

Decision required under the Overseas  
Investment Act 2005: Elviti Finance Limited

<b>Date</b>	11 March 2016
<b>Security Level</b>	Commercial: In Confidence
<b>Priority</b>	High
<b>Report/Case Number</b>	1308 / 201520049
<b>Consent Required By</b>	<b>23 March 2016</b> or settlement will need to be deferred for six weeks. The Applicant has been advised that 23 March may not be possible.

Instructions

	<b>Action Sought</b>	<b>Suggested Deadline</b>
<b>Minister for Land Information</b>	<ol style="list-style-type: none"> <li>1. Sign the attached memorandum</li> <li>2. Forward the memorandum and annexure to the Associate Minister of Finance</li> </ol>	18 March 2016
<b>Associate Minister of Finance</b>	<ol style="list-style-type: none"> <li>1. Sign the attached memorandum</li> <li>2. Forward the memorandum and annexure to the Overseas Investment Office</li> </ol>	23 March 2016

Contact for Telephone Discussion

<b>Name</b>	<b>Position</b>	<b>Telephone (wk)</b>	<b>Cellphone</b>	<b>First Contact</b>
Samantha Naidoo	Team Manager	04 460 2795	[s 9(2)(a)]	
Phillip Anderson	Senior Solicitor	04 460 2775		✓

## Executive Summary:

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### Applicant

#### *Elviti Finance Ltd*

1. The Applicant is **Elviti Finance Limited (Elviti)**.
2. Elviti is a NZ company incorporated in September 2015 to acquire 100% of the shares in a **Target (NZP Holdings Ltd)** - the underlying transaction requiring consent under this Application.
3. Elviti is an overseas person under the Act as it is (and will continue to be) majority owned by overseas persons.

#### *Archer Group*

4. Elviti is wholly owned by Elviti Holdings Limited, which was established to hold the interests of **four Archer Capital Fund 5 entities, along with various existing shareholders/managers in the Target who will retain an interest** under the proposed transaction. Currently, Elviti Holdings Ltd is owned just by the four Fund 5 entities.
5. Archer Group is one of Australia's leading private equity investment houses, with the longest track record of any leveraged buyout\* manager in Australia. Since 1996, Archer has closed acquisitions involving total aggregate funding in excess of A\$5bn.  
\* a leveraged buyout involves the acquisition of another company using a significant amount of borrowed money (bonds or loans) to meet the cost of acquisition.
6. Archer Group (on behalf of a number of Funds that it manages) has made several previous investments in NZ and has received OIO consent under the Act a number of times, most recently in late 2015 for the same funds behind this transaction.
7. The four Archer Capital Fund 5 entities which will be the underlying majority owners of Elviti are managed by Archer Capital Pty Limited (**Archer**) which was incorporated in Victoria (Australia) in 1996. Archer will manage the investment and have day to day control over Elviti.
8. Each Fund 5 entity operates entirely at an arms-length commercial basis from its investors and no individual underlying investor holds more than **§ 9(2)** of the total equity in the Fund 5 entities.

### Investment

9. Elviti is seeking consent to acquire 100% of the shares in NZP Holdings Limited (**the Target**). The acquisition will constitute an investment in both sensitive land and significant business assets as:
  - the Target indirectly owns sensitive land through a wholly owned NZ subsidiary. This sensitive land comprises approximately 13ha located near Palmerston North which is used for the Target's head office and manufacturing plant;
  - the consideration for the shares in the Target exceeds \$100m.
10. The Vendors are the current shareholders in the Target. The Target is currently owned approximately 91% by New Zealanders.

11. As part of the transaction, existing shareholders and staff across the Target business will be offered participation in equity in Elviti (through its immediate parent company) with the largest stakes being offered to senior managers. These persons are expected to hold an approximate 27% stake in Elviti and there will **continue to be significant underlying NZ ownership** of the Target\*.

\* The Applicant later confirmed that **25%** of the shares will be held by New Zealanders.

