

To: Michael Appleyard, Manager Applications, Overseas Investment Office

VARIATION ASSESSMENT REPORT: Metlifecare Limited

Date	25 February 2021	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	201900270	Deadline	As soon as possible
OIO contact	Andre Baldock, Senior Investigator, Enforcement		

A. Proposal to vary consent conditions

1. Metlifecare Limited and Metlifecare Oakridge Limited (the **Applicants**) were granted consent on 10 July 2019 (the **Consent**) to acquire sensitive land (the **New Land**) being residential freehold land located in Kerikeri (see case 201900270). The consent was for:
 - a. Metlifecare to acquire and develop an extension to an existing retirement village on the New land, and
 - b. once the development was complete, for Metlifecare Oakridge Limited to acquire the New Land and operate the extension along with the existing village.
2. The Applicants seek to vary Special Condition 3 of the Consent, regarding the development of the Land, by extending the completion dates for Milestones 1 and 3 as follows:
 - a. Milestone 1 – submission of resource consent for development: from [s 9(2)(b)(ii)]
 - b. Milestone 3 – completion of construction of the independent living units: from [s 9(2)(b)(ii)]
3. The Applicants seek the variations because:
 - a. their plans were delayed when the [s 9(2)(b)(ii)] and
 - b. their plans were further delayed when Metlife Care Limited was acquired by Asia Pacific Village Group Limited (**APV**) (see case 202000394), and
 - c. their plans were further delayed by COVID-19 pandemic.

B. How to approach the decision

4. You may vary or revoke conditions of consent with the agreement of the consent holder.¹ In considering whether to grant a variation, you must have regard to the purpose of the Act, being:

to acknowledge that it is a privilege for overseas persons to own or control sensitive New Zealand assets by—

 - (a) *requiring overseas investments in those assets, before being made, to meet criteria for consent; and*
 - (b) *imposing conditions on those overseas investments.*

¹ Section 27 of the Act.

5. The Act also has the purpose of managing certain risks, such as national security and public order risks, associated with transactions by overseas persons. This is not directly relevant to this application.

C. Our assessment

6. We accept the Applicant's reasons for delay, and consider the variation to be reasonable in the circumstances.
 - a. the Applicants have provided good reasons why it did not meet the timeframes set out in Condition 3, including unforeseen circumstances relating to the EQT ownership change and the coronavirus pandemic.
 - b. the time extension applied for appears reasonable and is consistent with the purpose of the Act
 - c. the time extension will not affect the criteria considered under the original consent – in particular we consider that the increased housing test is still likely to be met
 - d. Metlifecare Limited has a track record of delivering retirement village developments
7. We propose to make a technical change to Special Condition 1 (increased housing outcome) to insert the words [s 9(2)(b)(ii)] and change the required date from [s 9(2)(b)(ii)]
8. This change is to clarify that the obligation in the condition is both continuous and intended to cover the ongoing operation of long-term accommodation facilities while removing any potential conflict with the changes to the Milestone dates in Special Condition 3.
9. The Applicant has agreed to this change.
10. We also propose to update the reporting conditions to require an annual report on [s 9(2)(b)(ii)] so that the OIO can monitor progress towards submitting a resource consent. We consider the risk profile of the Applicant does not require ongoing reporting for this investment, but proactive monitoring can be scheduled if any issues are identified in the [s 9(2)(b)(ii)] report.

D. Recommendation

11. We recommend that Special Condition 3 be varied as follows:

You must **complete** the following milestones with regard to the development of the Land:

Milestone condition	Date for completion
<i>Milestone 1:</i> Submission of resource consent for development	[s 9(2)(b)(ii)]
<i>Milestone 2</i> Commencement of construction of the independent living units	[s 9(2)(b)(ii)]
<i>Milestone 3</i> Completion of construction of the independent living units	[s 9(2)(b)(ii)]

12. We recommend that Special Condition 1 be varied as follows:

Special Condition 1: Increased housing outcome	
<p>You must use the Land for the construction of a minimum of [s 9(2)] independent living units in a long-term accommodation facility on the Land.</p> <p>If you do not comply with this Special Condition, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	<p>[s 9(2)(b)(ii)]</p>

13. We recommend that the reporting conditions be amended to require an annual report on [s 9(2)(b)(ii)] so that the OIO can monitor progress towards submitting a resource consent.

