

To: Louise Hornabrook, Manager Applications, Overseas Investment Office

ASSESSMENT REPORT: Jieyu Lu and Hongzhao Huang (consent applications 201900621 and 201720091)

Date	15 September 2020	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	201900621 for the Winery and Vineyard Lots application; and 201720091 for the Lodge Lot application	Priority	High

Action Sought

Decision Maker	Action	Suggested Deadline
Louise Hornabrook, Manager Applications, Overseas Investment Office	<ol style="list-style-type: none"> Review the attached report and decide whether to grant consent to the application Forward the report and attachments to the Primary Assessor 	As soon as possible

LINZ Contacts

Name	Position	Contact number	First contact
Louise Hornabrook	Manager Applications	[s 9(2)(g)(ii)]	<input type="checkbox"/>
Duncan Robin	Senior Solicitor	+64 4 460 2783	<input checked="" type="checkbox"/>

ASSESSMENT REPORT: Jieyu Lu and Hongzhao Huang (consent applications 201900621 and 201720091)

Overview

Purpose

1. We seek your decision on two retrospective applications under the Overseas Investment Act 2005 (the **Act**) by Jieyu Lu and Hongzhao Huang (the **Applicants**) to acquire:
 - a) approximately 12.7990 hectares of non-urban land comprising:
 - i. approximately 5.0110 hectares at 570 Matakana Road, RD 5 Warkworth (the **Winery Lot**) on 26 October 2011; and
 - ii. approximately 7.7880 hectares at 568 Matakana Road, RD 5 Warkworth (the **Vineyard Lots**) on 2 February 2012 (application 201900621).
 - b) approximately 12.2087 hectares of non-urban land at 494 Matakana Road, RD 5, Warkworth (the **Lodge Lot**) (application 201720091) on 11 August 2017.
2. This is a combined report because both applications' investment plans are interconnected.
3. Both consent decisions are delegated under table A section C7 of the Ministerial delegation letter dated 17 October 2018 because the benefit to New Zealand test and the 'substantial and identifiable' criterion under the rural land directive apply and:
 - the consideration is less than \$20 million;
 - the land is less than 30 hectares; and
 - the land does not include foreshore, seabed, or the bed of a lake.

Key information

Applicant	Jieyu Lu and Hongzhao Huang (China 100%)
201900621 Vendor	Vegar Estate Wines Limited (in receivership and liquidation) for the Vineyard Lots VP 568 Limited (in receivership) for the Winery Lot (New Zealand 100%)
201900621 Consideration	\$1.2 million for the Winery Lot (excluding the Matakana Estate business) \$1.25 million for the Vineyard Lots
201720091 Vendor	Patricia Anne Vegar-Fitzgerald (New Zealand 100%)
201720091 Consideration	\$4.65 million
Application type	Benefit to New Zealand (Benefit to New Zealand - S&I)
Relevant tests	Investor test (s 16(1)(a)-(d)) Benefits test – substantial and identifiable benefits (s 16(1)(e)(ii)-(iii)) Transitional note: These transactions were entered into prior to the commencement of the Overseas Amendment Act 2018 and the Overseas Investment (Urgent Measures) Amendment Act 2020, so the version of the Act and the regulations in force immediately before their commencement apply.

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

Recommendation

5. Our recommendation is to **grant consent** for both applications.
6. If you agree to grant consent, we recommend that you make the determinations set out in paragraphs 7 - 11 below.


Duncan Robin
Senior Solicitor
Date: 15 / 09 / 2020

Decision

7. I determine that:

7.1 the 'relevant overseas person' for consent applications 201900621 and 201720091 are (collectively):

ROP	Relationship
Jieyu (Chrissy) Lu	100% owns the Lodge Lot Has an interest in, and is claiming 100% ownership (with Hongzhao Huang) of the Winery and Vineyard Lots Manages the Matakana Estate wine and lodge businesses
Hongzhao Huang	Has an interest in the Winery, Vineyard and Lodge Lots, and is claiming 100% ownership (with Jieyu Lu) of the Winery and Vineyard Lots Financially supports the investment

7.2 the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment;

7.3 the relevant overseas person has demonstrated financial commitment to the overseas investment;

7.4 all the individuals with control of the relevant overseas person are of good character; and

7.5 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(1)(a)-(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 section 16 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, in relation to farm land advertising that the criterion is met, as set out in the report.

11. Consent is granted to the investment in the form of the Proposed Decision in Attachment 1.



Louise Hornabrook

Manager Applications (Overseas Investment Office)

Date: 16/09/2020

Contents

ACTION SOUGHT	1
APPLICATION SUMMARY	6
APPLICANT AND INVESTOR TEST	10
INVESTMENT AND BENEFITS TEST	13
RECOMMENDATION	33
LIST OF ATTACHMENTS	33
LIST OF OTHER DOCUMENTS IN THE BUNDLE	33
ATTACHMENT 1 - PROPOSED DECISION	34
ATTACHMENT 2 - GUIDANCE FOR APPLYING THE ACT	42
ATTACHMENT 3 - OTHER BENEFIT FACTORS	46
ATTACHMENT 4 - SENSITIVE LAND DETAILS	48
ATTACHMENT 5 - ATEED LETTER OF SUPPORT	49
ATTACHMENT 6 - OVERVIEW TABLES FOR JIEYU LU, HONGZHAO HUANG AND MATAKANA WINES LIMITED 201900621 AND JIEYU LU, HONGZHAO HUANG AND MATAKANA ESTATE LODGE LIMITED 201720091	50

Released under the Official Information Act 1982

Application summary

1. We seek your decision on two retrospective applications under the Overseas Investment Act 2005 (the **Act**) by Jieyu Lu and Hongzhao Huang (the **Applicants**) to acquire:
 - a) approximately 12.7990 hectares of non-urban land comprising:
 - i. approximately 5.0110 hectares at 570 Matakana Road, RD 5 Warkworth (the **Winery Lot**) (application 201900621) on 26 October 2011; and
 - ii. approximately 7.7880 hectares at 568 Matakana Road, RD 5 Warkworth (the **Vineyard Lots**) on 2 February 2012.
 - b) approximately 12.2087 hectares of non-urban land at 494 Matakana Road, RD 5, Warkworth (the **Lodge Lot**) (application 201720091) on 11 August 2017.
2. This is a combined report because both applications' investment plans are interconnected.



Figure 1: Location of Matakana Estate



Figure 2: Aerial photograph of Matakana Estate



Figure 3: Diagram showing the Winery Lot in yellow, the Vineyard Lots in blue, the Lodge Lot in green, and the Huang Lots in red.

The Winery and Vineyard Lots

2. In 2011, Chris Chen, an associate of the Applicants became aware Vegar Estate Wines Limited (the **Vineyard Lots Vendor**), and VP 568 Limited (the **Winery Lot Vendor**) were in receivership. Chris Chen advised the Applicants and they agreed to acquire the Winery and Vineyard Lots for a joint venture.¹
3. The Applicants advise their understanding was Chris Chen would obtain consent under the Act post-settlement, as Chris Chen advised them as the Vendors were in receivership there was insufficient time to obtain consent under the Act pre-settlement and transfer the Winery and Vineyard Lots to the joint venture.
4. However, the Applicants discovered they did not have consent after applying for consent to acquire a separate piece of sensitive land, and voluntarily disclosed the potential breach in October 2017. The Applicants are now in dispute with Chris Chen.²

The Lodge Lot

5. In August 2011, Jieyu Lu acquired the Lodge Lot. It was a residential property. The Applicants initially planned to continue using it as a residential property, however they later decided to redevelop it into luxury accommodation to complement the Winery and Vineyard Lots.
6. Jieyu Lu considers she was not an overseas person under the Act when she acquired the Lodge Lot and that she was ordinarily resident in New Zealand on the basis that she was domiciled in New Zealand and had an intention to reside in New Zealand indefinitely. However, as a result of its investigations the OIO has concluded that Jieyu Lu was not domiciled in New Zealand and was still an overseas person when she acquired the Lodge Lot.

¹ For completeness, Matakana Wines Limited (MWL) also acquired the Matakana Estate wine business from VP 568 Limited, however, consent was not required under the Act because the business is not a significant business asset.

² The Applicants dispute with Chris Chen is discussed further at paragraphs 26 - 28 and 40 - 48.

7. We consider Jieyu Lu is now ordinarily resident in New Zealand and has been since December 2017 by being in New Zealand for 183 or more days in the preceding 12 months with the intention of residing in New Zealand permanently.

Vision for Matakana Estate

8. The Applicants' original vision was to own a New Zealand wine business to support Jieyu Lu's wine distribution and bar and restaurant businesses in China. The intent was for Chris Chen to run the Matakana Estate wine business and for Jieyu Lu to expand exports in China. However, their vision has evolved to developing and diversifying Matakana Estate into functions, events, accommodation and tourism, hence the Applicants further development plans.
9. For completeness, Jieyu Lu and Hongzhao Huang acquired three lots at 568 Matakana Road, RD 5 Warkworth (the **Huang Lots**) in 2007. Consent is not required for this transaction under the Act, because the Huang Lots are not sensitive land.

Released under the Official Information Act 1982

10. The benefits to New Zealand that have resulted from and are likely to result from the Winery and Vineyard Lots investment include:

Strong weighting		<ul style="list-style-type: none"> • Additional investment
Moderate weighting		<ul style="list-style-type: none"> • Jobs • Oversight and participation by New Zealanders
Weak weighting		<ul style="list-style-type: none"> • Increased export receipts • Increased processing of primary products • Walking access

11. The benefits to New Zealand that have resulted from and are likely to result from the Lodge Lot investment include:

Strong weighting		<ul style="list-style-type: none"> • Additional investment • Increased export receipts • Oversight and participation by New Zealanders
Moderate weighting		<ul style="list-style-type: none"> • Jobs
Weak weighting		<ul style="list-style-type: none"> • Advance significant Government policy or strategy • Enhance the viability of other investments • Walking access

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

Timing

13. Both applications are retrospective applications and do not have contractual deadlines. However, the Applicants have requested a decision as soon as possible for commercial certainty.