12. These NZ managers/interest holders will retain their current employment positions in the business and will be entitled to have up to two directors appointed to the Board of Elviti Holdings to represent their interests.
13. The Target is a biopharmaceutical manufacturer specialising in bile acids and complex carbohydrates products. The Target was established in 1971 to extract and purify biochemicals from by-products of the NZ meat processing industry. The Target's first products were pharmaceutical intermediates extracted from bile. The Target is well-positioned to benefit from an anticipated increased demand for new products and technologies in this industry.
14. The Target Group consists of two main operating companies:
- NZ headquartered NZ Pharmaceuticals Limited (Palmerston North);
  - UK based Dextra Laboratories Limited.
15. The Target currently has a total of 120 full time equivalent positions in its NZ operations (including central head office functions). Staff members are predominantly salaried full time professionals (being scientists and managers).
16. For the financial year ended September 2014, the Target's total revenue was \$76m.

#### Investment Plan

17. The Vendors appointed PricewaterhouseCoopers to advise on the potential sale of the Target in 2013, in order to raise additional capital to grow the Target Business.
18. An owner who supports the Target's current R&D programme and has the ability to fund significant capital expenditure is vital to the Target maximizing its growth potential.
19. Archer's plan is to partner with current shareholders and management of the Target to execute growth initiatives. Its investment plan involves continuing to support the Target's position as a leader in the pharmaceutical sector, including investing in manufacturing infrastructure and workforce to facilitate business growth.
20. The Target's investment plan is particularly focused on commercialising two Projects (known as [ s 9(2)(b)(ii) ] details of which are set out below) which are [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] Upon achieving these, which is expected during [ s 9(2)(b)(ii) ] Elviti will likely spend between an estimated [ s 9(2)(b)(ii) ] to [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] with the subsequent creation of around **45 full time** equivalent permanent jobs.

21. Even if these two Projects do not proceed, **8 new job** positions will still be created and over [ s 9(2) ] invested into [ s 9(2)(b)(ii) ] which would otherwise be unlikely to occur. Although this [ s 9(2) ] will be allocated mainly to Project [ s 9(2) ] it is committed to by Archer and is not contingent upon uncertain milestones being achieved in the new Projects.
22. Major developments are summarised in the following table:

Proposed initiative over the next five years	Approx Cost	Likely new jobs	Likely Counterfactual Assessment
[ s 9(2)(b)(ii) ] [ s 9(2) ] mostly devoted to Project [ s 9(2) ] (but not dependent on uncertain Project milestones)	[ s 9(2)(b)(ii) ]	8 permanent	Under the likely status quo counterfactual, the Target intends to spend approximately [ s 9(2) ] but will create no new positions.
[ s 9(2)(b)(ii) ] [ s 9(2) ] mostly devoted to Project [ s 9(2) ]	[ s 9(2)(b)(ii) ]		
Project [ s 9(2) ] if this proceeds [ s 9(2)(b)(ii) ]	[ s 9(2)(b)(ii) ]	30 permanent 50 construction	Without Archer's investment, the Target will not have the financial capacity to [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] and will further [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] No new construction or jobs
Project [ s 9(2) ] if this proceeds [ s 9(2)(b)(ii) ]	[ s 9(2)(b)(ii) ]	15 permanent 30 construction	Without Archer's investment, existing shareholders are likely to seek to [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] No new construction or jobs
Project [ s 9(2)(b)(ii) ]	[ s 9(2)(b)(ii) ]		Without Archer's investment, existing shareholders are likely to seek to [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] No new construction or jobs
<b>Projected Total</b>	[ s 9(2)(b)(ii) ]	<b>53 permanent</b> <b>80 construction</b>	[ s 9(2)(b)(ii) ] <b>No new construction or jobs</b>

23. [ s 9(2)(b)(ii) ] are much higher with Elviti's investment, due to its ability of [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ]
24. In the event that the overseas investment does not proceed, it is unlikely that there is a suitable alternative NZ purchaser who can bring similar benefits to those which are likely to result from Elviti's investment. The shares in the Target were extensively advertised by PricewaterhouseCoopers and the sole NZ entity interested was unable to satisfy the requirements of the existing managers.
25. Consequently, if the transaction does not proceed, it is likely that the **status quo will continue**, with the Target continuing to operate under its existing ownership structure.