E. Decision

14. I agree to vary the conditions of the Consent as set out in Attachment 1.

Agree / Disagree

Michael Appleyard

Michael Appleyard

Manager Applications (Residential & Forestry)

Date: 26/2/2021

Released under the Official Information Act 1982

Attachment 1 - Proposed Decision

Consent for Overseas Person to Acquire Sensitive New Zealand Land

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

Consent – Increased Housing Test

Decision date: **10 July 2019**

Varied on: **[25] February 2021**

The following people have been given the following **consent**:

Case	201900270
Consent	The Consent Holders may acquire the Land subject to the Conditions set out below.
Consent Holders	Metlifecare Limited (company no. 237544) Metlifecare Oakridge Limited (company no. 1964684) We will also refer to the Consent holder as you .
Land	Approximately 2,650m ² of freehold land located at 37B Cobham Road, Kerikeri, Far North District, being Lot 1 DP 207338 contained in record of title NA135D/97.
Timeframe	You have until 30 June 2020 to acquire the Land.

Conditions

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

For the avoidance of doubt, we will not require you to enter a security deed prior to acquisition of the Land as described in Standard condition 6.

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

Special conditions

You must comply with the following **special conditions**. These apply specifically to this Consent:

Definitions:

Act means Overseas Investment Act 2005

Long-term accommodation facility has the meaning set out in section 6 of the Overseas Investment Act 2005

Regulations means Overseas Investment Regulations 2005

Details	Required date								
Special Condition 1: Increased housing outcome									
<p>You must use the Land for the construction [s 9(2)(b)(ii)] of a minimum of [s 9(2)(b)(ii)] independent living units in a long-term accommodation facility on the Land.</p> <p>If you do not comply with this Special Condition, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	[s 9(2)(b)(ii)]								
Special condition 2: Non-occupation outcome									
<p>None of the following people may occupy the land acquired under the standing consent for residential purposes:</p> <p>(a) You.</p> <p>(b) Any overseas person with a 25% or more ownership or control interest in any of the people in (a).</p> <p>(c) Any overseas person who occupies the Land other than on arm's length terms².</p> <p>(d) Any overseas person who has a beneficial interest in, or beneficial entitlement to, the relevant interest in the Land.</p> <p>(e) If (a) is a trust, any beneficiary (direct or indirect) who may benefit under the trust at the trustees' discretion.</p>	From settlement								
Special condition 3: Milestones									
You must complete the following milestones with regard to the development of the Land:									
<table border="1"> <thead> <tr> <th data-bbox="248 1379 707 1440">Milestone condition</th> <th data-bbox="715 1379 1177 1440">Date for completion</th> </tr> </thead> <tbody> <tr> <td data-bbox="248 1440 707 1576"> <i>Milestone 1</i> Submission of resource consent for development </td> <td data-bbox="715 1440 1177 1576">[s 9(2)(b)(ii)]</td> </tr> <tr> <td data-bbox="248 1576 707 1713"> <i>Milestone 2</i> Commencement of construction of the independent living units </td> <td data-bbox="715 1576 1177 1713">[s 9(2)(b)(ii)]</td> </tr> <tr> <td data-bbox="248 1713 707 1850"> <i>Milestone 3</i> Completion of construction of the independent living units </td> <td data-bbox="715 1713 1177 1850">[s 9(2)(b)(ii)]</td> </tr> </tbody> </table>	Milestone condition	Date for completion	<i>Milestone 1</i> Submission of resource consent for development	[s 9(2)(b)(ii)]	<i>Milestone 2</i> Commencement of construction of the independent living units	[s 9(2)(b)(ii)]	<i>Milestone 3</i> Completion of construction of the independent living units	[s 9(2)(b)(ii)]	
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<i>Milestone 3</i> Completion of construction of the independent living units	[s 9(2)(b)(ii)]								
If you do not, Standard Condition 6 will apply and we may require you to dispose of Land.									

