



Decision Date

21 August 2014

Decision

Consent has been granted to **GMP Pharmaceuticals Limited**, or a 100% subsidiary of **GMP Pharmaceuticals Limited** ("the Applicant"), giving effect to a transaction which will result in:

- (a) An overseas investment in sensitive land, being the Applicant's acquisition of a freehold interest in approximately 0.7450 hectares of land at 10 Averton Place, East Tamaki, Auckland.

("the Investment")

Consent is granted subject to the following conditions:

Statutory Conditions of Consent

Section 28 of the Overseas Investment Act 2005 ("the Act") provides that it is a condition of every consent, whether or not it is stated in the consent, that:

- (a) the information provided by each applicant to the Overseas Investment Office or the relevant Ministers in connection with the application was correct at the time it was provided; and
- (b) each consent holder must comply with the representations and plans made or submitted in support of the application and notified by the Overseas Investment Office as having been taken into account when the consent was granted, unless compliance should reasonably be excused.

For the purposes of section 28(1)(b), the representations and plans made or submitted in support of the application and taken into account when consent was granted are those contained in the correspondence listed in the schedule to the statutory declaration of Qing Ye dated 19 August 2014 and in all attachments annexed to that correspondence.

Special Conditions

1. The consent will lapse if the Investment has not been acquired by and transferred to the Applicant within twelve months of the date of consent.
2. The Applicant must notify the Overseas Investment Office in writing as soon as practicable, and no later than twelve months from the date of consent, whether settlement of the acquisition of the Investment took place. If settlement of the acquisition of the Investment did take place, the notice must include:
 - (a) the date of settlement;
 - (b) final consideration paid (plus GST, if any);
 - (c) the structure by which the acquisition was made, and who acquired the Investment;
 - (d) where applicable, copies of transfer documents and settlement statements; and

- (e) any other information that would aid the Overseas Investment Office in its function to monitor conditions of consent.
3. The Applicant, or the individuals with control of the Applicant, must:
- (a) continue to be of good character; and
 - (b) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.
4. The Applicant must notify the Overseas Investment Office in writing within 20 working days if:
- (a) the Applicant; or (if the Applicant is not an individual) any individual with control of the Applicant:
 - (i) ceases to be of good character; or
 - (ii) commits an offence or contravenes the law (whether convicted or not); or
 - (iii) becomes aware of any other matter that reflects adversely on the Applicant's fitness to have the Investment; or
 - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
 - (b) any person in which the Applicant, or any individual with control of the Applicant has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the law (whether convicted or not); or
 - (c) the Applicant:
 - (i) ceases to be an overseas person; or
 - (ii) disposes of the Investment.
5. The Applicant must consult with the New Zealand Walking Access Commission ("WAC") to determine what the Applicant can reasonably do to provide, protect or improve public walking access over the relevant land or relevant part of that land (such as the registration of new instruments) ("Walking Access"). The Applicant must:
- (a) write to WAC within 15 working days of the date of settlement advising that the Applicant wishes to consult about Walking Access and enclose:
 - (i) a copy of the Public Decision Summary for this consent; and
 - (ii) a copy of this condition together with information identifying and describing the relevant land including aerial photographs, maps and Certificate(s) of Title;
 - (b) Implement any reasonable Walking Access recommended by WAC ("Recommendation") (in determining what is reasonable Walking Access, regard must be had to the Applicant's proposed use for the relevant land);
 - (c) The cost of any recommended Walking Access shall be borne by the Applicant (up to a maximum of \$15,000 plus GST);
 - (d) Agree that any dispute, difference or claim between WAC and the Applicant will be referred to and finally resolved in arbitration in Wellington, New Zealand. The tribunal will consist of a sole arbitrator appointed by agreement between the parties or if the parties cannot agree by the President of the New Zealand Law Society;

- (e) Share the cost of any arbitration equally with WAC (each party will be liable for their own legal costs); and
 - (f) Provide a copy of any award made by the arbitrator to the Overseas Investment Office within 15 working days of the award being made.
6. The Applicant must report in writing annually to the Overseas Investment Office detailing progress of its investment plan, including the following:
- (a) the Applicant's compliance with condition 5; and
 - (b) the Applicant's use of the land and how this use has enhanced the ongoing viability of other overseas investments undertaken by the relevant overseas person.
7. The first report referred to in condition 6 is due on 1 September 2015 and the final report is due on 1 September 2017.
8. If requested in writing by the Overseas Investment Office, the Applicant must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
- (a) the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent was granted; or
 - (b) the conditions of this consent.

Monitoring Conditions of Consent

For the purpose of monitoring conditions of consent, the Overseas Investment Office may, under section 38 of the Act, require the consent holder to provide information or documents, or both, that are specified in the notice. Under section 40 of the Act, the Overseas Investment Office may also require a consent holder to provide a statutory declaration verifying the extent to which the consent holder has complied with the conditions of consent, and, if the consent holder is in breach of a condition or conditions, the reasons for the breach and the steps the consent holder intends to take to remedy the breach.

Sanctions

The Act provides for civil and criminal sanctions for breaching the Act, failing to comply with the conditions of consent and failing to provide information required by the Overseas Investment Office. The Overseas Investment Office has an obligation to investigate and act upon alleged and suspected breaches of the Act.

General

A reference to the "Overseas Investment Office" in this Notice includes a reference to the regulator (as defined by the Act). A reference to the Applicant includes a reference to the consent holder.



Tyne Schofield
Senior Solicitor
Overseas Investment Office



Decision required under the Overseas
Investment Act 2005: GMP Pharmaceuticals Limited

Date	21 August 2014
Security Level	Commercial: In Confidence
Priority	High
Case Number	201410050
Consent Required By	31 August 2014

Contact for Telephone Discussion

Name	Position	Telephone (wk)	Cellphone	First Contact
David Viviers	Team Manager	04 460 2795	027 447 6810	
Tyne Schofield	Senior Solicitor	04 460 0552		✓

Released under the Official Information Act 1982

Annexures:

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

Instructions:

3. The regulator is required to grant consent in respect of this application if it is satisfied that all of the criteria in section 16 of the Overseas Investment Act 2005 ("the Act") are met. It must decline consent if it is not satisfied that all of the criteria in section 16 are met. The regulator must not take into account any criteria or factors other than those identified in sections 16 and 17, and regulation 28 of the Overseas Investment Regulations 2005 ("the Regulations").
4. In the attached Report the Overseas Investment Office identifies each of the criteria and factors under sections 16 and 17, and regulation 28 that the regulator is required to consider in this case.

"Benefit to New Zealand criteria"

5. In this case, section 16 requires the regulator to decide, among other things, whether it is satisfied that the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined under section 17 (section 16(1)(e)(ii)).
6. The application of the benefit to New Zealand criteria involves the exercise of judgement and is a high-level decision with significant policy content. This is 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.
7. In applying the benefit to New Zealand criteria, the regulator is 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 the regulator. 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 the regulator, in carrying out its overall evaluation, to decide what weight to give to each factor.

Justice Miller's "with and without test"

Economic factors

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

Non- economic factors

9. Although the position is not free from doubt, the better view is that the same question – will this benefit be achieved even if the overseas investment does not occur – should be asked in relation to the other “non-economic” factors listed in section 17(2)(b)-(e). The High Court judgment suggested¹ that there could be a benefit in respect of the non-economic factors even if the same benefit would be achieved in the absence of the investment. However, we consider that the regulator should not give weight to benefits that are likely to result in any event.

Regulation 28 factors

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

The criteria listed in reg 28 deal, for the most part, with benefits that only an overseas buyer could provide or what may be loosely described as strategic considerations, so they do not require a counterfactual analysis.²

11. Many of the factors in regulation 28 are incapable of having a counterfactual analysis applied to them. However, as recognised by Miller J, there are some factors that may require a counterfactual analysis. The Overseas Investment Office has applied a counterfactual analysis where appropriate.

Conditions

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

Decision

13. 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.

Decision:

14. I am satisfied that the criteria for consent in section 16 have been met as I have determined that:
- (a) the ‘relevant overseas person’ is (collectively) GMP Pharmaceuticals Limited and Qing Ye; and
 - (b) the ‘individual with control of the relevant overseas person’ is Qing Ye; and
 - (c) The application is delegated because the Ministers have delegated the power to grant applications where the criterion in section 16(1)(e)(iii) of the Act does not apply (here it does not) and where the application does not include special land, does not include land on other islands (as further referred to in Table 1 of Schedule 1 of the Act) and does not include or adjoin the foreshore or seabed or the bed of a lake (where the land exceeds the relevant area thresholds (if any) in Table

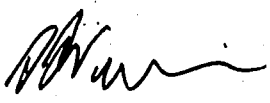
¹ *Tiroa E* at [36].

² *Tiroa E* at [36].

1 or Table 2 of Schedule 1 of the Act); and

- (d) the relevant overseas person has, or (if that person is not an individual) the individuals with control of the relevant overseas person collectively have, business experience and acumen relevant to the overseas investment; and
- (e) the relevant overseas person has demonstrated financial commitment to the overseas investment; and
- (f) the relevant overseas person is, or (if that person is not an individual) all the individuals with control of the relevant overseas person are, of good character; and
- (g) the relevant overseas person is not, or (if that person is not an individual) each individual with control of the relevant overseas person is not, an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009; and
- (h) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders).

15. Consent is granted to the Investment subject to the conditions in Appendix 1 of the Report.



David Viviers - Team Manager

Date 21-8-2014

Released under the Official Information Act 1982

**Report of the Overseas Investment Office
on the application for consent by
GMP Pharmaceuticals Limited
Case: 201410050**

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Summary of Key Information

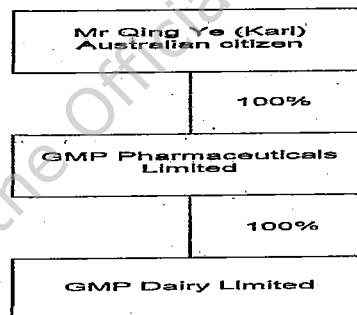
Applicant	GMP Pharmaceuticals Limited (Australia 100%)
Vendor	Murray Stewart Stringer (New Zealand 100%)
Consideration	\$1,270,000
Recommendation	Grant Consent

Application

1. For consent for the Applicant or a 100% subsidiary of the Applicant to give effect to:
 - (a) An overseas investment in sensitive land, being the Applicant's acquisition of a freehold interest in approximately 0.7450 hectares of land at 10 Averton Place, East Tamaki, Auckland.
 ("the Investment")

Applicant

2. This application is made by GMP Pharmaceuticals Limited ("**GMP Pharmaceuticals**" or "**Applicant**"), a company incorporated in New Zealand on 18 July 2001. The sole shareholder and director of the Applicant is Qing Ye, a citizen of Australia. Although now an Australian citizen, Mr Ye was born in Fuxin, China. The Applicant is a manufacturing company specialising in a range of pharmaceuticals, dietary supplements and natural health products. The Applicant also offers services such as product formulation, packaging solutions, label design and shipping.
3. Mr Qing Ye also established GMP Dairy Limited ("**GMP Dairy**"), a company incorporated in New Zealand on 21 December 2010. Mr Qing Ye is the sole director and the Applicant is the sole shareholder of GMP Dairy. GMP Dairy provides pharmaceutical grade value-added dairy products using advanced dairy processing and testing facilities. GMP Dairy's products include wet blend early childhood nutrition formulas, infant formula, protein based food replacements and dairy based nutritional supplements. GMP Dairy also provides manufacturing, quality assurance, export and regulatory services.



Retrospective Application

4. This application has been submitted in conjunction with another retrospective application submitted by Qing Ye (application 201410049). The Applicant and Qing Ye seek retrospective Overseas Investment Act 2005 ("**Act**") consent for the following transactions:
 - (a) Qing Ye acquiring land situated at 5-7 Averton Place, East Tamaki, Auckland, Certificate of Title NA53D/1046 ("**Dairy Land**") from Colin Bernard Flavell, Valerie Kay Flavell and Brian Anthony Teare ("**Dairy Land Vendor**") pursuant to an agreement for sale and purchase dated 29 August 2009 ("**Dairy Land Agreement**"); and
 - (b) The Applicant acquiring land situated at 10 Averton Place, East Tamaki, Auckland, Certificate of Title 531914 ("**Proposed Purchase Land**") from Murray Stewart Stringer ("**Proposed Purchase Land Vendor**") pursuant to an agreement for sale and purchase dated 30 October 2013 ("**Proposed Purchase Land Agreement**").

5. The full background to the above retrospective consents is set out in paragraphs 6 to 12 below. However, Qing Ye stipulates that prior to his acquisition of the Dairy Land, he engaged professional legal advisors and purchased the property through a real estate agent. As neither advisor informed him of the requirements of the Act, Qing Ye proceeded with the acquisition. Further, Qing Ye was under the mistaken impression that Australian citizens are automatically treated as New Zealanders once they arrive into New Zealand (that is, Qing Ye was unaware of the difference between being entitled to be resident, in terms of immigration law, and the requirement to be a citizen of, or ordinarily resident in, New Zealand, under the Act). It was also under these mistaken impressions that resulted in the Applicant, to which Qing Ye is the director and sole shareholder, to enter into the Proposed Purchase Land Agreement.

Background to the Investment

Pharmaceutical Land acquisition:

6. On 30 May 2002, Qing Ye acquired the property situated at 12 Averton Place, East Tamaki, Auckland, Certificate of Title NA60C/926 ("**Pharmaceutical Land**"). The Pharmaceutical Land was not sensitive pursuant to the Overseas Investment Act 1973 ("**1973 Act**") and therefore did not require consent under the 1973 Act. We note, however, that it would appear that the Pharmaceutical Land is sensitive under the Act, for the same reason that the Dairy Land and Pharmaceutical Land is sensitive (such sensitivities set out in paragraph 15).

Pharmaceutical Land business establishment:

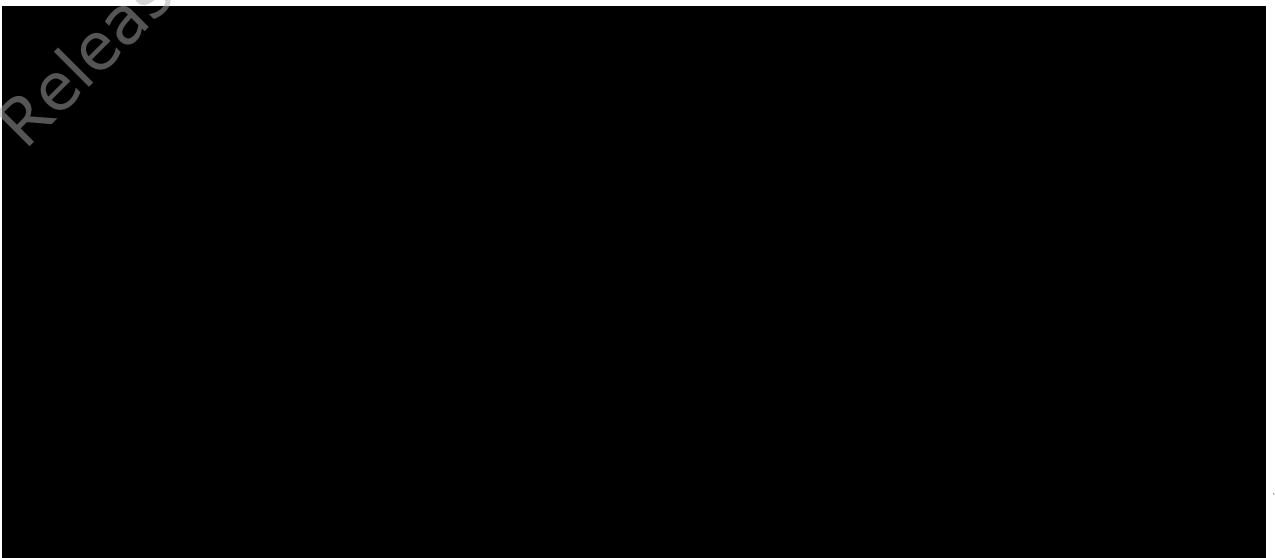
7. From May 2002 to 2005, Qing Ye established a pharmaceutical business and constructed a pharmaceutical manufacturing facility on the Pharmaceutical Land. The Applicant has confirmed that the cost to establish the pharmaceutical business did not meet, or exceed, the threshold to trigger an overseas investment in significant business assets under the 1973 Act. Accordingly, consent under the 1973 Act is not, and was not, required.

Dairy Land acquisition:

8. On 27 July 2009, Qing Ye entered into the Dairy Land Agreement with the Dairy Land Vendor (see paragraph 4(a)). The Dairy Land, which borders the west of the Pharmaceutical Land, is sensitive land under the Act and the Dairy Land Agreement was not conditional upon consent under the Act. The acquisition of the Dairy Land settled on 19 September 2009. Accordingly, in conjunction with this application, Qing Ye is applying for retrospective consent under the Act for the acquisition of the Dairy Land.

Lease Arrangements:

- 9.





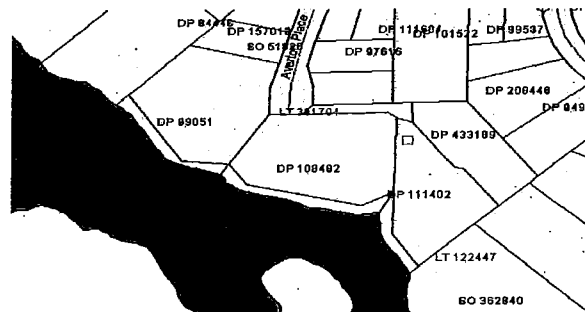
10. Accordingly, although various leasing arrangements were entered into, we consider that these lease arrangements did not, and do not, require consent under the Act.

Dairy Land business establishment:

11. Following the settlement of the Dairy Land, Qing Ye invested in the construction of an advanced dairy processing facility and established a dairy business on the Dairy Land. The cost to establish the dairy business did not reach the threshold under the Act to constitute an overseas investment in significant business assets (s13(1)(b)). Qing Ye has confirmed that his investment in establishing GMP Dairy's business and GMP Pharmaceuticals' business (being the businesses on the Dairy Land and Pharmaceutical Land) has so far totalled approximately [REDACTED]. Consent is therefore not required for the establishment of the dairy business.

Proposed Purchase Land Acquisition:

12. The Applicant entered into the Proposed Purchase Land Agreement with the Proposed Purchase Land Vendor on 30 October 2013 to acquire the Proposed Purchase Land. The Proposed Purchase Land is sensitive land under the Act (see paragraph 15). The Proposed Purchase Land Agreement was not initially conditional upon consent under the Act. While a Variation to an Agreement for Sale and Purchase, dated 2 April 2014, was subsequently executed to include an Overseas Investment Act condition, this overseas investment has already been given effect. Accordingly, consent to acquire the Proposed Purchase Land (technically being a retrospective consent as this transaction has already been given effect) is the subject of this application. A diagram of the Dairy Land (noted as DP 99051), the Pharmaceutical Land (noted as DP 108482) and the Proposed Purchase Land (noted as DP 111402) is as follows:



Outline of the Investment

13. The relevant details of the agreements that pertain to the retrospective consents being applied for (as set out in paragraph 4), are as follows:
- (a) **Dairy Land:** The purchase price for the Dairy Land, pursuant to the Dairy Land Agreement, was \$2.7m with a deposit of \$270,000. The Dairy Land Agreement was not subject to approval under the Act and is therefore the subject of Qing Ye's application (which was submitted in conjunction with this application), application 201410049;
 - (b) **Proposed Purchase Land:** The purchase price for the Proposed Purchase Land, pursuant to the Proposed Purchase Land Agreement, is \$1,270,000 with a deposit of \$127,000 which has already been paid. The Proposed Purchase Land Agreement was not subject to approval under the Act and is therefore the subject of this application;
14. The details of the two Vendors are as follows:
- (a) **Dairy Land Vendor:** Given the lapse of time from the settlement of the Dairy Land, the Applicant has provided limited details on the Dairy Land Vendors. Qing Ye notes, however, that it was his understanding that the Dairy Land was advertised for sale by the Dairy Land Vendor because National Starch & Chemical NZ Limited ("**National Starch**"), who previously leased the Dairy Land from the Dairy Land Vendors, did not wish to extend its lease; and
 - (b) **Proposed Purchase Land Vendor:** The Proposed Purchase Land Vendor has advised that he is selling the Proposed Purchase Land to pursue other investment opportunities. Further, he is a New Zealand citizen and did not need consent from the Overseas Investment Office ("**OIO**") or its predecessor(s) when he agreed to purchase the property in 1984.
15. The Dairy Land, Pharmaceutical Land and Proposed Purchase Land are sensitive land under the Act for the following reasons:
- (a) **Dairy Land:** Both the Dairy Land and the Pharmaceutical Land adjoin lots that are Local Purpose (Esplanade) Reserves vested in Auckland Council, specifically Lots 2 DP 99051 and Lot 2 DP 108482. The Pharmaceutical Land also adjoins Lot 2 DP 111402 (which borders the south of the Proposed Purchase Land), which is also a Local Purpose (Esplanade) Reserve vested in Auckland Council (all three esplanade reserves being the "**Esplanade Lots**"). The Esplanade Lots are zoned Public Open Space Zone 5. The Esplanade Lots constitute a reserve under section 37 of the Act as they provide public access to a natural resource, being part of the tidal Tamaki River, an arm of the Waitemata Harbour. Accordingly, the Dairy Land is sensitive under the Act pursuant to Part B 4(e); and
 - (b) **Proposed Purchase Land:** The Proposed Purchase Land adjoins Lot 2 DP 111402, a Local Purpose (Esplanade) Reserve vested in Auckland Council, with an area of 836 square metres. Lot 2 DP 111402 therefore forms one of the three Esplanade Lots. The Esplanade Lots are zoned Public Open Space Zone 5. The Esplanade Lots constitute a reserve under section 37 of the Act as they provide public access to a natural resource, being part of the tidal Tamaki River, an arm of the Waitemata Harbour. Accordingly, the Proposed Purchase Land is sensitive under the Act pursuant to Part B 4(e).

Rationale for the Investment

16. The Applicant and GMP Pharmaceuticals submit that the rationale for the acquisition of the Dairy Land and the Proposed Purchase Land is as follows:

- (a) **Dairy Land:** Qing Ye was considering expanding his business and wished to establish an advanced dairy processing facility on the Dairy Land. Qing Ye considered that there was an opportunity in the New Zealand market for such a business to succeed. Following the 2008 melamine issue in China, there was high demand in China for safe and good quality dairy products, particularly infant formula, manufactured in countries such as New Zealand; and
- (b) **Proposed Purchase Land:** The Applicant submits that the Pharmaceutical Land business is growing and is likely to need land on which to expand. The Applicant is already constrained in terms of space, with some staff working in temporary facilities. The Proposed Purchase Land adjoins the existing Pharmaceutical Land (the Proposed Purchase Land borders the east side of the Pharmaceutical Land). The acquisition of the Proposed Purchase Land would therefore provide the Applicant with the most suitable option to expand the business.

Sensitive Land

17. The Applicant is acquiring sensitive land. See Appendix 2.

Assessment Process

18. We have sought sufficient information from the Applicant for us to be assured about the accuracy of the information supplied and have sought sufficient evidence from the Applicant for us to be able to judge whether the criteria and factors that apply are met.
19. The OIO has consulted with Walking Access Commission ("**WAC**") about the application.
20. We have determined that the:
- (a) '**relevant overseas person**' is (collectively) GMP Pharmaceuticals Limited and Qing Ye; and
- (b) '**individual with control of the relevant overseas person**' is Qing Ye.

Counterfactual Analysis

21. In *Tiroa E*, the Court made specific reference to the counterfactual assessment to be made. Miller J recognised that the statute's perspective is forward looking and that, "if it is to isolate the economic benefits attributable to the overseas investment, the counterfactual must similarly be forward looking, requiring that the OIO ask what will happen if the investment is not made".³ Miller J also suggested that the "status quo may serve as the counterfactual under s 17(2)(a) only if Ministers think it likely that in the hands of another owner or owners, the farms will remain in their present state".⁴
22. To establish the appropriate counterfactual in this case, the OIO has considered what the likely state of affairs would be without the Investment. The Proposed Purchase Land Vendor and GMP Pharmaceuticals advise that:
- (a) The Proposed Purchase Land is being sold so the Proposed Purchase Land Vendor can pursue other investment opportunities and, should the Investment not proceed, the Proposed Purchase Land Vendor will likely sell the Proposed Purchase Land to another purchaser. The Proposed Purchase Land Vendor notes that there was no advertising carried out prior to the execution of the Proposed Purchase Land Agreement. Rather, as GMP Pharmaceuticals owns the neighbouring property (being the Pharmaceutical Land) and had been asking to

³ *Tiroa E* at [37].