14. Processing days for both applications to date are:

Quality Assurance	OIO Processing	Waiting for Applicant / Vendor	Third party consultation
2	87	57	32

15. This is outside our OIO processing standards of 65 working days of active OIO consideration for assessing applications of this type due to the complexity of the applications, and the impacts COVID-19 had on processing applications.

Applicant and investor test

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

Who is making the investment

18. The investment comprises the acquisition of approximately:
- a) 12.7990 hectares of non-urban land made up of approximately:
 - i. 5.0110 hectares at 570 Matakana Road, RD 5 Warkworth (the **Winery Lot**) on 26 October 2011; and
 - ii. 7.7880 hectares at 568 Matakana Road, RD 5 Warkworth (the **Vineyard Lots**) on 2 February 2012.
 - b) 12.2087 hectares of non-urban land at 494 Matakana Road, RD 5, Warkworth (the **Lodge Lot**) (application 201720091) on 11 August 2017.
19. The investment is being made by Chinese entrepreneurs and business owners Jieyu Lu and her husband Hongzhao Huang (the **Applicants**). Jieyu Lu has been involved with the wine industry in both New Zealand and China and has exported New Zealand wine to China since 2008. She has run the Matakana Estate wine business on the Winery and Vineyard Lots since 2012, the lodge business on the Lodge Lot since 2019, and is the legal owner of the Lodge Lot.
20. The Applicants' associate Chris Chen was also involved in the Winery and Vineyard Lots investment and should be a Winery and Vineyard Lots applicant (he is currently the legal owner of the Winery and Vineyard Lots). However, this is impractical as the Applicants and Chris Chen are currently in dispute.³ We do not consider this an issue as Chris Chen is not an overseas person and would otherwise not require consent.

Overview of assessment: investor test

Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
Relevant overseas persons (ROP) confirmed	ROP/IWC identified	ROP identified.	Paras 21 - 22. Section 15 of the Act.
Collectively have business experience and acumen relevant to the investment	Test met	The ROP have experience directly relevant to the investment.	Paras 23 - 24. Sections 16(2)(a) of the Act.
ROP demonstrated financial commitment	Test met	The Applicants have demonstrated financial commitment by undertaking development on the land to date and engaging professional advisors.	Sections 16(2)(b) of the Act.
Good character	Some concerns	The Applicants breached the Act; however, we are otherwise satisfied they are of good character.	Paras 25 - 35 and Error! Reference source not found.. Sections 16(2)(c) of the Act.

³ The Winery and Vineyard Lots transactions, Chris Chen's involvement, and the Applicants dispute with Chris Chen is discussed further at paragraphs 26 - 28 and 40 - 48.

Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
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	Signed statements provided confirming that each individual is not of the kind referred to in ss 15 or 16 of the Immigration Act.	Sections 16(2)(d) of the Act.

Ownership and control of the Applicant

21. We have determined the 'relevant overseas person' (ROP) for both consent applications 201900621 and 201720091 is (collectively):

ROP	Relationship
Jieyu (Chrissy) Lu	100% owns the Lodge Lot Has an interest in, and is claiming 100% ownership (with Hongzhao Huang) of the Winery and Vineyard Lots Manages the Matakana Estate wine and lodge businesses
Hongzhao Huang	Has an interest in the Winery, Vineyard and Lodge Lots, and is claiming 100% ownership (with Jieyu Lu) of the Winery and Vineyard Lots Financially supports the investment

22. For completeness, Chris Chen should be considered a Winery and Vineyard Lots ROP as he was involved in the Winery and Vineyard Lots transactions and is currently the legal owner of the Winery and Vineyard Lots. However, this is impractical as the Applicants and Chris Chen are currently in dispute. We do not consider this an issue as Chris Chen is not an overseas person and would otherwise not require consent.

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.

23. We have reviewed biographical information provided by the Applicants and note they collectively have extensive business experience across several industries in China and New Zealand including experience running the Matakana Estate wine and lodge businesses.
24. Having regard to the above, we are satisfied the Applicants 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.

25. The Applicants provided a signed statement stating they are of good character, and other than breaching the Act by acquiring an interest in the Winery and Vineyard Lots, and the Lodge Lot, have not committed an offence or contravened the law as described above and know of no other matter that reflects adversely on their fitness to have the investment. We note there is an ability under the Overseas Investment Act 2005 for the OIO to take action against the Applicants if the contents of the signed statements are false.

Acquisition of the Winery and Vineyard Lots without consent

26. The Applicants advise that Chris Chen made them aware of the opportunity to acquire the Winery and Vineyard Lots in 2011, after the vendors went into receivership. Chris Chen subsequently acquired the Winery Lot in October 2011, and the Vineyard Lots in February 2012 on behalf of a joint venture comprising Chris Chen, Jieyu Lu and Hongzhao Huang.
27. The Applicants advise the understanding was Chris Chen would obtain consent and that they would not have proceeded with the transaction had they known the Act would be breached.
28. The Applicants discovered consent had not been obtained after applying for consent to acquire a separate piece of sensitive land, and voluntarily disclosed the potential breach in October 2017.
29. We consider the Applicants breaching the Act by acquiring an interest in the Winery and Vineyard Lots without consent does not preclude a finding the Applicants are of good character. We consider the Applicants did not intentionally breach the Act as they believed Chris Chen would obtain consent and made a voluntary disclosure as soon as they were made aware of the potential breach.

Acquisition of the Lodge Lot without consent

30. Jieyu Lu acquired the Lodge Lot in August 2017. The Applicants consider Jieyu Lu was ordinarily resident in New Zealand⁴ by being domiciled in New Zealand when the Lodge Lot was acquired (she also held a New Zealand permanent residence visa since March 2015).
31. We consider Jieyu Lu was not domiciled or ordinarily resident in New Zealand when the Lodge Lot was acquired, because among other things, she spent significant time overseas and we considered her travel movements were inconsistent with having obtained New Zealand domicile.
32. For completeness, Jieyu Lu had been in New Zealand for 153 days when she acquired the Lodge, so could not rely on having resided in New Zealand with the intention of residing in New Zealand indefinitely, as she had not done so for the immediately preceding 12 months. The table below shows the days Jieyu Lu spent in New Zealand and overseas in the 2014 - 2017 calendar years.

Year	Days in New Zealand	Days overseas
2014	231	134
2015	164	201
2016	112	253
2017	202	163

⁴ Ordinarily resident" is a conjunctive test. A person must hold a residence class visa granted under the Immigration Act 2009 and either be domiciled or residing in New Zealand with the intention of residing here indefinitely, having done so for the immediately preceding 12 months.

Figure 4: Jieyu Lu's days in New Zealand and overseas between 2014 and 2017

33. We consider Chrissy Lu is now ordinarily resident in New Zealand and is no longer an overseas person from December 2017, as she has spent 183 or more days in New Zealand since December 2017 and intends on residing in New Zealand indefinitely. The graph below shows Jieyu Lu's days in New Zealand between March 2017 and September 2019.

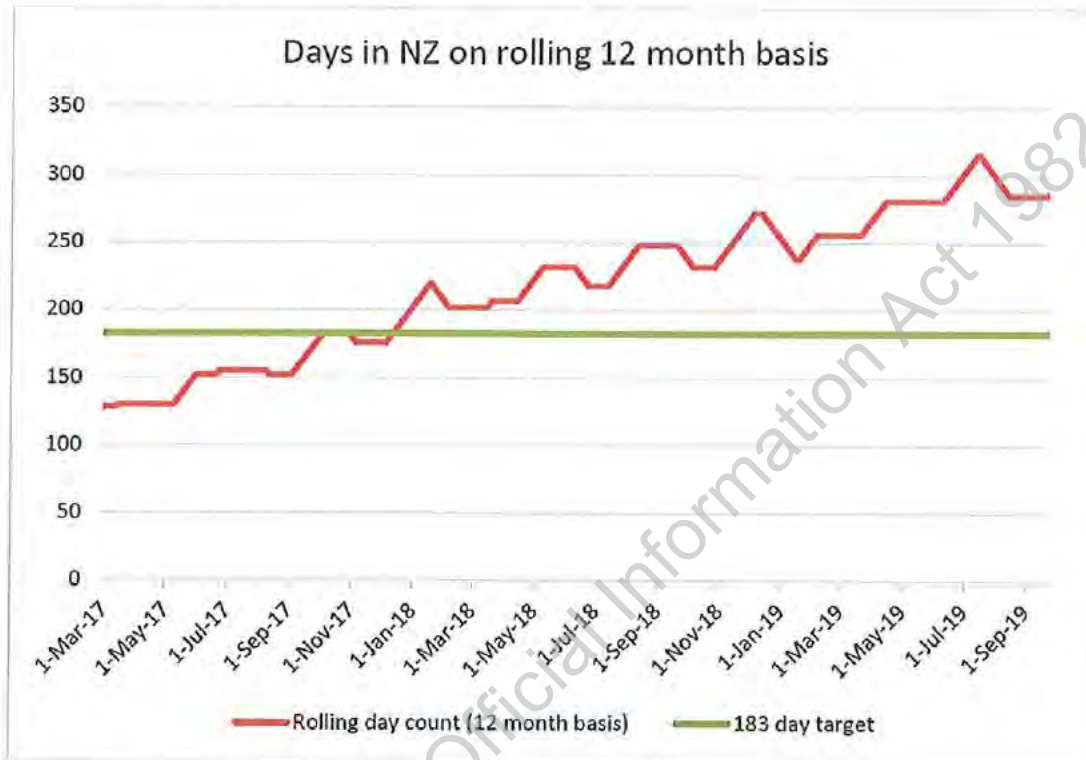


Figure 5: Jieyu Lu's days in New Zealand between March 2017 and September 2019

34. We consider the Applicants breaching the Act by acquiring the Lodge Lot without consent does not preclude a finding the Applicants are of good character. We consider the Applicants did not intentionally breach the Act as they believed Jieyu Lu was ordinarily resident when the Lodge Lot was acquired and made a voluntary disclosure as soon as they were made aware of the potential breach.
35. We consider the matters above do not preclude a finding the Applicants are of good character because there is no suggestion of wrongdoing by the Applicants (refer **Attachment 6** for further information on our good character searches and analysis).