#### Benefits of the Investment

26. The OIO is satisfied that the overseas investment will likely result in the following substantial and identifiable benefits:

##### Overseas Investment Act 2005

- 17(2)(a)(i) – Creation of Jobs (**high weighting**)
- 17(2)(a)(iv) – Greater productivity and efficiency
- 17(2)(a)(v) – Introduction of development capital (**high weighting**)

##### Overseas Investment Regulations 2005

- 28(e) – Previous investments
- 28(f) – Advance significant Government policy or strategy
- 28(j) – Oversight and participation by New Zealanders (**high weighting**)

#### Annexures:

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

#### Instructions:

29. Ministers must grant consent to this overseas investment if they are satisfied that all of the criteria in sections 16 and 18 of the Overseas Investment Act 2005 ("the Act") are met. They must decline to grant consent if they are not satisfied that all of the criteria in sections 16 and 18 are met. Ministers must not take into account any criteria or factors other than those identified in sections 16, 17 and 18, and regulation 28 of the Overseas Investment Regulations 2005 ("the Regulations").
30. Where the criteria under sections 16 and 18 are the same, Ministers need only consider each criterion once.
31. In the attached Report the Overseas Investment Office identifies each of the criteria and factors under sections 16, 17 and 18, and regulation 28 that Ministers are required to consider in this case.

"Benefit to New Zealand criteria"

32. In this case, section 16 requires Ministers to decide, among other things, whether they are satisfied in relation to the following "benefit to New Zealand" criteria:
  - (a) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined under section 17 (section 16(1)(e)(ii)); and
  - (b) that benefit will be, or is likely to be, substantial and identifiable (section 16(1)(e)(iii)).
33. The application of the benefit to New Zealand criteria involves the exercise of Ministerial judgement. The fact that responsibility for making this decision has been conferred on Ministers confirms that this is a high-level decision with significant policy content. That is also apparent from the language and content of the factors that must be considered, many of which require a high degree of evaluative judgement, and are not capable of quantification or calculation.
34. In applying the benefit to New Zealand criteria, Ministers are required to consider each of the factors in section 17(2), determine which of the factors are relevant to the investment, and have regard to the relevant section 17(2) factors. The relative importance to be given to each factor is a matter to be determined by Ministers. In particular, the Act does not require economic factors to be given more weight than non-economic factors, or vice versa. It is a matter for you, in carrying out your overall evaluation, to decide what weight to give to each factor.
35. The decision concerning whether the benefit to New Zealand, or any part of it or group of New Zealanders, is substantial and identifiable under section 16(1)(e)(iii), involves a collective assessment of the relevant factors.

Justice Miller's "with and without test"

*Economic factors*

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

*Non- economic factors*

37. 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 suggested<sup>1</sup> that there could be a benefit in respect of the non-economic factors even if the same benefit would be achieved in the absence of the investment. But as the Court noted<sup>2</sup>, it is not easy to see how a benefit that will happen anyway could be regarded as substantial for the purposes of section 16(1)(e)(iii). We consider that Ministers should not treat benefits that are likely to be achieved in any event as contributing to the “substantial and identifiable benefit” criterion.

*Regulation 28 factors*

38. 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.<sup>3</sup>

39. 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

40. Conditions may be imposed on any consent that is granted, under section 25. The attached Report recommends some conditions that Ministers may wish to consider imposing in this case.
41. If you wish to make any changes to the conditions of consent, those changes should be discussed with the Overseas Investment Office, and the other Minister, before being finalised.

Decision

42. 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.
43. If you propose to disagree with the decision of the other Minister, you should discuss your proposed decision with the Overseas Investment Office and the other Minister.
44. If required, staff members from the Overseas Investment Office are available to brief you on the Office’s recommendations.

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<sup>1</sup> *Tiroa E* at [36].

<sup>2</sup> *Tiroa E* at [38].

<sup>3</sup> *Tiroa E* at [36].

## Recommendations:

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45. I recommend that you:

(a) determine that:

(i) the 'relevant overseas person' is:

- **Elviti Finance Limited (Elviti)** - the Applicant - the new owner of the shares in the Target and new indirect owner of the sensitive land);
- the collective group of underlying investment fund entities (being Archer Capital Trusts 5A, 5B, 5C and Archer Capital Offshore 5, LP) which together constitute **Archer Capital Fund 5**;
- **Archer Capital Pty Limited (Archer)** - the manager of the Archer Fund 5 entities which will be the majority investor in Elviti).