⁴ *Tiroa E* at [42].

buy it for several years, GMP Pharmaceuticals was offered to buy the Proposed Purchase Land first. The Proposed Purchase Land Vendor notes that he has had some interest from other prospective purchasers, but no back-up agreement has been entered into;

(b) GMP Pharmaceuticals seeks to undertake the following on the Proposed Purchase Land:

(i) **Short term:** GMP Pharmaceuticals plan is to use the Proposed Purchase Land for car parking. GMP Pharmaceuticals' staff already use Proposed Purchase Land for that purpose with the permission of the Proposed Purchase Land Vendor; and

(ii) **Medium to long term:** GMP Pharmaceuticals intends to at least build a warehouse on the Proposed Purchase Land.

(c) GMP Pharmaceuticals notes that the Proposed Purchase Land is a corner site with no road frontage and a long single driveway access, which, GMP Pharmaceuticals submits, makes it unattractive for would-be purchasers. Further, GMP Pharmaceuticals submits that it is unlikely that an as-yet unidentified purchaser would be willing to make the investment in a geotechnical report and reinforcement of land (which may be required) in order to develop the relatively small site.

23. Having considered the Applicant's submissions, the OIO considers that the appropriate counterfactual is that, without the Investment, the Proposed Purchase Land will likely be sold to an alternative New Zealand purchaser, who will likely provide some development to the Proposed Purchase Land.

24. Given the size and location of the Proposed Purchase Land, we consider it is likely that, without the Investment, the Proposed Purchase Land Vendor will sell the Proposed Purchase Land to an alternate New Zealand purchaser. The Proposed Purchase Land Vendor has submitted that this is his intent and has noted that, although he does not have a back up offer, he has received interest from other potential purchasers.

25. It is not clear what type of business an alternate New Zealand purchaser may undertake on the Proposed Purchase Land. Given the location of the Proposed Purchase Land, we consider it likely that an alternate New Zealand purchaser would establish a new, or continue a pre-existing, business on the Proposed Purchase Land. On this basis, we consider that an alternative New Zealand purchaser would likely have provided reasonable amounts of development to the Proposed Purchase Land.

Criteria set out in section 16

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

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

Qing Ye is the sole shareholder and director of the Applicant. [REDACTED]

Qing Ye has demonstrated his business experience and acumen through his successful ventures in the pharmaceutical and healthcare industries in New Zealand. Qing Ye is the sole shareholder of the Applicant, a manufacturing company specialising in a range of pharmaceuticals, dietary supplements, natural health and dairy products. The Applicant has been an extremely successful business venture in New Zealand, going from ■ employees in 2001 to over ■ employees in 2013. The Applicant has innovative export solutions, known as the AUNEW system, which has been well recognised through multiple business awards.

OIO Assessment:

The OIO is satisfied that the relevant overseas persons, or the individuals with control of the relevant overseas persons, collectively have business experience and acumen relevant to the overseas investment. Qing Ye has extensive business experience and commercial acumen, with particular regard to the pharmaceutical and healthcare industries. As illustrated above, Qing Ye has held positions in DLMEHECO Aust Pty Ltd, GMP Pharmaceuticals Pty Ltd, GMP Pharmaceuticals and GMP Dairy, which are relevant to the overseas investment. We are further satisfied that, as an astute and experienced businessman, Qing Ye can engage and oversee professionals for any expertise that he may lack. We are accordingly satisfied that this criterion is met.

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

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

The Applicant claims that it has demonstrated financial commitment to the Investment by:

- (a) Entering into a contract to purchase the land;
- (b) Paying a deposit to the Proposed Purchase Land Vendor, being \$127,000; and
- (c) Engaging specialist advisers to advise on the transaction.

OIO Assessment:

The OIO is satisfied that the relevant overseas persons have demonstrated financial commitment to the overseas investment through the commitments described above, including the payment of the deposit. Accordingly, we consider that this factor is met.

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


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

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

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

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

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

The Applicant has provided a statutory declaration in support of the application that confirms the individuals with control of the relevant overseas person are of good character, including confirmation that Mr Ye is not an individual of the kind referred to in sections 15 or 16 of the Immigration Act 2009.

OIO Assessment:

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

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

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

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

The proposed overseas investment will or is likely to benefit New Zealand (or any part of it or group of New Zealanders) having regard to the following factors, with particular reference to the previous investments, given the extensive previous investments undertaken by the Applicant, GMP Dairy and Mr Qing Ye:

Overseas Investment Act 2005

17(2)(e) – Walking Access

Overseas Investment Regulations 2005

28(e) – Previous investments

28(f) – Significant Government policy or strategy

28(g) – On going viability of previous overseas investments

Factors Set Out in section 17

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

Will the overseas investment result in, or is it likely to result in, the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost?	Unknown
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Applicant's Claims:

The Applicant is already space-constrained, with some staff working in temporary facilities. The Applicant claims that expansion onto the Proposed Purchase Land will free up space in the existing site, as well as create new jobs on the new site if a warehouse or new plant is constructed. The Applicant submits that:

- a) In the short term, its plan is to use the Proposed Purchase Land for car parking. GMP Pharmaceuticals' staff already use the Proposed Purchase Land for that purpose with the permission of the Proposed Purchase Land Vendor; and
- b) In the medium to long term, the Applicant submits that it intends to at least build a warehouse on the Proposed Purchase Land. New jobs would be able to be supported in relation to the geotechnical advice and design of the warehouse. Based on the construction of a 2000 square metre warehouse and related parking facilities, the construction of the warehouse would be likely to support 20-30 full-time construction workers and construction consultants for a period of 6-8 months. Once the warehouse is established, up to 5 permanent full-time jobs would likely be created with the potential for further employment.

OIO Assessment:

The OIO considers it has been provided with insufficient information to determine whether the Investment will 'likely' result in the creation of new job opportunities in New Zealand.

The Proposed Purchase Land is currently being used by the Applicant for car park purposes, pursuant to an unwritten lease or licence with the Proposed Purchase Land Vendor. Accordingly, in the short term, the Investment is not likely to result in the creation of any new full time equivalent ("FTE") jobs.

The Applicant submits that it intends to build 'at least' a warehouse, which will likely result in the creation of the various new job opportunities listed above. However, we consider that we have been provided with insufficient information to determine whether this warehouse is 'likely' to be built. Specifically, we note that the Applicant has only commenced preliminary discussions, any construction is subject to obtaining and approving various consents (which have yet to be obtained) and construction is only 'expected' to be completed in two years. Further, even if there was certainty as to the warehouse's construction, we consider that it is likely that the an alternate New Zealand purchaser would also likely develop either a warehouse or similar type building (see paragraphs 21 to 25 for further discussion on the likely counterfactual).

We therefore consider that we have insufficient information to determine whether the warehouse development is likely to occur and, even if it does, it (or a similar development) would likely be constructed by an alternate New Zealand purchaser anyway. Accordingly, we have insufficient information to determine that the Investment is 'likely' to result in the creation of any new FTE jobs. The OIO therefore considers that this factor is unknown.

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

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

The Applicant notes that there are no firm plans for expansion. Qing Ye has a track record of introducing new technology and is likely to continue to do so in the future. For example, GMP Pharmaceuticals has developed the AUNEW system, which was introduced by the company in 2005 and, as far as Mr Ye is aware, is a unique and innovative export system aimed at assisting small and medium size businesses in Australia and New Zealand to access the Chinese markets. The AUNEW system consolidates many export resources into a single system, including regulatory, logistical, anti-counterfeiting, and distribution resources.

OIO Assessment:

The OIO considers that it has insufficient information to determine whether the Investment will likely result in the introduction of new technology into New Zealand. The Applicant has not provided any evidence that a particular technology will be introduced into New Zealand as a result of the Investment, or that this new technology is different from anything already in New Zealand. Rather, the Applicant suggests that this is a possibility. Accordingly, we do not consider that a new technology will 'likely' be introduced into New Zealand as a result of the Investment. The OIO therefore considers that this factor is unknown.

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

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

This factor is not relevant as the Investment will not, or is not likely to, result in increased export receipts for New Zealand exporters.

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

Will the overseas investment result in, or is it likely to result in, added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand?	Not relevant
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OIO Assessment:

This factor is not relevant as the Investment will not, or is not likely to, result in added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand.

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

Will the overseas investment result in, or is it likely to result in, the introduction into New Zealand of additional investment for development purposes?	Not Relevant
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OIO Assessment:

This factor is not relevant as the Investment does not involve the introduction into New Zealand of additional investment for development purposes.

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

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

This factor is not relevant as the Investment will not, or is not likely to, result in increased processing in New Zealand of New Zealand's primary products.

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

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

This factor is not relevant as the Investment does not involve existing areas of significant indigenous vegetation and significant habitats of indigenous fauna.

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

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

This factor is not relevant as the Investment does not involve existing areas of significant habitats of trout, salmon, protected wildlife and game.

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

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

This factor is not relevant as the Investment does not involve historic heritage within the relevant land.

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

Are there, or will there be, adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land, or a relevant part of that land, by the public or any section of the public?	✓
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OIO Assessment:

The OIO has consulted with WAC in relation to whether walking access, and imposing a WAC consultation condition of consent, would be appropriate for the Proposed Purchase Land. WAC confirmed that, given the steep banks of the current esplanade reserve, a WAC consultation condition of consent would be appropriate in these circumstances.

Accordingly, we have imposed a condition of consent requiring the Applicant to consult with WAC to determine what reasonable walking access mechanisms are required and implement any reasonable formal protection recommended by WAC. With this condition imposed, the OIO is satisfied that there are adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land, or a relevant part of that land, by the public or any section of the public.

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

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

This factor is not relevant as the Investment does not involve foreshore, seabed, riverbed, or lakebed.

42. r28(a) Overseas Investment Regulations 2005

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

The Applicant claims it has a continuing interest in furthering its business interests in New Zealand. If consent is granted, the Applicant is likely to continue to seek further investment opportunities in New Zealand using his business model of identifying and adding value to undervalued food and nutritional ingredients. If consent is not granted, Mr Ye would likely pursue similar opportunities overseas.

GMP Pharmaceuticals and GMP Dairy have already demonstrated willingness for its senior people to contribute and participate more widely in the sector. Minesh Patel (GMP Pharmaceuticals' General Manager) is a board member of Natural Products New Zealand. GMP Pharmaceuticals is also a member of Infant Nutritional Council, Organic Exporters Association and Food and Grocery Council.

OIO Assessment:

The OIO considers that it has been provided with insufficient information to determine whether the Investment, specifically future investment opportunities, will likely result in consequential benefits to New Zealand.

While the Applicant claims that it will continue to seek further investment opportunities in New Zealand, it does not specify exactly what these opportunities are or when they may occur. Accordingly, we consider that we have been provided with insufficient information to determine that these further investment opportunities are 'likely' to occur and, even if they do, that they are likely to provide consequential benefits to New Zealand. Further, with regard to the consequential benefits provided by Mr Patel (if any), we consider that these benefits would likely occur without the Investment, as we consider it likely that Mr Patel would continue with his employment with GMP Pharmaceuticals (which does not require consent). Accordingly, we consider that this factor is unknown.

43. r28(b) Overseas Investment Regulations 2005

Is the relevant overseas person a key person in a key industry of a country with which New Zealand will, or is likely to, benefit from having improved relations?	Not Relevant
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OIO Assessment:

This factor is not relevant as the overseas investment does not involve a key person in a key industry of a country with which New Zealand will, or is likely to, benefit from having improved relations.

44. r28(c) Overseas Investment Regulations 2005

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

If consent for the Investment is not granted, the Applicant claims it would likely adversely affect New Zealand's image amongst Australian and Chinese businesses. This is particularly the case given the public support (mentioned above) that Prime Minister John Key and other senior government officials have shown for Mr Ye's business activities in New Zealand. GMP Pharmaceuticals and GMP Dairy are involved in promoting business relationships between China and New Zealand. For example, GMP Pharmaceuticals has hosted business delegations from China.

The Ministry of Foreign Affairs and Trade website notes that China is New Zealand's fourth largest trading partner, taking over \$1.6 billion of New Zealand's merchandise products and over \$1 billion of services. The website also refers to New Zealand's ground-breaking free trade agreement with China and the expectations that the agreement will continue to lead to benefits for New Zealand manufacturers, and to defend New Zealand's market shares - particularly in areas where China is New Zealand's largest international customer (for example, for milk powder).

OIO Assessment:

The OIO considers that a refusal would not likely result in New Zealand breaching any of its international obligations. The OIO considers that any decline would be on the basis that the relevant criteria for consent were not met. The Office considers it unlikely that a well reasoned decision to decline will, or is likely to, adversely affect New Zealand's image overseas or its trade or international relations.

45. r28(d) Overseas Investment Regulations 2005

Will granting the application for consent result in, or is it likely to result in, the owner of the relevant land undertaking other significant investment in New Zealand?	Unknown
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OIO Assessment:

The Proposed Purchase Land Vendor has submitted that he is selling the Proposed Purchase Land to pursue other investment opportunities; however, he has not stated what these other investment opportunities are or when they might take place. Accordingly, we consider that we have been provided with insufficient information to determine whether these other investment opportunities are 'significant' or, even if they are, whether they are 'likely' to occur. We therefore consider that this factor is unknown.

46. r28(e) Overseas Investment Regulations 2005

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

The Applicant claims it has made significant previous investments in New Zealand, as demonstrated by its level of commitment to GMP Pharmaceuticals and GMP Dairy, and the success that those companies have achieved. Mr Ye's investments in establishing the infrastructure and facilities for those companies has so far totalled approximately [REDACTED] in property, plant and equipment and several more millions in inventory. A number of New Zealand's smaller local suppliers rely on GMP Pharmaceuticals and GMP Dairy orders for up to 80% of their business.

Mr Ye has also made significant investments to develop AUNEW, a "one stop export to China" business system, to facilitate the exports to China from New Zealand and Australia. The AUNEW system consolidates many export resources into a single system, including regulatory, logistical, anti-counterfeiting and distribution resources. Many New Zealand exporters have benefited from this innovative system, and AUNEW has won several awards, including Exporter of the Year at the 2011 Endeavour Awards and the Global Integration Award at the 2009 Endeavour Awards. Endeavour Awards is the primary awards system for the Australian manufacturing industry.

OIO Assessment:

The OIO is satisfied that the relevant overseas person has previously undertaken investments that have been, or are, of benefit to New Zealand.

We consider that both Mr Qing Ye and GMP Pharmaceuticals are relevant overseas persons for the purposes of this application. As set out further in paragraphs 6 and 7, from 2002 to 2005, Qing Ye acquired the Pharmaceutical Land, established a pharmaceutical business and constructed a pharmaceutical manufacturing facility on the Pharmaceutical Land. We consider that these developments on the Pharmaceutical Land are, or have, likely led to increased export receipts. Specifically,

[REDACTED]

Accordingly, pursuant to the improvements made to the Pharmaceutical Land by Mr Ye and GMP Pharmaceuticals, and the benefits that have consequently arisen (such as increased export receipts), we consider the relevant overseas person has previously undertaken investments that have been, or are, of benefit to New Zealand.

47. r28(f) Overseas Investment Regulations 2005

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

The Applicant submits that the Investment gives effect to and advances the NZ Inc China Strategy, a government strategy to strengthen New Zealand's economic, political and security relationship with China. Prime Minister John Key states that the

strategy is "built around developing the trade and economic links between New Zealand and the People's Republic of China".

One of the strategic goals of the NZ Inc China Strategy is to grow high quality science and technology collaborations with China to enhance commercial opportunities. GMP Pharmaceuticals has a growing business exporting goods to China. In addition, GMP Dairy (a 100% subsidiary of GMP Pharmaceuticals) is the only company to hold certifications from the Chinese government authorities directly with respect to production of organic products. GMP Dairy is one of five infant milk manufacturers to gain registration to export to China, following a tightening of regulations by the Chinese government. The Applicant submits that, as reported in an Agrinews article⁵, GMP Dairy was the only manufacturer out of 13 to pass the required audit without problems.

OIO Assessment:

The OIO considers that the Investment will likely give effect to, or advance, a significant Government policy or strategy, being the NZ Inc China Strategy.

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

The China Strategy identifies five strategic goals for furthering New Zealand's relationship with China, one of which is to double two-way goods trade. The business activities of the Applicant, noting the Mr Qing's, the Applicant's and GMP Dairy's current business activities in New Zealand, are likely to further this China Strategy strategic goal of doubling two-way goods trade. As set out further in paragraph 48, we consider that the Investment is likely to enhance the on-going viability of other overseas investments undertaken by GMP Dairy, being a 100% subsidiary of the Applicant. This, in turn, will likely assist with the doubling of two-way goods trade with China. However, the extent by which the Investment will 'advance' this strategy, at this stage, is not likely to be significant. Accordingly, while we consider that the Investment is likely to advance a significant Government policy or strategy (NZ Inc China Strategy), we consider that this factor should not be given significant weighting.

The OIO therefore considers that this factor is met because the Investment will likely assist with the doubling of two-way goods trade with China.

48. r28(g) Overseas Investment Regulations 2005

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

The Proposed Purchase Land neighbours the Pharmaceutical Land (which, in turn, neighbours the Dairy Land). The purchase of the Proposed Purchase Land will allow Mr Ye, and GMP Pharmaceuticals, to extend the operations of GMP Pharmaceuticals. The Applicant submits that GMP Pharmaceuticals is a fast-growing company that needs the option to expand its operations. Failure to grant consent will create

⁵ <https://agrihq.co.nz/article/five-infant-formula-makers-comply-with-new-chinese-regulations?p=6>

significant uncertainty as to the viability of both the dairy and pharmaceutical businesses in New Zealand.

OIO Assessment:

The OIO is satisfied that the Investment will likely enhance the on-going viability of other overseas investments undertaken by Mr Qing Ye (being a relevant overseas person).

GMP Dairy (being a 100% subsidiary of GMP Pharmaceuticals and whereby Qing Ye is the sole director and shareholder of GMP Pharmaceuticals) is currently operating a dairy business from the Dairy Land (see paragraph 11 for further details on this business). In conjunction with this application, Qing Ye is seeking retrospective consent to acquire the Dairy Land and consequently run the dairy business from the Dairy Land.

Pursuant to an unwritten licence or lease, the employees of both GMP Dairy and GMP Pharmaceuticals are currently using the Proposed Purchase Land for car parking purposes, with the consent of the Proposed Purchase Vendor. In the short term, the Applicant intends to continue to use the Proposed Purchase Land for car parking purposes. In the medium to long term, the Applicant intends to build a warehouse on the Proposed Purchase Land.

As set out further in paragraphs 21 to 25, we consider that the likely counterfactual is that, without the Investment, the Proposed Purchase Land will likely be sold to an alternative New Zealand purchaser, who will likely provide some development to the Proposed Purchase Land. On this basis, it is unlikely that GMP Dairy and GMP Pharmaceuticals' employees will be able to continue with their current parking arrangement. This (the Applicant submits) may result in staff parking their vehicles in a way that obstructs the main driveway, creating a potentially unsafe environment for staff and visitors. Accordingly, for these car parking purposes, we are satisfied that the Investment is likely to enhance the on-going viability for the GMP Dairy business (being a previous overseas investment by a relevant overseas person). Given the nature of this 'enhancement' to the previous overseas investment, we consider that this factor should not be given significant weight.

49. r28(h) Overseas Investment Regulations 2005

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

This factor is not relevant as the overseas investment is not an investment in strategically important infrastructure on sensitive land.

50. r28(i) Overseas Investment Regulations 2005

Will New Zealand's economic interests be adequately promoted by the overseas investment?	Not Relevant
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OIO Assessment:

The OIO considers that this factor is not relevant as the Applicants have not provided evidence that New Zealand's economic interests will likely be adequately promoted by

the overseas investment.

51. r28(j) Overseas Investment Regulations 2005

To what extent will New Zealanders be, or are likely to be, able to oversee or participate in the overseas investment and any relevant overseas person?	x
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The Applicant claims that both GMP Pharmaceuticals and GMP Dairy are incorporated in New Zealand and have their principal place of business in Auckland. Additionally, all of the senior management team of GMP Pharmaceuticals and GMP Dairy are New Zealanders.

OIO Assessment:

The OIO considers that there will be minimal participation by New Zealanders in the Investment. We note that both relevant overseas persons are incorporated in New Zealand, have their principal place of business in New Zealand and there is some participation in the senior management of the Applicant and GMP Dairy. However, as the remainder of the Investment is owned and controlled by overseas interests (the Applicant has an overseas person as the director and is 100% owned by an overseas person), we consider that there will be limited overseeing and participation in the Investment by New Zealanders.

In assessing this factor, the OIO has considered the six matters referred to in r 28(j):

- a) There is no requirement that 1 or more New Zealanders must be part of a relevant overseas persons' governing body;
- b) Both the relevant overseas persons are incorporated in New Zealand;
- c) The relevant overseas persons have their principal place of business in New Zealand;
- d) The Applicant has not claimed that the relevant overseas persons will be party to a listing agreement with NZX Limited or any other registered exchange that operates a securities market in New Zealand; and
- e) New Zealanders will not have any partial ownership or controlling stake in the overseas investment or in a relevant overseas person.

Ownership and control of the Investment and the relevant overseas persons is therefore concentrated in one overseas person.

Third Party Submissions

52. No third party submissions were received.

Appendix 1 – Conditions of Consent

Consent is granted subject to the following conditions:

1. The consent will lapse if the Investment has not been acquired by and transferred to the Applicant within twelve months of the date of consent.
2. The Applicant must notify the Overseas Investment Office in writing as soon as practicable, and no later than twelve months from the date of consent, whether settlement of the acquisition of the Investment took place. If settlement of the acquisition of the Investment did take place, the notice must include:
 - (a) the date of settlement;
 - (b) final consideration paid (plus GST, if any);
 - (c) the structure by which the acquisition was made, and who acquired the Investment;
 - (d) where applicable, copies of transfer documents and settlement statements; and
 - (e) any other information that would aid the Overseas Investment Office in its function to monitor conditions of consent.
3. The Applicant, or the individuals with control of the Applicant, must:
 - (a) continue to be of good character; and
 - (b) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.
4. The Applicant must notify the Overseas Investment Office in writing within 20 working days if:
 - (a) the Applicant, or (if the Applicant is not an individual) any individual with control of the Applicant:
 - (i) ceases to be of good character; or
 - (ii) commits an offence or contravenes the law (whether convicted or not); or
 - (iii) becomes aware of any other matter that reflects adversely on the Applicant's fitness to have the Investment; or
 - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
 - (b) any person in which the Applicant, or any individual with control of the Applicant has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the law (whether convicted or not); or
 - (c) the Applicant:
 - (i) ceases to be an overseas person; or
 - (ii) disposes of the Investment.
5. The Applicant must consult with the New Zealand Walking Access Commission ("**WAC**") to determine what the Applicant can reasonably do to provide, protect or improve public walking access over the relevant land or relevant part of that land (such as the registration of new instruments) ("**Walking Access**"). The Applicant must:

- (a) write to WAC within 15 working days of the date of settlement advising that the Applicant wishes to consult about Walking Access and enclose:
 - (i) a copy of the Public Decision Summary for this consent; and
 - (ii) a copy of this condition together with information identifying and describing the relevant land including aerial photographs, maps and Certificate(s) of Title;
 - (b) Implement any reasonable Walking Access recommended by WAC ("**Recommendation**") (in determining what is reasonable Walking Access, regard must be had to the Applicant's proposed use for the relevant land);
 - (c) The cost of any recommended Walking Access shall be borne by the Applicant (up to a maximum of \$15,000 plus GST);
 - (d) Agree that any dispute, difference or claim between WAC and the Applicant will be referred to and finally resolved in arbitration in Wellington, New Zealand. The tribunal will consist of a sole arbitrator appointed by agreement between the parties or if the parties cannot agree by the President of the New Zealand Law Society;
 - (e) Share the cost of any arbitration equally with WAC (each party will be liable for their own legal costs); and
 - (f) Provide a copy of any award made by the arbitrator to the Overseas Investment Office within 15 working days of the award being made.
6. The Applicant must report in writing annually to the Overseas Investment Office detailing progress of its investment plan, including the following:
- (a) the Applicant's compliance with condition 5; and
 - (b) the Applicant's use of the land and how this use has enhanced the ongoing viability of other overseas investments undertaken by the relevant overseas person.
7. The first report referred to in condition 6 is due on 1 September 2015 and the final report is due on 1 September 2017.
8. If requested in writing by the Overseas Investment Office, the Applicant must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
- (a) the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent was granted; or
 - (b) the conditions of this consent.