Conclusion – Investor test

36. Our conclusion is that the **investor test is met**.

Investment and benefits test

37. 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

38. The Applicants seek retrospective consent to acquire 12.7990 hectares of non-urban land comprising approximately:

- a) 5.0110 hectares at 570 Matakana Road, RD 5 Warkworth (the **Winery Lot**) on 26 October 2011; and
 - b) 7.7880 hectares at 568 Matakana Road, RD 5 Warkworth (the **Vineyard Lots**) on 2 February 2012.
39. The Applicants separately seek retrospective consent to acquire 12.2087 hectares of non-urban land at 494 Matakana Road, RD 5 Warkworth (the **Lodge Lot**) on 11 August 2017.

Context of the Winery and Vineyard Lots acquisition

40. The Applicants have been acquainted with Matakana Estate since 2007 when they acquired the Huang Lots.
41. In or around 2008 and 2009, Jieyu Lu became a distributor for the Matakana Estate brand in China through her Chateau Kiwi franchise. Jieyu Lu also established a private club called Half Moon Bay; and a restaurant and wine bar called Matakana Lounge Bar in Zhongshan, China which sold and distributed New Zealand wine.
42. In 2011, Chris Chen acquired the Winery Lot in October 2011, and the Vineyard Lots in February 2012 for a joint venture with the Applicants, which was formalised via their joint venture agreement in April 2012. The joint venture agreement provided among other things that the Applicants would take a 65% interest, and Chris Chen a 35% interest in the Winery and Vineyard Lots.
43. Hongzhao Huang 100% funded the Winery and Vineyard Lots acquisition with the understanding Chris Chen would repay him for his 35% stake (the Applicants also advise they entered into the joint venture without legal representation). The Applicants further advise they were interested in a joint venture with Chris Chen because of his New Zealand wine business experience.

Dispute with Chris Chen

44. The Applicants are currently in dispute and are no longer on speaking terms with Chris Chen. Chris Chen is still the legal owner of the Winery and Vineyard Lots, however the Applicants have registered a caveat against the Winery and Vineyard Lots to protect their interests.
45. The Applicants have also filed a statement of claim against Chris Chen claiming (among other things) 100% of the Winery and Vineyard Lots, as Chris Chen has not repaid Hongzhao Huang for his 35% stake in the joint venture.

The Matakana Estate wine business

46. Matakana Wines Limited (**MWL**) acquired the Matakana Estate business and brand in March 2012. This acquisition did not require consent. The Applicants advise this was 100% funded by Jieyu Lu and Hongzhao Huang, though Chris Chen was an MWL director and chief executive between January 2012 and April 2017.
47. MWL then leased the part of the Winery Lot the winery buildings are located from Chris Chen. The term of that lease has expired, however MWL has continued on a periodic tenancy basis.
48. The Applicants advise they currently operate the Matakana Estate business through MWL. This includes maintaining the vines and harvesting the grapes on the Vineyard and Huang Lots.

Context of the Lodge Lot acquisition

49. Jieyu Lu acquired the Lodge Lot in August 2017, which was a residential property at the time for \$4.65 million.
50. The Applicants intended to use the Lodge Lot as a residential property. They also considered the Lodge Lot acquisition beneficial because the Lodge Lot Vendor and Paul Vegar had a covenant registered on the Winery and Vineyard Lots titles requiring their approval for certain development on the Winery and Vineyard Lots. The Lodge Lot acquisition effectively removed that covenant.

Residential land outcome

51. Although the Winery and Lodge Lots include residential land, no residential outcome is required for these acquisitions because the agreements were entered into prior to 22 October 2018.

Investment Plan summary

52. The Applicants' original vision was to own a New Zealand wine business to support Jieyu Lu's wine distribution and bar and restaurant businesses in China. The intent was for Chris Chen to run the Matakana Estate wine business and for Jieyu Lu to expand exports in China. However, their vision has evolved to developing and diversifying Matakana Estate into functions, events, accommodation and tourism.

Winery and Vineyard Lots Investment Plan summary

53. The Applicants advise when the Winery and Vineyard Lots were acquired, the vines and existing buildings (being a winery building, tasting room and a separate office and storage building) on the land were in poor health, likely due to the Vendors being in receivership.
54. They have since restored the vines and began restoring the existing buildings and have operated the wine business and built exports in China. They have largely completed **Stage 1**, which involved converting a third of the winery building to a cellar door and tasting bar able to cater to 50 people.
55. They also have plans to further develop the Winery and Vineyard Lots (**Stage 2**) by developing an event space in the winery building able to cater to 145 people, constructing further office space on the Winery Lot and redeveloping the existing tasting room building. The Applicants expect to start Stage 2 in 2021 and have already begun preliminary investigation work (for example, investigating options to deal with tasting room's cladding issues and not having a code of compliance).
56. The Applicants advise they spent approximately [s 9(2)(b)] restoring the vines, and [s 9(2)(b)] progressing Stage 1. They also expect to spend a further [s 9(2)(b)] completing Stage 2.

Lodge Lot Investment Plan summary

57. The Applicants advise the current lodge building on the Lodge Lot was a residential property when they acquired it. They have since converted and refurbished it into luxury accommodation.⁵ Rates at the lodge start at \$1,680 per night.

⁵ The Applicants have also set up a website, established a business partnership with Luxury LAS (which organises luxury experiences in New Zealand, and has been negotiating with Luxury Retreats to act as an international agent for the lodge business in the Japan and North America markets. The Applicants have also started the source consent process to enable the land surrounding the lodge building to be used for large events.



Figure 5: Images of the lodge

58. The Applicants advise they have spent approximately \$510,000 converting and refurbishing the lodge; and establishing it as a business. The Applicants acknowledge the lodge business is still in its infancy and expect it to start making a profit in 2021.

Future development

59. The Applicants have further development plans for the Winery, Vineyard and Lodge Lots as well as the Huang Lots (the **Preferred Design**), which involves:
- a) acquiring an adjoining lot (subject to the Applicants acquiring it from the current owner);
 - b) developing a 5 star-eco tourism venture which has various types of luxury accommodation and spaces on the land comprising the Winery, Vineyard, Lodge Lots and the adjoining lot;
 - c) disposing the Huang Lots to help fund the development and acquisition of the adjoining land.

The concept master plan below shows the Applicants' future development plans.

60. The Applicants have spent approximately \$130,000 on the Preferred Design (including developing the concept master plan); and expect to spend a further \$500,000 investigating the viability of the Preferred Design. The Applicants advise their future development plans will depend on several factors including Stage 2 and whether they can acquire the adjoining lot.

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

Released under the Official Information Act 1982

Figure 4: Overall masterplan for Matakana Estate

Impact of Covid-19 on the applications

61. The Applicants advise COVID-19 is impacting the investment. They expect the investment to be realised, though are unsure of the exact timing.
62. This seems reasonable given the ongoing uncertainty regarding the future economic impacts of COVID-19. We have concluded there is insufficient data to determine how some benefit claims will be impacted by COVID-19 restrictions. Because of this, the benefit claims made in this assessment report are unable to be adjusted to account for the future economic impacts of COVID-19.

Farmland advertising

s16(1)(f) of the Act.

The Regulations require farm land or farm land securities to be offered for acquisition on the open market to non-overseas persons for at least 20 working days (or longer if the advertisement states or implies that offers will be accepted for that longer period). The purpose of such advertising is to ensure non-overseas persons have reasonable notice that they are available for acquisition. The Regulations do not require that the vendor accept any alternative offer made by a non-overseas person.

63. The Vineyard Lots are farm land under the Act because they are principally used for horticulture. The Investment triggered the farm land offer criterion and advertising requirement under the Act and Overseas Investment Regulations 2005.
64. The Applicants submit they are unable to confirm if the Vineyard Lots were advertised as required under the farm land offer criterion and advertising requirement, though they do consider it very likely given:
 - a) 2010 internet articles show the land was for sale as the Vendor was being liquidated;
 - b) the receivers will likely have advertised the Vineyard Lots to comply with their obligations under the Receivership Act 1993;
 - c) the first Receivers' report advises the land assets were extensively marketed.
65. We consider the Vineyard Lots were advertised in accordance with the Regulations. The 2010 internet articles indicate the Vineyard Lots were advertised, and the first receivers' report in May 2011 advises the Vineyard Lots were extensively marketed and that the receivers were following up with those who showed an interest.

What is likely to happen without the investment (Counterfactual)

66. If consent is not granted, we consider it is likely the:
 - a) Winery and Vineyard Lots would have been sold to an alternative New Zealand purchaser (**Winery and Vineyard Lots ANZP**) being a family operated boutique winery that would focus on producing and exporting wine;
 - b) Lodge Lot would have been retained by the Vendor or sold to an alternative New Zealand purchaser (**Lodge Lot ANZP**), who would use the Lodge Lot as a residential property.
67. There are two key questions to determine what is likely to occur:
 - a) who is likely to own the land
 - b) what is the likely use of the land.
68. As these are retrospective applications, we need to consider the counterfactual from when:

- a) the Winery and Vineyard Lots were acquired in 2011 and 2012;
- b) the Lodge Lot was acquired in 2017.

Who is likely to own the Winery and Vineyard Lots, and what is their likely use?

- 69. The Applicants submit the Winery and Vineyard Lots Vendors' receivers would likely have sold the Winery and Vineyard Lots to an ANZP being a family operated boutique winery. The Applicants further submit an ANZP would likely focus on producing and selling high margin wine in low volumes domestically, as there was an oversupply of wine and a depressed wine market when the Winery and Vineyard Lots were acquired in 2011 and 2012.
- 70. We agree that this is the most likely outcome, if indeed the receivers had been able to sell the assets.⁶

Who is likely to own the Lodge Lot, and what is its likely use?

