

To: Anneke Turton, Leader - Assessment

ASSESSMENT REPORT: Sealord Group Limited

Date	7 December 2023	Classification	IN CONFIDENCE: Commercially sensitive
LINZ reference	202300263	Deadline	18 December 2023

Purpose

We seek your decision on an application for consent to acquire significant business assets under the Overseas Investment Act 2005 (Act).

Action sought

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

Key information

4. For the reasons set out in this report, our recommendation is to **grant consent**.

Applicant	Sealord Group Limited (New Zealand: 50%; Japan: 37.3%; Various regions: 12.7%)
Vendors	Independent Fisheries Holdings Limited (IFHL) Independent Fisheries Limited (IFL) Staunton Investments Limited (SIL) (all New Zealand: 100%)
Assets	The Assets are described in greater detail in the body of this report. <ul style="list-style-type: none"> • 100% of the shares in IFL and its assets; • IFL and IFHL's annual catch entitlement; • IFL's fishing quota; • Lease interest in premises at 15 Dublin Street, Lyttleton; • SIL's cold store assets (including land, buildings, plant and machinery) located at 17 Broad Street, Woolston, Christchurch; and • Business records relating to the above.
Consideration	[s 9(2)(b)(ii)]
Relevant tests	Investor test: s18A National interest test: s18(b)

Timing

5. The Overseas Investment Regulations 2005 specify the total assessment timeframe for this application is 35 working days. This application is currently on day 27, therefore a decision is due to the applicant by 18 December 2023.

A. Decision

Core tests

6. I determine that:

- 6.1 The 'relevant overseas person' is (collectively):

Relevant overseas person	Role
Sealord Group Limited	Applicant
Nissui Corporation (Nissui)	50% shareholder in parent company of Applicant
Aotearoa Fisheries Limited (AFL)	

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

Individuals with control	Role
Mark Eric Clarkson*	Director of Applicant
Glenn Winiata Hawkins*	
Terutaka Kuraishi	
Jamie Tuuta*	
Rachel Emere Taulelei*	
Stephen Barry Tarrant*	
Steven Arnold Yung	
Masahide Asai	
Shingo Hamada	President & CEO (and Board Member) of Nissui
Seiji Takahashi	Board Member of Nissui
Shinya Yamamoto	
Koji Umeda	
Shinya Yamashita	
Mikito Nagai	
Tokio Matsuo	
Atsumi Eguchi	
Hiroyuki Hamano	
Shino Hirose	

Masahiro Yamamoto	
Tadashi Kanki	

6.3 The individuals with control of the relevant overseas person who are New Zealand citizens are indicated with an asterisk in the 'Individuals with Control' table above. These individuals, together with AFL (which is also not an overseas person), are excluded from the requirement to satisfy the investor test contained in the Act.

6.4 Sealord Group Limited and Nissui Corporation (both of which are relevant overseas persons) have established some of the factors contained in section 18A(4) of the Act. However, I consider that they do not make any of the relevant overseas persons or individuals with control unsuitable to invest in New Zealand.

National interest assessment

7. I note that the overseas investment in significant business assets is not a transaction of national interest under section 20A of the Act and the Minister of Finance has not notified it is a transaction of national interest under section 20B of the Act.

Decision about whether to grant or decline consent

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

Anneke Turton

Leader – Assessment (Overseas Investment - LINZ)

Date: 7 / 12 / 2023

Released under the Official Information Act 2002

B. Background and proposed transaction

9. Sealord Group Limited (the **Applicant** or **Sealord**) seeks consent to acquire various assets from Independent Fisheries Limited (**IFL**), Independent Fisheries Holdings Limited (**IFHL**) and Staunton Investments Limited (**SIL**), collectively, 'the **Vendors**'.
10. The assets will be acquired pursuant to two interdependent agreements (the **Proposed Transaction**) which are conditional on contemporaneous settlement¹.
11. The assets include:
 - 100% of the shares in IFL and its assets;
 - IFL and IFHL's annual catch entitlement;
 - IFL's fishing quota;
 - Lease interest in premises at 15 Dublin Street, Lyttleton;
 - SIL's cold store assets (including land, buildings, plant and machinery) located at 17 Broad Street, Woolston, Christchurch; and
 - Business records relating to the above;collectively, 'the **Assets**'.
12. The Proposed Transaction will result in the Applicant acquiring fishing quota. However, the Applicant is not required to apply for any additional consent² in respect of the fishing quota because the Applicant will acquire IFL's quota and retained quota in reliance on permission granted by the Overseas Investment Commission in 2001 (which allowed acquisition of quota by Sealord or its nominee)³.
13. The site of the cold store in Woolston, Christchurch (which covers an area of 3.6855 ha) does not constitute sensitive land⁴ under the Act and therefore this application has been made under the significant business assets pathway only.
14. The Applicant is a New Zealand company which comprises one of the largest seafood businesses in the Southern Hemisphere. It specialises in fishing, processing, distribution and marketing of seafood and exports approximately 90% of its catch, in various frozen formats, to 40 countries.
15. The Vendors are all related parties⁵ and are selling the Assets in an arm's length transaction. [s 9(2)(a)]