Appendix 2 – Sensitive Land

1. 10 Averton Place, East Tamaki, Auckland

Land Interest	Freehold Interest (0.7450 hectares)
CTs	531914 (North Auckland)
Sensitivity	Adjoins land that is over 0.4 hectares and is listed, or in a class listed, as a reserve, a public park, or other sensitive area by the regulator under s37

Released under the Official Information Act 1982



Decision Date

21 August 2014

Decision

Consent has been granted to **Qing Ye**, or an entity 100% owned and controlled by **Qing Ye** ("the Applicant"), giving effect to a transaction which will result in:

- (a) An overseas investment in sensitive land, being the Applicant's acquisition of a freehold interest in approximately 0.8988 hectares of land at 5-7 Averton Place, East Tamaki, Auckland.

("the Investment")

For the avoidance of doubt, consent under the Overseas Investment Act 2005 is not required for a leasehold interest over 5-7 Averton Place, East Tamaki, Auckland, and 12 Averton Place, East Tamaki, Auckland, where such leasehold interest is exempt pursuant to Regulation 33(1)(a) of the Overseas Investment Regulations 2005.

Consent is granted subject to the following conditions:

Statutory Conditions of Consent

Section 28 of the Overseas Investment Act 2005 ("the Act") provides that it is a condition of every consent, whether or not it is stated in the consent, that:

- (a) the information provided by each applicant to the Overseas Investment Office or the relevant Ministers in connection with the application was correct at the time it was provided; and
- (b) each consent holder must comply with the representations and plans made or submitted in support of the application and notified by the Overseas Investment Office as having been taken into account when the consent was granted, unless compliance should reasonably be excused.

For the purposes of section 28(1)(b), the representations and plans made or submitted in support of the application and taken into account when consent was granted are those contained in the correspondence listed in the schedule to the statutory declaration of Qing Ye dated 19 August 2014 and in all attachments annexed to that correspondence.

Special Conditions

1. The Applicant, or the individuals with control of the Applicant, must:
 - (a) continue to be of good character; and
 - (b) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.
2. The Applicant must notify the Overseas Investment Office in writing within 20 working days if:
 - (a) the Applicant, or (if the Applicant is not an individual) any individual with control of the Applicant:

- (i) ceases to be of good character; or
 - (ii) commits an offence or contravenes the law (whether convicted or not); or
 - (iii) becomes aware of any other matter that reflects adversely on the Applicant's fitness to have the Investment; or
 - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
- (b) any person in which the Applicant, or any individual with control of the Applicant has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the law (whether convicted or not); or
- (c) the Applicant:
- (i) ceases to be an overseas person; or
 - (ii) disposes of the Investment.

Monitoring Conditions of Consent

For the purpose of monitoring conditions of consent, the Overseas Investment Office may, under section 38 of the Act, require the consent holder to provide information or documents, or both, that are specified in the notice. Under section 40 of the Act, the Overseas Investment Office may also require a consent holder to provide a statutory declaration verifying the extent to which the consent holder has complied with the conditions of consent, and, if the consent holder is in breach of a condition or conditions, the reasons for the breach and the steps the consent holder intends to take to remedy the breach.

Sanctions

The Act provides for civil and criminal sanctions for breaching the Act, failing to comply with the conditions of consent and failing to provide information required by the Overseas Investment Office. The Overseas Investment Office has an obligation to investigate and act upon alleged and suspected breaches of the Act.

General

A reference to the "Overseas Investment Office" in this Notice includes a reference to the regulator (as defined by the Act). A reference to the Applicant includes a reference to the consent holder.



Tyne Schofield
Senior Solicitor
Overseas Investment Office

Decision required under the Overseas
Investment Act 2005: Qing Ye

Date	21 August 2014
Security Level	Commercial: In Confidence
Priority	High
Case Number	201410049
Consent Required By	31 August 2014

Contact for Telephone Discussion

Name	Position	Telephone (wk)	Cellphone	First Contact
David Viviers	Team Manager	04 460 2795	027 447 6810	
Tyne Schofield	Senior Solicitor	04 460 0552		✓

Released under the Official Information Act 1982

Annexures:

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

Instructions:

3. The regulator is required to grant consent in respect of this application if it is satisfied that all of the criteria in section 16 of the Overseas Investment Act 2005 ("the Act") are met. It must decline consent if it is not satisfied that all of the criteria in section 16 are met. The regulator must not take into account any criteria or factors other than those identified in sections 16 and 17, and regulation 28 of the Overseas Investment Regulations 2005 ("the Regulations").
4. In the attached Report the Overseas Investment Office identifies each of the criteria and factors under sections 16 and 17, and regulation 28 that the regulator is required to consider in this case.

"Benefit to New Zealand criteria"

5. In this case, section 16 requires the regulator to decide, among other things, whether it is satisfied that the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined under section 17 (section 16(1)(e)(ii)).
6. The application of the benefit to New Zealand criteria involves the exercise of judgement and is a high-level decision with significant policy content. This is 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.
7. In applying the benefit to New Zealand criteria, the regulator is 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 the regulator. 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 the regulator, in carrying out its overall evaluation, to decide what weight to give to each factor.

Justice Miller's "with and without test"

Economic factors

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

Non- economic factors

9. Although the position is not free from doubt, the better view is that the same question – will this benefit be achieved even if the overseas investment does not occur – should be asked in relation to the other “non-economic” factors listed in section 17(2)(b)-(e). The High Court judgment suggested¹ that there could be a benefit in respect of the non-economic factors even if the same benefit would be achieved in the absence of the investment. However, we consider that the regulator should not give weight to benefits that are likely to result in any event.

Regulation 28 factors

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

The criteria listed in reg 28 deal, for the most part, with benefits that only an overseas buyer could provide or what may be loosely described as strategic considerations, so they do not require a counterfactual analysis.²

11. Many of the factors in regulation 28 are incapable of having a counterfactual analysis applied to them. However, as recognised by Miller J, there are some factors that may require a counterfactual analysis. The Overseas Investment Office has applied a counterfactual analysis where appropriate.

Conditions

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

Decision

13. 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.


Decision:

14. I am satisfied that the criteria for consent in section 16 have been met as I have determined that:
- (a) the ‘relevant overseas person’ is (collectively) GMP Pharmaceuticals Limited and Qing Ye; and
 - (b) the ‘individual with control of the relevant overseas person’ is Qing Ye; and

¹ *Tiroa E* at [36].

² *Tiroa E* at [36].

- (c) The application is delegated because the Ministers have delegated the power to grant applications where the criterion in section 16(1)(e)(iii) of the Act does not apply (here it does not) and where the application does not include special land, does not include land on other islands (as further referred to in Table 1 of Schedule 1 of the Act) and does not include or adjoin the foreshore or seabed or the bed of a lake (where the land exceeds the relevant area thresholds (if any) in Table 1 or Table 2 of Schedule 1 of the Act); and
 - (d) the relevant overseas person has, or (if that person is not an individual) the individuals with control of the relevant overseas person collectively have, business experience and acumen relevant to the overseas investment; and
 - (e) the relevant overseas person has demonstrated financial commitment to the overseas investment; and
 - (f) the relevant overseas person is, or (if that person is not an individual) all the individuals with control of the relevant overseas person are, of good character; and
 - (g) the relevant overseas person is not, or (if that person is not an individual) each individual with control of the relevant overseas person is not, an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009; and
 - (h) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders).
15. Consent is granted to the Investment subject to the conditions in Appendix 1 of the Report.



David Viviers - Team Manager

Date 21-8-2014

Released under the Official Information Act 1982

Report of the Overseas Investment Office
on the application for consent by
Qing Ye
Case: 201410049

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Summary of Key Information

Applicant	Qing Ye (Australia 100%)
Vendor	Colin Bernard Flavell, Valerie Kay Flavell and Brian Anthony Teare (New Zealand 100%)
Consideration	\$2,700,000
Recommendation	Grant Consent

Application

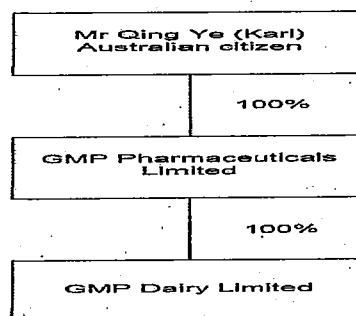
1. For consent for the Applicant or an entity 100% owned and controlled by the Applicant to give effect to:
 - (a) An overseas investment in sensitive land, being the Applicant's acquisition of a freehold interest in approximately 0.8988 hectares of land at 5-7 Averton Place, East Tamaki, Auckland.

("the Investment")

Applicant

2. This application is made by Qing Ye ("**Applicant**"), a citizen of Australia. Although [REDACTED]

The Applicant advises that he has more than 18 years of marketing and project management experience in the pharmaceutical and healthcare industries in China, Australia and New Zealand. The Applicant was also a founding member of the Australian/New Zealand Healthcare Association.
3. The Applicant established GMP Pharmaceuticals Limited ("**GMP Pharmaceuticals**"), a company incorporated in New Zealand on 18 July 2001 (the Applicant had previously established GMP Pharmaceuticals Pty Limited in Australia in 1994). The Applicant is the sole director and shareholder of GMP Pharmaceuticals. GMP Pharmaceuticals is a manufacturing company specialising in a range of pharmaceuticals, dietary supplements and natural health products. GMP Pharmaceuticals also offers services such as product formulation, packaging solutions, label design and shipping.
4. The Applicant also established GMP Dairy Limited ("**GMP Dairy**"), a company incorporated in New Zealand on 21 December 2010. The Applicant (Mr Ye) is the sole director and GMP Pharmaceuticals is the sole shareholder of GMP Dairy. GMP Dairy provides pharmaceutical grade value-added dairy products using advanced dairy processing and testing facilities. GMP Dairy's products include wet blend early childhood nutrition formulas, infant formula, protein based food replacements and dairy based nutritional supplements. GMP Dairy also provides manufacturing, quality assurance, export and regulatory services.



Retrospective Application

5. This application has been submitted in conjunction with another retrospective application submitted by GMP Pharmaceuticals (application 201410050). The Applicant and GMP Pharmaceuticals seek retrospective Overseas Investment Act 2005 ("**Act**") consent for the following transactions:

- (a) The Applicant acquiring land situated at 5-7 Averton Place, East Tamaki, Auckland, Certificate of Title NA53D/1046 ("**Dairy Land**") from Colin Bernard Flavell, Valerie Kay Flavell and Brian Anthony Teare ("**Dairy Land Vendor**") pursuant to an agreement for sale and purchase dated 29 August 2009 ("**Dairy Land Agreement**"); and
- (b) GMP Pharmaceuticals acquiring land situated at 10 Averton Place, East Tamaki, Auckland, Certificate of Title 531914 ("**Proposed Purchase Land**") from Murray Stewart Stringer ("**Proposed Purchase Land Vendor**") pursuant to an agreement for sale and purchase dated 30 October 2013 ("**Proposed Purchase Land Agreement**").
6. The full background to the above retrospective consents is set out in paragraphs 7 to 13 below. However, the Applicant stipulates that prior to his acquisition of the Dairy Land, he engaged professional legal advisors and purchased the property through a real estate agent. As neither advisor informed him of the requirements of the Act, the Applicant proceeded with the acquisition. Further, the Applicant was under the mistaken impression that Australian citizens are automatically treated as New Zealanders once they arrive into New Zealand (that is, the Applicant was unaware of the difference between being entitled to be resident, in terms of immigration law, and the requirement to be a citizen of, or ordinarily resident in, New Zealand, under the Act). It was also under these mistaken impressions that resulted in GMP Pharmaceuticals, to which the Applicant is the director and sole shareholder, to enter into the Proposed Purchase Land Agreement.

Background to the Investment

Pharmaceutical Land acquisition:

7. On 30 May 2002, the Applicant acquired the property situated at 12 Averton Place, East Tamaki, Auckland, Certificate of Title NA60C/926 ("**Pharmaceutical Land**"). The Pharmaceutical Land was not sensitive pursuant to the Overseas Investment Act 1973 ("**1973 Act**") and therefore did not require consent under the 1973 Act. We note, however, that it would appear that the Pharmaceutical Land is sensitive under the Act, for the same reason that the Dairy Land and Pharmaceutical Land is sensitive (such sensitivities set out in paragraph 16).

Pharmaceutical Land business establishment:

8. From May 2002 to 2005, the Applicant established a pharmaceutical business and constructed a pharmaceutical manufacturing facility on the Pharmaceutical Land. The Applicant has confirmed that the cost to establish the pharmaceutical business did not meet, or exceed, the threshold to trigger an overseas investment in significant business assets under the 1973 Act. Accordingly, consent under the 1973 Act is not, and was not, required.

Dairy Land acquisition:

9. On 27 July 2009, the Applicant entered into the Dairy Land Agreement with the Dairy Land Vendor (see paragraph 5(a)). The Dairy Land, which borders the west of the Pharmaceutical Land, is sensitive land under the Act and the Dairy Land Agreement was not conditional upon consent under the Act. The acquisition of the Dairy Land settled on 19 September 2009. A retrospective consent under the Act for the acquisition of the Dairy Land is therefore the subject of this application.

Lease Arrangements:

10. 

(a)

(b)

(c)

(d)

(e)

11. Accordingly, although various leasing arrangements were entered into, we consider that these lease arrangements did not, and do not, require consent under the Act.

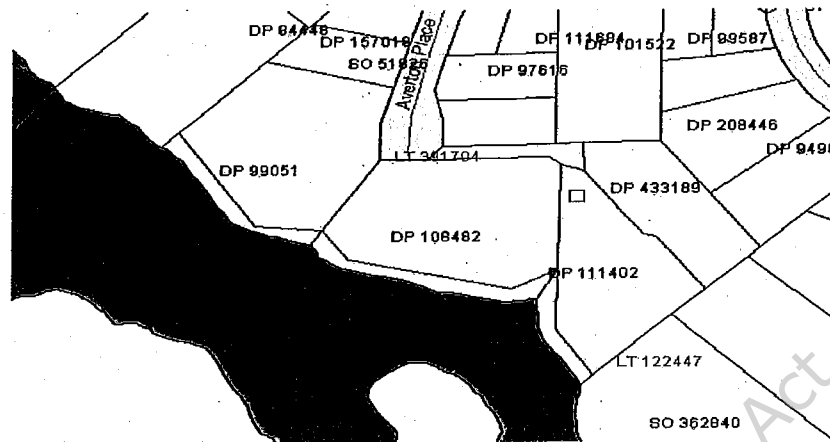
Dairy Land business establishment:

12. Following the settlement of the Dairy Land, the Applicant invested in the construction of an advanced dairy processing facility and established a dairy business on the Dairy Land. The cost to establish the dairy business did not reach the threshold under the Act to constitute an overseas investment in significant business assets (s13(1)(b)). The Applicant has confirmed that its investment in establishing GMP Dairy and GMP Pharmaceuticals (being the businesses on the Dairy Land and Pharmaceutical Land) has so far totalled approximately [REDACTED]. Consent under the Act is therefore not required for the establishment of the dairy business.

Proposed Purchase Land Acquisition:

13. GMP Pharmaceuticals entered into the Proposed Purchase Land Agreement with the Proposed Purchase Land Vendor on 30 October 2013 to acquire the Proposed Purchase Land (see paragraph 5(b)). The Proposed Purchase Land is sensitive land under the Act (see paragraph 16). The Proposed Purchase Land Agreement was not initially conditional upon consent under the Act. While a Variation to an Agreement for Sale and Purchase, dated 2 April 2014, was subsequently executed to include an Overseas Investment Act condition, this overseas investment has already been given effect.

Accordingly, in conjunction with this application, GMP Pharmaceuticals is applying for consent under the Act to acquire the Proposed Purchase Land. A diagram of the Dairy Land (noted as DP 99051), the Pharmaceutical Land (noted as DP 108482) and the Proposed Purchase Land (noted as DP 111402) is as follows:



Outline of the Investment

14. The relevant details of the agreements that pertain to the retrospective consents being applied for (as set out in paragraph 5), are as follows:
- Dairy Land:** The purchase price for the Dairy Land, pursuant to the Dairy Land Agreement, was [REDACTED]. The Dairy Land Agreement was not subject to approval under the Act and is therefore the subject of this application;
 - Proposed Purchase Land:** The purchase price for the Proposed Purchase Land, pursuant to the Proposed Purchase Land Agreement, is \$1,270,000 with a deposit of \$127,000 which has already been paid. The Proposed Purchase Land Agreement was not subject to approval under the Act and is therefore the subject of GMP Pharmaceuticals' application (which was submitted in conjunction with this application), application 201410050;
15. The details of the two Vendors are as follows:
- Dairy Land Vendor:** Given the lapse of time from the settlement of the Dairy Land, the Applicant has provided limited details on the Dairy Land Vendors. The Applicant notes, however, that it was his understanding that the Dairy Land was advertised for sale by the Dairy Land Vendor because National Starch & Chemical NZ Limited ("**National Starch**"), who previously leased the Dairy Land from the Dairy Land Vendors, did not wish to extend its lease; and
 - Proposed Purchase Land Vendor:** The Proposed Purchase Land Vendor has advised that he is selling the Proposed Purchase Land to pursue other investment opportunities. Further, he is a New Zealand citizen and did not need consent from the Overseas Investment Office ("**OIO**") or its predecessor(s) when he agreed to purchase the property in 1984.
16. The Dairy Land, Pharmaceutical Land and Proposed Purchase Land are sensitive land under the Act for the following reasons:
- Dairy Land:** Both the Dairy Land and the Pharmaceutical Land adjoin lots that are Local Purpose (Esplanade) Reserves vested in Auckland Council, specifically Lots 2 DP 99051 and Lot 2 DP 108482. The Pharmaceutical Land also adjoins Lot 2 DP 111402 (which borders the south of the Proposed Purchase Land), which is also a Local Purpose (Esplanade) Reserve vested in Auckland Council (all three esplanade reserves being the "**Esplanade Lots**"). The Esplanade Lots are zoned Public Open Space Zone 5. The Esplanade Lots constitute a reserve

under section 37 of the Act as they provide public access to a natural resource, being part of the tidal Tamaki River, an arm of the Waitemata Harbour. Accordingly, the Dairy Land is sensitive under the Act pursuant to Part B 4(e); and

- (b) **Proposed Purchase Land:** The Proposed Purchase Land adjoins Lot 2 DP 111402, a Local Purpose (Esplanade) Reserve vested in Auckland Council, with an area of 836 square metres. Lot 2 DP 111402 therefore forms one of the three Esplanade Lots. The Esplanade Lots are zoned Public Open Space Zone 5. The Esplanade Lots constitute a reserve under section 37 of the Act as they provide public access to a natural resource, being part of the tidal Tamaki River, an arm of the Waitemata Harbour. Accordingly, the Proposed Purchase Land is sensitive under the Act pursuant to Part B 4(e).

Rationale for the Investment

17. The Applicant and GMP Pharmaceuticals submit that the rationale for the acquisition of the Dairy Land and the Proposed Purchase Land is as follows:
- (a) **Dairy Land:** The Applicant was considering expanding his business and wished to establish an advanced dairy processing facility on the Dairy Land. The Applicant considered that there was an opportunity in the New Zealand market for such a business to succeed. Following the 2008 melamine issue in China, there was high demand in China for safe and good quality dairy products, particularly infant formula, manufactured in countries such as New Zealand; and
- (b) **Proposed Purchase Land:** The Applicant claims that the Pharmaceutical Land business is growing and is likely to need land on which to expand. GMP Pharmaceuticals is already constrained in terms of space, with some staff working in temporary facilities. The Proposed Purchase Land adjoins the existing Pharmaceutical Land (the Proposed Purchase Land borders the east side of the Pharmaceutical Land). The acquisition of the Proposed Purchase Land would therefore provide GMP Pharmaceuticals with the most suitable option to expand the business.

Sensitive Land

18. The Applicant is acquiring sensitive land. See Appendix 2.

Assessment Process

19. We have sought sufficient information from the Applicant for us to be assured about the accuracy of the information supplied and have sought sufficient evidence from the Applicant for us to be able to judge whether the criteria and factors that apply are met.
20. We did not consider it necessary to seek input from third parties in order to verify the information or evidence gathered.
21. We have determined that the:
- (a) **'relevant overseas person'** is (collectively) GMP Pharmaceuticals Limited and Qing Ye; and
- (b) **'individual with control of the relevant overseas person'** is Qing Ye.

Counterfactual Analysis

22. In *Tiroa E*, the Court made specific reference to the counterfactual assessment to be made. Miller J recognised that the statute's perspective is forward looking and that, "if it is to isolate the economic benefits attributable to the overseas investment, the counterfactual must similarly be forward looking, requiring that the OIO ask what will happen if the investment is not made".³ Miller J also suggested that the "status quo may serve as the counterfactual under s 17(2)(a) only if Ministers think it likely that in the hands of another owner or owners, the farms will remain in their present state".⁴
23. To establish the appropriate counterfactual in this case, the OIO has considered what the likely state of affairs would be without the Investment. The Applicant advises that:
- (a) The Applicant's understanding is that the Dairy Land was advertised for sale by the Dairy Land Vendor because National Starch, the adhesive manufacturer that had previously leased the Dairy Land from the Dairy Land Vendor, did not wish to extend its lease. With GMP Pharmaceuticals' business growing quickly, the Applicant purchased the Dairy Land with a view to expanding its business;
 - (b) If the Applicant had not purchased the Dairy Land, the Applicant submits that another business similar to National Starch may have leased or acquired the Dairy Land. The Applicant submits that a purchaser/lessee would have used the land for a purpose similar to that of National Starch. The Applicant understands that National Starch was using the Dairy Land mainly for warehousing of products, such as industrial starch, polymers and specialty food products. The Applicant's understanding is that there was not more than 10-15 people employed by National Starch at the site (being the Dairy Land) and that it was a very simple operation;
 - (c) However, the Applicant submits that this an 'at best' scenario. The Applicant submits that it is equally possible that the Dairy Land would have been leased or bought for no more than warehousing purposes, for the following reasons:
 - (i) the global financial crisis meant New Zealand businesses had little appetite to expand manufacturing operations in New Zealand. Therefore, the counterfactual would be very unlikely to have involved a business investing in new development expansion; and
 - (ii) at the time that National Starch ended the lease, a new industrial park was being established at Highbrook Park. Highbrook Park is now a 107 hectare industrial park incorporating attractive features such as a business town, retail hub and commercial services. The Applicant is of the view that, given the option of acquiring land at Highbrook Park or acquiring the Dairy Land, businesses looking to rent or buy land to establish a new operation, or expand an existing operation would have found Highbrook Park much more attractive.
24. Having considered the Applicant's submissions, the OIO considers that the appropriate counterfactual is that, without the Investment, the Dairy Land will likely have been sold to an alternative New Zealand purchaser, who would have likely provided some development to the Dairy Land.
25. Given the size and location of the Dairy Land, we consider it is likely that, without the Investment, the Dairy Land Vendor would have sold the Dairy Land to an alternate New Zealand purchaser.
26. Given the length of time that has elapsed from the Dairy Land settlement, it is not clear what type of business an alternate New Zealand purchaser may have undertaken on the Dairy Land. While the Applicant stipulates that it is likely that an alternate New

³ *Tiroa E* at [37].

⁴ *Tiroa E* at [42].

Zealand purchaser would have undertaken warehousing activities (as similar to that undertaken by National Starch), we do not consider that this was 'likely' to occur. Further, while an alternate New Zealand purchaser establishing a new business may have acquired land at Highbrook Park, we consider that this is largely speculative. Accordingly, we consider it likely that an alternate New Zealand purchaser would have established, or continued, a business on the Dairy Land. On this basis, we consider that an alternative New Zealand purchaser would likely have provided reasonable amounts of development to the Dairy Land.

Criteria set out in section 16

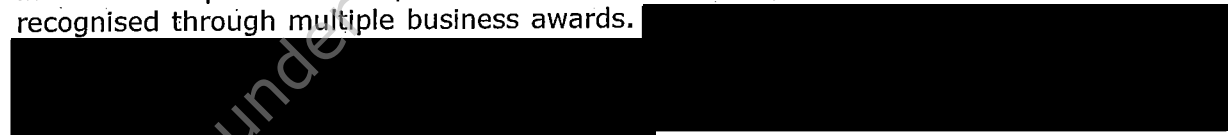
27. s16(1)(a) Overseas Investment Act 2005

<p>Does the relevant overseas person, or (if that person is not an individual) do the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to that overseas investment?</p>	<p style="text-align: center;">✓</p>
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Applicant's Claims:



Mr Ye has demonstrated his business experience and acumen through his successful ventures in the pharmaceutical and healthcare industries in New Zealand. Mr Ye is the sole shareholder of GMP Pharmaceuticals, a manufacturing company specialising in a range of pharmaceuticals, dietary supplements, natural health and dairy products. GMP has been an extremely successful business venture in New Zealand, going from [redacted] employees in 2001 to over [redacted] employees in 2013. GMP Pharmaceuticals has innovative export solutions, known as the AUNEW system, which has been well recognised through multiple business awards.