- 71. The Applicants submit the Lodge Lot would likely have been retained by the Lodge Lot Vendor or sold to an ANZP as the Vendor was trying to sell the Lodge Lot for several years. The Applicants further submit the vendor or an ANZP would likely continue using the Lodge Lot as a residential property.
- 72. We consider the Vendor would likely have eventually sold the Lodge Lot to an ANZP, who would have continued using it as a residential property.

Consultation and submissions about the investment

- 73. We consulted with the Department of Conservation (**DOC**); the Walking Access Commission (**WAC**); Auckland Council; the Ministry for Primary Industries (**MPI**); and Tourism New Zealand (**Tourism NZ**).

Consultation with the Department of Conservation (DOC)

- 74. DOC raised no concerns with either consent application.

Consultation with the Walking Access Commission (WAC) and Auckland Council

- 75. WAC and the Auckland Council recommended the Applicants build walking and cycling access (the **access**) from Golf Road through the Winery and Vineyard Lots and the Lodge Lot to Matakana Road. The Applicants have agreed to supply the land for the access but do not want to build the access.⁷

Consultation with the Ministry for Primary Industries (MPI)

- 76. MPI was concerned about the viability of the Applicants' wine business, noting the Applicants' downward trends in higher margin finished wine and exports (at a time NZ wine exports were increasing), and upward trend in lower margin bulk wine.
- 77. The Applicants advise this was an anomaly due to their dispute with Chris Chen, and their new focus on developing and diversifying Matakana Estate into functions, events, accommodation and tourism.⁸ However, while they expect to sell more finished wine than bulk wine moving forward, they do not expect to produce and

⁶ MPI also advised Matakana is not a premium wine region that would likely attract a large established New Zealand company.

⁷ This is discussed further under the walking access benefit factor from paragraph 124.

⁸ This is discussed further under the increased export receipts benefit factor from paragraph Error! Reference source not found., and the increased processing of primary products benefit factor from paragraph 117

export the same volume of wine they have previously due to their new focus on developing and diversifying Matakana Estate.

Consultation with the Tourism New Zealand (Tourism NZ)

78. Tourism NZ advised the Matakana region has tourism potential. The region is close to Auckland, and Auckland Tourism, Events & Economic Development (ATEED)⁹ has promoted it for several years. The region's tourism is a work in progress however, as it needs to develop a full tourism offering that attracts international visitors (similar to Waiheke Island).

Rural Land Directive

79. This investment involves the acquisition of 'rural land' being land that is non-urban and over 5 hectares in size (excluding any associated land) but excludes 'forest land'. Therefore, in accordance with directions from Ministers, we have treated the following factors as being of high relative importance¹⁰:
- a) the "jobs" factors (section 17(2)(a)(i));
 - b) the "new technology or business skills" factor (section 17(2)(a)(ii));
 - c) the "increased export receipts" factor (section 17(2)(a)(iii));
 - d) the "increased processing of primary products" factor (section 17(2)(a)(iv)); and
 - e) the "oversight and participation by New Zealanders" factor (regulation 28(j)).

⁹ ATEED also gave the Applicants a letter of support (attached as Attachment 5).

¹⁰ Ministerial Directive letter date 28 November 2017, paras 13-17

Overview of assessment: Winery Lot and Vineyard Lots investment and benefit test (consent application 201900621)

Relevant benefit factors	Applicant's claims: what they did and intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Additional investment	\$832k already invested (\$130k jointly relates to the Lodge Lot investment) \$1.4275m further investment planned (\$500k jointly relates to the Lodge Lot investment)	Less additional investment	Strong	Significantly more additional investment than under the counterfactual	Special condition 1 - introduce \$585k of additional investment (joint condition with the Lodge Lot investment)	Paras 82 - 90
Jobs <i>(high relative importance factor)</i>	6 ongoing FTE employed Up to 100 FTE could be created (jointly relates to the Lodge Lot investment)	Fewer jobs (up to 3 FTE employed)	Moderate	3 more FTE employed than under the counterfactual	Special condition 3 - Retain 4 FTE (joint condition with the Lodge Lot investment)	Paras 91 - 100
Oversight and participation by New Zealanders <i>(high relative importance factor)</i>	NZ oversight and participation since 2011 through Chris Chen and Jieyu Lu when she became ordinarily resident in NZ	Not applicable	Moderate	Partial NZ oversight and participation through Chris Chen from 2011 – 2017 and Jieyu Lu from 2017 when she became ordinarily resident in NZ	None	Paras 101 - 104
Increased export receipts <i>(high relative importance factor)</i>	\$13.6m of wine exported between 2013 and 2018	Less export receipts	Weak	More wine exports than under the counterfactual	Special condition 2 - \$800k of non-wine export receipts between 2023 – 2027 (joint condition with the Lodge Lot investment)	Paras 105 - 116
Increased processing of primary products <i>(high relative importance factor)</i>	\$17.9m of wine processed between 2013 and 2018	Less processing of primary products	Weak	Slightly more wine processed than under the counterfactual	None	Paras 117 - 123
Walking access	Plan on making land available for walking and cycling access	No new walking access	Weak	Slightly more improved walking access than under the counterfactual	Special condition 4 – register a walking and cycling easement	Paras 124 - 130

Relevant benefit factors	Applicant's claims: what they did and intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
					between Golf Road and Matakana Road (joint condition with the Lodge Lot investment)	

Overview of assessment: Lodge Lot investment and benefit test (consent application 201720091)

Relevant benefit factors	Applicant's claims: what they did and intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Additional investment	\$640k already invested (\$130k jointly relates to the Winery and Vineyard Lots investment) \$500k further investment planned (jointly relates to the Winery and Vineyard Lots investment)	No additional investment	Strong	Significantly more additional investment than under the counterfactual	Special condition 1 - introduce \$585k of additional investment (joint condition with the Winery and Vineyard Lots investment)	Paras 82 - 90
Increased export receipts <i>(high relative importance factor)</i>	\$657k export receipts from overseas visitors projected between 2020 and 2022	No new export receipts	Strong	Significantly more export receipts than under the counterfactual	Special condition 2 - \$800k of non-wine export receipts between 2023 - 2027 (joint condition with the Winery and Vineyard Lots investment)	Paras 105 - 116
Oversight and participation by New Zealanders <i>(high relative importance factor)</i>	100% NZ ownership and control since December 2017 when Jieyu Lu became ordinarily resident in NZ	Not applicable	Strong	100% NZ ownership and control since December 2017 when Jieyu Lu became ordinarily resident in NZ	None	Paras 101 - 104
Jobs <i>(high relative importance factor)</i>	1 ongoing FTE job Numerous jobs developing the lodge business created	No new jobs	Moderate	1 more FTE employed than under the counterfactual	Special condition 3 - Retain 4 FTE (joint condition with the	Paras 91 - 100

Relevant benefit factors	Applicant's claims: what they did and intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
	Up to 100 FTE jobs could be created (jointly relates to the Lodge Lot investment)				Winery and Vineyard Lots investment)	
Walking access	Plan on making land available for walking and cycling access	No new walking access	Weak	Slightly more improved walking access than under the counterfactual	Special condition 4 – register a walking and cycling easement between Golf Road and Matakana Road (joint condition with the Winery and Vineyard Lots investment)	Paras 124 - 130
Advance significant Government policy or strategy	Increased tourism in Matakana	No new tourism	Weak	Advances the New Zealand-Aotearoa Government Tourism Strategy by increasing tourism in Matakana	None	Paras 131 - 137
Enhance the viability of other investments	Enhances the viability of the Winery and Vineyard Lots investment	Not applicable	Weak	Slightly enhances the viability of the Winery and Vineyard Lots investment	None	Paras 138 - 140

Released under the Official Information Act 1987

80. 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.
81. 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**.

Additional investment for development purposes

There are four key elements to this factor.

- The investment must be **additional investment**.
- The additional investment must be **introduced into New Zealand**.
- The additional investment must be **for development purposes**.
- The additional investment that is **likely to result from the overseas investment** must be **additional to that which is likely to occur without the overseas investment**.

82. We consider the investment has likely led to; and will continue to lead to the Applicants introducing additional investment into New Zealand for development purposes, additional to that likely to occur without the Investment.

Winery and Vineyard Lots

83. The Applicants submit they have already invested approximately:
- a) \$450,000 restoring the Vineyard Lots vines, which were damaged during the Vendor's receivership;
 - b) \$252,000 on Stage 1 being a cellar door and tasting bar (including obtaining resource and building consents) in the winery building.
84. The Applicants further submit they plan on investing a further \$927,500 completing Stage 2, which involves developing an event space in the winery building able to cater to 145 people, building further office space on the Winery Lot and redeveloping the existing tasting room building.
85. The Applicants also submit they invested approximately \$130,000 on the Preferred Design (including developing the concept master plan); and expect to invest a further \$500,000 investigating the viability of the Preferred Design. If the Preferred Design proceeds, they expect further investment (the Preferred Design relates to both the Winery and Vineyard Lots, and the Lodge Lot investment).

Winery and Vineyard Lots Counterfactual

86. Without the investment, we consider less additional investment as a Winery and Vineyard Lots ANZP would likely have:
- a) invested in restoring the vines to produce wine;
 - b) not invested further as it would have focused on producing wine.

The Lodge Lot

87. The Applicants submit they have invested approximately \$510,000 refurbishing, establishing and expanding the Lodge business.

Lodge Lot Counterfactual

88. Without the investment, we consider there would have been no additional investment, as a Lodge ANZP would likely have continued using the Lodge Lot as a residential property.

Our Assessment

89. We consider this factor should be given a **strong weighting** in relation to both the Winery and Vineyard Lots investment, and the Lodge Lot investment as the investment has likely led to; and will continue to lead to significantly more additional investment than under the counterfactual.