(ii) the 'individuals with control of the relevant overseas person' are

- the **directors of Elviti** (Peter Gold and Tomas Chubb);
- the **directors of Archer** (Peter Wiggs, Peter Gold, Benjamin Frewin and David Bull).

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

(iv) the relevant overseas person has demonstrated financial commitment to the overseas investment; and

(v) all the individuals with control of the relevant overseas person are of good character; and

(vi) 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

(vii) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and

(viii) the benefit will be, or is likely to be, substantial and identifiable; and

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(b) accordingly you are satisfied that the criteria for consent in sections 16 and 18 have been met; and

Associate Minister of Finance:

Minister for Land Information:

Satisfied

Satisfied

Not Satisfied

Not Satisfied

(c) grant consent to the overseas investment subject to the conditions in Appendix 1 of the Report.

Associate Minister of Finance:

Minister for Land Information:

Consent Granted

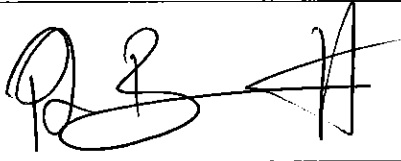
  

Consent Granted


Consent Declined

Consent Declined



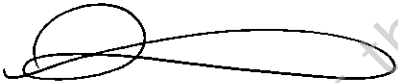
Associate Minister of Finance

Date 23/3/16



Minister for Land Information

Date 21/03/16



Samantha Naidoo - Team Manager  
Overseas Investment Office

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Report of the Overseas Investment Office  
on the application for consent by  
Elviti Finance Limited  
Case: 201520049

Contents

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SUMMARY OF KEY INFORMATION ..... 2

APPLICATION ..... 2

APPLICANT..... 2

BACKGROUND TO THE INVESTMENT ..... 4

OUTLINE OF THE INVESTMENT ..... 7

RATIONALE FOR THE INVESTMENT ..... 8

SENSITIVE LAND ..... 9

ASSESSMENT PROCESS..... 10

COUNTERFACTUAL ANALYSIS..... 10

CRITERIA SET OUT IN SECTIONS 16 AND 18 ..... 11

FACTORS SET OUT IN SECTION 17 ..... 14

THIRD PARTY SUBMISSIONS..... 28

APPENDIX 1 – CONDITIONS OF CONSENT ..... 31

APPENDIX 2 – SENSITIVE LAND ..... 31

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## Summary of Key Information

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<b>Applicant</b>	<b>Elviti Finance Limited</b> (Australia 27%, NZ 25%, USA 14%, Canada 11%, Various overseas persons 23%)
<b>Vendor</b>	<b>Existing shareholders of NZP Holdings Limited</b> (NZ 91.13%, Japan 8.85%, Australia 0.02%)
<b>Consideration</b>	\$250,000,000
<b>Recommendation</b>	Grant Consent

## Application

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1. For consent for the Applicant to give effect to:
  - (a) an overseas investment in sensitive land, being the Applicant's acquisition of rights or interests in 100% of the shares of NZP Holdings Limited which owns or controls a freehold interest in approximately 13ha of land at 68 Weld Street, Palmerston North;
  - (b) an overseas investment in significant business assets, being the Applicant's acquisition of rights or interests in 100% of the shares of NZP Holdings Limited, the consideration of which exceeds \$100m.
1. ("the Investment")

## Applicant

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### *Elviti – the Applicant*

2. The Applicant is Elviti Finance Limited (**Elviti**).
3. Elviti is a NZ company incorporated in September 2015 to acquire 100% of the shares in a **Target** (NZP Holdings Ltd) - the underlying transaction requiring consent under this Application.
4. Elviti is an overseas person under the Act as it will be majority owned by overseas persons.
5. Elviti has two directors (Peter Gold and Tomas Chubb) who will be deemed individuals with control of the overseas investment (along with the directors of the majority parent Archer Group management entity – see below).