OIO Assessment:

The OIO is satisfied that the relevant overseas persons, or the individuals with control of the relevant overseas persons, collectively have business experience and acumen relevant to the overseas investment. Mr Ye has extensive business experience and commercial acumen, with particular regard to the pharmaceutical and healthcare industries. As illustrated above, Mr Ye has held positions in DLMEHECO Aust Pty Ltd, GMP Pharmaceuticals Pty Ltd, GMP Pharmaceuticals and GMP Dairy, which are relevant to the overseas investment. We are further satisfied that, as an astute and experienced businessman, Mr Ye can engage and oversee professionals for any expertise that he may lack. We are accordingly satisfied that this criterion is met.

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

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

Mr Ye has demonstrated his financial commitment by purchasing the Dairy Land (as well as paying the deposit and engaging professionals prior to the acquisition) and investing significant resources into the dairy business (including infrastructure, facilities, and staff) in order to ensure its success.

OIO Assessment:

The OIO is satisfied that the relevant overseas persons have demonstrated financial commitment to the overseas investment through the commitments described above, including the payment of the deposit. Accordingly, we consider that this factor is met.

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

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

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

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

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

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

The Applicant has provided a statutory declaration in support of the application that confirms the individuals with control of the relevant overseas person are of good

character, including confirmation that Mr Ye is not an individual of the kind referred to in sections 15 or 16 of the Immigration Act 2009.

OIO Assessment:

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

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

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

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

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

Overseas Investment Act 2005

- 17(2)(a)(i) – Jobs
- 17(2)(a)(iii) – Increased export receipts
- 17(2)(a)(iv) – Increased productivity
- 17(2)(a)(vi) – Increased processing

Overseas Investment Regulations 2005

- 28(e) – Previous investments
- 28(f) – Significant Government policy or strategy

Factors Set Out in section 17

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

Will the overseas investment result in, or is it likely to result in, the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost?	✓
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Applicant's Claims:

Mr Ye's investment in the Pharmaceutical Land and the Dairy Land, to date, has resulted in a significant increase in new job opportunities since their acquisition. GMP Pharmaceuticals now employs more than ■■■ full-time equivalent staff ("FTE") and GMP Dairy employs more than ■■■ full-time equivalent staff. The staff are employed in a range of roles, including machinery operation, administration, sales, marketing, planning, procurement, quality assurance, laboratory work and accounts.

OIO Assessment:

The OIO is satisfied that the Investment has resulted in the creation of new FTE job opportunities.

The OIO is satisfied that the businesses on the Pharmaceutical Land and the Dairy Land have resulted in the creation of new FTE job opportunities, being approximately [REDACTED] FTE jobs on the Pharmaceutical Land and [REDACTED] new FTE jobs on the Dairy Land.

We consider that the new FTE job opportunities created on the Pharmaceutical Land would likely have occurred without the Investment (we note the Pharmaceutical Land did not require consent when purchased, see paragraph 7). Accordingly, as this application relates to retrospective consent for the acquisition of the Dairy Land, we consider that 160 jobs relating to the Pharmaceutical Land should be discounted.

Without the Investment, we consider it is likely that an alternate New Zealand purchaser would have acquired the Dairy Land and either established a new business or moved a current business onto the Dairy Land (see paragraphs 22 to 26 for further discussion on the counterfactual). Therefore, without the Investment, we consider that some jobs would likely have been created on the Dairy Land. Accordingly we consider that some of the 60 new FTE jobs should be discounted. We note, however, that the businesses on the Pharmaceutical Land and Dairy Land (the Dairy Land business was run as a division of GMP Pharmaceuticals until 1 April 2013) were very successful, whereby GMP Pharmaceuticals and GMP Dairy have an annual turnover of [REDACTED]. Accordingly, we consider it is likely that the number of jobs, in relation to the Dairy Land, with the Investment would likely have been more than without the Investment. We therefore consider that this factor has been met.

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

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

GMP Pharmaceuticals has developed the AUNEW system, which was introduced by GMP Pharmaceuticals in 2005 and, as far as Mr Ye is aware, is a unique and innovative export system aimed at assisting small and medium size businesses in Australia and New Zealand to access the Chinese markets. The AUNEW system consolidates many export resources into a single system, including regulatory, logistical, anti-counterfeiting and distribution resources.

OIO Assessment:

The OIO considers that it has insufficient information to determine whether the AUNEW system constitutes new technology in New Zealand. While we consider that the AUNEW system may constitute new technology, we have been provided with insufficient information to determine that this, or similar, technology did not already exist in New Zealand prior to the Investment. While Me Ye understands that this is a unique system in New Zealand, we consider this belief alone is not sufficient to determine that this system is new technology in New Zealand.

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

Will the overseas investment result in, or is it likely to result in, increased export receipts for New Zealand exporters?	✓
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Applicant's Claims:

The Applicant claims Mr Ye has previously increased export receipts, as demonstrated through the growth that the pharmaceutical and dairy businesses have experienced in recent years. Mr Ye's investments in the Pharmaceutical Land and Dairy Land have resulted in an increase in export receipts for New Zealand.

In relation to Mr Ye's investment on the Pharmaceutical Land, the manufacturing facility exports more than 1500 different products to Australia, China, Hong Kong, Korea and Southeast Asia. [REDACTED]

OIO Assessment:

The OIO is satisfied that the Investment has resulted in increased export receipts for New Zealand exporters.

We consider that any increased export receipts resulting from the business on the Pharmaceutical Land will likely have occurred without the Investment and should accordingly be discounted (the acquisition of the Pharmaceutical Land did not require consent under the Act).

We consider that the Applicant's business on the Dairy Land has resulted in increased export receipts for New Zealand exporters; the dairy business' entire turnover was in direct exports. Without the Investment, we consider it is likely that an alternate New Zealand purchaser would have acquired the Dairy Land and may have provided export receipts to New Zealand exporters. However, it is not clear that an alternate New Zealand purchaser would have produced any export receipts and, even if it did, we consider that given the success of the dairy business (we again note GMP Pharmaceuticals and GMP Dairy have an annual turnover [REDACTED] the export receipts resulting from the Investment would likely have been greater than without the Investment. We therefore consider that this factor is met.

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

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

The Applicant submits that Mr Ye's investments in the Pharmaceutical Land and Dairy Land have resulted in an increase in market competition in the pharmaceuticals manufacturing and dairy processing markets. GMP Pharmaceuticals⁵ is a significant producer of infant dairy formula, providing market competition to Fonterra, Danone and Sutton Group. GMP Pharmaceuticals takes a pharmaceutical approach to its infant formula production and documentation, which sets it apart from other standard food-grade operations.

The Applicant claims that GMP Dairy is the largest buyer of Fonterra's organic milk, purchasing (circa) 60% of Fonterra's organic milk volumes. This supports a differentiated product in the New Zealand milk market. GMP Dairy also produces other specialty milk products such as colostrum, whey protein and goat's milk. GMP Dairy is currently increasing the productivity and efficiency of its current plant.

[REDACTED] The new canning line will double production capacity.

OIO Assessment:

The OIO considers that the Investment has likely resulted in greater productivity in New Zealand.

The OIO considers that greater productivity is increasing the amount of good or service produced. From 2002, the Applicant has established the pharmaceutical and

[REDACTED] Again, we consider that the production resulting from the business on the Pharmaceutical Land should be discounted as this would likely have occurred without the Investment.

It is not clear what an alternate New Zealand purchaser may have produced on the Dairy Land. Although we consider it possible that the production of an alternate New Zealand purchaser's goods or service may have been similar, or greater, to that of the Applicant, we consider this is unlikely due to the benefits arising from having the dairy business located adjacent to the pharmaceutical business (we again note that the Dairy Land business was run as a division of GMP Pharmaceuticals until 1 April 2013). Both businesses are also very successful since their creation (we again note GMP Pharmaceuticals and GMP Dairy have an annual turnover of [REDACTED]). Accordingly, we consider that it is likely that the Investment resulted in greater productivity in New Zealand. We are therefore satisfied that this factor is met.

Given the uncertainty of what an alternate New Zealand purchaser may have produced, however, we consider that this factor should not be given significant

⁵ The Dairy Land business was run as a division of GMP Pharmaceuticals until 1 April 2013.

weight.

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

Will the overseas investment result in, or is it likely to result in, the introduction into New Zealand of additional investment for development purposes?	Not Relevant
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OIO Assessment:

This factor is not relevant as the Investment does not involve the introduction into New Zealand of additional investment for development purposes.

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

Will the overseas investment result in, or is it likely to result in, increased processing in New Zealand of New Zealand's primary products?	✓
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Applicant's Claims:

The Applicant claims that Mr Ye's investment in the Dairy Land has led to increased processing in New Zealand of value added ready to market finished products sourced from New Zealand milk, due the establishment of the dairy processing facility and its attendant success. GMP Dairy currently processes over [REDACTED] of raw milk powder per month, [REDACTED] GMP Dairy expects to more than double production in the next year.

Both GMP Pharmaceuticals and GMP Dairy's business model is based on identifying, processing and transforming food and nutritional ingredients into high value finished products, especially for the Asia markets, where there is high demand for those products for cultural or nutritional benefits. GMP Pharmaceuticals started by identifying ingredients from animal products such as bee products, shark cartilage and shark liver oil, fish oil, deer antler, animal by-products and green lipped mussel extracts; and later into herbal supplements such as bilberry, blueberry, green barley and grape seed extracts. Since 2001, GMP Pharmaceuticals has been paying more attention on dairy ingredients such as colostrums, lactoferrin, milk calcium and infant formula. Organic milk is the company's most recent project under its business model.

OIO Assessment:

The OIO is satisfied that the Investment has resulted in increased processing in New Zealand of New Zealand's primary products.

The Applicant's arguments in relation to increased processing of primary products relate to the processing of primary products on the Dairy Land (any increased processing relating to the Pharmaceutical Land would be discounted as it likely would have occurred without the Investment).

As set out in paragraph 35, we consider that the Investment has likely resulted in increased production [REDACTED]

[REDACTED] We consider that any increase in production will likely result in increased processing in New Zealand of New Zealand's primary products. It is not clear whether an alternate New Zealand purchaser would have acquired the Dairy Land and processed primary products, which were equal to, or greater than, that produced by the Applicant. However, as set out further in paragraph 35, we consider that it is

likely that the production with the Investment would have been greater than that without the Investment. Accordingly, we consider that the processing of the primary products in New Zealand (which results from the increased production) would therefore likely be greater with the Investment, than without the Investment. We therefore consider that this factor is met.

We again note, however, that given the uncertainty of what levels of primary products an alternate New Zealand purchaser may have processed, we consider that this factor should not be given significant weight.

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

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

This factor is not relevant as the Investment does not involve existing areas of significant indigenous vegetation and significant habitats of indigenous fauna.

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

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

This factor is not relevant as the Investment does not involve existing areas of significant habitats of trout, salmon, protected wildlife and game.

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

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

OIO Assessment:

This factor is not relevant as the Investment does not involve historic heritage within the relevant land.

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

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

Applicant's Claims:

The Applicant claims that there do not appear to be any special features on the Dairy Land at present (such as scenic or amenity attributes) that would warrant the provision of public walking access. In addition, much of the Dairy Land is currently being used for industrial purposes, with both a pharmaceutical manufacturing and dairy processing facility on the Dairy Land. Accordingly, the Applicant submits it is not appropriate for the public to be given walking access to those sites.

The reserves adjoining the land provide public access to the nearby Otara Creek arm of the tidal Tamaki River, which is part of the Waitemata harbour. The Applicant understands that access to the Tamaki river is also available at other points on the river.

OIO Assessment:

The OIO considers that this factor is not relevant as the Dairy Land is not appropriate for public walking access. The Dairy Land is currently being used for the purposes of a dairy business (such as providing pharmaceutical grade value-added dairy products). Accordingly, given the land use, we consider that public walking access is not appropriate for the Dairy Land and this factor is therefore not relevant.

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

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

This factor is not relevant as the Investment does not involve foreshore, seabed, riverbed, or lakebed.

43. r28(a) Overseas Investment Regulations 2005

Will the overseas investment result in, or is it likely to result in, other consequential benefits to New Zealand (whether tangible or intangible benefits (such as, for example, additional investments in New Zealand or sponsorship of community projects))?	Unknown
--	----------------

Applicant's Claims:

The Applicant claims he has a continuing interest in furthering his business interests in New Zealand. If consent is granted, the Applicant submits he is likely to continue to seek further investment opportunities in New Zealand using his business model of identifying and adding value to undervalued food and nutritional ingredients. If consent is not granted, the Applicant would likely pursue similar opportunities overseas.

GMP Pharmaceuticals and GMP Dairy have already demonstrated willingness for its senior people to contribute and participate more widely in the sector. Minesh Patel (GMP Pharmaceuticals' General Manager) is a board member of Natural Products New Zealand. GMP Pharmaceuticals is also a member of Infant Nutritional Council, Organic Exporters Association and Food and Grocery Council.

OIO Assessment:

The OIO considers that it has been provided with insufficient information to determine whether the Investment, specifically future investment opportunities, will likely result in consequential benefits to New Zealand.

While the Applicant claims that it will continue to seek further investment opportunities in New Zealand, it does not specify exactly what these opportunities are or when they may occur. Accordingly, we consider that we have been provided with insufficient information to determine that these further investment opportunities are 'likely' to occur and, even if they do, that they are likely to provide consequential benefits to New Zealand. Further, with regard to the consequential benefits provided by Mr Patel (if any), we consider that these benefits would likely occur without the Investment, as we consider it likely that Mr Patel would continue with his employment with GMP Pharmaceuticals (which does not require consent). Accordingly, we consider that this factor is unknown.

44. r28(b) Overseas Investment Regulations 2005

Is the relevant overseas person a key person in a key industry of a country with which New Zealand will, or is likely to, benefit from having improved relations?	Not Relevant
--	---------------------

OIO Assessment:

This factor is not relevant as the overseas investment does not involve a key person in a key industry of a country with which New Zealand will, or is likely to, benefit from having improved relations.

45. r28(c) Overseas Investment Regulations 2005

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

If consent for the Investment is not granted, the Applicant claims it would likely adversely affect New Zealand's image amongst Australian and Chinese businesses. This is particularly the case given the public support (mentioned above) that Prime Minister John Key and other senior government officials have shown for Mr Ye's business activities in New Zealand. GMP Pharmaceuticals and GMP Dairy are involved in promoting business relationships between China and New Zealand. For example, GMP Pharmaceuticals has hosted business delegations from China.

The Ministry of Foreign Affairs and Trade website notes that China is New Zealand's fourth largest trading partner, taking over \$1.6 billion of New Zealand's merchandise products and over \$1 billion of services. The website also refers to New Zealand's ground-breaking free trade agreement with China and the expectations that the agreement will continue to lead to benefits for New Zealand manufacturers, and to defend New Zealand's market shares - particularly in areas where China is New Zealand's largest international customer (for example, for milk powder).

OIO Assessment:

The OIO considers that a refusal would not likely result in New Zealand breaching any of its international obligations. The OIO considers that any decline would be on the basis that the relevant criteria for consent were not met. The Office considers it unlikely that a well reasoned decision to decline will, or is likely to, adversely affect New Zealand's image overseas or its trade or international relations.

46. r28(d) Overseas Investment Regulations 2005

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

This factor is not relevant as the Investment will not result in the owner of the relevant land undertaking other significant investment in New Zealand.

47. r28(e) Overseas Investment Regulations 2005

Has the relevant overseas person previously undertaken investments that have been, or are, of benefit to New Zealand?	✓
--	---

Applicant's Claims:

The Applicant claims he has made significant previous investments in New Zealand, as demonstrated by his level of commitment to GMP Pharmaceuticals and GMP Dairy, and the success that those companies have achieved. The Applicant's investments in establishing the infrastructure and facilities for those companies has so far totalled approximately [REDACTED] in property, plant and equipment and several more millions in inventory. A number of New Zealand's smaller local suppliers rely on GMP Pharmaceuticals and GMP Dairy orders for up to 80% of their business. Farmers of organic milk depend on, together, GMP Pharmaceuticals and GMP Dairy's purchase of over (circa) 60% of Fonterra's annual production volumes of organic milk.

Mr Ye has also made significant investments to develop AUNEW, a "one stop export to China" business system, to facilitate the exports to China from New Zealand and Australia. The AUNEW system consolidates many export resources into a single system, including regulatory, logistical, anti-counterfeiting and distribution resources. Many New Zealand exporters have benefited from this innovative system, and AUNEW has won several awards, including Exporter of the Year at the 2011 Endeavour Awards and the Global Integration Award at the 2009 Endeavour Awards. Endeavour Awards is the primary awards system for the Australian manufacturing industry.

OIO Assessment:

The OIO is satisfied that the relevant overseas person has previously undertaken investments that have been, or are, of benefit to New Zealand.

We consider that both Mr Qing Ye and GMP Pharmaceuticals are relevant overseas persons for the purposes of this application. As addressed in paragraphs 34, 35 and 37, any increased export receipts, production and processing of primary products, resulting from the investments on the Pharmaceutical Land, have been discounted for the purposes of section 17(2)(a)(iii), section 17(2)(a)(iv) and section 17(2)(a)(vi) of the Act. However, we consider that the benefits that have resulted from the

Pharmaceutical Land investments are still likely of benefit to New Zealand (albeit that they did not result from the Investment). Accordingly, pursuant to the improvements made to the Pharmaceutical Land by Mr Ye and GMP Pharmaceuticals, and the benefits that have consequently arisen (such as increased export receipts, productivity and processing of primary products), we consider the relevant overseas person has previously undertaken investments that have been, or are, of benefit to New Zealand.

48. r28(f) Overseas Investment Regulations 2005

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

The Applicant submits that the Investment gives effect to and advances the NZ Inc China Strategy, a government strategy to strengthen New Zealand's economic, political and security relationship with China. Prime Minister John Key states that the strategy is "built around developing the trade and economic links between New Zealand and the People's Republic of China".

One of the strategic goals of the NZ Inc China Strategy is to grow high quality science and technology collaborations with China to enhance commercial opportunities. GMP Pharmaceuticals has a growing business exporting goods to China. In addition, GMP Dairy (a 100% subsidiary of GMP Pharmaceuticals) is the only company to hold certifications from the Chinese government authorities directly with respect to production of organic products. GMP Dairy is one of five infant milk manufacturers to gain registration to export to China, following a tightening of regulations by the Chinese government. The Applicant submits that, as reported in an Agrinews article⁶, GMP Dairy was the only manufacturer out of 13 to pass the required audit without problems.

OIO Assessment:

The OIO considers that the Investment will likely give effect to, or advance, a significant Government policy or strategy, being the NZ Inc China Strategy.

The NZ Inc China Strategy is the second in a series (after India) of NZ Inc country strategies that are part of the government's 120-point economic development action plan. The strategies set priorities for New Zealand's operations in our key markets, with the aim of strengthening our economic, political and security relationships with countries and regions, encourage people to people links and two-way investment. The China Strategy identifies five strategic goals for furthering New Zealand's relationship with China, one of which is to double two-way goods trade. The business activities of the Applicant, noting the Applicant's, GMP Pharmaceuticals' and GMP Dairy's current business activities in New Zealand, are likely to further this China Strategy strategic goal of doubling two-way goods trade. In particular, we note the increase in export receipts, increased production and increased processing of primary products in New Zealand that has likely resulted from the Investment.

The OIO therefore considers that this factor is met because the Investment will assist with the doubling of two-way goods trade with China.

⁶ <https://agrihq.co.nz/article/five-infant-formula-makers-comply-with-new-chinese-regulations?p=6>

49. r28(g) Overseas Investment Regulations 2005

Will the overseas investment enhance, or is it likely to enhance, the ongoing viability of other overseas investments undertaken by the relevant overseas person?	x
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OIO Assessment:

The OIO considers that the Investment will not likely enhance the on-going viability of other overseas investments undertaken by the relevant overseas person. As set out in paragraph 7, the acquisition of the Pharmaceutical Land did not require consent under the 1973 Act. As this application pertains to the acquisition of the Dairy Land, the relevant overseas person (either Mr Ye or GMP Pharmaceuticals) has not previously undertaken an overseas investment. Accordingly, this factor is not met as the relevant overseas person has not undertaken other overseas investments, so this investment cannot enhance the on-going viability of it.

50. r28(h) Overseas Investment Regulations 2005

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

This factor is not relevant as the overseas investment is not an investment in strategically important infrastructure on sensitive land.

51. r28(i) Overseas Investment Regulations 2005

Will New Zealand's economic interests be adequately promoted by the overseas investment?	Unknown
---	----------------

Applicant's Claims:

The Investment has contributed to New Zealand becoming a more reliable supplier of dairy products, in particular wet blend early childhood nutrition formulas. The importance of New Zealand's reliability as a supplier of quality child nutrition formula was illustrated by the Fonterra botulism scare in August 2013, which had far-reaching effects on New Zealand's dairy industry.

OIO Assessment:

The OIO considers that New Zealand's economic interests may be adequately promoted by the Investment, however, given the difficulty in assessing the extent of this promotion, we consider that this factor is unknown. In assessing this factor, the OIO has considered the four matters referred to in regulation 28(i).

Matters in regulation 28(i)(i)-(iv)

- a) **Whether New Zealand will become a more reliable supplier of primary products in the future:** As set out in paragraphs 34 and 36, we consider that the Investment has likely resulted in increased production and increased processing of primary products in New Zealand. This increased production and increased processing may, on a small scale, provide the Applicant with a

greater ability to meet its obligations, and may result in New Zealand becoming a more reliable supplier of primary products in the future. However, given the scale and the structure of the dairy industry, any net increase in reliability will likely be small, if any;

- b) **Whether New Zealand's ability to supply the global economy with a product that forms an important part of New Zealand's export earnings will be less likely to be controlled by a single overseas person or its associates:** The OIO does not consider that New Zealand's ability to supply the global economy with a product that forms an important part of New Zealand's export earnings will be less likely to be controlled by a single overseas person or its associates. The scale and structure of New Zealand's dairy industry means that it would be virtually impossible for a single overseas person or its associates to control New Zealand's ability to supply the global economy with dairy products;
- c) **Whether New Zealand's strategic and security interests are or will be enhanced:** The OIO does not consider that the Investments will enhance New Zealand's strategic and security interests.
- d) **Whether New Zealand's key economic capacity is or will be improved:** As discussed above, the OIO considers that there is likely to be an increase in productivity and processing. The OIO considers that this may improve New Zealand's key economic capacity, albeit on a small scale, if any at all.

We therefore consider that increased productivity and processing may improve New Zealand's key economic capacity. However, given the scale and the structure of the dairy industry, any increase in key economic capacity will likely be small, if any. We therefore consider that this factor is unknown.

52. r28(j) Overseas Investment Regulations 2005

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

The Applicant claims that both GMP Pharmaceuticals and GMP Dairy are incorporated in New Zealand and have their principal place of business in Auckland. Additionally, all of the senior management team of GMP Pharmaceuticals and GMP Dairy are New Zealanders.

OIO Assessment:

The OIO considers that there will be minimal participation by New Zealanders in the Investment. We note that both relevant overseas persons are incorporated in New Zealand, have their principal place of business in New Zealand and there is some participation in the senior management of GMP Pharmaceuticals and GMP Dairy. However, as the remainder of the Investment is owned and controlled by overseas interests, we consider that there will be limited overseeing and participation in the Investment by New Zealanders.

In assessing this factor, the OIO has considered the six matters referred to in r 28(j):

- a) There is no requirement that 1 or more New Zealanders must be part of a relevant overseas persons' governing body;

- b) Both the relevant overseas persons are incorporated in New Zealand;
- c) The relevant overseas persons have their principal place of business in New Zealand;
- d) The Applicant has not claimed that the relevant overseas persons will be party to a listing agreement with NZX Limited or any other registered exchange that operates a securities market in New Zealand; and
- e) New Zealanders will not have any partial ownership or controlling stake in the overseas investment or in a relevant overseas person.

Ownership and control of the Investment and the relevant overseas persons is therefore concentrated in a very small number of overseas persons.