¹ The Agreement for sale and purchase of land and assets between SIL and the Applicant (signed 25/8/23) is for the sale of the Land, the buildings located on the Land, Plant and Equipment. The Land means the land at 17 Broad Street, Woolston, Christchurch with legal description Lot 1 Deposited Plan 531560 and comprised in record of title 868021. Plant and Equipment means all the fixed and moveable plant equipment, machinery, tools, fixtures and fittings owned or used by SIL in connection with the Land as set out in Schedule 1 (together with additional items acquired and not sold from 1 December 2022 to settlement). Pursuant to the Agreement for sale and purchase of quota and shares in IFL (dated 25/8/23), IFHL agrees to sell the Applicant the 6,000,000 shares in IFL, together with IFL's assets as described in part A Schedule 6, the quota shares described in Part A, Schedule 1 of the agreement, the retained quota shares set out in Part B of Schedule 1, the lease interest in the Lyttleton Premises (being the relevant part of the land and buildings at 15 Dublin Street, Lyttleton with legal description Lot 1 Deposited Plan 473 and comprised in record of title CB398/280), and the unused balance of the annual catch entitlement as described in Recital E of the agreement, together with the defined business records.

² Under section 57B of the Fisheries Act 1996. Section 79 of the Overseas Investment Act provides that permissions granted under section 57(3) of the Fisheries Act (as it applied prior to the amendments introduced by the Overseas Investment Act in 2005) and conditions of those permissions 'must be treated as if they were consents granted and conditions applied under this Act'.

³ Paragraph 5(d) of decision 200110007/200110008, 17 January 2001.

⁴ Confirmed in Sensitive Land Certificate from Grayson Neal, dated 23 March 2023.

⁵ IFL is a wholly owned subsidiary of IFHL. SIL is approximately 16.7% owned by IFL and the remaining share is held by the trustees of the [s 9(2)(a)] which is a 40% shareholder in IFHL.

16. IFL will become a subsidiary of the Applicant and is likely to hold the cold store assets under the control and governance of the Applicant.
17. The Commerce Commission granted clearance for the Applicant's acquisition of IFL (and its related entities) on 13 November 2023.

C. Application of the Act

18. The Asset is sensitive because the value of the business is more than \$100 million,⁶ so consent is required.⁷ The following criteria for an investment in significant business assets apply to this application:⁸
 - The investor test must be met.⁹
 - You must also note whether the investment is a transaction of national interest and, if so, whether the Minister of Finance has decided that the investment is contrary to New Zealand's national interest.¹⁰
19. We assess the investor test in Part D, and discuss national interest matters in Part E.

D. Applicant and investor test

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

Business Activities

21. Sealord is one of the largest seafood businesses in the Southern Hemisphere. It has fishing and aquaculture operations in New Zealand, Australia and the Southern Indian Ocean.
22. Sealord was incorporated in 1961 and has its headquarters in Nelson. It employs more than 1,000 people in New Zealand and 240 people overseas.
23. The Sealord Group is engaged in sustainable deep-sea fishing and finfish aquaculture operations. It is one of the largest quota holders in New Zealand, harvesting sustainable seafood. It also owns Petuna Aquaculture and Sealord King Reef in Australia and has a 50% shareholding in New Zealand fishing business, Westfleet Seafoods Limited.

Ownership

24. Sealord Group Limited is a wholly owned subsidiary of Kura Limited (**Kura**), a New Zealand company.
25. Kura is 50% owned by Aotearoa Fisheries Limited (**AFL**), which trades as Moana New Zealand. AFL is held through 51 iwi shareholders¹¹.