Proposed conditions

90. We recommend imposing a special condition requiring the consent holders introduce into New Zealand at least \$585,000 of additional investment on Stage 2 and/or the Preferred Design.

Jobs (high relative importance factor)

There are three key elements to this factor:

- The "new job opportunities" must be **new**, or if existing jobs are being "retained", the existing jobs **would or might** otherwise be lost if the investment does not proceed;
- The new job opportunities or retained jobs must be **in New Zealand**;
- The new job opportunities or retained jobs that are **likely to result** from the overseas investment must be **additional** to those which are likely to occur **without the overseas investment**.

91. We consider the investment has likely led to; and will continue to lead to increased job opportunities, additional to that likely to occur without the investment.

Winery and Vineyard Lots jobs

92. The Applicants submit the investment has led to 6 full-time equivalent jobs (FTE) on the Winery and Vineyard Lots being a CEO, winemaker, sales manager, vineyard manager, internal accountant / office administrator and sales assistant. The Applicants have also employed contractors and consultants as part of the Stage 1 development to date.
93. The Applicants further submit 2 new FTE (cellar door staff) and further casual jobs will be created following Stage 1.
94. The Applicants consider there would only be up to 3 FTE under the counterfactual.
95. The Applicants also submit redeveloping the buildings on Winery and Vineyard Lots, and the Lodge Lot and their broader Preferred Design, has led to and will continue to lead to numerous jobs (for example, builders, painters and architects).

Winery and Vineyard Lots counterfactual

96. Without the investment, we consider there would likely be less jobs as a Winery and Vineyard ANZP would likely have maintained the status quo; requiring up to 3 FTE. We have not factored in the development and Preferred Design jobs, as the benefit from these was considered under the additional investment benefit factor.

The Lodge Lot

97. The Applicants submit the investment has led to and will continue to lead to numerous FTE developing and operating the lodge business such as builders; painters; gardeners; architects; hosts; and waiting and function staff. The Applicants are not able to quantify exactly how many jobs have and will be created, however.

Counterfactual

98. Without the Investment, we consider there would be less jobs as an ANZP would likely have continued using the Lodge Lot as a residential property. We have not factored in the development and Preferred Design jobs, as the benefit from these was considered under the additional investment benefit factor.

Our Assessment

99. We consider this factor should be given a **moderate weighting** in relation to both the Winery and Vineyard Lots investment, and the Lodge Lot investment as the investment has likely led to; and will continue to lead to more jobs than under the counterfactual.

Proposed conditions

100. We recommend imposing a special condition requiring the consent holders maintain 4 FTE jobs between the 2021 and 2024 financial years to 30 June on the Winery and Vineyard Lots and/or the Lodge Lot.

Oversight and participation by New Zealanders (high relative importance factor)

There are three key elements to this factor:

- There must be persons who are not overseas persons (**New Zealanders**);
- The New Zealanders must be likely to be able to **oversee or participate** in the overseas investment or any relevant overseas person;
- The overseeing or participation must be in the **overseas investment or any relevant overseas person**.
This factor is relevant to all overseas investments in sensitive land.

101. We consider the investment has and will likely lead to oversight and participation by New Zealanders.

The Winery and Vineyard Lots

102. The Applicants submit the investment has and will likely continue to lead to oversight and participation by New Zealanders being:
- a) Chris Chen who ran the Matakana Estate business on the Winery and Vineyard Lots between 2011 and 2017;
 - b) Jieyu Lu, who became ordinarily resident in New Zealand from December 2017.

The Lodge

103. The Applicants submit the Investment has and will likely continue to lead to oversight and participation by Jieyu Lu, who the Applicants submit became ordinarily resident in New Zealand from December 2017.

Our Assessment

104. We consider this factor should be given:
- a) a **moderate weighting** in relation to the Winery and Vineyard Lots investment as New Zealanders have had some ownership and control of the Winery and Vineyard Lots since 2011;
 - b) a **strong weighting** in relation to the Lodge Lot investment as a New Zealander has 100% owned and controlled the Lodge Lot since December 2017 when Jieyu Lu became ordinarily resident in New Zealand.

Increased export receipts (high relative importance)

There are two key elements to this factor:

- **Export receipts** must be likely to be increased.
- The increased export receipts that are likely to result from the overseas investment must be **additional** to those which are likely to occur **without the overseas investment**.

105. We consider the investment has likely led to; and will continue to lead to (subject to the ongoing uncertainty from COVID-19) increased export receipts, additional to that likely to occur without the investment.

The Winery and Vineyard Lots

106. The Applicants submit the investment has led to increased export receipts from wine exports due to their international (mainly China) connections. The Applicants submit their wine exports for the 2013 to 2018 financial years to 30 June.

Description	2013	2014	2015	2016	2017	2018	Total
Export receipts (finished wine)	\$2.26m	\$2.24m	\$3.04m	\$2.21m	\$1.83m	\$0.99m	\$12.57m
Export receipts (bulk wine)	-	-	-	\$0.41m	\$0.59m	\$7,415	\$1m
Total	\$2.26m	\$2.24m	\$3.04m	\$2.63m	\$2.42m	\$0.99m	\$13.57m

* figures above truncated

107. The Applicants further submit they have exported approximately \$80k of honey and honey products to China.

108. MPI was concerned about the viability of the Applicants' wine business, noting the Applicants' downward trends in higher margin finished wine and exports (at a time NZ wine exports were increasing), and upward trends in lower margin bulk wine.

109. The Applicants advise this was an anomaly due to their dispute with Chris Chen, and their new focus on developing and diversifying Matakana Estate into functions, events, accommodation and tourism. They do not however expect to produce and export the same volume of wine they have previously due to their new focus on developing and diversifying Matakana Estate.

Counterfactual

110. Without the investment, we consider there would likely be less:

- wine export receipts as an ANZP would likely export less wine to China (which has higher margins);
- export receipts from functions, events and tourism as an ANZP would likely focus solely on producing and exporting wine.

We consider there is uncertainty with this benefit factor however from the Applicants developing and diversifying the Matakana Estate business.

The Lodge Lot

111. The Applicants submit the investment has and will likely lead to increased export receipts from international visitors. The Applicants submit their projected revenue for the 2020 to 2022 financial years to 30 June.

Revenue	2020	2021	2022	Total
Accommodation	\$176.9k	\$300.6k	\$315.1k	\$792.7k

Cellar dining	\$24k	\$34k	\$34k	\$92k
Events	\$96.6k	\$144.7k	\$159.2k	\$400.5k
Sales	\$20.8k	\$4.6k	\$4.9k	\$30.4k
Total	\$318.4k	\$483.9k	\$513.3k	\$1,315.7k

* figures above truncated

112. The Applicants further submit they expect 50% of their projected revenue to come from international visitors.

Counterfactual

113. Without the investment, we consider there would be no export receipts as an ANZP would likely have continued using the Lodge Lot as a residential property.

Our Assessment

114. We consider this factor should be given a:

- a) **weak weighting** in relation to the Winery and Vineyard Lots investment as the investment likely led to increased export receipts from wine additional to that under the counterfactual, though also taking into account the uncertainty from the Applicants developing and diversifying the Matakana Estate business;
- b) **strong weight** in relation to the Lodge Lot investment as the investment has likely led to; and will continue to lead to significantly increased export receipt receipts from tourism additional to that under the counterfactual.

115. Although there are likely to be significant impacts in the short to medium term due to the effects of COVID-19, the above increased export receipts will likely be realised when things return to normal. We also note the effects of COVID-19 would equally impact an ANZP.

Proposed conditions

116. We recommend imposing a special condition requiring the consent holders generate \$200,000 of non-wine export receipts annually between the 2024 and 2027 financial years to 30 June from the Land. We consider this gives the consent holders enough time to establish the diversified Matakana Estate business post COVID-19.

Increased processing of primary products (high relative importance)

<p>There are four key elements to this factor:</p> <ul style="list-style-type: none"> • Processing of primary products must be likely to increase. • The increased processing of primary products must occur in New Zealand. • The increased processing must be of New Zealand's primary products. • The increased processing that is likely to result from the overseas investment must be additional to that which is likely to occur without the overseas investment.
--

117. We consider the investment has likely led to; and will continue to lead to (subject to the ongoing uncertainty from COVID-19) increased processing of primary products at the Winery and Vineyard, additional to that likely to occur without the investment.

The Winery and Vineyard Lots

118. The Applicants submit the investment has led to increased wine production due to their high volume low margin approach, and their improved ability to export to China. The Applicants submitted their wine production in dollar terms for the 2013 to 2018 financial years to 30 June.

Description	2013	2014	2015	2016	2017	2018	Total
Finished wine	\$2.76m	\$2.39m	\$3.30m	\$2.38m	\$2.04m	\$1.15m	\$14.02m
Bulk wine	\$0.54m	-	\$0.13m	\$0.77m	\$0.81m	\$1.60m	\$3.85m
Total	\$3.3m	\$2.39m	\$3.43m	\$3.15m	\$2.85m	\$2.75m	\$17.87m

* figures above truncated

Counterfactual

119. Without the investment, we consider there would be less wine produced. We do not consider the Applicants produced substantially more wine than an ANZP. However, the Applicants were able to maintain wine production levels when there was an oversupply of wine and a depressed wine market in New Zealand.
120. MPI was concerned about the viability of the Applicants' wine business, noting the Applicants' downward trends in higher margin finished wine and exports (at a time NZ wine exports were increasing), and upward trend in lower margin bulk wine.
121. The Applicants advise this was an anomaly due to their dispute with Chris Chen, and their new focus on developing and diversifying Matakana Estate into functions, events, accommodation and tourism. They do not however expect to produce and export the same volume of wine they have previously due to their new focus on developing and diversifying Matakana Estate.

Our Assessment

122. We consider this factor should be given a **weak weighting** as the investment likely led to an increased processing of primary products additional to that under the counterfactual, though also taking into account the uncertainty from the Applicants developing and diversifying the Matakana Estate business.
123. We consider this factor does not apply to the Lodge Lot application.