Third Party Submissions

53. No third party submissions were received.

Released under the Official Information Act 1982

Appendix 1 – Conditions of Consent

Consent is granted subject to the following conditions:

1. The Applicant, or the individuals with control of the Applicant, must:
 - (a) continue to be of good character; and
 - (b) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.
2. The Applicant must notify the Overseas Investment Office in writing within 20 working days if:
 - (a) the Applicant, or (if the Applicant is not an individual) any individual with control of the Applicant:
 - (i) ceases to be of good character; or
 - (ii) commits an offence or contravenes the law (whether convicted or not); or
 - (iii) becomes aware of any other matter that reflects adversely on the Applicant's fitness to have the Investment; or
 - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
 - (b) any person in which the Applicant, or any individual with control of the Applicant has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the law (whether convicted or not); or
 - (c) the Applicant:
 - (i) ceases to be an overseas person; or
 - (ii) disposes of the Investment.

Released under the Official Information Act 1982

Appendix 2 – Sensitive Land

1. 5-7 Averton Place, East Tamaki, Auckland

Land Interest	Freehold Interest (0.8988 hectares)
CTs	NA53D/1046 (North Auckland)
Sensitivity	Adjoins land that is over 0.4 hectares and is listed, or in a class listed, as a reserve, a public park, or other sensitive area by the regulator under s37

Released under the Official Information Act 1982

Tyne Schofield

From: Tyne Schofield
Sent: Wednesday, 13 August 2014 4:30 p.m.
To: 'Susie Kilty'
Cc: 'Yi-Shen Lau'; David Viviers
Subject: RE: Qing Ye - 201410049 and GMP Pharmaceuticals Limited - 201410050 [BUD-L.FID14910]

Hi Susie,

Thanks for your confirmations in relation to paragraphs 9(a) and (c) of our letters of 24 July,

With regard to the conditions for 10 Averton Place, we have amended condition 5(c) in relation to a max spend (in red below). However, we consider that our standard WAC condition is otherwise appropriate in these circumstances. We provide the marked up condition 5 below.

5. *The Applicant must consult with the New Zealand Walking Access Commission ("**WAC**") to determine what the Applicant can reasonably do to provide, protect or improve public walking access over the relevant land or relevant part of that land (such as the registration of new instruments) ("**Walking Access**"). The Applicant must:*
- (a) *write to WAC within 15 working days of the date of settlement advising that the Applicant wishes to consult about Walking Access and enclose:*
 - (i) *a copy of the Public Decision Summary for this consent; and*
 - (ii) *a copy of this condition together with information identifying and describing the relevant land including aerial photographs, maps and Certificate(s) of Title;*
 - (b) *Implement any reasonable Walking Access recommended by WAC ("**Recommendation**") (in determining what is reasonable Walking Access, regard must be had to the Applicant's proposed use for the relevant land);*
 - (c) *The cost of any recommended Walking Access shall be borne by the Applicant (up to a maximum of \$15,000 plus GST);*
 - (d) *Agree that any dispute, difference or claim between WAC and the Applicant will be referred to and finally resolved in arbitration in Wellington, New Zealand. The tribunal will consist of a sole arbitrator appointed by agreement between the parties or if the parties cannot agree by the President of the New Zealand Law Society;*
 - (e) *Share the cost of any arbitration equally with WAC (each party will be liable for their own legal costs); and*
 - (f) *Provide a copy of any award made by the arbitrator to the Overseas Investment Office within 15 working days of the award being made.*

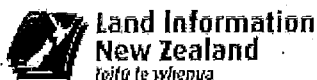
With regard to the dairy lease, and our conversation of 5 June, I note that we are still considering this and our conversation pertained to our thinking at that stage.

We look forward to receipt of the declarations and the administrative penalty.

Kind regards,

Tyne Schofield
Senior Solicitor
Overseas Investment Office

E tschofield@linz.govt.nz | DDI +64 4 460 0552



From: Susie Kilty [mailto:susie.kilty@buddlefindlay.com]
Sent: Monday, 11 August 2014 2:19 p.m.
To: Tyne Schofield
Cc: Yi-Shen Lau; David Viviers
Subject: RE: Qing Ye - 201410049 and GMP Pharmaceuticals Limited - 201410050 [BUD-L.FID14910]

Tyne

Thank you for your letters of 24 July.

Mr Ye and GMP Pharmaceuticals have authorised Buddle Findlay to advise you as follows:

Description of investments

The descriptions of the investments in your letters are accurate and cover the transactions.

With reference to paragraph 2.12(b) and 2.13 of the application, we note that you have advised us (telephone call Lau/Schofield on 5 June) that the dairy lease is covered by the exemption in regulation 33(1)(a) and accordingly no consent is required for that lease.

Conditions of consent for 5-7 Averton Place (201410049)

Mr Ye and GMP Pharmaceuticals have no comments on (and therefore accept) the draft conditions of consent in relation to 5-7 Averton Place

Conditions of consent for 10 Averton Place (application 201410050)

We understand that that the walking access condition has been suggested because you consider that, while there are benefits, you are concerned about the extent of those benefits.

As set out in the application and related correspondence, the proposed transaction is of clear benefit to New Zealand, particularly in relation to regulations 28(a) (consequential benefits), 28(c) (New Zealand's image overseas), 28(e) (previous investments), and 28(g) (ongoing viability of other overseas investments). These benefits are real and would satisfy section 16(1)(e)(ii) of the Act, and therefore support a decision to grant consent, independent of a walking access condition.

In light of that, we again request that consent is granted based on the standard conditions. Otherwise, our client requests that the draft conditions for 10 Averton Place are amended as follows (in substance, the change picks up the second part of 5(b), and condition 5(c), and groups them together, and adds detail about what would be reasonable, having regard to the Applicant's proposed use of the land).

Amendment to condition 5

(b) subject to paragraph 5A, implement any reasonable Walking Access recommended by WAC ("Recommendation") (in determining what is reasonable Walking Access, regard must be had to the Applicant's proposed use for the relevant land);

(c) The cost of any recommended Walking Access shall be borne by the Applicant

New condition 5A

5A. In relation to any Recommendation:

- (a) In determining what is reasonable Walking Access, the Applicant may have regard to the Applicant's proposed use for the relevant land;
- (b) A Recommendation will only be reasonable if:
- i. no more that 100sq mtrs of land is to be set aside for any walking access;
 - ii. the walking access recommended does not exceed 2 meters from the boundary of the relevant land along the Otara Creek;
- (c) The cost of any recommended Walking Access must be borne by the Applicant, provided that the total cost to the Applicant is not more than \$15,000;

The quantum of the cap seems appropriate given the nature and proposed use of the land. This property does not have high amenity value and is fundamentally different from, say, access across rural land to the coast.

Payment of the administrative penalty and statutory declarations

The administrative penalty of \$10,000 will be couriered to you with the statutory declarations.

Regards

SUSIE KILTY | PARTNER | BUDDLE FINDLAY

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From: Tyne Schofield [<mailto:tschofield@linz.govt.nz>]
Sent: 5 August 2014 5:11 p.m.
To: Susie Kilty
Cc: Yi-Shen Lau; David Viviers
Subject: RE: Qing Ye - 201410049 and GMP Pharmaceuticals Limited - 201410050 [BUD-L.FID14910]

Thanks Susie,

We look forward to hearing from you.

Kind regards,

Tyne Schofield
Senior Solicitor
Overseas Investment Office

E tschofield@linz.govt.nz | DDI +64 4 460 0552

Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace
PO Box 5501, Wellington 6145, New Zealand | T 04 460 0110



From: Susie Kilty [<mailto:susie.kilty@buddlefindlay.com>]
Sent: Tuesday, 5 August 2014 4:30 p.m.
To: Tyne Schofield
Cc: Yi-Shen Lau
Subject: RE: Qing Ye - 201410049 and GMP Pharmaceuticals Limited - 201410050 [BUD-L.FID14910]

Tyne

I'm conscious that we haven't come back to you yet – we are engaging with our client regarding this proposed walking access condition.

We will get back to you as soon as we can, but in the meantime, and appreciating that you and we are both aiming at robust decision-making, we re-iterate that we are still of the view that the purchase of the land at 10 Averton Place by GMP meets the criteria for consent (being benefit to New Zealand) without needing to rely on the walking access criterion. In particular:

- Mr Ye has made significant previous investments that are of benefit to New Zealand.
- The investment supports the ongoing viability of the GMP Pharmaceuticals business.
- Failure to grant consent would negatively affect New Zealand's image.
- There are consequential benefits to the investment, including further investment by Mr Ye in New Zealand.

In relation to the last two points, the New Zealand Trade Minister Tim Groser is today officiating a launch at which GMP will unveil a second canning line and world-first traceability technology on the infant formula cans. This is a feature that is very attractive to the Chinese market (see <http://www.stuff.co.nz/business/farming/dairy/10338280/Trace-technology-set-to-add-value-to-milk>).

We'll be in touch soon.

Regards

Susie

SUSIE KILTY | PARTNER | BUDDLE FINDLAY

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From: Tyne Schofield [<mailto:tschofield@linz.govt.nz>]
Sent: 29 July 2014 4:46 p.m.
To: Susie Kilty
Cc: Yi-Shen Lau
Subject: RE: Qing Ye - 201410049 and GMP Pharmaceuticals Limited - 201410050 [BUD-L.FID14910]

Hi Susie,

With regard to the truth and correctness declaration, can you also add the letter of 2 April 2014 (which forwarded a copy of the 10 Averton Place Agreement for Sale and Purchase). The emails that make the confirmations referred to in paragraphs 9(a) and 9(c) of our letters of 24 July, should also be included in the truth and correctness declaration.

We are otherwise happy with the declarations.

Kind regards,

Tyne Schofield
Senior Solicitor
Overseas Investment Office

E tschofield@linz.govt.nz | DDI +64 4 460 0552

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PO Box 5501, Wellington 6145, New Zealand | T 04 460 0110
W www.linz.govt.nz | www.landonline.govt.nz | data.linz.govt.nz



From: Susie Kilty [<mailto:susie.kilty@buddlefindlay.com>]

Sent: Friday, 25 July 2014 4:51 p.m.

To: Tyne Schofield; Yi-Shen Lau

Subject: RE: Qing Ye - 201410049 and GMP Pharmaceuticals Limited - 201410050 [BUD-L.FID14910]

Tyne

Thanks for talking to me before earlier. As mentioned, I attach draft declarations for your review.

Otherwise, in relation to the proposed walking access condition for 10 Averton Place, our preliminary view is that actually providing access is ultimately likely to be inappropriate and unnecessary, given that the site will be used as commercial premises for the manufacture and/or storage of pharmaceutical products or paraphernalia, and potentially dairy products (including infant formula).

We will reflect on this further, and liaise with our client as well. In the meantime, as discussed, I would be grateful if you could let me know what sort of financial caps the OIO may have set on walking access provisions in other applications.

Other matters

We confirm that Mr Ye and GMP have authorised Buddle Findlay to comment on the draft conditions on their behalf.

Payment of the administrative penalty is being arranged.

Kind regards

Susie

SUSIE KILTY | PARTNER | BUDDLE FINDLAY

State Insurance Tower, 1 Willis Street, PO Box 2694, Wellington 6140
Tel +64 4 499 4242 Fax +64 4 462 0856
susie.kilty@buddlefindlay.com | www.buddlefindlay.com

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From: Tyne Schofield [mailto:tschofield@linz.govt.nz]
Sent: 24 July 2014 3:40 p.m.
To: Yi-Shen Lau
Cc: Susie Kilty
Subject: Qing Ye - 201410049 and GMP Pharmaceuticals Limited - 201410050

Hi Yi-Shen,

Please find attached our letters for the Qing Ye application 201410049 and the GMP Pharmaceuticals Limited application 201410050.

We would be happy to look over the statutory declarations prior to signing to ensure they comply with our requirements.

Please let me know if you have any queries.

Kind regards,

Tyne Schofield
Senior Solicitor
Overseas Investment Office

E tschofield@linz.govt.nz | DDI +64 4 460 0552

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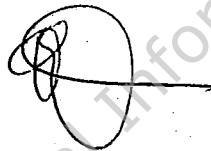
DECLARATION OF TRUTH AND CORRECTNESS OF APPLICATION
Applications 201410049 and 201410050

I, Qing Ye of Killara, New South Wales, Australia, sole director of GMP Pharmaceuticals, solemnly and sincerely declare that:

- I have read the correspondence dated 28 March 2014, 2 April 2014, 17 April 2014, 5 May 2014, 13 June 2014, 16 July 2014, 23 July 2014, 5 August 2014, and 11 August 2014 and all attachments annexed to that correspondence, which were submitted to the Overseas Investment Office in support of the applications made by GMP Pharmaceuticals, GMP Dairy and me to acquire land at Averton Place, East Tamaki; and
- I confirm that the information contained in the application and all related correspondence and attachments is true and correct;

And I make this declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Declared at *OTARA C.A.B*)
on this day of *19 AUGUST* 2014)
before me)



M. Marshall J.P.

Signature of a person authorised to take statutory declarations by the Oaths and Declarations Act 1957

MYRA ROSE MARSHALL
Print name *19.08.2014*
M R MARSHALL JP - Reg: 66
Auckland
Justice of the Peace
for New Zealand



Occupation

DECLARATION AS TO CHARACTER

Applications 201410049 and 201410050

I, Qing Ye, of Killara, New South Wales, and sole director of GMP Pharmaceuticals Limited, solemnly and sincerely declare that:

- Except insofar as both the relevant applications have been made on a retrospective basis, I have never committed an offence or contravened the law and no entity in which I had a 25% or more ownership or control interest at the time has committed an offence or contravened the law;
- I am of good character;
- I am not an individual of the kind referred to in sections 15 or 16 of the Immigration Act 2009 (which list certain persons not eligible for visas or entry permission under that Act); and
- I know of no other matter that reflects adversely on my fitness to have the particular overseas investment. .

And I make this declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Declared at *OTARA C.A.B*)
on this day of *19 August 2014*)
before me)

M Marshall J.P

Signature of a person authorised to take statutory declarations by the Oaths and Declarations Act 1957

MYRA ROSE MARSHALL J.P

Print name

19.08.2014
M R MARSHALL JP - Reg: 66
Auckland
Justice of the Peace
for New Zealand



Occupation

Tyne Schofield

From: Susie Kilty <susie.kilty@buddlefindlay.com>
Sent: Monday, 11 August 2014 2:19 p.m.
To: Tyne Schofield
Cc: Yi-Shen Lau; David Viviers
Subject: RE: Qing Ye - 201410049 and GMP Pharmaceuticals Limited - 201410050 [BUD-L.FID14910]

Tyne

Thank you for your letters of 24 July.

Mr Ye and GMP Pharmaceuticals have authorised Buddle Findlay to advise you as follows:

Description of investments

The descriptions of the investments in your letters are accurate and cover the transactions.

With reference to paragraph 2.12(b) and 2.13 of the application, we note that you have advised us (telephone call .au/Schofield on 5 June) that the dairy lease is covered by the exemption in regulation 33(1)(a) and accordingly no consent is required for that lease.

Conditions of consent for 5-7 Averton Place (201410049)

Mr Ye and GMP Pharmaceuticals have no comments on (and therefore accept) the draft conditions of consent in relation to 5-7 Averton Place.

Conditions of consent for 10 Averton Place (application 201410050)

We understand that that the walking access condition has been suggested because you consider that, while there are benefits, you are concerned about the extent of those benefits.

As set out in the application and related correspondence, the proposed transaction is of clear benefit to New Zealand, particularly in relation to regulations 28(a) (consequential benefits), 28(c) (New Zealand's image overseas), 28(e) (previous investments), and 28(g) (ongoing viability of other overseas investments). These benefits are real and would satisfy section 16(1)(e)(ii) of the Act, and therefore support a decision to grant consent, independent of a walking access condition.

In light of that, we again request that consent is granted based on the standard conditions. Otherwise, our client requests that the draft conditions for 10 Averton Place are amended as follows (in substance, the change picks up the second part of 5(b), and condition 5(c), and groups them together, and adds detail about what would be reasonable, having regard to the Applicant's proposed use of the land).

Amendment to condition 5

(b) ~~subject to paragraph 5A, implement any reasonable Walking Access recommended by WAC ("Recommendation") (in determining what is reasonable Walking Access, regard must be had to the Applicant's proposed use for the relevant land);~~

~~(c) The cost of any recommended Walking Access shall be borne by the Applicant~~

New condition 5A

5A. In relation to any Recommendation:

- (a) In determining what is reasonable Walking Access, the Applicant may have regard to the Applicant's proposed use for the relevant land;
- (b) A Recommendation will only be reasonable if:
- i. no more that 100sq mtrs of land is to be set aside for any walking access;
 - ii. the walking access recommended does not exceed 2 meters from the boundary of the relevant land along the Otara Creek;
- (c) The cost of any recommended Walking Access must be borne by the Applicant, provided that the total cost to the Applicant is not more than \$15,000;

The quantum of the cap seems appropriate given the nature and proposed use of the land. This property does not have high amenity value and is fundamentally different from, say, access across rural land to the coast.

Payment of the administrative penalty and statutory declarations

[REDACTED]

Regards

.....

SUSIE KILTY | PARTNER | BUDDLE FINDLAY

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susie.kilty@buddlefindlay.com | www.buddlefindlay.com

.....

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From: Tyne Schofield [mailto:tschofield@linz.govt.nz]
Sent: 5 August 2014 5:11 p.m.
To: Susie Kilty
Cc: Yi-Shen Lau; David Viviers
Subject: RE: Qing Ye - 201410049 and GMP Pharmaceuticals Limited - 201410050 [BUD-L.FID14910]

Thanks Susie,

We look forward to hearing from you.

Kind regards,

Tyne Schofield
Senior Solicitor
Overseas Investment Office

E tschofield@linz.govt.nz | DDI +64 4 460 0552

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**Land Information
New Zealand**
Toitū te whenua

Our Ref: 201410050

24 July 2014

Buddle Findlay (Wellington)
PO Box 2694
WELLINGTON 6140

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PO Box 5501
Wellington 6145
New Zealand
+64 4 460 0110
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BY EMAIL

Attention: Yi-Shen Lau

GMP Pharmaceuticals Limited – Draft Conditions

1. We refer to the application letter dated 28 March 2014.

Relevant overseas person and individuals with control

2. Please note that for the purposes of this application, we consider the:

- (a) 'relevant overseas person' to be (collectively) GMP Pharmaceuticals Limited and Qing Ye; and
- (b) 'individual with control of the relevant overseas person' to be Qing Ye.

Draft consent wording

3. Although we are still assessing the application, we note that if retrospective consent were to be granted, it would be granted to **GMP Pharmaceuticals Limited**, or a 100% subsidiary of **GMP Pharmaceuticals Limited** (the Applicant), to give effect to a transaction which would result in:

- (a) An overseas investment in sensitive land, being the Applicant's acquisition of a freehold interest in approximately 0.7450 hectares of land at 10 Averton Place, East Tamaki, Auckland.

("the Investment")

Administrative penalty

4. Qing Ye and GMP Pharmaceuticals Limited are closely related. Although separate transactions, the two applications 201410049 and 201410050 are also closely connected transactions. Accordingly, the regulator has considered the administrative penalty on a global basis, across both applications. Having regard to regulation 32 of the Overseas Investment Regulations 2005, the

5. We consider that this penalty is not unduly harsh or oppressive given the value of the consideration for the assets acquired and the nature of, and the reasons for, the retrospective consent.

Draft conditions

6. Before deciding the application, we invite the Applicant to comment on the Overseas Investment Office's current draft conditions of consent. The draft conditions are attached as **Appendix 1** to this letter.

7. The delegated decision maker may not have seen the draft conditions, and may amend them prior to deciding whether or not to grant consent. If this was to occur, the Applicant may not necessarily be consulted further.
8. Please have the Applicant comment on the draft conditions as soon as possible or, if they do not wish to comment, tell us so as soon as possible.

Please provide further information

9. Please provide us with the following:
 - (a) Confirmation that the description of the Investment above is accurate and covers the transaction;
 - (b) Payment of the administrative penalty (if for any reason consent is not granted, this penalty fee will be returned);
 - (c) The Applicant's comments on the draft conditions in Appendix 1, or the Applicant's confirmation that they do not wish to comment. If your firm comments, or advises that the Applicant does not wish to comment, on the Applicant's behalf, please include a statement confirming the firm's authority to do so;
 - (d) A statutory declaration that addresses the good character of the individuals with control of the relevant overseas person as identified above; and
 - (e) A final statutory declaration in support of the application. This final declaration must specifically refer to all correspondence (including any emails and all attachments) provided in support of the application, including reference to the application letter.
10. Please ensure that the above statutory declarations comply with the form of statutory declarations on our [website](#). We suggest you email us draft declarations so that we can review them before they are signed.
11. It is important to note that we are still assessing the application and **this letter does not grant retrospective consent to the Investment**. Further, the draft conditions and draft retrospective consent wording are subject to change.
12. Please contact me if you have any queries or wish to discuss.

Yours sincerely



Tyne Schofield
Senior Solicitor
Overseas Investment Office

DDI: +64 4 460 0552
Email: tschofield@linz.govt.nz

Appendix 1

1. The consent will lapse if the Investment has not been acquired by and transferred to the Applicant within twelve months of the date of consent.
2. The Applicant must notify the Overseas Investment Office in writing as soon as practicable, and no later than twelve months from the date of consent, whether settlement of the acquisition of the Investment took place. If settlement of the acquisition of the Investment did take place, the notice must include:
 - (a) the date of settlement;
 - (b) final consideration paid (plus GST, if any);
 - (c) the structure by which the acquisition was made, and who acquired the Investment;
 - (d) where applicable, copies of transfer documents and settlement statements; and
 - (e) any other information that would aid the Overseas Investment Office in its function to monitor conditions of consent.
3. The Applicant, or the individuals with control of the Applicant, must:
 - (a) continue to be of good character; and
 - (b) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.
4. The Applicant must notify the Overseas Investment Office in writing within 20 working days if:
 - (a) the Applicant; or (if the Applicant is not an individual) any individual with control of the Applicant:
 - (i) ceases to be of good character; or
 - (ii) commits an offence or contravenes the law (whether convicted or not); or
 - (iii) becomes aware of any other matter that reflects adversely on the Applicant's fitness to have the Investment; or
 - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
 - (b) any person in which the Applicant, or any individual with control of the Applicant has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the law (whether convicted or not); or
 - (c) the Applicant:
 - (i) ceases to be an overseas person; or
 - (ii) disposes of the Investment.
5. The Applicant must consult with the New Zealand Walking Access Commission ("WAC") to determine what the Applicant can reasonably do to provide, protect or improve public walking access over the relevant land or relevant part of that land (such as the registration of new instruments) ("Walking Access"). The Applicant must:
 - (a) write to WAC within 15 working days of the date of settlement advising that the Applicant wishes to consult about Walking Access and enclose:
 - (i) a copy of the Public Decision Summary for this consent; and

- (ii) a copy of this condition together with information identifying and describing the relevant land including aerial photographs, maps and Certificate(s) of Title;
 - (b) Implement any reasonable Walking Access recommended by WAC ("Recommendation") (In determining what is reasonable Walking Access, regard must be had to the Applicant's proposed use for the relevant land);
 - (c) The cost of any recommended Walking Access shall be borne by the Applicant;
 - (d) Agree that any dispute, difference or claim between WAC and the Applicant will be referred to and finally resolved in arbitration in Wellington, New Zealand. The tribunal will consist of a sole arbitrator appointed by agreement between the parties or if the parties cannot agree by the President of the New Zealand Law Society;
 - (e) Share the cost of any arbitration equally with WAC (each party will be liable for their own legal costs); and
 - (f) Provide a copy of any award made by the arbitrator to the Overseas Investment Office within 15 working days of the award being made.
6. The Applicant must report in writing annually to the Overseas Investment Office detailing progress of its investment plan, including the following:
- (a) the Applicant's compliance with condition 5; and
 - (b) the Applicant's use of the land and how this use has enhanced the ongoing viability of other overseas investments undertaken by the relevant overseas person.
7. The first report referred to in condition 6 is due on 1 September 2015 and the final report is due on 1 September 2017.
8. If requested in writing by the Overseas Investment Office, the Applicant must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
- (a) the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent was granted; or
 - (b) the conditions of this consent.

Tyne Schofield

From: Yi-Shen Lau <Yi-Shen.Lau@buddlefindlay.com>
Sent: Wednesday, 23 July 2014 11:28 a.m.
To: Tyne Schofield
Cc: Susie Kilty
Subject: RE: Architectural plan for 10 Averton Place (GMP application - case numbers 201410049 and 201410050) [BUD-L.FID14910]

Tyne

In response to your queries, Mr Ye advises that the real estate agent involved was Bayleys Real Estate Manukau. The salesperson was Katie Wu. The manager of that Bayleys at the time was Dave Stanley. Bayleys prepared the Sale and Purchase Agreement and presented it to Mr Ye. To the best of Mr Ye's recollection, when the Agreement was presented it indicated that OIO consent was not required. At no time did Bayleys advise Mr Ye that the land was "sensitive land".