⁶ Section 13(1)(a)(ii) of the Act.

⁷ Under sections 10(1)(b) and 13(1)(a) of the Act.

⁸ Set out in section 18 of the Act.

⁹ Section 18A(4) of the Act.

¹⁰ Section 18(b) of the Act.

¹¹ The acquisition of a 50% ownership stake in the Applicant by Māori in 1992 was a key part of the settlement of Māori fishing claims under the Treaty of Waitangi. It allowed direct iwi ownership of fishing quota as well as 50% ownership in one of New Zealand's largest seafood companies.

26. The remaining 50% shareholding in Kura is held by Nissui Corporation¹² (**Nissui**), a widely held¹³ Japanese company, listed on the Tokyo Stock Exchange. Nissui was incorporated in 1943 and has group companies in 28 countries. Its three main business groups are fisheries, food products and fine chemicals.
27. The Applicant is an overseas person under the Act due to its 50% indirect ownership by an overseas company.
28. A diagram of the intended ownership structure is in **Attachment 2**.
29. For these reasons, we recommend that the ‘**relevant overseas person**’ is (collectively):

Relevant overseas person	Role
Sealord Group Limited	Applicant
Nissui Corporation	50% shareholder of parent company of Applicant
Aotearoa Fisheries Limited	

Control

30. The Applicant is managed by a Board which consists of six directors and two alternate directors. The Boards of AFL and Nissui have the power to appoint, remove and replace the directors of the Applicant, in accordance with their equal shareholdings in Kura.
31. The Proposed Transaction is not a major transaction under the Companies Act 1993 and therefore did not require shareholder approval. However, a significant portion of the purchase price is likely to be funded by new equity provided by AFL and Nissui. Nissui therefore approved the Proposed Transaction (with AFL an ‘interested party’).

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

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

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

35. Therefore, we recommend that the ‘**individuals with control of the relevant overseas person**’ (IWC)¹⁴ are:

Individuals with control	Role
Mark Eric Clarkson*	Director of Applicant
Glenn Winiata Hawkins*	
Terutaka Kuraishi	
Jamie Tuuta*	

¹² Nissui changed its name from Nippon Suisan Kaisha Limited on 1/12/22.

¹³ Shareholders with a more than 5% shareholding in Nissui are The Master Trust Bank of Japan (21.7%) and Custody Bank of Japan, Limited (Trust Account) (8.3%).

¹⁴ Section 15.

Rachel Emere Taulelei* ¹⁵	
Stephen Barry Tarrant*	
Steven Arnold Yung	
Masahide Asai	
Shingo Hamada	President & CEO (and Board Member) of Nissui
Seiji Takahashi	Board Member of Nissui
Shinya Yamamoto	
Koji Umeda	
Shinya Yamashita	
Mikito Nagai	
Tokio Matsuo	
Atsumi Eguchi	
Hiroyuki Hamano	
Shino Hirose	
Masahiro Yamamoto	
Tadashi Kanki	

Establishment of investor test factors

*FV Ocean Dawn incident one-section 18A(4)(a)(iii) of the Act*¹⁶

36. Sealord pleaded guilty in 2020 to a charge laid under the Fisheries (Benthic Protection Areas) Regulations 2007. The charge related to a strict liability offence aboard a Sealord vessel, FV Ocean Dawn, involving the use of a trawler net in a protected area in October 2018. The Applicant was convicted and paid a fine of \$24,000.
37. The Applicant noted that the offending was unintentional and resulted from crew error. The Applicant self-reported the activity to the relevant authorities after becoming aware of what had occurred and fully co-operated with investigations. The Applicant has taken a range of measures to avoid a repeat occurrence, including re-training of staff, the introduction of electronic navigation alarms and a complete review of information and procedures. The Judge noted at sentencing that the offending was a mistake and acknowledged that the remedial matters put in place by the Applicant “*shows to me an acceptance of responsibility and a commitment to...excellence*”¹⁷.
38. After considering the factor established, and the steps taken by the Applicant, in particular in relation to self-reporting and full co-operation with the authorities, we consider this does not make the Applicant unsuitable to invest in New Zealand.