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

Standard conditions

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

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

<p>2. Take all reasonable steps to facilitate an Inspection including:</p> <ul style="list-style-type: none"> (a) directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection, (b) being available, or requiring your employees, agents, tenants or other occupiers to be available, at all reasonable times during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required. <p>During an Inspection:</p> <ul style="list-style-type: none"> (a) we will not compel you and your employees, agents, tenants or other occupiers to answer our questions or to let us look at, copy or take away documents, (b) our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection. 	
<p>Standard condition 4: remain of good character</p>	
<p>You and the Individuals Who Control You:</p> <ol style="list-style-type: none"> 1. must continue to be of good character, and 2. must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009. <p>In summary, these sections describe convicted or deported people who are not eligible for visa or entry permission to enter or be in New Zealand and people who are considered likely to commit an offence or to prevent a threat or risk to security, public order or the public interest.</p> <p>The Individuals Who Control You are individuals who:</p> <ul style="list-style-type: none"> (a) are members of your governing body, (a) directly or indirectly, own or control 25% or more of you or of a person who itself owns or controls 25% or more of you, and (b) are members of the governing body of the people referred to in paragraph (b) above. 	<p>At all times</p>
<p>Standard condition 5: tell us about changes that affect you, the people who control you, or people you control</p>	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <ol style="list-style-type: none"> 1. You, any Individual Who Controls You, or any person in which you or any individual who controls you hold (or at the time of the offence held) a 25% or more ownership or control interest commits an offence or contravenes the law anywhere in the world. This applies whether or not you or they were convicted of the offence. In particular, please tell us about any offences or contraventions that you are charged with or 	<p>Within 20 working days after the change</p>

<p>sued over and any investigation by enforcement or regulatory agencies or professional standard bodies.</p> <ol style="list-style-type: none"> 2. An Individual Who Controls You ceases to be of good character; commits an offence or contravenes the law (whether they were convicted or not); becomes aware of any other matter that reflects adversely on their fitness to have the Land; or becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (see standard condition 4). 3. You cease to be an overseas person or dispose of all or any part of the Land. 4. You, any Individual Who Controls You, or any person in which you or any Individual Who Controls You hold (or at the time of the event held) a 25% or more ownership or control interest: <ol style="list-style-type: none"> (c) becomes bankrupt or insolvent (d) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or (e) becomes subject to any form of external administration. 	
<p>Standard condition 6: dispose of the Land if you do not comply with key Special conditions</p>	
<p>Some of the special conditions were key to the decision to give consent. If we consider you have failed to comply with one of those special conditions in a material way we may require you to dispose of the Land.</p> <p>We may also require you to execute a security deed before you may acquire the Land. The security deed:</p> <ol style="list-style-type: none"> 1. must be in the form we require, 2. must be executed and delivered to us before you acquire the Land, 3. gives us power to appoint a receiver to dispose of the Land if you do not do that as required by this Standard condition 6, 4. will provide, among other things, that if we appoint a receiver, the receiver may dispose of the Land, deduct his or her costs from the proceeds of sale, and pay the remainder to you. <p>If all or part of this Standard condition 6 applies to a Special condition, we have said so in that condition.</p> <p>We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:</p>	
<p>Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.</p>	<p>Within six weeks of the date of our notice.</p>
<p>Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.</p>	<p>Within six weeks of the date of our notice.</p>

<p>Dispose of the Land: dispose of the Land to a third party who is not your associate.</p>	<p>Within six months of our notice.</p>
<p>Offer without reserve: : if you have not disposed of the Land within six months of our notice, offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.</p>	<p>Within nine months of our notice.</p>
<p>Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.</p>	<p>By the last day of every March, June, September and December after our notice or at any other time we require.</p>
<p>Report disposal to us: send us, in writing, evidence:</p> <ul style="list-style-type: none"> (a) that you have disposed of the Land, (b) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor), (c) the purchaser is not your associate. 	<p>Within one month after the Land has been disposed of.</p>

Released under the Official Information Act 1982

Reporting conditions

We need information from you so we can monitor your progress against the Conditions.

~~In addition to Standard Condition 2,~~ You must lodge a reports by no later than [s 9(2)(b)(ii)] and [s 9(2)(b)(ii)] which must:

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

Released under the Official Information Act 1982