To the best of Mr Ye's memory he presented the unsigned Sale and Purchase Agreement to his lawyer, Mr Ben Bong of Wong & Bong Law Office Limited (<http://www.wongbonglaw.co.nz/>).

Mr Ye advises that, to the best of his knowledge he thinks that he would have passed the unsigned Agreement to Mr Bong and asked Mr Bong to advise on any matters that Mr Bong thought applicable before Mr Ye signed the Agreement. While correspondence regarding the purchase is not immediately at hand, Mr Ye advises that there is no correspondence regarding OIO advice. As set out in the application, it did not cross Mr Ye's mind that he should enquire further into Overseas Investment Act issues for the transaction, especially because no issues had previously arisen in relation to the initial purchase of the Pharmaceutical Land.

Please let us know if you have further questions.

Kind regards

Yi-Shen

YI-SHEN LAU | SOLICITOR | BUDDLE FINDLAY

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yi-shen.lau@buddlefindlay.com | www.buddlefindlay.com

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From: Tyne Schofield [<mailto:tschofield@linz.govt.nz>]
Sent: 18 July 2014 12:18 p.m.
To: Yi-Shen Lau
Cc: Susie Kilty
Subject: RE: Architectural plan for 10 Averton Place (GMP application - case numbers 201410049 and 201410050) [BUD-L.FID14910]

Hi Yi-Shen,

We have a further query in relation to the advice provided to Qing Ye in 2009. The application notes at paragraph 3.1 that "Mr Ye engaged professional legal advisors and purchased the property through a real estate agent. Neither set of advisors informed him of the need to seek consent under the Act." Can you confirm what advice was sought and given and, if possible, provide copies of this correspondence. Can you also confirm the firm and lawyer that was involved in the initial dairy land purchase.

Kind regards,

Tyne Schofield
Senior Solicitor
Overseas Investment Office

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Land Information
New Zealand
toitū te whenua

From: Yi-Shen Lau [<mailto:Yi-Shen.Lau@buddlefindlay.com>]
Sent: Wednesday, 16 July 2014 3:07 p.m.
To: Tyne Schofield
Cc: Susie Kilty
Subject: Architectural plan for 10 Averton Place (GMP application - case numbers 201410049 and 201410050) [BUD-L.FID14910]

Tyne

Attached for your information is a draft architectural plan for 10 Averton Place in anticipation of developing the site.

As shown on the plan, the gross floor area for manufacturing (or warehousing) is approximately 2,000m², with 180m² to be used as an office. The arrows on the plan indicate the driveway. There are a significant number of car parks anticipated as well.

Please contact us if you have any questions.

We look forward to hearing from you in relation to this application.

Kind regards

Yi-Shen

YI-SHEN LAU | SOLICITOR | BUDDLE FINDLAY

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Tyne Schofield

From: Tyne Schofield
Sent: Friday, 18 July 2014 12:18 p.m.
To: 'Yi-Shen Lau'
Cc: 'Susie Kilty'
Subject: RE: Architectural plan for 10 Averton Place (GMP application - case numbers 201410049 and 201410050) [BUD-L.FID14910]

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Kind regards,

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Sent: Wednesday, 16 July 2014 3:07 p.m.
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Tyne

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As shown on the plan, the gross floor area for manufacturing (or warehousing) is approximately 2,000m², with 180m² to be used as an office. The arrows on the plan indicate the driveway. There are a significant number of car parks anticipated as well.

Please contact us if you have any questions.

We look forward to hearing from you in relation to this application.

Kind regards

Yi-Shen

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Tyne Schofield

From: Yi-Shen Lau <Yi-Shen.Lau@buddlefindlay.com>
Sent: Wednesday, 16 July 2014 3:07 p.m.
To: Tyne Schofield
Cc: Susie Kilty
Subject: Architectural plan for 10 Averton Place (GMP application - case numbers 201410049 and 201410050) [BUD-L.FID14910]
Attachments: 10 Averton Scheme 2014.07.15.pdf

Tyne

Attached for your information is a draft architectural plan for 10 Averton Place in anticipation of developing the site. As shown on the plan, the gross floor area for manufacturing (or warehousing) is approximately 2,000m², with 180m² to be used as an office. The arrows on the plan indicate the driveway. There are a significant number of car parks anticipated as well.

Please contact us if you have any questions.

We look forward to hearing from you in relation to this application.

Kind regards

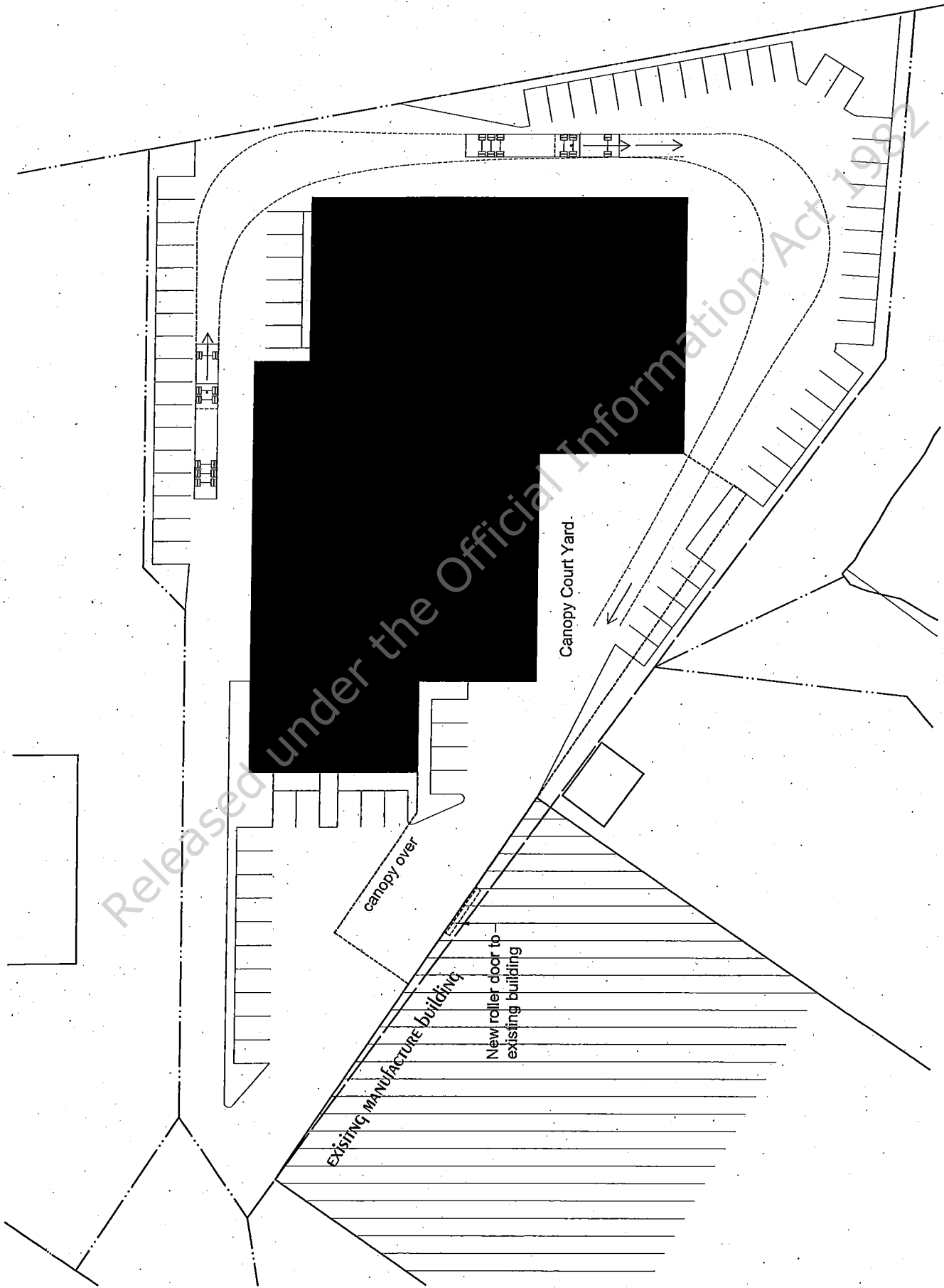
Yi-Shen

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Francis Chenz
ARCHITECTURE CONSULTANTS

Address: P O Box 31038
Arlene
Auckland
09 4452078
021 522099
www.fchenz.co.nz

All dimensions shall be checked on site before fabrication of components starts. It is the responsibility of the client to ensure that the site is suitable for the proposed, transmitted or copied in whole or in part without the express permission of the Company.

Information:	18/09/2013
Resource Consent:	-
Building Consent:	-
Tender:	-
Construction:	-
Revision:	-

Project No: FCZB1 BF

SHEET N° sk/01

PROJECT NAME
BMP
10 AVERTON PLACE
EAST TAMAKI

Released under the Official Information Act 1982

PROGRESS

This Drawing and the information shown is a preliminary bulk and location and subject to location of services, resource consent approval, building consent etc.

Tyne Schofield

From: Yi-Shen Lau <Yi-Shen.Lau@buddlefindlay.com>
Sent: Friday, 13 June 2014 4:56 p.m.
To: Tyne Schofield
Cc: Susie Kilty; Grant Dunn
Subject: GMP - OIO application - further information requested by the OIO [BUD-L.FID14910]
Attachments: 20140611_124329.jpg; 12062014143841.pdf; Lease agreement for 12 Averton.pdf

Tyne

Thank you for your email requesting further information from GMP.

Lease

A copy of the lease for 12 Averton Place is **attached**.

Plans regarding 10 Averton Place

The speed at which GMP's business has grown has led to space becoming tightly constrained at its existing site. For example, GMP's marketing team has been working from a portable office for the past 12 months.

In the short term, GMP's plan is to use the land at 10 Averton Place for car parking. GMP staff already use 10 Averton Place for that purpose with the permission of Mr Stringer. Previous to that arrangement, staff had been parking their vehicles in a way that obstructed the main driveway. This was unsafe for staff and visitors. GMP is committed to providing an attractive work environment, and being able to provide safe parking facilities is part of that. The purchase of 10 Averton Place would also allow GMP to develop the existing access/driveway arrangements, removing the need for large trucks to make awkward turning manoeuvres to get to and from the plant.

In the medium to long term, GMP intends to at least build a warehouse on the land and has already commenced preliminary discussions with engineers and architects, which is expected to be expedited once OIA consent is granted. Warehousing needs are currently being accommodated at GMP's existing site and third party warehousing. A new warehouse would free up space at the existing site for other purposes, for example, a new production line or permanent office space.

In order to build on the land, GMP would need to obtain a geotechnical report for the land because of its proximity to the Otara creek. Once (and assuming that) GMP is satisfied with the geotechnical reports and any issues are resolved, GMP expects to establish the warehouse within 2 years.

Counterfactual for 10 Averton Place transaction

As stated in GMP's application, the vendor of 10 Averton Place, Mr Stringer, intends to hold the land in the short term pending the identification of an alternative buyer.

GMP submits that, while Mr Stringer states that he will sell the land to an alternative purchaser, it is unlikely that Mr Stringer will find a suitable purchaser for the land that is willing to invest to the same extent that GMP is. The land is a corner site with no road frontage and with a long single driveway access, which makes it unattractive for would-be purchasers. We **attach** a photo taken from the property looking towards the road. GMP's pharmaceutical building is visible to the left. A neighbouring warehouse is in the background to the right. The photo was taken from the approximate position marked x on the aerial photograph **attached**.

As stated in GMP's letter of 14 April 2014, there is also a nearby 107-hectare industrial park (Highbrook Park) with features that would be more attractive to a would-be purchaser wanting to invest in (say) manufacturing facilities with branded frontage.

In addition, any developer of the land would need to obtain a geotechnical report in order to build on the land due to its location. In 2013, GMP obtained a geotechnical report for its Dairy site (5 Averton Place) which, like 10 Averton Place, sits on the bank of the Otara creek. This cost the company \$10,000. The report concluded that, whilst construction was feasible, reinforcement work was needed to prevent the land from subsiding. GMP expects that the

geotechnical report for 10 Averton Place will have a similar conclusion and that any purchaser will need to either carry out reinforcement work in order to build on the land, or be forced to build a smaller facility to minimise issues.

The costs associated with getting a geotechnical report and performing reinforcement are likely to be worthwhile for GMP. Because its facilities adjoin 10 Averton Place, any construction at 10 Averton Place could be optimised, for example, by combining the driveway/access with GMP's existing sites. In contrast, it is unlikely that an as-yet unidentified purchaser would be willing to make the investment in a geotechnical report and reinforcement of land, in order to develop the relatively small corner site.

Benefits in relation to the 10 Averton Place transaction

GMP submits that the purchase of 10 Averton Place will be of benefit to New Zealand. The benefits arise primarily in relation to the factors that do not require a counterfactual analysis. In particular, the following benefits that are not subject to the counterfactual test arise in relation to the investment in 10 Averton Place:

- *Failure to grant consent would be likely to adversely affect New Zealand's image:* as detailed in the application, if the investment is not made because consent is not granted it would be likely adversely to affect New Zealand's image among Australian and Chinese businesses. This is particularly the case given the public support given by Prime Minister John Key and other senior government officials to Mr Ye. This factor is of high importance and should be given significant weight by the OIO.
- *Previous investments:* Mr Ye has made significant previous investments in New Zealand that are of benefit to New Zealand. [REDACTED] Mr Ye has also developed the AUNEW business system which has benefited New Zealand businesses and for which GMP has won several business awards. This factor is of high importance and should be given significant weight by the OIO.
- *Participation and oversight by New Zealanders:* GMP Pharmaceuticals and GMP Dairy are both incorporated in New Zealand. All of the senior management team of GMP Pharmaceuticals and GMP Dairy are New Zealanders. This factor is of moderate importance.
- *Ongoing viability of other investments:* GMP Pharmaceuticals is a fast-growing company that needs the option to expand its operations. If the land was sold to an alternative New Zealand purchaser, this would create uncertainty as to the ongoing viability of expanding the GMP Pharmaceuticals business (see page 18 of the application). Long term, this may require Mr Ye to reassess whether GMP Pharmaceuticals should continue to be based in New Zealand or whether expansion opportunities are only available in other jurisdictions. This factor is of high importance and should be given significant weight by the OIO.

Even if the OIO adopted a counterfactual in which an alternative New Zealand purchaser acquired the land, the following benefits would arise:

- *Significant government policy/strategy:* This factor is of high importance and should be given significant weight by the OIO. The investment gives effect to and advances the NZ Inc strategy. For example, Mr Ye actively facilitates business relationships between New Zealand and China, for example by hosting business delegations (see page 18 of the application). This would not be the case if the land was held by Mr Stringer or if the land was sold to an alternative New Zealand purchaser.
- *Jobs:* In relation to the warehouse, jobs would be able to be supported in relation to the geotechnical advice and design of the warehouse. Based on the construction of a 2000m² warehouse and related parking facilities, the construction of the warehouse would be likely to support 20-30 full-time construction workers and construction consultants for a period of 6-8 months. Once the warehouse is established, up to 5 permanent full-time jobs would likely be created with the potential for further employment.

Walking access

In our call you suggested that GMP may wish to provide walking access across 10 Averton Place to strengthen its application.

GMP advises that the esplanades are mangroves and are unsafe for walking access. Significant access to the creek is already provided via a track on the opposite bank. On the GMP side of the creek, there appears to be access to the creek from Antrim Crescent, Perth Street, and Hill Street.

Please contact us if you have any further questions.

Kind regards

Yi-Shen

YI-SHEN LAU | SOLICITOR | BUDDLE FINDLAY

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Released under the Official Information Act 1982

Tyne Schofield

From: Tyne Schofield
Sent: Thursday, 5 June 2014 10:49 a.m.
To: 'Yi-Shen Lau'
Cc: 'Susie Kilty'; 'Grant Dunn'
Subject: Qing Ye - 201410049 and 201410050 - Further information

Hi Yi-Shen,

Thanks for your time earlier. Further to our discussion, can you provide us with the following further information:

1. For completeness, can you provide us with a copy of the lease between Qing Ye and GMP Pharmaceuticals Limited over the Pharmaceutical Land;
2. With regard to the purchase of the land at 10 Averton Place, can you provide further details as to the proposed developments or expansions onto this land (including the likelihood of such developments proceeding). At this stage, it appears that any development of this land is only a possibility and it is accordingly difficult to conclude that any benefits are 'likely' to occur from these potential developments. For example, while the Applicant suggests that a warehouse or new plant may be built, we have insufficient information to determine that either project is 'likely' to be built. We therefore cannot conclude, for example, that either 5 (warehouse) or 60 (new plant) new FTE jobs are likely to occur as a result of the investment, or that increased export receipts, productivity or processing is likely to occur. Similarly, it is difficult to determine that the acquisition of 10 Averton Place will enhance the on-going viability of the dairy and pharmaceutical businesses, when it is not clear how, or when, this land will be utilised. I note too that the counterfactual will need to be taken into account when considering any benefits claimed in relation to the acquisition of 10 Averton Place;
3. I note there are 'no firm plans for expansion' in relation to 10 Averton Place (as per paragraph 10.19). If it transpires that the expansion on to 10 Averton Place is not required, does your client anticipate selling this property; and
4. With regard to paragraphs 10.23 and 10.24 of the Application, is there currently public walking access available to the esplanade reserves adjacent to the Tamaki River? The esplanade reserves appear to be landlocked by the five adjacent property lots.

Please let us know if you have any queries on the above.

Kind regards,

Tyne Schofield
Senior Solicitor
Overseas Investment Office

E tschofield@linz.govt.nz | DDI +64 4 460 0552

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14 April 2014

David Viviers
Overseas Investment Office
Radio New Zealand House
155 The Terrace
PO Box 5501
Wellington 6145

Dear David

GMP/Qing Ye (applications 201410049 and 201410050)

1. Thank you for your letter of 7 April 2014 in which you requested further information regarding applications made by Mr Qing Ye, GMP Pharmaceuticals and GMP Dairy. I am responding to your questions on behalf of myself, GMP Pharmaceuticals and GMP Dairy (together, **GMP**).

Establishment of GMP Pharmaceuticals

2. You asked about the meaning of the words "during this period" in paragraph 2.3 of GMP's application. GMP confirms that "during this period" refers to the period between the acquisition of 12 Averton Place (2002) and the date that Mr Ye sold his New Zealand home (2005).

3.

Leases for 12 Averton Place and 5-7 Averton Place

4. You asked about the status of the land at 12 Averton Place and 5-7 Averton Place between when the leases for those properties expired (March 2010) and when the new leases commenced (1 April 2012). GMP confirms that, during this time, the properties were held by Mr Ye personally but continued to be used by GMP Pharmaceuticals and GMP Dairy, albeit without a formal lease arrangement.

Counterfactual

5. In your letter you stated that the counterfactual should address what would happen without the investment, as opposed to what would happen if consent was not granted.
6. Thank you for clarifying the Overseas Investment Office's approach to the counterfactual for retrospective applications.
7. GMP has not yet acquired the land at 10 Averton Place. Therefore, GMP submits that the counterfactual and benefits for that acquisition are as described in the application.
8. GMP's view of the counterfactual for the investment in the land at 5-7 Averton Place (that is, what would have happened if Mr Ye had not made the investment) is as described below.

9. As stated in paragraph 6.2 of our application, Mr Ye's understanding is that the Dairy Land was put on the market for sale by the vendor because National Starch, the adhesive manufacturer that had previously leased the property from the vendors, did not wish to extend its lease. With GMP's business growing quickly, Mr Ye bought the land with a view to expanding the business.
10. The applicants submit that, if Mr Ye had not purchased the land, another business similar to National Starch may have leased or bought the land. The applicants submit that a purchaser/lessee would have used the land for a purpose similar to that of National Starch. As far as GMP is aware, National Starch was using the land mainly for warehousing for products such as industrial starch, polymers and specialty food products. GMP's understanding is that there was not more than 10-15 people employed by National Starch at the site, and that it was a very simple operation.
11. However, this is an "at best" scenario. The applicants submit that it is equally possible that the land would have been leased or bought for no more than warehousing purposes, for the following reasons.
12. First, the global financial crisis meant the New Zealand businesses had little appetite to expand manufacturing operations in New Zealand. Therefore, the counterfactual would be very unlikely to have involved a business investing in new development expansion.
13. Second, at the time that National Starch ended the lease, a new industrial park was being established at Highbrook Park. Highbrook Park is now a 107 hectare industrial park incorporating attractive features such as a business town, retail hub and commercial services. The applicants are of the view that, given the option of acquiring land at Highbrook Park or acquiring the land at 5-7 Averton Place, businesses looking to rent or buy land to establish a new operation, or expand an existing operation would have found Highbrook Park much more attractive.
14. In contrast to the two factors described above, the land was attractive to GMP because it was adjacent to GMP's existing facilities at 12 Averton Place, and because GMP had identified a niche dairy market subsequent to the melamine scandal in 2008. In addition, GMP had an already established relationship with Fonterra as their preferred supplier at the time, and consequently there was an opportunity to expand into dairy and in particular into the infant formula business.
15. Mr Ye has considered what he would have done if he had not acquired the land at 5-7 Averton Place. Mr Ye submits that the only reason why he would not have acquired the land would have been if Mr Ye had applied for consent under the Overseas Investment Act and consent was not granted.
16. If that had happened, Mr Ye would not have established GMP Dairy, and would instead have invested in his overseas businesses. That is because, having been denied consent to acquire land for the GMP Dairy business, Mr Ye would have been likely to take the view that his investments were not welcome, and that he would be unlikely to obtain consent for another investment in New Zealand.

Benefits of investment at 5-7 Averton Place

17. GMP submits that the benefits of Mr Ye's acquisition of 5-7 Averton Place, as assessed on a "with/without investment" basis are much higher than the benefits of the investment as assessed on a "with/without consent" basis, as described below.

18. Unless otherwise stated, benefits in relation to a factor under the Act or regulations are as stated in the application.

Economic benefits: job opportunities

19. This factor is of very high importance. As stated in paragraph 10.19 of the application, the investment in the Dairy Land resulted in the employment of more than [REDACTED] full time equivalent staff. The staff are employed in a range of roles including machinery operations, administration, sales, marketing, planning, procurement, quality assurance, laboratory work, and accounts.

Economic benefits: export receipts

20. This factor is of high importance. As stated in paragraph 10.19 of the application, the establishment

[REDACTED]

GMP was one of seven infant formula manufacturers in New Zealand (out of a total of 19 manufacturers) that were recently nominated by the Ministry for Primary Industries ("MPI") for an audit by China's registration authority known as the Certification and Accreditation Administration of the Peoples Republic of China ("CNCA"). This industry audit by China has been extensively covered in the mainstream media. Whilst formal notification of the outcome of the audit will only be known at the end of this month, the feedback given by both MPI and CNCA during the close out meeting on the day of the audit was extremely positive. If the formal notification of the outcome confirms the informal feedback that GMP has received, management expect that GMP Dairy's exports earnings will more than double in the next 12 months, as GMP will be viewed as a trusted provider of high quality and safe dairy products.

21. The other benefits stated in the application in relation to this factor continue to apply.

Market competition/greater efficiency or productivity/enhanced domestic services

22. This factor is of high importance. As stated in paragraph 10.19 of the application, GMP is a significant producer of infant dairy formula, providing market competition to Fonterra, Danone, Dairy Goat, New Image Group, New Zealand New Milk and Sutton Group. In addition, as stated in the application, GMP Dairy is the largest buyer of Fonterra's organic milk, supporting a differentiated product in the New Zealand milk market.

23. [REDACTED] GMP Dairy is currently increasing the productivity and efficiency of its plant [REDACTED] blending and canning line [REDACTED] equipment and installation costs. The new canning line will double production capacity. The applicants submit that productivity has increased to a higher rate than would be possible in the counterfactual, because productivity would be zero if Mr Ye had not established the GMP Dairy business.

Previous investments

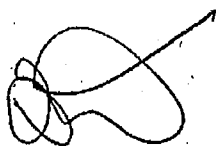
24. This factor is of high importance. The benefits in relation to the factor are as stated in paragraph 10.26 of the application, but the benefits related to GMP Dairy are not relevant to the assessment of benefits under the factor.

Significant Government policy or strategy

25. The factor is of high importance. The GMP Dairy business supports the NZ Inc Strategy, because it strengthens New Zealand's trade relationship with China. This benefit would not accrue if the GMP Dairy business had not been established.

