks of the date of our notice.</p>
<p>Dispose of the Land: dispose of the Land to a third party who is not your associate.</p>	<p>Within six months of our notice.</p>
<p>Offer without reserve: offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.</p>	<p>Within nine months of our notice.</p>
<p>Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.</p>	<p>By the last day of every March, June, September and December after our notice or at any other time we require.</p>
<p>Report disposal to us: send us, in writing, evidence:</p> <ol style="list-style-type: none"> (a) that you have disposed of the Land, (b) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor), (c) the purchaser is not your associate. 	<p>Within one month after the Land has been disposed of.</p>

Reporting conditions

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

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

1. be sent to **oiomonitoring@linz.govt.nz** by these dates:
 - (a) Year one: 1 November 2020
 - (b) Year five: 1 November 2024
 - (c) Year eight: 1 November 2027
2. contain information about your progress in implementing the special conditions.
3. follow the format of the template annual report published on our website at <https://www.linz.govt.nz/overseas-investment/enforcement/how-we-take-action>
4. If requested in writing by the OIO, the Consent Holder(s) must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
 - (a) The representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the content was granted or
 - (b) The conditions of this consent.

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ATTACHMENT 2 - GUIDANCE FOR APPLYING THE ACT

1. Ministers must grant consent to this overseas investment if they are satisfied that all of the criteria in sections 16 and 18 of the Overseas Investment Act are met. They must decline to grant consent if they are not satisfied that all of the criteria in sections 16 and 18 are met. Ministers must not take into account any criteria or factors other than those identified in sections 16, 17 and regulation 28 of the Overseas Investment Regulations.
2. Where the criteria under sections 16 are the same, Ministers need only consider each criterion once.
3. In the attached Report the Overseas Investment Office identifies each of the criteria and factors under sections 16, 17, and regulation 28 that Ministers are required to consider in this case.

“Benefit to New Zealand criteria”

4. 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)(b)(ii), s16(1)(c)(ii), s16(1)(d)(ii), s16(1)(e), s16A, s16B); and
 - (b) that benefit will be, or is likely to be, substantial and identifiable (section 16(1)(b)(ii), s16(1)(c)(ii), s16(1)(d)(ii), s16(1)(e), s16A, s16B).
5. 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.
6. 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.
7. 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

8. 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

9. 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 suggested⁶ 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 noted⁷, 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

10. 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.⁸

11. 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.

Conditions

12. Conditions may be imposed on any consent that is granted, under section 25(A). The attached Report recommends some conditions that Ministers may wish to consider imposing in this case.
13. 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

14. 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.
15. 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.
16. If required, staff from the Overseas Investment Office are available to brief you on the Office’s recommendations.

Good character criterion

17. Section 16(2)(c) of the Act requires that Managers be satisfied that the relevant overseas person or, (if that person is not an individual) all the individuals with control of the relevant overseas persons are of good character.

⁶ *Tiroa E* at [36].

⁷ *Tiroa E* at [38].

⁸ *Tiroa E* at [36].

18. The term “good character” is not defined in the Act. The majority of the Select Committee reporting back on the Bill in 2005 confirmed that the “good character” test was needed as it is important to ensure that all persons investing in New Zealand are people unlikely to act inappropriately and bring New Zealand into disrepute.
19. When undertaking the good character assessment, Managers must be satisfied that the character of all the individuals with control of the relevant overseas person is sufficient so that they should be granted the privilege of owning or controlling sensitive New Zealand assets.
20. The good character test is applicable to individuals, not entities such as body corporates. However, where the investment is to be carried out by a body corporate, the character of the relevant individuals who control the body corporate will need to be considered. Where an offence or contravention is committed by a person to which an individual had a 25% or more ownership or control interest, this is a mandatory consideration. Where the individual’s interest in the person is less than this, there generally must be other grounds to reasonably infer participation by the individual in the alleged wrongdoing.
21. Section 19(1) of the Act states that the following factors must be taken into account (without limitation) in assessing whether or not a person is of good character:
 - (a) offences or contraventions of the law by the person, or by any person in which the individual has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not);
 - (b) any other matter that reflects adversely on the person’s fitness to have the particular overseas investment.
22. All relevant matters must be weighted up before making a decision that an individual is of good character. If the decision-maker wishes to rely on a matter to which the applicant has not had an opportunity to respond, then such an opportunity to respond needs to be given to the applicant.
23. How much weight should be given to a particular matter depends on a number of factors, including how closely linked the particular matter is with the investment being made. While submissions on weighting given by the relevant overseas person or individual with control may be considered, the ultimate decision as to the weighting to be given to relevant matters is for the decision-makers.
24. Matters which might be relevant include:
 - (a) Credible allegations of offending or contraventions of the law (assessing whether the allegation is sufficiently linked to an individual with control or relevant overseas person);
 - (b) Investigations, prosecutions or other enforcement action by regulatory or professional bodies;
 - (c) Track record in New Zealand.
25. Matters which are unlikely to be relevant include:
 - (a) Adverse information that does not relate to an individual with control (for example, offences or contraventions by a relevant overseas person which occurred before the particular individual became involved with the relevant overseas person);
 - (b) Where the decision maker is satisfied that allegations about a relevant overseas person or individual with control have been fully investigated by the relevant regulatory or other authority and the person or individual has been cleared of any wrongdoing;