### *Archer Group – the majority owner of the Applicant*

6. Elviti is a wholly owned subsidiary of Elviti Holdings Ltd, which was established to hold the interests of Archer Capital Trust 5A, 5B, 5C and Archer Capital Offshore 5, LP (together the Fund 5 entities), along with **certain existing shareholders and managers of the Target** who will retain an interest in the Target going forward.
7. Currently (the retained shares of the existing shareholders/staff being yet to be finally determined but expected to constitute an approximate 27% interest) Elviti Holdings Ltd is owned by the four Fund 5 entities in the following shares:

Shareholder	Number of shares
Archer Capital Nominees Pty Ltd as custodian for Archer Capital Trust 5A	41 shares
Archer Capital Nominees Pty Ltd as custodian for Archer Capital Trust 5B	27 shares
Archer Capital Nominees Pty Ltd as custodian for Archer Capital Trust 5C	10 shares
Archer Capital GP5 Limited (as general partner of Archer Capital GP5, LP, as general partner of Archer Capital Offshore 5, LP)	22 shares
<b>TOTAL</b>	<b>100 shares</b>

*Archer Capital Party Limited (Archer)*

8. The four Archer Capital Fund 5 entities are managed by **Archer Capital Pty Limited (Archer)** which was incorporated in Victoria (Australia) in 1996.
9. Archer Group is one of Australia's leading private equity investment houses, with the longest track record of any leveraged buyout\* manager in Australia. Since 1996, Archer has closed acquisitions involving total aggregate funding in excess of A\$5bn.
 

\* a leveraged buyout involves the acquisition of another company using a significant amount of borrowed money (bonds or loans) to meet the cost of acquisition. Often, the assets of the company being acquired are used as collateral for the loans in addition to the assets of the acquiring company. The purpose of leveraged buyouts is to allow companies to make large acquisitions without having to commit a lot of capital.
10. Archer does not have a specific industry focus but evaluates a wide range of prospective acquisitions where careful use of leverage in the capital structure, supported by a clear strategy for improving the business, combine to provide an attractive investment.
11. Archer has made several previous investments in NZ (on behalf of its various Funds) and has received OIO consent under the Act a number of times, most recently in late 2015 (on behalf of the same Fund 5 entities involved in this transaction).
12. Archer is owned by two Australian incorporated proprietary companies:
  - [ s 9(2)(b)(i) ] Ordinary Shares). [ ] is owned by entities controlled by [ s 9(2)(a) ]
  - [ s 9(2)(b)(ii) ] Ordinary Shares). [ s 9(2)(b) ] [ s 9(2)(b) ] is owned by entities controlled by [ s 9(2)(a) ]
13. Archer will manage Elviti on behalf of the Fund 5 entities and have day to day control of the Investment. Therefore the directors of Archer, along with those of Elviti, will be deemed individuals with control of the Investment.
14. Archer's directors are currently Peter Wiggs, Peter Gold, David Bull, and Benjamin Frewin. Mr Gold is also a director of Elviti.

*Archer Capital Fund 5*

15. The four Fund 5 entities collectively form Archer Capital Fund 5, which is the most recent Archer Group Fund, formed in December 2011 as the successor to Archer Capital Funds 1 to 4.

16. Fund 5 is a private equity fund formed for the purpose of making privately negotiated equity and equity-oriented investments primarily targeted at acquisitions of Australian and NZ businesses with enterprise values between \$200m and \$700m.
17. No investor in any Fund 5 entity makes up more than 5% of the funds invested in the Fund 5 entities, other than:
  - [ s 9(2)(b)(ii) ]
  - 
  -
18. All investors in the Fund 5 entities are purely passive investors and each entity operates entirely at an arms-length commercial basis from its investors.
19. The Fund 5 entities were involved in recent OIO Application 201520003 - being an 84% shareholder of an applicant granted delegated consent to acquire the issued share capital of Aspire2Group Limited for \$200m.

## Background to the Investment

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### *NZP Holdings Limited – the Target*

20. Elviti is seeking consent to acquire 100% of the shares in **NZP Holdings Limited** (the **Target**). The acquisition will constitute an investment in both sensitive land and significant business assets as:
  - the Target indirectly owns sensitive land through a wholly owned NZ subsidiary. This sensitive land is located near Palmerston North and is used for the Target's NZ head office and manufacturing plant;
  - the consideration for the shares in the Target exceeds \$100m.
21. The Vendors are the current shareholders in the Target. The Target is currently owned approximately 91% by New Zealanders.
22. The current majority financial investor in the Target is **Direct Capital**, via its Direct Capital III Fund. The remaining shareholders are largely individuals.