Please contact us if you have any questions.

Yours sincerely

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Mr Qing Ye
On behalf of himself, GMP Pharmaceuticals and GMP Dairy

Released under the Official Information Act 1982



**Land Information
New Zealand**
Toitū te whenua

Our Ref: 201410049 and 201410050

07 April 2014

Buddle Findlay (Wellington)
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BY EMAIL

Attention: Yi-Shen Lau

Qing Ye - Application for consent

1. We refer to the above applications dated 28 March 2014. As the issues relating to the applications are similar we are sending one letter accepting the applications for assessment
2. The Overseas Investment Office has now completed its initial review of the applications and confirms that they have been accepted for assessment. A GST receipt for the application fees will be sent to you once the fees have been paid.

Further information

3. Our initial review of the application identified the following matters that need to be addressed:
 - (a) Paragraph 2.3 (footnote 1) of the application letter refers to "During this period". It is not clear which "period" is being referred to as the preceding paragraph mentions the family living in motels for 2-3 months. However the reference to \$477 million is not correct as the introduction of the \$477 million exemption for Australian non-government investors only came into effect on 1 March 2013. Nothing appears to turn on this as consent was not required for the acquisition of the land [REDACTED]
 - (b) We consider that at two applications are required. One application for the acquisition of 5-7 Averton Place and one for the acquisition of 10 Averton Place. Consequently two fees of \$19,524.44 are payable. We will assess whether further fees or penalties are payable once we have carried out a more in depth analysis of the applications.
 - (c) The application refers to a lease of 12 Averton Place by Mr Ye to GMP Pharmaceuticals and a lease of 5-7 Averton Place to GMP Pharmaceuticals. The first lease expired on 31 March 2010 and the second lease on 18 March 2010. The two properties were then leased to GMP Dairy and to GMP Pharmaceuticals from 1 April 2012 for periods of 5 year plus rights of renewal. Kindly provide information on the status of the properties between the expiry of the leases in 2010 and the new leases in 2012.

- (d) We note that the counterfactual analysis does not address what would have happened without the investment. The references to what Mr Ye would do if consent were not granted do not meet the requirements for the counterfactual test. We suggest that further information be provided on the counterfactual and that the benefits claimed be measured against the counterfactual.

Timeframes for assessment

4. The Overseas Investment Office categorises applications into one of three categories according to the estimated time to process them. These categories provide a guide for how long it may take for a decision to be made. Set out below is the provisional categorisation for this application and the contact details of the Senior Solicitor to whom it has been allocated:¹

Provisional Categorisation: Category 3 (70 working days of active consideration by the OIO)

Allocated to: Tyne Schofield
+64 4 460 0552
tschofield@linz.govt.nz

5. Please note that the timeframe **excludes** the time where the Overseas Investment Office is waiting for the applicant to provide further information and time spent consulting with third parties. Please refer to our website for further information on the assessment process and assessment timeframes.
6. Tyne will be in contact with you once a full analysis of the application has been completed or if any further information is required.

Yours sincerely



David Viviers
Team Manager
Overseas Investment Office

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¹ Categorisation and allocation details are subject to change.



28th March 2014

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Minister of Finance
Minister of Land Information
Parliament Buildings
Wellington

c/o Annelies McClure
Manager
Overseas Investment Office
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Wellington

MR QING YE, GMP PHARMACEUTICALS LIMITED AND GMP DAIRY LIMITED – APPLICATION UNDER THE OVERSEAS INVESTMENT ACT 2005 AND OVERSEAS INVESTMENT REGULATIONS 2005 – CONSENT TO ACQUIRE SENSITIVE LAND – AVERTON PLACE, EAST TAMAKI, AUCKLAND

1. Introduction

- 1.1 This is an application by Mr Qing Ye (known as Karl Ye), and two companies wholly owned by Mr Ye – GMP Pharmaceuticals Limited ("**GMP Pharmaceuticals**") and GMP Dairy Limited ("**GMP Dairy**") for consent to acquire interests in land located at Averton Place, East Tamaki, Auckland.
- 1.2 The relevant land is all adjoining and located at Averton Place. Unfortunately, the request for consent is largely made on a retrospective basis.
- 1.3 Mr Ye and both of the relevant companies are overseas persons as defined in section 7(2) of the Act. Mr Ye is an Australian citizen and at all material times was not ordinarily resident in New Zealand, and the relevant companies are incorporated in Australia. The background to this application and the reasons why consent was not sought for the acquisition of some earlier transactions is set out below.
- 1.4 Given that Mr Ye is the sole shareholder and director of GMP Pharmaceuticals, that GMP Pharmaceuticals is the sole shareholder of GMP Dairy, and that Mr Ye is the sole director of GMP Dairy, Mr Ye submits that he is the relevant overseas person in terms of section 15 of the Act. Further, this application covers all relevant transactions. Mr Ye considers that this is likely to make the OIO's analysis more straightforward, given that the rationale and benefits for the above investments are essentially the same for each investment, and if consent is not granted in respect of any one investment, each other investment will be significantly affected.

2. Background

- 2.1 Mr Ye is an Australian citizen and was born on 9 June 1965. On 30 May 2002 Mr Ye acquired approximately 0.9418 hectares of land at 12 Averton Place (the "**Pharmaceutical Land**"). The acquisition did not require consent under the Overseas Investment Act 1973, because the land was not sensitive under that Act. A certificate from Port Glen Limited verifying that this is the case is attached at Appendix 1.

2.2 Mr Ye's family, who had been residing in Australia, migrated to New Zealand to join Mr Ye shortly after that acquisition, at the end of 2002. [REDACTED]

2.3 During this period, Mr Ye set up GMP Pharmaceuticals Limited and established the business.¹ This included arranging for a pharmaceutical manufacturing facility to be constructed on the land. Mr Ye also had similar business interests in Australia at that time, but the New Zealand venture quickly took off and, by 2005, became Mr Ye's largest investment interest.

2.4 [REDACTED]

2.5 On 1 April 2009, Mr Ye leased the Pharmaceutical Land to GMP Pharmaceuticals for a 12 month period.² On 27 July 2009, Mr Ye entered into a sale and purchase agreement for approximately 0.8988 hectares of land adjoining the Pharmaceuticals Land, at 5-7 Averton Place (the "Dairy Land"). On 19 September 2009, Mr Ye settled the acquisition of the Dairy Land and immediately leased that land to GMP Pharmaceuticals for a 6 month period.³ Mr Ye then invested in the construction of an advanced dairy processing facility on that site. The Dairy Land was (and remains) sensitive, but no consent was sought prior to its acquisition.

2.6 On 21 December 2010, Mr Ye set up GMP Dairy Limited, which is now a wholly owned subsidiary of GMP Pharmaceuticals (rather than being directly owned by Mr Ye), to carry out the dairy operations aspect of the business. The Dairy Land is sensitive because, while the land is located in an industrial area, the land adjoins land that falls into clause 2 of the OIO's list published under section 37. Specifically, the adjoining land provides public access to a natural resource, (part of the tidal Tamaki River, an arm of the Waitemata Harbour).

2.7 On 1 April 2012, Mr Ye leased the Dairy Land to GMP Dairy and the Pharmaceutical Land to GMP Pharmaceuticals. The leases were part of a general restructure of Mr Ye's business in order to separate the dairy operations from the pharmaceutical operations, following the rapid growth of the dairy operations. Each lease was for a term of 5 years, with a right to renew each lease for two further 5 year periods.

2.8 In 2013, Mr Ye approached Buddle Findlay for general commercial advice. In the course of providing those services, Buddle Findlay identified that consent had not been sought under the Act for any of the above transactions.

2.9 Mr Ye also advised Buddle Findlay of a proposed acquisition by GMP Pharmaceuticals of a property at 10 Averton Place, which adjoins Mr Ye's two existing properties there. The opportunity to purchase 10 Averton Place came about because of the friendship between Mr Ye and Mr Stringer, the owner of that property, through both parties being commercial neighbours for a long time.

¹ With reference to section 13(1)(b) of the Act, expenditure on establishing the business did not exceed \$477 million.

² The lease expired on 31 March 2010.

³ The lease expired on 18 March 2010.

- 2.10 Unfortunately, the sale and purchase agreement for 10 Averton Place, which was executed on 30 October 2013 was not initially made conditional on OIO consent, although the parties have now agreed to vary the agreement so that the acquisition is conditional on OIO consent. Mr Ye now seeks to ensure that he and his companies are in a position of compliance with the Overseas Investment Act.
- 2.11 A table setting out the relevant transactions made by Mr Ye, GMP Pharmaceuticals and GMP Dairy is attached as Appendix 2.
- 2.12 Accordingly, this is a joint application by Mr Ye, GMP Dairy, and GMP Pharmaceuticals, and relates to the following transactions:
- (a) Mr Ye's acquisition of approximately 0.8988 hectares of land at 5-7 Averton Place (the Dairy Land) on 27 July 2009 (retrospective);
 - (b) The lease between Mr Ye and GMP Dairy for the Dairy Land dated 1 April 2012 (retrospective);
 - (c) The proposed acquisition by GMP Pharmaceuticals of approximately 0.7450 hectares of land at 10 Averton Place, East Tamaki, Auckland.
- 2.13 In relation to the lease by Mr Ye for the Dairy Land, while the disposition of a leasehold interest by an owner to a 100% subsidiary would ordinarily be exempt from the requirement for consent by virtue of regulation 33(1)(a), Mr Ye has included the lease interest in the request for consent out of given that Mr Ye's original acquisition of the land occurred without having obtained consent and that the OIO may therefore take the view that the lease compounded the initial breach. However, he would be interested in the OIO's views as to whether consent is required for that transaction.
- 2.14 Since its inception, GMP has grown such that it now employs [REDACTED] full-time staff. The GMP group is a recognised leader and contributor to the New Zealand economy, with an annual turnover of [REDACTED] in 2008.
- 2.15 Mr Ye now seeks to ensure that his investments comply with the Overseas Investment Act. Mr Ye looks forward to contributing further to the New Zealand economy through his business interests here.

3. Reasons why consent was not sought

- 3.1 In relation to Mr Ye's acquisition of the Dairy Land on 27 July 2009, Mr Ye engaged professional legal advisors and purchased the property through a real estate agent. Neither set of advisors informed him of the need to seek consent under the Act. Because of that, it did not cross Mr Ye's mind that he should enquire further into Overseas Investment Act issues for the transaction, especially because no issues had previously arisen in relation to the initial purchase of the Pharmaceutical Land.
- 3.2 Furthermore, Mr Ye was under the mistaken impression that Australian citizens are automatically treated as New Zealanders once they arrive into New Zealand, (that is, Mr Ye was unaware of the difference between being entitled to be resident, in terms of immigration law, and the requirement to be a citizen of, or ordinarily resident in, New Zealand, under the Overseas Investment Act).

3.3 As a result, Mr Ye did not realise that consent was required until the matter was identified by Buddle Findlay in 2013.

3.4 This oversight was carried through into Mr Ye's lease of the Dairy Land on 1 April 2012.

3.5



3.6 However, as noted above, the parties have agreed to vary the sale and purchase agreement so that the acquisition is conditional on OIO consent. The parties are currently finalising the variation. A copy of the 30 October agreement and the variation will be sent to the OIO as soon as the variation has been executed.

4. Executive summary

4.1 The benefit to New Zealand criterion is addressed with particular reference to the following factors, each being of high importance, in the Act and the Overseas Investment Regulations 2005:

- (a) the overseas investment will, or is likely to result in increased export receipts for New Zealand exporters (section 17(2)(a)(iii));
- (b) the overseas investment will, or is likely to, result in increased processing of New Zealand's primary products (section 17(2)(a)(vi) of the Act);
- (c) the overseas investment will, or is likely to, result in other consequential benefits to New Zealand (regulation 28(a));
- (d) refusing the application for consent will or is likely to adversely affect New Zealand's image overseas or its trade or international relations (regulation 28(c));
- (e) the relevant overseas person has previously undertaken investments that have been, or are, of benefit to New Zealand (regulation 28(e));
- (f) the overseas investment gives effect to or advances a significant government policy or strategy (regulation 28(f)); and
- (g) the overseas investment will enhance the ongoing viability of other investments (regulation 28(g)).

4.2 Mr Ye also meets the other criteria for consent listed in section 16 of the Act, specifically:

- (a) Mr Ye has significant business acumen and experience that is directly relevant to the investment;

- (b) Mr Ye has demonstrated his financial commitment to the investment;
- (c) Mr Ye is of good character;
- (d) Mr Ye is not an individual of the kind referred to in sections 15 or 16 of the Immigration Act 2009.

4.3 Accordingly, it is appropriate for consent to be granted under the Act for Mr Ye to enter into the relevant transactions.

5. Applicants: Mr Qing Ye, GMP Dairy Limited, GMP Pharmaceuticals Limited

Mr Qing Ye

5.1 Mr Ye was born on 9 June 1965. He is an Australian citizen. A copy of Mr Ye's passport is attached as Appendix 3.

5.2 Mr Ye's residential address is [REDACTED]

5.3 Mr Ye has [REDACTED]

[REDACTED] He has more than 18 years of marketing and project management experience in the pharmaceutical and healthcare industries in China, Australia, and New Zealand. [REDACTED]

5.4 Mr Ye has demonstrated his business experience and acumen through his successful ventures in the pharmaceutical, healthcare and dairy industries in New Zealand. As mentioned above, Mr Ye is the sole shareholder of GMP Pharmaceuticals, a manufacturing company specialising in a range of pharmaceuticals, dietary supplements, natural health and dairy products. GMP Pharmaceuticals has been an extremely successful business venture in New Zealand, going from [REDACTED] employees in 2001 to over [REDACTED] full-time employees in 2013. Mr Ye is also the ultimate owner of GMP Dairy, which, despite being a young company, is now a growing exporter of products to China and other countries, and has [REDACTED] full-time employees.

5.5 GMP has won many significant business awards in New Zealand during recent years. In 2010 GMP won "Most Innovative Approach in International Business" at the New Zealand International Business Awards.

5.6 Mr Ye's curriculum vitae is attached as Appendix 4.

GMP Pharmaceuticals Limited

5.7 GMP Pharmaceuticals is a New Zealand Limited Company, incorporated in Auckland on 18 July 2001. Mr Ye is the sole shareholder. As mentioned above, GMP is a manufacturing company specialising in a range of pharmaceuticals, dietary supplements, and natural health products. The company also offers services such as product formulation, packaging solutions, label design, and shipping. GMP Pharmaceuticals is a Medsafe certified contract manufacturer.

5.8 GMP Pharmaceuticals started business activities in 2003 following increasing demand for New Zealand-made products. At the time, there were only 7 employees with near zero

infrastructure, limited machinery or tools, no established customers or suppliers, and very little know how or R&D capability. In order to establish the business, significant support was provided by Mr Ye and his family including investing their time to build the business and providing the initial funding for the business.

- 5.9 Significant financial, regulatory and systems support was provided by GMP Australia during that time, including standard operating procedures, formulation, and controls.
- 5.10 Less than a year after the establishment of GMP Pharmaceuticals, a company called Pan Pharmaceuticals, which at the time was the largest pharmaceutical company in Australia, collapsed as a result of investigations into quality and product safety issues. A major product recall was conducted and many pharmaceutical and nutraceutical companies incurred significant financial losses. Consequently, those companies looked for alternative suppliers outside Australia from which to source their products. This presented GMP with a significant opportunity to grow its business with the support of an already established and mature business in Australia.
- 5.11 Over the last 10 years, GMP Pharmaceuticals has established a good reputation in the local market and many overseas markets including Australia, China, Hong Kong, Korea and South-East Asia. GMP is well known in the industry as a "one stop contract manufacturer" for brand owners. GMP has had a lot of experience handling very sensitive and highly regulated products such as pharmaceuticals and restricted animal products. GMP handles more than 1500 different products and has over 250 active customers.
- 5.12 GMP is now New Zealand's largest contract manufacturer of supplements, and is a leading contract manufacturer of pharmaceuticals, dietary supplements, dairy products, restricted animal products, early childhood nutritional milk formulas and organic foods.
- 5.13 GMP Pharmaceuticals has been an extremely successful business venture in New Zealand, going from 7 employees in 2001 to over 190 employees in 2013. The company has won several prestigious business awards, including the highest overall prize in the 2009 Indian Business Awards, the prize for Best Large Business at the 2012 Indian Business Awards, NZTE award in 2010 as stated above and more recently New Zealand China Trade Association awards and Westpac business awards in 2013. All events were attended by senior government officials which have included Prime Minister John Key, Deputy Prime Minister Bill English, and Auckland Mayor Len Brown at various times.
- 5.14 A copy of the GMP Pharmaceuticals' latest annual report and financial statements is attached as Appendix 5. Those reports and statements include GMP Dairy's operations, because GMP's dairy business was run as a division of GMP Pharmaceuticals Limited until 1 April 2013, when the assets relating to GMP's dairy business were transferred to GMP Dairy. An ownership structure diagram for the GMP Group is attached at Appendix 6.

GMP Dairy Limited

- 5.15 GMP Dairy is a New Zealand Limited Company, incorporated on 21 December 2010 at Auckland. GMP Pharmaceuticals is the sole shareholder of GMP Dairy. As stated above, GMP Dairy was run as a division of GMP Pharmaceuticals until 1 April 2013. GMP Dairy provides pharmaceutical grade value-added dairy products using advanced dairy processing and testing facilities. The

company's products include wet blend early childhood nutrition formulas, infant formula, protein based food replacements, and dairy based nutritional supplements. The company also provides manufacturing, quality assurance, export and regulatory services.

- 5.16 GMP Dairy's dairy processing facility (situated on the Dairy Land at 5-7 Averton Place) was officially opened by Prime Minister John Key on 29 July 2012. The facility particularly addresses a rapid increase in global demand and a shortage of high quality wet blend dairy infant formula products. The company currently has the capacity to produce over 20 million cans of infant formula each year and exports, primarily to China. GMP Dairy is the only company to hold certifications from the Chinese government authorities directly with respect to production of organic products. It also holds Good Manufacturing Practice certification. GMP Dairy exports its products under its own brand names Cowala and GMP, as well as manufacturing products under contract for other brands.
- 5.17 As stated above, GMP Dairy does not have separate annual reports and financial statements, because it was run as a division of GMP Pharmaceuticals until 1 April 2013. Separate reports for GMP Dairy will be prepared for the financial year ending 31 March 2014.

Contact details

- 5.18 Questions relating to this application should be directed in the first instance to the legal advisors for the applicants, whose address is also the address for service for all three applicants in New Zealand:

Buddle Findlay
State Insurance Tower
1 Willis Street
PO Box 2694
Wellington 6140

Attention: Susie Kilty / Grant Dunn

Telephone: [REDACTED]

Facsimile: 04 462 0856 / 09 363 0630

Email: susie.kilty@buddlefindlay.com / grant.dunn@buddlefindlay.com

- 5.19 The contact details for GMP Dairy and GMP Pharmaceuticals, which is also the address of GMP Pharmaceuticals' registered office in New Zealand, is:

GMP Pharmaceuticals Limited
12 Averton Place
East Tamaki
Auckland 2013
New Zealand

Telephone: (09) 272 1111

Email: [REDACTED]

- 5.20 The address of GMP Dairy's registered office in New Zealand is:

GMP Dairy Limited
5 Averton Place
East Tamaki
Auckland 2013

New Zealand

Telephone: (09) 272 1111

Email: [REDACTED]

5.21 As stated above, the applicants submit that the relevant overseas person for the purposes of the application is Mr Ye.

6. Vendors – Dairy Land – Colin Bernard and Valerie Kay Flavell and Brian Anthony Teare

6.1 The vendors for the Dairy Land at 5 Averton Place were Colin Bernard and Valerie Kay Flavell (as to a half share) and Brian Anthony Teare (as to a half share). Given the lapse of time since the acquisition, Mr Ye does not have any other information about the vendors.

6.2 Further, Mr Ye does not have a vendor statement setting out the reasons for that sale. However, Mr Ye's understanding is that 5 Averton Place was put on market for sale by the vendor because National Starch, who previously leased the property from the vendors, did not wish to extend their lease. With GMP's business growing quickly, GMP bought the land with a view to having space to expand the business, which subsequently occurred with establishment of GMP Dairy.

7. Vendor – 10 Averton Place – Mr Murray Stringer

7.1 The vendor for the land at 10 Averton Place is Mr Murray Stewart Stringer. Mr Stringer is a New Zealand citizen. No consent was required for the vendor to acquire the land.

7.2 Mr Stringer is the owner of Stringer Engineering, which manufactures precision components using CNC and other production equipment.

7.3 A statement from Mr Stringer setting out the circumstances and reasons for selling the property at 10 Averton Place is attached as Appendix 7.

8. Nature of the Investment

8.1 As stated above, this is a joint application by Mr Ye, GMP Dairy and GMP Pharmaceuticals. The application relates to the transactions set out below:

(a) Mr Ye's acquisition of approximately 0.8988 hectares of land at 5-7 Averton Place (the Dairy Land) on 27 July 2009. A copy of the relevant sale and purchase agreement for the land is attached as Appendix 8. [REDACTED]

(b) The lease between Mr Ye and GMP Dairy for the Dairy Land dated 1 April 2012. A copy of the lease is attached as Appendix 9. [REDACTED]

(c) The proposed acquisition by GMP Pharmaceuticals of approximately 0.7450 hectares of land at 10 Averton Place, East Tamaki, Auckland. The agreed purchase price is NZ\$1,280,000 and will be funded from GMP Pharmaceuticals' balance sheet.

8.2 Consent is required under the Overseas Investment Act because Mr Ye is an Australian citizen and, at all material times, was not ordinarily resident in New Zealand. Therefore, Mr Ye, and his wholly-owned companies, are each overseas persons.

Land details

8.3 The details of the land that is the subject of the application are as follows:

Certificate of Title	NA53D/1046
Land Area	0.8988 hectares more or less
Legal Description	Lot 1 DP 99051
Estate	Fee Simple
Location	5-7 Averton Place, East Tamaki, Auckland

Certificate of Title	NA531914
Land Area	0.7450 hectares more or less
Legal Description	Lot 1 DP 433189 and a half share in Lot 3 DP 433189
Estate	Fee simple
Location	10 Averton Place, East Tamaki, Auckland

8.4 Copies of the certificates of title for the land are **attached** as Appendix 10. Quickmap and Google Earth Maps are also attached as Appendix 11.

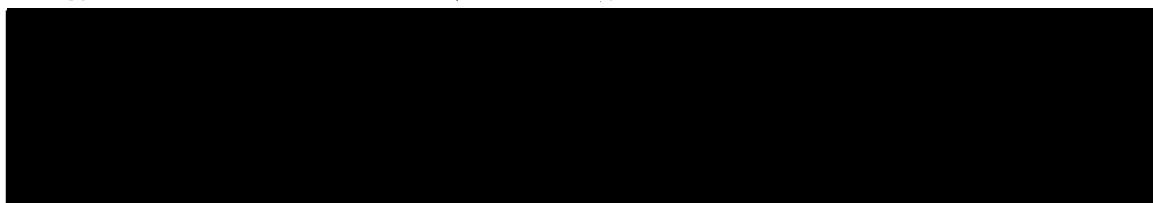
8.5 Sensitive land certificates for the land issued by Port Glen Limited are **attached** as Appendix 12. The land is sensitive in terms of Schedule 1 of the Act because it adjoins land that is listed, or in a class listed, as a reserve, a public park, or other sensitive area by the regulator under section 37 of the Act. Specifically, the land adjoins a Local Purpose (Esplanade) Reserve vested in Auckland Council, as well as other esplanade reserves.

Proposed use of the land – Dairy Land (5-7 Averton Place)

8.6 The current use and proposed use of the land is set out in the table below.

Region: East Tamaki, Auckland

Type: Freehold



Proposed use of the land – 10 Averton Place

8.7 Mr Ye intends that the land at 10 Averton Place will be used to give GMP Pharmaceuticals the option of expanding its business. In the medium to long term, GMP intends to build a further pharmaceutical plant or a warehouse on the land. The current use of the land and the proposed use of the land is set out in the table below. Because the future use of the land will depend on the development of the business, it is not possible to provide exact indications about what the land will be used for. However, GMP expects to be able to make decisions on land use in the next year.

Region: East Tamaki, Auckland

Type: Freehold

Land use	Current Use (ha)	Proposed Use (ha)
Pharmaceuticals manufacturing facility or warehouse	0	Up to 0.7450 ha
Car parking	0.1000	As required under local Council rules
Vacant/open space	0.5450	
Dwelling	0.1000	
Total	0.7450	0.7450 ha

Other details – farm land

8.8 The land does not include "farm land", as defined in the Act, because it is not over 5 hectares and is not used exclusively or principally for agriculture, horticultural, or pastoral purposes, or for the keeping of bees, poultry, or livestock.