Walking access

<p>There are four key elements to this factor:</p> <ul style="list-style-type: none"> • 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.

124. We consider the Investment has and will likely lead to improved walking access between Golf Road and Matakana Road the Winery and Vineyard Lots and the Lodge Lot (the **access**).

The Winery and Vineyard Lots and the Lodge Lot

125. The Applicants submit they will make land available for access through the Winery and Vineyard Lots, and the Lodge Lot to better connect Golf Road and Matakana Road. The Applicants were already working with Auckland Council on creating the above access, however this ceased when the Applicants discovered they did not have consent.
126. We consulted WAC and Auckland Council, who preferred the Applicants build the access, and Auckland Council maintain the access. However, the Applicants submit they are only willing to make the access land available. WAC and Auckland Council accepted having the access land available, while not their preference is of benefit.

127. The Applicants also submit they are unable to grant any easements over the Winery and Vineyard Lots while Chris Chen is the legal owner.

Counterfactual

128. Without the investment, we consider there would be no new access as a Winery and Vineyard Lots ANZP would likely want to protect the Winery and Vineyard Lots from harm, while a Lodge ANZP would want to maintain their privacy.

Our Assessment

129. We consider this factor should be given a weak weighting as the investment will likely eventually lead to improved walking access, however a third party will still need to create the access.

Proposed conditions

130. We recommend imposing a special condition requiring the consent holders register a walking and cycling easement over the Winery and Vineyard Lots and the Lodge Lot to better connect Golf Road and Matakana Road by 2024.¹¹

Advance significant government policy or strategy

There are three key elements to this factor:

- The overseas investment must give effect to or advance a specific Government policy or strategy.
- The Government policy or strategy must be significant.
- The effect or advancement that is likely to result from the overseas investment must be additional to that which is likely to occur without the overseas investment.

131. We consider the Investment will advance significant Government policy and strategy being the New Zealand-Aotearoa Government Tourism Strategy (the **Government's Tourism Strategy**).
132. We consider the Tourism Strategy a significant Government strategy as Cabinet agreed the Government would take a more deliberate and coordinated approach to the tourism system, directed officials to consult on the draft strategy, and agreed to the final version of the strategy.
133. The strategy's overarching aim is to enrich New Zealand-Aotearoa through sustainable tourism growth, and lists 5 outcomes to achieve this:

¹¹ We consider this allows enough time for the Applicants and Chris Chen to resolve their dispute.

Theme	Outcome	Focus
Te ōhanga The economy	Tourism sector productivity improves	This focuses on the type of growth that we want tourism to deliver – with an emphasis on lifting the productivity of the sector.
Te Taiao The environment	Tourism protects, restores and champions New Zealand-Aotearoa's natural environment, cultural and historic heritage	Our natural environment is the backbone of New Zealand-Aotearoa's economy, culture and wellbeing. To achieve sustainable tourism growth, we must protect the environment and manage activity within its limits so New Zealand-Aotearoa will be in great shape for the next generation.
Ngā manuhiri o te ao, o Aotearoa anō hoki International and domestic visitors	New Zealand-Aotearoa delivers exceptional visitor experiences	To ensure the sustainability of the tourism sector New Zealand-Aotearoa needs to develop and promote high-quality, authentic visitor experiences that draw on New Zealand-Aotearoa's unique visitor proposition.
Tātou o Aotearoa me ō tātou hapori New Zealanders and our communities	New Zealanders' lives are improved by tourism	For New Zealand-Aotearoa to achieve sustainable tourism growth we require the support of New Zealanders and our community.
Ngā rohe Regions	Tourism supports thriving and sustainable regions	We want to make sure that sustainable tourism growth is inclusive and the benefits of tourism are distributed across all regions in New Zealand-Aotearoa.

Figure 6: New Zealand-Aotearoa Government Tourism Strategy Outcomes Table

The Lodge Lot

134. The Applicants submit the Investment has and will likely continue to advance the Government's Tourism Strategy by attracting visitors to the lodge and giving them a high quality experience, benefiting the Matakana region.

Counterfactual

135. Without the Investment, we consider there would be no advancement of the Government's Tourism Strategy as an ANZP would likely have continued using the Lodge Lot as a residential property.

Our assessment

136. We consider this factor has been met and should be given a **weak weighting** as the investment has likely led to; and will continue to advance the Government's Tourism Strategy.
137. We consider this factor does not apply to the Winery and Vineyard Lots application.

Enhance the viability of other investments

There are three key elements to this factor:

- 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**.

138. We consider the investment has and will likely continue to (subject to the ongoing uncertainty from COVID-19) enhance the viability of other investments, additional to that likely to occur without the investment.

The Lodge Lot

139. The Applicants submit the Lodge Lot investment enhanced and will continue to enhance the ongoing viability of the Winery and Vineyard Lot investment.

Our assessment

140. We consider this factor has been met for the Lodge Lot and should be given a **weak weighting**, as the Lodge Lot investment complements and provides accommodation for the wine business, though also taking into account that the Winery and Vineyard Lots investment is still viable without the Lodge Lot investment.

Conclusion – benefits test

141. In order for consent to be granted, the Applicants must demonstrate:

- that the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
- that the benefit will be, or is likely to be, substantial and identifiable.

142. We do not consider any other factor should be given high relative importance in the context of this Investment

143. We have undertaken our assessment having regard to the characteristics of the land and the nature of the interest acquired (reflecting the proportional nature of the benefit test). Here the Applicants are acquiring:

- the **Vineyard Lots**;
- the **Winery Lot**; and
- the **Lodge Lot**.

144. Our view is that the Applicants have met the benefits test. On balance, we consider that, taking into account the size and nature of the land being acquired, the Investment has resulted or is likely to result in substantial and identifiable benefit to New Zealand. In this regard, we note:

145. Subject to the ongoing uncertainty from COVID-19, we consider:

- the Winery and Vineyard Investment likely has and will continue to benefit New Zealand as described at paragraph 10
- the Lodge Investment likely has and will continue to benefit New Zealand as described at paragraph 11.

Impact of declining consent

146. If the Applicants are not granted consent, they will likely be required to dispose of the land.

Conditions

147. Proposed conditions are set out in **Attachment 1**. These are designed to ensure the Applicants continue to develop the Winery and Vineyard Lots, retain jobs, generate export receipts and improve walking access. The conditions also take into account the benefits the Applicants have already achieved while the Applicants have had an interest in the Winery and Vineyard Lots, and the Lodge Lot, the interconnectedness of both applications, and the proportional nature of the benefit test.

Conclusion

148. Subject to the ongoing uncertainty from COVID-19, we are satisfied that the investment is likely to result in the benefits outlined in the table at paragraphs 10 and 11 of the executive summary and **Attachment 7**.
149. Our view is that the Applicants have **met** the benefits test for both applications 201900621 and 201720091. Overall, when examined together, we consider that the benefits of the investments are likely to be **substantial and identifiable**.

Recommendation

150. Our recommendation is to **grant consent**, as we consider that the investor test and the benefits test have been met.
151. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and to paragraphs 7 - 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. ATEED letter of support
6. Overview tables

List of other documents in the Bundle

- A. Application
- B. Investment Plan (Appendix 1 of the Application)
- C. Master Plan (Appendix 2 of the Application)

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: 15 September 2020

The following people have been given the following consent:

Case	201900621 and 201720091
Consent	The Consent Holders may acquire the Land subject to the Conditions set out below.
Consent holder/s	Jieyu Lu and Hongzhao Huang Any entities 100% owned by Jieyu Lu and/or Hongzhao Huang We will also refer to each Consent holder and the Consent holders together as you .
Land	A freehold interest in approximately 5.0110 hectares of non-urban land at 568 Matakana Road, RD 5 Warkworth being land comprised of record of title 337339; 7.788 hectares of non-urban land at 568 Matakana Road, RD 5 Warkworth being land comprised of records of title 337340, 337341 and 337342; and 12.2087 hectares of non-urban land at 494 Matakana Road, RD 5 Warkworth being land comprised of record of title 583823.
The Lodge Lot	The land comprised record of title 583823.
Preferred Design	Development of the Land into a 5-star eco-tourism venture.
Stage 2	Development of an event space in the existing winery building, redevelopment of the existing tasting room, and construction of further office space on the Land.
Public Access	Public walking and cycling access connecting from Golf Road to Matakana Road at the north-eastern boundary of the Land along the perimeter alignment indicated in red in Schedule 1.

Timeframe	<p>You may acquire the Land as follows:</p> <ol style="list-style-type: none"> 1. record of title 337339 from 26 October 2011; 2. records of title 337340, 337341 and 337342 from 2 February 2012; and 3. record of title 583823 from 11 August 2017. <p>You have until 30 June 2024 to acquire the Land.</p>
------------------	--

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: Introduce additional investment	
<p>You must introduce into New Zealand at least \$585,000 completing Stage 2 and/or Preferred Design.</p> <p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	By 31 December 2025
Special condition 2: Increased export receipts	
<p>You must generate at least \$200,000 of non-wine export receipts from the Land.</p> <p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	Each year for the period commencing 1 July 2023 to 30 June 2027
Special condition 3: Jobs	
You must retain 4 full time equivalent jobs on the Land.	For the period commencing 1 October

<p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	<p>2020 to 30 June 2024</p>
<p>Special condition 4: Walking access</p>	
<p>You must register an easement registrable under the Land Transfer Act 2017 that allows for public walking and cycling access connecting from Golf Road to Matakana Road at the north-eastern boundary of the Land along the perimeter alignment indicated in red in Schedule 1.</p> <p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	<p>By 30 June 2024</p>

Schedule 1 – Proposed walking access easement



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"> 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 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"> the date you acquired the Land (Settlement), consideration paid (plus GST if any), the structure by which the acquisition was made and who acquired the Land, and copies of any transfer documents and Settlement statements. 	As soon as you can, and no later than two months after Settlement
Standard condition 3: allow us to inspect the Land	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions.</p> <p>We will give you at least two weeks' written notice if we want to do this.</p> <p>You must then:</p> <ol style="list-style-type: none"> Allow a person we appoint (Inspector) to: <ol style="list-style-type: none"> enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (Inspection), 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"> 1. directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection, 2. 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"> 1. 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, 2. our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection. 	
Standard condition 4: remain of good character	
<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>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: if you have not disposed of the Land within six months of our notice, offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.</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> <ul style="list-style-type: none"> (d) that you have disposed of the Land, (e) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor), (f) 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 a **report**. It must:

1. be sent to **oiomonitoring@linz.govt.nz** by these dates:
 - (a) *1 August 2022* to show your compliance with special conditions 1 and 3
 - (b) *1 August 2024* to show your compliance with special conditions 1; 2; 3 and 4
 - (c) *1 August 2027* to show you have complied with special conditions 1 and 2.
2. contain information about:
 - (a) your progress giving effect to the special conditions
 - (b) your progress with Stage 2 and the Preferred Design
 - (c) your wine sales and exports including the:
 - (i) types of wine
 - (ii) volume of finished wine and bulk wine in litres and dollar terms
 - (d) whether you have applied for or received any resource consents
3. follow the format of the template annual report published on our website.
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.