¹⁵ Passport provided in the name of Rachel Emere Roper (maiden name). Driver's licence provided as evidence of current legal surname, Taulelei.

¹⁶ This factor refers to whether the Applicant has, at any time in the preceding 10 years, been convicted of an offence for which it has been sentenced to pay a fine.

¹⁷ Page 18 of judgment, Judge D C Ruth.

*Current prosecutions of Sealord- section 18A(4)(a)(vi) of the Act*¹⁸

39. The Applicant also established three factors under this section as it is currently being prosecuted by Maritime New Zealand under the Health & Safety at Work Act 2015 in connection with three separate incidents.

FV Will Watch vessel incident

40. The charges relating to the FV Will Watch¹⁹ vessel arise from a decision made by Sealord around June 2021 to second its workers to work on the vessel. The charge alleged that the Applicant failed to comply with its duty under health and safety legislation and that failure exposed workers to a risk of death or serious injury. Specifically, the Applicant failed to carry out an adequate asbestos risk assessment to identify risks or hazards to its workers arising from exposure to asbestos fibres on the vessel. The Applicant has entered a guilty plea and a conviction has been entered (with sentencing to occur on 12 December 2023) in relation to one charge.
41. Sealord has worked with its subsidiary to update its Asbestos Management Standard and Hazard Register. Sealord no longer seconds any of its employees to work on the FV Will Watch vessel and has developed a secondment checklist which specifically considers issues of health and safety.
42. Having considered the established factor and the Applicant's guilty plea and steps taken by the Applicant to reduce the risk of further incidents, we consider this does not make the Applicant unsuitable to invest in New Zealand.

[s 6(c)]

43. [s 6(c)]
44. [s 6(c)]
45. [s 6(c)]
- However, given the Applicant's intention to defend these charges we consider that the establishment of this factor does not make the Applicant unsuitable to invest in New Zealand.

[s 6(c)]

46. [s 6(c)]
47. [s 6(c)]

¹⁸ This factor refers to whether any other proceedings have been begun against the Applicant and have not been completed, for any offence or contravention of an enactment, that carries a penalty corresponding to those listed in section 18A(4)(a)(i) to (v).

¹⁹ The vessel is owned and operated by United Fame Investments (Cook Islands) Ltd which is a wholly owned subsidiary of Sealord.

48. [s 6(c)]
[Redacted]

49. Having considered [s 6(c)]
[Redacted]

50. On the basis that [s 6(c)] we do not consider that the establishment of this factor makes the Applicant unsuitable to invest in New Zealand.

[s 9(2)(ba)(i)]
[Redacted]

51. [s 9(2)(ba)(i)]
[Redacted]

52. [s 9(2)(ba)(i)]
[Redacted]

53. [s 9(2)(ba)(i)]
[Redacted]

Summary of investor test

- 54. None of the individuals with control²² established any of the factors contained in section 18A(4) of the Act.
- 55. Two of the entities which make up the relevant overseas person (the Applicant and Nissui) established factors under section 18A(4) of the Act. However, after considering the mitigation steps taken, we do not consider this makes any of the relevant overseas persons or individuals with control unsuitable to invest in New Zealand.
- 56. For the reasons set out above, our conclusion is that **the investor test has been met.**

[s 9(2)(ba)(i)]
[Redacted]

²² AFL was included as part of the relevant overseas person, however it is not required to satisfy the investor test as it is not an overseas person. The individuals with control that are listed with an asterisk next to their name are all New Zealand citizens and therefore not required to satisfy the investor test.

E. Not a transaction of national interest

57. The investment does not involve a transaction of national interest under the mandatory criteria of the Act.²³ This is because the investment does not involve a non-NZ government investor, or an investment in a strategically important business (as defined in the Act).
58. We have not referred this transaction to the Minister of Finance for call in for a national interest assessment on a discretionary basis.²⁴ The Minister has therefore not declined consent to the transaction.
59. We are directed²⁵ that the starting point is the assumption that overseas investment is in New Zealand's national interest and that we should only seek the Minister of Finance to exercise his discretion for a national interest assessment if the proposed investment:
- could pose risks to New Zealand's national security or public order
 - would grant an investor significant market power within an industry or result in vertical integration of a supply chain
 - has foreign government or associated involvement that was below the 10 per cent threshold for automatic application of the national interest test, but granted that government (and/or its associates) disproportionate levels of access to or control of sensitive New Zealand assets
 - would have outcomes that were significantly inconsistent with or would hinder the delivery of other Government objectives
 - raises significant Treaty of Waitangi issues, or
 - relates to a site of national significance (e.g. significant historic heritage).
60. We do not consider that this investment engages any of these risk factors.