- (c) Adverse information that does not impact on the character of a relevant overseas person or individual with control.
26. Briefly, some of the things we consider when weighing up “good character” include:
- (a) connection to the Individuals with Control (IWCs) or Relevant Overseas Person (ROP): we assess the level of control between any of the IWCs of the ROP and the particular matter. For example, a breach of safety rules by an employee of subsidiary company where the company was fined would likely have a low (or no) connection with an IWC who was an executive director of the parent company, whereas an executive decision by a company to illegally collude with a competitor would likely have a high connection with that IWC.
 - (b) relevance to this investment: we assess how relevant the particular matter is to the nature of this particular investment. For example, a dangerous driving conviction by an IWC would have low relevance in connection with the acquisition of a dairy farm, whereas a conviction for discharging farm effluent into a waterway would have a high relevance to the acquisition of a dairy farm.
 - (c) what actions, if any, were taken to remedy the situation and reduce the chances of it reoccurring.
27. The onus is on the applicants to satisfy the decision maker that all the individuals with control are of good character.
28. If the decision maker has doubts about the character of an individual with control which result in it not being satisfied that the test for good character has been met, then the application for consent must be declined.

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ATTACHMENT 3 - OTHER BENEFIT FACTORS

1. The table **below** lists other factors in the Act and regulations for assessing the benefit of overseas investments.
2. 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 purposes of our assessment.

Factor	Reason not relevant or insufficient
Job opportunities – s17(2)(a)(i)	These benefits were not claimed by the Applicant and we agree that they are not relevant to this investment.
New technology or business skills – s17(2)(a)(ii)	
Increased export receipts – s17(2)(a)(iii)	
Added market competition, increased productivity, efficiency, and enhanced domestic services – s17(2)(a)(iv)	
Additional investment for development purposes – s17(2)(a)(v)	
Increased processing of primary products – s17(2)(a)(vi)	
Indigenous vegetation/fauna – s17(2)(b)	The Applicant submits that the Land does not contain any existing areas of significant indigenous vegetation or significant habitats of indigenous fauna. The Department of Conservation has been consulted and no comments were made on any existing areas of significant indigenous vegetation or significant habitats of indigenous fauna.
Trout, salmon, wildlife and game – s17(2)(c)	These benefits were not claimed by the Applicant and we agree. The Land does not contain any such features.
Historic heritage – 17(2)(d)	
Offer to sell seabed/foreshore/riverbed to the Crown – s17(2)(f)	
Consequential benefits – reg 28(a)	These benefits were not claimed by the Applicant and we agree that they are not relevant to this investment.
Key person in a key industry – reg 28(b)	
Affect image, trade or international relations – reg 28(c)	The Applicant claims that refusing this application may adversely impact on New Zealand's image, trade, and international relations. However, we consider that a well-reasoned decision to decline is unlikely to have the adverse effects as claimed by the Applicant.
Owner to undertake other significant investment – reg 28(d)	These benefits were not claimed by the Applicant and we agree that they are not relevant to this investment.
Advance significant government policy or strategy – reg 28(f)	
Strategically important infrastructure – reg 28(h)	
Economic interests – reg 28(i)	The Applicant submits that its waste treatment and disposal methods are world-class, and that effective waste handling and disposal processes are essential for the efficient and healthy running of Auckland City. We find this submission too broad. It is unlikely that this investment alone would impact New Zealand's key economic capacity.

Factor	Reason not relevant or insufficient
Oversight and participation by New Zealanders – reg 28(j)	The Applicant submits that it has two New Zealand directors. However, there are no New Zealanders who are part of the Applicant's governing body, nor is there such a requirement.

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ATTACHMENT 4 - SENSITIVE LAND DETAILS

1. 1232 State Highway 1, Wayby Valley, Auckland

Land Interest	Freehold Interest (approximately 4.7838 hectares)
Record(s) of Title	233954 (North Auckland)
Sensitivity	Is more than 5 hectares of non-urban land Includes residential land

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ATTACHMENT 5 - GOOD CHARACTER SEARCHES AND ANALYSIS

The OIO undertook an open-source search of the relevant overseas persons (ROPs) and individuals with control (IWCs).