ATTACHMENT 2 - GUIDANCE FOR APPLYING THE ACT

1. You¹² must grant consent to this overseas investment if you are satisfied that all of the applicable criteria in the Overseas Investment Act 2005 (**Act**) and the Overseas Investment Regulations 2005 (**Regs**) are met. You must decline to grant consent if you are not satisfied that all of the applicable criteria are met. You must not take into account any criteria or factors other than those identified as applying to this application in the table below.
2. The type of application you are considering is an application under the Sensitive land - not residential (Benefit to New Zealand) pathway.
3. The following table sets out the criteria and factors that apply to this application:

Pathway	Criteria and factors (post-October 2018)
Benefit only	Investor test – s16(1)(a) and 16(2) and Benefit test – s16(1)(b)(ii) or s16(1)(c)(ii) or s16(1)(d)(ii) or s16(1)(e)(ii), and 16A(1)(a) and Benefit factors – s17 and Reg 28.

4. Where the criteria under sections 16 and 18 are the same, Ministers need only consider each criterion once.
5. 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.
6. Following is guidance in relation only to the criteria and factors that apply to this application.

Investor test – good character criterion

7. You must 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.
8. 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.
9. When undertaking the good character assessment, you 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.
10. 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 body corporate 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 body corporate is less than this, there generally must be other grounds to reasonably infer participation by the individual in the alleged wrongdoing.

¹² 'You' here refers either to the decision-maker, being the relevant Minister(s) for a Ministerial application or the delegated decision-maker for a delegated application

11. 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.
12. All relevant matters must be weighed up before you make a decision that an individual is of good character. If you wish 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 in order to meet the requirements of natural justice.
13. 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 you.
14. 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.
15. 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.
16. Briefly, some of the things we consider when weighing up "good character" include:
 - (a) the seriousness of the matter, which may include considerations of: what the matter was and the level of actual or potential harm; whether the matter was established by a relevant regulator or the Court and attributed to an Individual with Control (IWC) or Relevant Overseas Person (ROP); what the penalty or other sanction was (if any); whether the matter was a one-off event or repeated breaches, including a pattern of non-compliance across a range of regulatory regimes; whether what occurred was inadvertent, negligent, reckless or deliberate; whether what occurred was legal in New Zealand but illegal in the jurisdiction in which it occurred, in which case we consider the culture and context of that country;

- (b) if a matter is an allegation, the credibility of the allegation including the reliability of the source and credibility of the information raised. Generally, if an allegation is reported in a number of sources and is not simply 'copy and pasted' it is likely to be regarded as having credibility;
 - (c) 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.
 - (d) 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.
 - (e) what actions, if any, were taken to remedy the situation and reduce the chances of it reoccurring.
17. The onus is on the applicants to satisfy the decision maker that all the individuals with control are of good character.
 18. If you have 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.

Benefit to New Zealand criteria

19. In this case, section 16 and 16A require Ministers to decide, among other things, whether they are satisfied in relation to the following "benefit to New Zealand" criteria 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.
20. The application of the benefit to New Zealand criteria involves the exercise of judgement. The fact that responsibility for making this decision has been conferred on Ministers and their delegees 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.
21. In applying the benefit to New Zealand criteria, you 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 you as the decision-maker. 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.

Justice Miller’s “with and without test”

Economic factors

22. 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

23. 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 suggested¹³ 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 noted¹⁴, 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

24. 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.¹⁵

25. 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

26. Conditions may be imposed on any consent that is granted, under section 25(A) of the Act¹⁶. The attached Report recommends some conditions that you may wish to consider imposing in this case.

Decision

27. The decision that you are required to make should be based on information available to you that you consider is sufficiently reliable for that purpose. The information that the Overseas Investment Office has taken into account in making its recommendation is summarised in the attached Report.

¹³ *Tiroa E* at [36].

¹⁴ *Tiroa E* at [38].

¹⁵ *Tiroa E* at [36].

¹⁶ Section 25 of the Act prior to the Amendment Act.

ATTACHMENT 3 - OTHER BENEFIT FACTORS

1. The table below lists other factors in the Act and regulations for assessing the benefit of overseas investments.
1. 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.

The Winery and Vineyard Lots

Factor	Reason not relevant or insufficient
New technology or business skills – s17(2)(a)(ii) <i>(high relative importance factor)</i>	The Applicants submit, and we accept, that this factor is not relevant .
Added market competition, increased productivity, efficiency, and enhanced domestic services – s17(2)(a)(iv)	The Applicants submit, and we accept, that this factor is not relevant .
Indigenous vegetation/fauna – s17(2)(b)	The Applicants submit, and we accept, that this factor is not relevant .
Trout, salmon, wildlife and game – s17(2)(c)	The Applicants submit, and we accept, that this factor is not relevant .
Historic heritage – 17(2)(d)	The Applicants submit, and we accept, that this factor is not relevant .
Offer to sell seabed/foreshore/riverbed to the Crown – s17(2)(f)	The Applicants submit, and we accept, that this factor is not relevant .
Consequential benefits – reg 28(a)	The Applicants submit, and we accept, that this factor is not relevant .
Key person in a key industry – reg 28(b)	The Applicants submit, and we accept, that this factor is not relevant .
Affect image, trade or international relations – reg 28(c)	The Applicants submit, and we accept, that this factor is not relevant .
Owner to undertake other significant investment – reg 28(d)	The Applicants submit, and we accept, that this factor is not relevant .
Previous investments – reg 28(e)	The Applicants submit, and we accept, that this factor is not relevant .
Advance significant government policy or strategy – reg 28(f)	The Applicants submit, and we accept, that this factor is not relevant .
Strategically important infrastructure – reg 28(h)	The Applicants submit, and we accept, that this factor is not relevant .
Economic interests – reg 28(i)	The Applicants submit, and we accept, that this factor is not relevant .

The Lodge Lot

Factor	Reason not relevant or insufficient
New technology or business skills – s17(2)(a)(ii) <i>(high relative importance factor)</i>	The Applicants submit, and we accept, that this factor is not relevant .
Added market competition, increased productivity, efficiency, and enhanced domestic services – s17(2)(a)(iv)	The Applicants submit, and we accept, that this factor is not relevant .
Increased processing of primary products – s17(2)(a)(vi) <i>(high relative importance factor)</i>	The Applicants submit, and we accept, that this factor is not relevant .
Indigenous vegetation/fauna – s17(2)(b)	The Applicants submit, and we accept, that this factor is not relevant .
Trout, salmon, wildlife and game – s17(2)(c)	The Applicants submit, and we accept, that this factor is not relevant .
Historic heritage – 17(2)(d)	The Applicants submit, and we accept, that this factor is not relevant .
Offer to sell seabed/foreshore/riverbed to the Crown – s17(2)(f)	The Applicants submit, and we accept, that this factor is not relevant .
Consequential benefits – reg 28(a)	The Applicants submit, and we accept, that this factor is not relevant .
Key person in a key industry – reg 28(b)	The Applicants submit, and we accept, that this factor is not relevant .
Affect image, trade or international relations – reg 28(c)	The Applicants submit, and we accept, that this factor is not relevant .
Previous investments – reg 28(e)	The Applicants submit, and we accept, that this factor is not relevant .
Strategically important infrastructure – reg 28(h)	The Applicants submit, and we accept, that this factor is not relevant .
Economic interests – reg 28(i)	The Applicants submit, and we accept, that this factor is not relevant .

ATTACHMENT 4 - SENSITIVE LAND DETAILS

1. The Winery and Vineyard Lots

Land Interest	Freehold Interest (approximately 12.7990 hectares)
Record(s) of Title	337340, 337341, 337342, 337339 (North Auckland)
Sensitivity	Is more than 5 hectares of non-urban land

2. The Lodge Lot

Land Interest	Freehold Interest (approximately 12.2087 hectares)
Record(s) of Title	583823 (North Auckland)
Sensitivity	Is more than 5 hectares of non-urban land

Released under the Official Information Act 1982

ATTACHMENT 5 - ATEED LETTER OF SUPPORT



To whom it may concern

The purpose of this letter is to describe the positive relationship Auckland Tourism, Events and Economic Development (ATEED) has with Chrissy Lu, and to outline what we perceive to be a significant contribution to our region's economy.

ATEED is the economic development agency for Auckland, and an Auckland Council-controlled organisation. We have, for a number of years, had a strategic focus in the development of tourism and business ties with China.

Chrissy Lu was introduced to members of ATEED's Tourism Trade Development unit in China about 6 years ago, with a view that Chrissy could help build tourism relationships between the two countries. Chrissy and her husband Alex hosted ATEED guests, and shared with them Alex's marina project in Zhongshan, China.

The couple spoke of their desire to further develop the profile of New Zealand wine, and in particular their Matakana Estate brand in China, whilst also increasing the profile of Matakana as a tourism destination in New Zealand for Chinese tourists.