F. Conclusion

61. After considering the application, our view is that:
- the investor test has been met; and
 - the transaction is not considered to be a transaction of national interest.
62. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and from page 3 of this Assessment Report to record your decision.



Emma Bailey
Senior Solicitor

Overseas Investment – LINZ

Date: 30 / 11 / 2023

²³ Under s 20A of the Act.

²⁴ Section 20B of the Act

²⁵ Ministerial Directive Letter (24 November 2021).

G. List of Attachments

1. Proposed Decision
2. Intended ownership structure

Released under the Official Information Act 1982

ATTACHMENT 1 PROPOSED DECISION

Consent for Overseas Person to Acquire Significant New Zealand Business Assets

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

Consent

Decision date: [date]

The following people have been given the following consent:

Case	202300263
Consent	Sealord Group may acquire any of the Assets subject to the Conditions set out below. Independent Fisheries Limited may acquire the Cold Store Assets
Consent holder/s	(a) Sealord Group Limited (company number 168963) and (b) Independent Fisheries Limited We will also refer to each Consent holder and the Consent holders together as you .
Assets	means the Shares, Quota and ACE, Lyttelton Premises Lease, Retained Assets, Cold Store Assets and Business Records.
Shares	means 6 million fully paid ordinary shares in Independent Fisheries Limited (company number 125989)
Quota and ACE	Means the quota detailed in Part A Schedule 1 of the Agreement for Sale and Purchase of Quota and Shares in Independent Fisheries Limited dated 15 August 2023 (Quota & Shares SPA)
Lyttelton Premises Lease	Means Independent Fisheries Holdings Limited interest as tenant under its lease of part of the premises at 15 Dublin Street Lyttelton
Retained Assets	Means retained quota, retained ACE and business records relating to the retained quota and retained ACE as defined in the Quota & Shares SPA

Business Records	Means the business records of Independent Fisheries Holdings Limited; Independent Fisheries Limited and Staunton Investments Limited relating to the Shares, Quota and Ace, Lyttelton Premises Lease and the Retained Assets.
Cold Store Assets	Means the land and buildings and associated plant and equipment and approvals for a cold store at 17 Broad Street, Woolston, Christchurch
Timeframe	You have until 30 November 2024 to acquire the Assets.

Released under the Official Information Act 1982

Conditions

Your Consent is subject to the conditions set out below. These apply to all overseas people who are given consent to acquire significant business assets, including you.

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.

In the Consent and the Conditions, we refer to Toitū Te Whenua Land Information New Zealand as **LINZ, us or we**.

Act means the Overseas Investment Act 2005.

Details	Required date
Standard condition 1: Acquire the Assets	
<p>You must acquire the Assets:</p> <ol style="list-style-type: none">by the date stated in the Consent. If you do not, your Consent will lapse and you must not acquire the Interest, andusing the acquisition, ownership and control structure you described in your application. Note, only you – the named Consent holder – may acquire the Interest, not your subsidiary, trust or other entity.	As stated in the Consent
Standard condition 2: tell us when you acquire the Assets	
<p>You must tell us in writing when you have acquired the Assets Include details of:</p> <ol style="list-style-type: none">the date you acquired the Assets (settlement),consideration paid (plus GST if any),the structure by which the acquisition was made and who acquired the Assets, andcopies of any transfer documents and settlement statements.	As soon as you can, and no later than two months after settlement
Standard condition 3: remain not unsuitable to invest in New Zealand	
<p>You, and to the extent that you are not an individual, the Individuals Who Control You must remain not unsuitable to own or control the Assets in accordance with section 18A(1) of the Act.</p> <p>The Individuals Who Control You are individuals who:</p> <ol style="list-style-type: none">are members of your governing body	At all times