The searches of the International Consortium of Investigative Journalists (ICIJ) database, United Nations Security Council (UNSC) Terrorist Entities List, and Interpol Red Notice List did not produce any relevant results.

Two of the things we consider when weighing up 'good character' include:

- a. **connection to the Individuals with Control (IWCs) or Relevant Overseas Person (ROP):** we assess the level of control between any of the IWCs of the ROP and the particular matter. For example, a breach of safety rules by an employee of subsidiary company where the company was fined would likely have a low (or no) connection with an IWC who was an executive director of the parent company, whereas an executive decision by a company to illegally collude with a competitor would likely have a high connection with that IWC.
- b. **relevance to this investment:** we assess how relevant the particular matter is to the nature of this particular investment. For example, a dangerous driving conviction by an IWC would have low relevance in connection with the acquisition of a dairy farm, whereas a conviction for discharging farm effluent into a waterway would have a high relevance to the acquisition of a dairy farm.

When making our assessment of character we also look at:

- a. How reliable is the allegation? For example a conviction would be a highly reliable, whereas a report in a tabloid newspaper or an internet forum would be less reliable.
- b. Is the explanation provided by the Applicant persuasive? Is it internally consistent and does it adequately address the concerns?
- c. Is there a pattern of similar allegations or offences? Do common themes emerge?
- d. How serious is the allegation? What actions, if any, were taken to remedy the situation and reduce the chances of it reoccurring?

In case 201720096, the OIO also undertook an open-source search of the ROPs and IWCs. We found an allegation that the Applicant had mixed recycling materials, contrary to the Marlborough District Council's recycling rules and an allegation that one of the IWCs was involved in a thallium pollution incident. We had concluded that both these incidents were the result of third-party actions, and that those incidents had low connection to the IWCs. We were satisfied that the ROPs and IWCs were of good character.

The table below are the OIO's findings since case 201720096. The table summarises the various allegations since case 201720096. For full details of the allegations, responses and our assessment, please refer to the pages following the table.

Our assessment of the connection to the IWCs is shown as the first coloured bar on the table.

Our assessment of the relevance to this investment is shown as the second coloured bar on the table.

Our ultimate assessment of the risk of each matter is shown as the third coloured bar on the table.

Direct quotes appear in italic font.

Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment
		Low	Med	High	Low	Med	High		
1. <u>Unjustifiable dismissal claim</u>	A former employee was involved in a workplace accident that result in serious injury. The former employee was later dismissed as the Applicant alleged that the employee's actions had contributed to the workplace accident. However, the former employee claimed that there was no current and relevant work instruction for the procedure that he was undertaking when the accident occurred. The Employment Relations Authority ("ERA") agreed with the former employee that there was no current and relevant work instruction in place.							In light of this matter, the Applicant has made changes in its instructions and procedures. A risk assessment alongside a Business Unit Instructor ("BUI") form for all operations is used. Operators are trained to competency by a senior operator of a particular equipment type that they may have to operate. They are then assessed using a BUI and finally signed off as competent. The Applicant also utilises all other policies and procedures as part of the training and assessment process.	The Applicant has taken action since the incident and has put procedures in place to ensure that the incident does not reoccur. The Applicant has also responded fully to the issues raised by the ERA. The accident that resulted in the unjustifiable dismissal was an operational matter and it was unlikely the IWCs were directly involved in the matter. We do not consider this matter precludes


Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment
		Low	Med	High	Low	Med	High		
								The Applicant considers that it has responded fully and appropriately to the issues raised by the ERA in order to ensure that the problems identified by the ERA are not repeated.	the IWCs and ROPs from having good character.
4. <u>Environment Court charges</u>	The Bay of Plenty Regional Council has initiated legal action against Rotorua Lakes Council and the Applicant in the Environment Court. The Applicant has been charged with unauthorised discharge of contaminants onto land and into water. This is an ongoing matter.							The Applicant is defending these charges. The Applicant submits that the Rotorua District Council had been operating the landfill for many years through contractors. The Applicant tendered for the landfill but recognised that the landfill had been poorly designed and operated over many years. The best solution was to cap the landfill completely. The process of capping the landfill was lengthy and required resource consents. Only a few months after Waste Management took	The Applicant was working towards bettering the landfill that they had taken over but process was long and the work was not able to be completed before unfavourable weather conditions hit. When the problem arose, the Applicant had worked to mitigate the leachate breakouts. We consider that this was an operational matter and that the IWCs and ROPs

Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment
		Low	Med	High	Low	Med	High		
								<p>over, the Bay of Plenty experienced high volumes of rainfall over a short period of time. This impacted on the landfill and created a pollutant called leachate. Once the landfill become saturated it is very difficult to control leachate within the landfill. Waste Management were in the process of seeking the consents to cap the landfill during these months. During these very wet months Waste Management was working round-the-clock to mitigate the effects of any leachate breakouts as best as it could.</p>	<p>became involved when the legal action was initiated. We do not consider this matter precludes the IWCs and ROPs from having good character.</p>
<p>6. <u>Fatal road accident involving rubbish truck</u></p>	<p>A six year-old girl has died after being hit by one of the Applicant's rubbish collection trucks as she was walking home from school.</p>							<p>N/A</p>	<p>The coroner in the case stated that there may be blind spots around the rubbish collection trucks and the driver should have done a check in</p>

Matter	Summary of disclosure or search finding	Connection to IWC/ROP			Relevance to this investment			Summary of Applicant response	OIO assessment
		Low	Med	High	Low	Med	High		
									the mirrors beforehand. However, the truck driver was acquitted of careless use of a vehicle causing death. We consider the IWCs and ROPs were not involved in this incident, and therefore we

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ATTACHMENT 6 - OVERVIEW TABLES FOR WASTE MANAGEMENT NZ LIMITED 201900389

	<p>Application</p> <ul style="list-style-type: none"> Waste Management NZ Limited seeks consent to acquire approximately 4.7838 hectares of non-urban land located at 1232 State Highway 1, Wayby Valley, Wellsford, Auckland. Waste Management NZ Limited is one of the largest operators in the New Zealand waste industry. They intend to use the land as buffer land to their proposed landfill. This proposed landfill is located on adjoining land. The vendors are Phillipa Doris Izard-Price, Kenneth Ian Price and James Sidney Wiles, <p>Decision requested by: 13 March 2020</p>	<p>Provisional recommendation</p> <ul style="list-style-type: none"> Our provisional recommendation is to grant consent. Relevant tests for this transaction: <ul style="list-style-type: none"> Investor test (s16) Benefits test – substantial and identifiable (s16(1)(c)(ii) and s16A)
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Overview of assessment: Investor test

Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
Relevant overseas persons (ROP) and individuals with control (IWC) confirmed	Test met	ROP & IWC identified	Paras 24-30 Section 15 of the Act.
Collectively have business experience and acumen relevant to the investment	Test met	The IWCs have experience relevant to the investment.	Paras 31-33 Sections 16(2)(a) of the Act.
ROP demonstrated financial commitment	Test met	The Applicant has demonstrated financial commitment by entering into an Agreement for Sale and Purchase of the Land.	Sections 16(2)(b) of the Act.
Good character	Test met	We are satisfied that the ROP/IWC are of good character.	Paras 34-36 and Attachment 5. Sections 16(2)(c) of the Act.
Not an individual of the kind ineligible for a visa or entry permission under ss 15 or 16 of the Immigration Act 2009	Test met	Statutory declarations provided confirming that each individual is not of the kind referred to in ss 15 or 16 of the Immigration Act. No additional assessment required.	Sections 16(2)(d) of the Act.

Overview of assessment: Investment and benefit test

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Enhance the viability of other overseas investments	The Applicant has acquired the surrounding Springhill land and Matariki land. A new landfill is planned for the Matariki land, while the Springhill land is to act as buffer land. The Land would be added to the Springhill land as further buffer land.	An ANZP is likely to continue utilising the Land as a lifestyle block and may oppose resource consents for landfill.	High weighting	The inclusion of this Land to the buffer land would lessen opposition from the immediate neighbours to the landfill.	The Applicant must continue to use Land for the purpose of buffer land.	Paras 69-75
Walking access	The Land has been included in the existing Springhill Land and Matariki Land consultation with the New Zealand Walking Access Commission ("WAC") that was required as part of application 201720096. The Applicant has had initial consultations with WAC and has agreed to create a walking track through the bush area along the southern boundary of the Land in addition to its proposed access from the initial consent. The walking track alignment is to be determined through consultations with WAC and the Department of Conservation ("DOC"). The walking track will also be aligned with walking access on Springhill Land and Matariki Land.	No walking access would be created on the Land itself as the Land would remain a lifestyle property used for residential	Moderate weighting	The Applicant is likely to create walking access on the Land. This walking access will be aligned with the walking access created on adjoining properties.	The Applicant must create a walking track through the bush area along the southern boundary of the Land and consult WAC and DOC regarding the alignment of the walking track.	Paras 76-82
Previous investments	The Applicant has previously invested in New Zealand's waste and recycling industries, leading to the introduction of significant capital into New Zealand.	N/A	Moderate weighting	The Applicant has undertaken previous investments in New Zealand's waste and recycling industries and has introduced significant capital into New Zealand.	N/A	Paras 83-89

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