9. Rationale for the investment

Dairy Land (5-7 Averton Place)

9.1 The rationale for investing in the Dairy Land was that Mr Ye was considering expanding his business and specifically, Mr Ye wished to establish an advanced dairy processing facility on the land. Mr Ye considered that there was an opportunity in the New Zealand market for such a business to succeed. Following the 2008 melamine issue in China, there was high demand in China for safe and good quality dairy products, particularly infant formula, manufactured in countries such as New Zealand.

10 Averton Place

9.2 The rationale for the proposed investment at 10 Averton Place is that the pharmaceutical business is growing and is likely to need land on which to expand. GMP Pharmaceuticals is already space-constrained with some staff working in temporary facilities. As 10 Averton Place adjoins the existing pharmaceutical land, the acquisition of 10 Averton Place would provide GMP Pharmaceuticals with the most suitable option to expand the business.

9.3 The investment is part of Mr Ye's wider plan to expand his pharmaceutical business interests in New Zealand. While Mr Ye has no specific plans for the land, there is significant option value in securing the adjoining land. Absent expanding onto that land, Mr Ye would be faced with duplicate establishment costs to construct a new facility elsewhere, and the option of establishing a new facility in Australia would become a reasonable alternative.

10. Investment criteria

Business experience and acumen (section 16(1)(a))

10.1

[REDACTED]

He has more than 18 years of marketing and project management experience in the pharmaceutical and healthcare industries in China, Australia, and New Zealand.

[REDACTED]

10.2 Mr Ye has demonstrated his business experience and acumen through his successful ventures in the pharmaceutical and healthcare industries in New Zealand. As mentioned above, Mr Ye is the sole shareholder of GMP Pharmaceuticals, a manufacturing company specialising in a range of pharmaceuticals, dietary supplements, natural health and dairy products. GMP has been an extremely successful business venture in New Zealand, going from 7 employees in 2001 to over 250 employees in 2013. GMP Pharmaceuticals has innovative export solutions, known as the AUNEW system, which has been well recognised through multiple business awards.

10.3 Similarly, Mr Ye is the ultimate owner of GMP Dairy which,

[REDACTED]

10.4 As stated above, Mr Ye's curriculum vitae is attached as Appendix 4.

10.5 The above experience and acumen is relevant to the transactions for which consent is required, because the continuing operation of the business, and the proposed expansion of the businesses, will require the same expertise.

Demonstrated financial commitment (section 16(1)(b))

- 10.6 In relation to the transactions which have already occurred, Mr Ye has demonstrated his financial commitment by purchasing the relevant land and investing significant resources into the dairy business (including infrastructure, facilities, and staff) in order to ensure its success. His continuing interest in supporting and expanding that business and the pharmaceutical business further demonstrates his financial commitment to the investments he has made.
- 10.7 In relation to the proposed acquisition of land at 10 Averton Place, Mr Ye has demonstrated financial commitment to the investment by:
- (a) entering into a contract to purchase the land;
 - (b) paying a deposit to the vendor, Mr Stringer, of 10% of the sale price;
 - (c) engaging specialist advisers to advise on the transaction.

Good character (section 16(1)(c) and (d))

- 10.8 Mr Ye's good character is supported by the various awards that his companies have received, which support Mr Ye's good standing in the New Zealand business community. Mr Ye is also a Justice of the Peace in New South Wales, a position that requires good character
- 10.9 Mr Ye acknowledges that the transactions relating to the relevant Land for which consent was required and not sought is unfortunate and regrettable. Section 3 above explains the reasons why consent was not sought at the time the relevant investments were made. Mr Ye does not consider that the initial failure to apply for consent diminishes his good character.
- 10.10 Mr Ye is happy to answer any further questions the OIO may have, and to provide character references if required. A template of a certificate of good character in relation to Mr Ye is attached as Appendix 13, including confirmation that Mr Ye is not an individual of the kind referred to in sections 15 or 16 of the Immigration Act 2009. Mr Ye will provide the completed certificate when requested by the OIO.

Citizenship/residence (section 16(1)(e)(i))

- 10.11 Mr Ye is not a New Zealand citizen. Although Mr Ye has spent over 6 months in New Zealand over the past 12 months, his long-term intention is to remain ordinarily resident in Australia.
- 10.12 Therefore, this application addresses the factors set out in section 17(2) and regulation 28. As required, Mr Ye has identified what he considers to be the importance of each factor (where relevant).

Counterfactual test

- 10.13 As a result of the High Court decision in *Tiroa and Te Hape B v Chief Executive of Land Information* (High Court, Wellington, 15 February 2012), it is necessary for the applicant to identify a counterfactual in order to assess the benefits of the investment to New Zealand. That counterfactual is set out below.

10.14 The land at Averton Place on which the dairy facility is located is integral to the operation of Mr Ye's dairy interests in New Zealand, and since the land was acquired significant investment has been made into the infrastructure and facilities on the land. If consent is not granted for the acquisition of the Dairy Land (and related lease) and for the acquisition of 10 Averton Place, this will signal to Mr Ye that his investment in New Zealand is not welcome.

10.15 Mr Ye has identified 10 Averton Place as the most logical location for the expansion of the current GMP operations. A refusal to grant consent for that land would cause Mr Ye to re-evaluate the future of both the dairy operation and the pharmaceutical operation in New Zealand over the medium to long term. In the short term, Mr Stringer would continue to reside on the land pending the identification of an alternative buyer of the land. The land has not been advertised for sale. While there has been some interest in the land, Mr Stringer has not received any firm offers to purchase.

10.16 If retrospective consent is not granted for the acquisition of the Dairy Land (and/or related lease), Mr Ye would likely be forced to sell the GMP Dairy business, along with the Dairy Land. That is because it is unlikely that Mr Ye would get consent for another New Zealand site on which to base the business, if consent is not granted under this application. Mr Ye would also consider moving the business offshore, but such a course of action is unlikely as it would be very expensive and would disrupt supplier and client contracts.

10.17 If GMP Dairy's business is sold, it would be sold as a going concern, including the sale of GMP's operations, machinery, employees, documentation systems and other intellectual property. GMP's view is that the most likely purchaser would be an as yet unidentified large Chinese public company or state owned enterprise.

Benefit to New Zealand (section 16(1)(e)(ii))

10.18 The land to which this application relates does not exceed five hectares. Therefore, the applicants are required to show that the investments will benefit New Zealand, but is not required to show that the benefit is substantial or identifiable.

Economic benefits (section 17(2)(a))

10.19 In relation to the factors specified in section 17(2)(a), Mr Ye advises as follows:

- *Job opportunities:* The Ministers are likely to view this factor as being of moderate importance. Mr Ye's track record shows that he has been able to create and sustain job opportunities. Mr Ye's investment in the Pharmaceutical Land and the Dairy Land to date has resulted in a significant increase in new job opportunities since the land was acquired. As mentioned above, GMP Pharmaceuticals now employs more than [REDACTED] full-time equivalent staff and GMP dairy employs more than [REDACTED] full-time equivalent staff. The staff are employed in a range of roles, including machinery operation, administration, sales, marketing, planning, procurement, quality assurance, laboratory work, and accounts.

As stated above, GMP Pharmaceuticals is already space-constrained with some staff working in temporary facilities. Expansion into 10 Averton Place will free up space in the existing site, as well as create new jobs on the new site if a warehouse or new plant is constructed. For

example, if the land is used for a warehouse, it is likely that up to five jobs will be created. Based on the number of staff employed at the current plant, GMP estimates that 60-80 jobs would be created if a new plant is built.

- *New technology and business skills:* This factor is relevant to the application, but is of low importance given there are no firm plans for expansion. Mr Ye has a track record of introducing new technology and is likely to continue to do so in the future. For example, GMP Pharmaceuticals has developed the AUNEW system, which was introduced by the company in 2005 and, as far as Mr Ye is aware, is a unique and innovative export system aimed at assisting small and medium size businesses in Australia and New Zealand to access the Chinese markets. The AUNEW system consolidates many export resources into a single system, including regulatory, logistical, anti-counterfeiting, and distribution resources. If GMP's dairy business is sold, GMP is of the view that further new technology is unlikely to be introduced into New Zealand.
- *Export receipts:* The OIO is likely to view this factor as being of high importance. Mr Ye has a track record of being able to grow a business's export receipts. This is demonstrated through the growth that the pharmaceutical and dairy businesses have experienced in recent years. Mr Ye's investments in the land at Averton Place have resulted in an increase in export receipts for New Zealand. In relation to Mr Ye's investment in the Pharmaceutical Land, the manufacturing facility there exports more than 1500 different products to Australia, China, Hong Kong, Korea, and Southeast Asia.

[REDACTED]

GMP Dairy also manufactures whole milk, skim milk, pregnancy formulas, colostrums, whey protein, goats' milk, nutritional blends, yoghurt powder and organic products.

[REDACTED]

Chinese officials are currently conducting an audit and registration process for manufacturers of milk products, in particular infant milk formula. GMP anticipates that this will lead to fewer brands being eligible for export to China. That will mean that GMP will have an opportunity to grow their market share. In the counterfactual, with GMP Dairy sold to an (as yet unidentified) third party, GMP is firmly of the view that this uplift in exports is unlikely to occur. The uplift relies not only on GMP's brand/business but also Mr Ye's relationships within China. Mr Ye is a recognised business

person with significant Chinese connections. For example, Mr Ye recently secured an agreement with a significant state-owned enterprise in China for the exclusive distribution of organic milk. He has in the past accompanied the Prime Minister on official New Zealand delegations to China.

The investment in the land at 10 Averton Place is likely to result in an increase in export receipts because it will allow GMP's pharmaceutical business to grow, leading to a higher capacity to produce products for export.

- *Market competition/greater efficiency or productivity/enhanced domestic services:* The OIO is likely to view this factor as being of moderate importance. Mr Ye's investments in the land at Averton Place have resulted in an increase in market competition in the pharmaceuticals manufacturing and dairy processing markets. GMP is a significant producer of infant dairy formula, providing market competition to Fonterra, Danone and Sutton Group. GMP takes a pharmaceutical approach to its infant formula production and documentation, which sets it apart from other the standard food-grade operations.

GMP Dairy also produces other specialty milk products such as colostrum, whey protein and goat's milk. GMP Dairy is currently increasing the productivity and efficiency of its current plant. It is currently installing a new canning line, which will double the production capacity of GMP Dairy. GMP considers that, with Mr Ye's experience and contacts, GMP Dairy will be able to increase productivity to a higher rate than would be possible in the counterfactual. GMP acknowledges that this is a difficult factor to assess given that Mr Ye does not wish to exit the business.

- *Additional investment for development purposes:* This factor is not relevant to the investment. Funds for future investments are likely to come from operational cash flows and local bank borrowing.
- *Primary products:* The OIO is likely to view this factor as being of high importance. Mr Ye's investment in the Dairy Land has led to increased processing in New Zealand of value added ready to market finished products sourced from New Zealand milk, due the establishment of the dairy processing facility and its attendant success.

GMP's business model is based on identifying, processing and transforming food and nutritional ingredients into high value finished products, especially for the Asia markets, where there is high demand for those products for cultural or nutritional benefits. The company started by identifying ingredients from animal products such as bee products, shark cartilage and shark liver oil, fish oil, deer antler, animal by-products and green lipped mussel extracts; and later into herbal supplements such as bilberry, blueberry, green barley and grape seed extracts. Since 2001, GMP has been paying more attention on dairy ingredients such as colostrums, lactoferrin, milk calcium and infant formula. Organic milk is the company's most recent project under its business model.

GMP intends to continue to introduce more valued added finished products as it develops its technical skills and improves its understanding of regulatory requirements in overseas markets.

Indigenous vegetation/fauna (section 17(2)(b))

10.20 This factor is not relevant. There are no areas of significant indigenous vegetation or habitats of indigenous fauna on the land at present.

Wildlife (section 17(2)(c))

10.21 This factor is not relevant. There are no areas of significant habitats of trout, salmon or wildlife protected under section 3 of the Wildlife Act 1953, or game as defined in section 2(1) of that Act, on the land at present.

Historic heritage (section 17(2)(d))

10.22 This factor is not relevant. The land has been investigated by Port Glen Limited and no registered historic places have been identified.

Walking access (section 17(2)(e))

10.23 This factor is not relevant. There do not appear to be any special features on the land at present (such as scenic or amenity attributes) that would warrant the provision of public walking access. In addition, as noted, much of the land is currently being used for industrial purposes, with both a pharmaceutical manufacturing and dairy processing facility on the land. Accordingly, it is not appropriate for the public to be given walking access to those sites.

10.24 The reserves adjoining the land provide public access to the nearby Otara Creek arm of the tidal Tamaki River, which is part of the Waitemata harbour. The applicants understand that access to the Tamaki river is also available at other points on the river.

Offer to sell special land to the Crown (section 17(2)(f))

10.25 This factor is not relevant to the application. As documented in the attached certificate from Port Glen Limited, (Appendix 12), the properties does not include any special land.

Other benefits to New Zealand (section 17(2)(g)) and regulation 28 of the Overseas Investment Regulations 2005)

10.26 In relation to the factors specified in regulation 28, GMP advises as follows:

- *Consequential benefits (regulation 28(a)):* The OIO is likely to consider this factor to be of high importance. As has been demonstrated above, Mr Ye has a continuing interest in furthering his business interests in New Zealand. If consent is granted, he is likely to continue to seek further investment opportunities in New Zealand using his business model of identifying and adding value to undervalued food and nutritional ingredients. If consent is not granted, Mr Ye would pursue similar opportunities overseas.

The GMP Group has already demonstrated willingness for its senior people to contribute and participate more widely in the sector. Minesh Patel (our General Manager) is a board member

of Natural Products New Zealand. GMP is also a member of Infant Nutritional Council, Organic Exporters' Association and Food and Grocery Council.

- *Key person in a key industry (regulation 28(b))*: This factor is not relevant to the application.
- *Overseas image/trade relations/international relations and international obligations (regulation 28(c))*: The OIO is likely to consider this factor to be of high importance. If consent for this investment is not granted, it would be likely to adversely affect New Zealand's image amongst Australian and Chinese businesses. This is particularly the case given the public support (mentioned above) that Prime Minister John Key and other senior government officials have shown for Mr Ye's business activities in New Zealand. GMP is involved in promoting business relationships between China and New Zealand. For example, GMP has hosted business delegations from China, and, as previously noted, Mr Ye has accompanied the Prime Minister on official delegations to China.

The Ministry of Foreign Affairs and Trade website notes that China is New Zealand's fourth largest trading partner, taking over \$1.6 billion of New Zealand's merchandise products and over \$1 billion of services. The website also refers to New Zealand's ground-breaking free trade agreement with China, and the expectations that the agreement will continue to lead to benefits for New Zealand manufacturers, and to defend New Zealand's market shares – particularly in areas where China is New Zealand's largest international customer (for example, for milk powder).

The Investment Protocol for the New Zealand-Australia Closer Economic Relations Trade Agreement (CER) came into force on 1 March 2013. The Protocol is intended to maintain the status of the CER as the highest quality trade agreement either of the parties have with any trading partner. The Ministry of Foreign states that Australia is New Zealand's largest trading partner, taking over 23% of all New Zealand exports.

- *Other significant investments by vendors (regulation 28(d))*: This factor is not relevant.
- *Previous investments (regulation 28(e))*: The OIO is likely to consider this factor to be of high importance. Mr Ye has made significant previous investments in New Zealand, as demonstrated by his level of commitment to GMP Pharmaceuticals and GMP Dairy, and the success that those companies have achieved.

Mr Ye has made significant investments to develop AUNEW, a "one stop export to China" business system, to facilitating the exports to China from New Zealand and Australia. The AUNEW system consolidates many export resources into a single system, including regulatory, logistical, anti-counterfeiting, and distribution resources. Many New Zealand exporters have benefited from this innovative system, and AUNEW has won several awards, including Exporter of the Year at the 2011 Endeavour Awards and the Global Integration Award at the

2009 Endeavour Awards. Endeavour Awards is the primary awards system for the Australian manufacturing industry.

- *Significant government policy or strategy (regulation 28(f))*: This factor is relevant to the application and is of high importance.

The investment gives effect to and advances the NZ Inc strategy, a government strategy to strengthen New Zealand's economic, political and security relationship with China.⁴ Prime Minister John Key states that the strategy is "built around developing the trade and economic links between New Zealand and the People's Republic of China". Prime Minister John Key recently concluded his fourth official visit to China since taking office. Mr Key's visit was largely focused on trade between New Zealand and China, with a specific focus on the agricultural and dairy sectors.

One of the strategic goals of the NZ Inc strategy is to grow high quality science and technology collaborations with China to enhance commercial opportunities. The GMP business directly supports the NZ Inc strategy. GMP has a growing business exporting goods to China. China has recently moved to a two child policy for families in which one of the parents is an only child, which may present additional growth opportunities for the export of infant milk formula. In addition, GMP Dairy is the only company to hold certifications from the Chinese government authorities directly with respect to production of organic products, and Mr Ye actively facilitates business relationships between New Zealand and China, especially in the dairy export industry, for example, by hosting Chinese delegations. These business relationships are likely to be lost if Mr Ye is forced to sell the dairy business.

In December 2013 the government committed to spending \$227 million over 10 years to "enhance primary sector production and productivity while maintaining our land and water quality for future generations".⁵ GMP notes that its innovative approach to dairy exports has already enhanced primary sector production and productivity.

The Ministry of Primary Industries recently released its statement of intent for 2013-2018.⁶ The work that GMP does at its production facilities closely aligns with several of the key goals outlined in this document. For example, GMP is able to maximise New Zealand's export opportunities because of its close and unique ties with China and its ability to find markets for new and innovative products. The value adding that GMP does to New Zealand's dairy industry also helps to improve the productivity of the primary industries sector, another key goal in the statement of intent.

- *Ongoing viability of other investments (regulation 28(g))*: The OIO is likely to consider this factor to be of high importance. In relation to the proposed purchase of the land at 10 Averton Place, the land is neighbouring land to Mr Ye's original purchase of the Pharmaceutical Land at 12 Averton Place. The purchase of the land will allow Mr Ye to extend the operations of GMP Pharmaceuticals. Failure to grant consent will create significant uncertainty as to the viability of both the dairy and pharmaceuticals businesses in New Zealand.

⁴ <http://www.mfat.govt.nz/NZ-Inc/6-Opening-doors-to-China/index.php>.

⁵ See <http://beehive.govt.nz/release/804m-seven-national-science-challenges>.

⁶ Available at <http://www.mpi.govt.nz>.

- *New Zealand control of strategically important infrastructure (regulation 28(h))*: This factor is not relevant to the application. There is no strategically important infrastructure on the relevant land.
- *Promotion of New Zealand's economic interests (regulation 28(i))*: The OIO is likely to consider this factor to be of moderate importance. In relation to Mr Ye's investment in the Dairy Land, the investment has contributed to New Zealand becoming a more reliable supplier of dairy products, in particular wet blend early childhood nutrition formulas. The importance of New Zealand's reliability as a supplier of quality child nutrition formula was illustrated by the Fonterra botulism scare in August 2013, which had far-reaching effects on New Zealand's dairy industry.
- *Participation or oversight by New Zealanders (regulation 28(j))*: The OIO is likely to consider this factor to be of moderate importance. Both GMP Pharmaceuticals and GMP Dairy are incorporated in New Zealand, and have their principal place of business in Auckland. All of the senior management team of GMP Pharmaceuticals and GMP Dairy are New Zealanders.

11. Statutory declarations

- 11.1 We will provide a statutory declaration verifying that the information contained in this application is true and correct, in the form set out in Appendix 14, upon request.

12. General

Confidentiality

- 12.1 The proposed investment, and the information contained in this application, is commercially sensitive. Accordingly, the applicants seek confidentiality for all information contained in, attached to, or provided with or in relation to this application.
- 12.2 If a request for information is received under the Official Information Act 1982, in relation to either the fact of the application or the information contained in the application, the applicants request that the information is withheld under that Act. The applicants also request that they be notified of any request made under the Official Information Act for information in this application, or in relation to the existence of this application, and be given the opportunity to comment as to whether the information remains commercially sensitive at the time the request is made.

Application fee

- 12.3 This application letter relates to a number of matters. However, the assessment of consent factors relies on the same information. Accordingly, this application covers all the relevant matters.
- 12.4 The regulations are not clear on the fee payable in such circumstances. The OIO will be the decision-maker in respect of each matter covered [REDACTED]. [REDACTED] However, please advise our solicitors of the fee payable and a cheque for the correct amount will be forwarded.

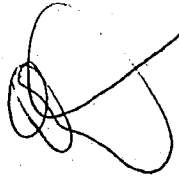
Date for determination

12.5 We would appreciate the OIO considering this application at its earliest convenience. The condition in the variation to the sale and purchase agreement that relates to obtaining consent under the OIA for the land at 10 Averton Place is required to be satisfied by 31 August 2014. The applicants therefore request that consent (at least for that acquisition) be granted by that date and that they be informed at the earliest opportunity if this timeframe is unable to be met.

Further information

12.6 Please contact our solicitors if you require any further information (contact details are set out at paragraph 5.20 above).

Yours sincerely

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Mr Qing Ye, on behalf of himself, GMP Pharmaceuticals and GMP Dairy

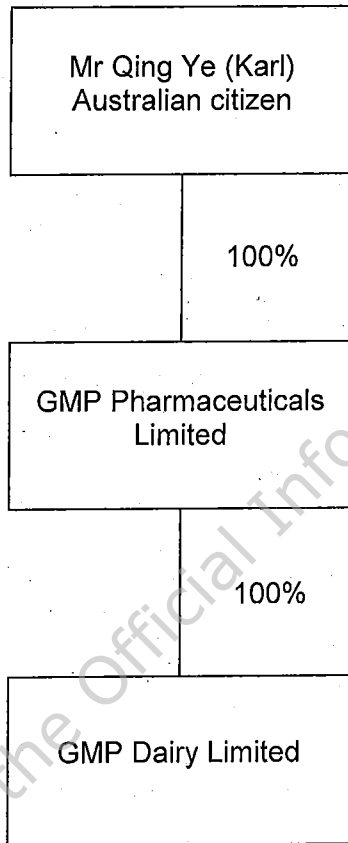
Released under the Official Information Act 1982

APPENDIX 2 – TABLE OF RELEVANT TRANSACTIONS

Released under the Official Information Act 1982

Date	Transaction	OIO Consent requirements
30 May 2002	Mr Ye acquires land at 12 Averton Place	Consent not required under the Overseas Investment Act 1973.
1 April 2009	Mr Ye leases 12 Averton Place to GMP Pharmaceuticals	Consent not required because term of lease less than three years.
27 July 2009	Mr Ye acquires land at 5-7 Averton Place	Consent required under the Act but not obtained.
19 September 2009	Mr Ye leases 5-7 Averton Place to GMP Pharmaceuticals	Consent not required because term of lease less than three years.
18 March 2010	Lease for 5-7 Averton Place expires	None
1 April 2012	Mr Ye leases 5-7 Averton Place to GMP Dairy	Consent may or may not be required under the Act depending on the OIO's interpretation of the exemption under Regulation 33(1)(a) of the Overseas Investment Regulations.
30 October 2013	Mr Ye enters into sale and purchase agreement with Mr Murray Stringer for land at 10 Averton Place	Consent required under the Act.

APPENDIX 6 – OWNERSHIP STRUCTURE DIAGRAM



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APPENDIX 7 – VENDOR LETTER

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M S Stringer
10 Averton Place
East Tamaki
Auckland 2013
28 March 2014

The Manager
Overseas Investment Office
155 The Terrace
Wellington

Dear Sir

I am writing to you in support of an application by GMP Pharmaceuticals Ltd who wish to buy my industrial section at 10 Averton Place East Tamaki Auckland.

I am selling the property to pursue other investment opportunities.

I am a New Zealand citizen and was born in Auckland on 2nd July 1950.

I hold the property in my own name.

I did not need consent from the OIO or it's predecessors when I agreed to purchase the property in 1984.

I will sell the land to another purchaser if this sale is blocked.

There was no advertising carried out prior to the Sale and Purchase agreement being entered into. GMP own the neighbouring property, have been asking to buy the land for several years and I offered it to them first.

There is some interest from other prospective purchasers but no back-up agreement has been entered into.

Please contact me if the information offered here is unclear or if further information is required.

Yours sincerely



Murray Stringer