Since this introduction, Chrissy Lu and Matakana Estate have supported ATEED both in China and New Zealand. This has included sponsorships, practical assistance and hosting guests, dignitaries and key stakeholders at trade shows, private functions and other public events.

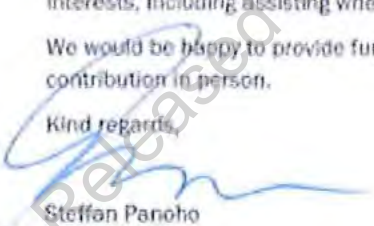
All of this activity has been designed to strengthen the link between China and New Zealand travel and tourism.

Auckland's Matakana Coast region has enormous potential as a prime tourist destination and ATEED is grateful for the investment of time, energy and money being made into Matakana Estate by Chrissy, Alex, and their team.

We hope to continue our mutually beneficial relationship with Chrissy Lu and her business interests, including assisting where we can in the development of Matakana Estate.

We would be happy to provide further detail of ATEED's relationship with Chrissy Lu or discuss her contribution in person.

Kind regards,


Steffan Panoho
Head of Tourism

Main Office |
167b Victoria Street West
+64 9 305 0500
167b Victoria Street West,
Auckland 1010
PO Box 5561, Wellesley St,
Auckland 1141

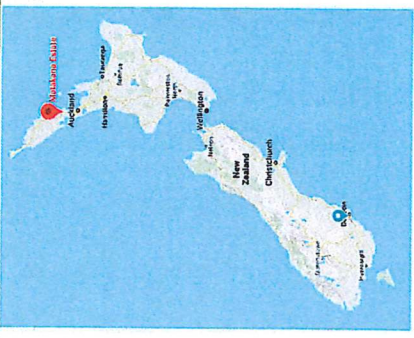

Constellation Drive Hub
+64 9 354 0057
Level 1, Building 1
61 Constellation Drive
Rosedale, Auckland 0632
PO Box 302 253
North Harbour
Auckland 0751

Manukau Hub
+64 9 365 0510
Civic Building
31-33 Manukau Station Road
Manukau, Auckland 2104
PO Box 5561
Wellesley St
Auckland 1141

Henderson Service Centre
+64 9 354 0056
6 Henderson Valley Road
Henderson, Auckland 0612
PO Box 21 548
Henderson
Auckland 0650

aucklandnz.com

ATTACHMENT 6 - OVERVIEW TABLES FOR JIEYU LU, HONGZHAO HUANG AND MATAKANA WINES LIMITED 201900621 AND JIEYU LU, HONGZHAO HUANG AND MATAKANA ESTATE LODGE LIMITED 201720091

 <p>Location of the Land</p>	 <p>Aerial photograph of the Land</p>	<p>Application</p> <p>Jieyu Lu, Hongzhao Huang and Matakana Wines Limited (MWL) (together the Winery and Vineyard Lots Applicants) seek retrospective consent to acquire approximately 12,7990 hectares of non-urban land comprising:</p> <ul style="list-style-type: none"> approximately 7,7880 hectares of non-urban land at 568 Matakana Road, RD 5 Warkworth (the Vineyard Lots); and approximately 5,0110 hectares of land at 570 Matakana Road, RD 5 Warkworth (the Winery Lot) (together the Winery and Vineyard Lots) (application 201900621). <p>Jieyu Lu, Hongzhao Huang and Matakana Estate Lodge Limited (MELL) (together the Lodge Lot Applicants) seek retrospective consent to acquire approximately 12,2087 hectares of non-urban land at 494 Matakana Road, RD 5, Warkworth (the Lodge Lot) (application 201720091).</p> <p>The Vendor of the:</p> <ul style="list-style-type: none"> Vineyard Lots is Vegar Estate Wines Limited (in receivership and liquidation) Winery Lot is VP 568 Limited (in receivership) Lodge Lot is Patricia Anne Vegar-Fitzgerald. <p>The Applicants' original vision was to own a New Zealand wine business to support Jieyu Lu's wine distribution and bar and restaurant businesses in China.</p> <p>Their vision has evolved to developing and diversifying Matakana Estate into functions, events, accommodation and tourism.</p>	<p>Provisional recommendation</p> <ul style="list-style-type: none"> Our recommendation is to grant consent for both applications. Relevant tests for this transaction: <ul style="list-style-type: none"> Investor test Benefits test (S&L). The land is not (and does not contain) any farm land, or special land. <p>Factors for the decision-maker to particularly consider:</p> <ul style="list-style-type: none"> The Applicants have already achieved some benefits on the land Both applications Investment Plans are interconnected The impacts from COVID-19 will likely delay the expected benefits and create uncertainty, however these impacts will likely also occur under the counterfactual
---	--	---	--

Overview of assessment: Investor test

Element of investor test	OIO assessment of strengths and weaknesses	Cross-references
Relevant overseas persons (ROP) confirmed	<p>Risk Barometer</p> <p>ROP/IWC identified</p>	<p>Paras 21 - 22.</p>
Collectively have business experience and acumen relevant to the investment	<p>Test met</p>	<p>Section 15 of the Act.</p> <p>Paras 23 - 24.</p>
ROP demonstrated financial commitment	<p>Test met</p>	<p>Sections 16(2)(a) of the Act.</p> <p>Sections 16(2)(b) of the Act.</p>
Good character	<p>Some concerns</p>	<p>Paras 25 - 35 and Error! Reference source not found..</p>
Not an individual of the kind ineligible for a visa or entry permission under ss 15 or 16 of the Immigration Act 2009	<p>Test met</p>	<p>Sections 16(2)(c) of the Act.</p> <p>Sections 16(2)(d) of the Act.</p>

Overview of assessment: Winery Lot and Vineyard Lots investment and benefit test (consent application 201900621)

Relevant benefit factors	Applicant's claims: what they did and intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Additional investment	\$832k already invested (\$130k jointly relates to the Lodge Lot investment) \$1.4275m further investment planned (\$500k jointly relates to the Lodge Lot investment)	Less additional investment	Strong	Significantly more additional investment than under the counterfactual	Special condition 1 - introduce \$585k of additional investment (joint condition with the Lodge Lot investment)	Paras 82 - 90
Jobs (high relative importance factor)	6 ongoing FTE employed Up to 100 FTE could be created (jointly relates to the Lodge Lot investment)	Less jobs (up to 3 FTE employed)	Moderate	3 more FTE employed than under the counterfactual	Special condition 3 - Retain 4 FTE investment)	Paras 91 - 100
Oversight and participation by New Zealanders (high relative importance factor)	NZ oversight and participation since 2011 through Chris Chen and Jieyu Lu when she became ordinarily resident in NZ	Not applicable	Moderate	Partial NZ oversight and participation through Chris Chen from 2011 - 2017 and Jieyu Lu from 2017 when she became ordinarily resident in NZ	None	Paras 101 - 104
Increased export receipts (high relative importance factor)	\$13.6m of wine exported between 2013 and 2018	Less export receipts	Weak	More wine exports than under the counterfactual	Special condition 2 - \$800k of non-wine export receipts between 2023 - 2027 (joint condition with the Lodge Lot investment)	Paras 105 - 116
Increased processing of primary products (high relative importance factor)	\$17.9m of wine processed between 2013 and 2018	Less processing of primary products	Weak	Slightly more wine processed than under the counterfactual	None	Paras 117 - 123
Walking access	Plan on making land available for walking and cycling access	No new walking access	Weak	Slightly more improved walking access than under the counterfactual	Special condition 4 - register a walking and cycling easement between Golf Road and Matakana Road (joint condition with the Lodge Lot investment)	Paras 124 - 130

Overview of assessment: Lodge Lot investment and benefit test (consent application 201720091)

Relevant benefit factors	Applicant's claims: what they did and intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Additional investment	\$640k already invested (\$130k jointly relates to the Winery and Vineyard Lots investment) \$500k further investment planned (jointly relates to the Winery and Vineyard Lots investment)	No additional investment	Strong	Significantly more additional investment than under the counterfactual	Special condition 1 - introduce \$585k of additional investment (joint condition with the Winery and Vineyard Lots investment)	Paras 82 - 90
Increased export receipts <i>(high relative importance factor)</i>	\$657k export receipts from overseas visitors projected between 2020 and 2022	No new export receipts	Strong	Significantly more export receipts than under the counterfactual	Special condition 2 - \$800k of non-wine export receipts between 2023 – 2027 (joint condition with the Winery and Vineyard Lots investment)	Paras 105 - 116
Oversight and participation by New Zealanders <i>(high relative importance factor)</i>	100% NZ ownership and control since December 2017 when Jieyu Lu became ordinarily resident in NZ	Not applicable	Strong	100% NZ ownership and control since December 2017 when Jieyu Lu became ordinarily resident in NZ	None	Paras 101 - 104
Jobs <i>(high relative importance factor)</i>	1 ongoing FTE job Numerous jobs developing the lodge business created Up to 100 FTE jobs could be created (jointly relates to the Lodge Lot investment)	No new jobs	Moderate	1 more FTE employed than under the counterfactual	Special condition 3 - Retain 4 FTE (joint condition with the Winery and Vineyard Lots investment)	Paras 91 - 100
Walking access	Plan on making land available for walking and cycling access	No new walking access	Weak	Slightly more improved walking access than under the counterfactual	Special condition 4 – register a walking and cycling easement between Golf Road and Matakana Road (joint condition with the Winery and Vineyard Lots investment)	Paras 124 - 130
Advance significant Government policy or strategy	Increased tourism in Matakana	No new tourism	Weak	Advances the New Zealand-Aotearoa Government Tourism Strategy by increasing tourism in Matakana	None	Paras 131 - 137
Enhance the viability of other investments	Enhances the viability of the Winery and Vineyard Lots investment	Not applicable	Weak	Slightly enhances the viability of the Winery and Vineyard Lots investment	None	Paras 138 - 140

Released under the Official Information Act 2000