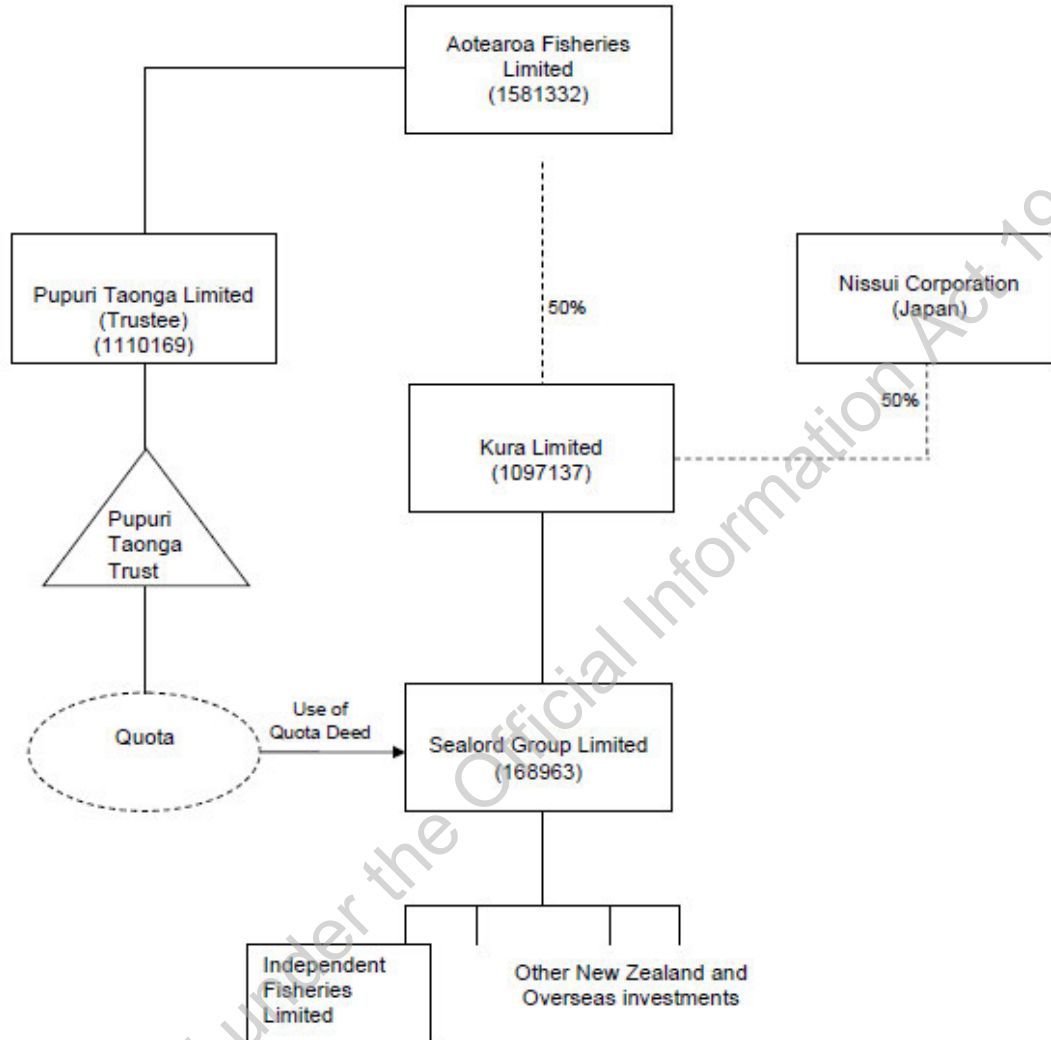
<p>(b) directly or indirectly, own or control more than 25% of you or of a person who itself owns or controls more than 25% of you, and</p> <p>(c) are members of the governing body of the people referred to in paragraph (b) above. To avoid doubt, this includes the members of your governing body.</p>	
<p>Standard condition 4: 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"> 5. You become aware that you and/or any Individual Who Controls you establishes any of the investor test factors listed in section 18A(4) of the Act. 6. You cease to be an overseas person or dispose of all or any part of the Asset. 7. Your New Zealand Service Address changes. This is the address you provided us in your application as the address which we will send any legal document we need to serve on you. 	<p>Within 20 working days after the change</p>

Reporting Conditions:

In addition to Settlement reporting (as set out in Standard Condition 2), if requested in writing by the LINZ, the Consent Holder(s) must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:

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

ATTACHMENT 2 – INTENDED OWNERSHIP STRUCTURE



Released under the Official Information Act 1982