### *Business of the Target*

23. The Target is a biopharmaceutical manufacturer specialising in bile acids and complex carbohydrates products. The Target was established in 1971 to extract and purify biochemicals from by-products of the NZ meat processing industry. The company's first products were pharmaceutical intermediates extracted from bile. The Target is well-positioned to benefit from an anticipated increased demand for new products and technologies in this industry.
24. For the financial year ended September 2014, the Target's total revenue was \$76m.
25. The Target currently has a total of 120 full time equivalent positions in its NZ operation. Staff members are predominantly salaried full time professionals (scientists and managers).
26. The Target comprises two main operating companies:
  - NZ headquartered NZ Pharmaceuticals Limited;
  - UK based Dextra Laboratories Limited.

27. The two operating companies have distinct but complementary capabilities, and are highly integrated from a strategic and management perspective. NZ Pharmaceuticals accounts for approximately [s 9(2)] of revenues. Dextra has a [s 9(2)(b)] revenue contribution of approximately (b)(ii) but will [s 9(2)(b)(ii)] via the Target's [s 9(2)(b)(ii)]

28. The Target's core product range of bile acids is underpinned by strong demand for its [s 9(2)(b)(ii)] The Target has a number of significant growth prospects which complement its existing core product range.

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

30. **Project** [s 9(2)(b)(ii)] [s 9(2)(b)(ii)]

31. [Redacted]

32. [Redacted]

33. [Redacted]

and would create an expected 15 permanent full time jobs (plus approximately 30 construction jobs for one year).

34. Without Archer's investment, existing shareholders are likely to seek to outsource or sub-licence manufacturing to avoid significant capital outlay that they don't have. If this occurs, the plant expansion will not be undertaken and the new job positions will not be created.

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

35. [Redacted]

36. [Redacted]

37. [Redacted]

38. [ s 9(2)(b)(ii) ]  
39. [ s 9(2)(b)(ii) ]

40. [ s 9(2)(b)(ii) ] and would create an expected **30** permanent full time jobs (plus approximately 50 construction jobs for one and a half years). [ s 9(2)(b)(ii) ]

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

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

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

42. [ s 9(2)(b)(ii) ]  
43. [ s 9(2)(b)(ii) ]  
44. [ s 9(2)(b)(ii) ]  
45. [ s 9(2)(b)(ii) ]  
46. [ s 9(2)(b)(ii) ]  
47. [ s 9(2)(b)(ii) ]

*The Counterfactual*

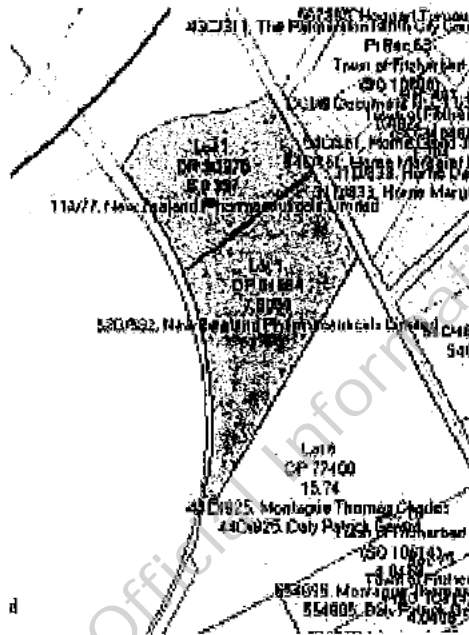
48. To fully capture [ s 9(2)(b)(ii) ] of Projects [ s 9(2)(b)(ii) ] the Target needs to [ s 9(2)(b)(ii) ] if all goes to [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ]

49. Without Archer’s investment, and given the absence of a realistic alternative NZ investor in the Business, existing shareholders in the Target are likely to seek to outsource or sub-licence manufacturing to avoid significant capital outlay that they don’t have. Whilst this would save the large capital expenditure required, it would not capture the full benefit to NZ in terms of export earnings and job creation.

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## Outline of the Investment

50. Elviti intends to acquire 100% of the shares in the Target pursuant to a *Purchase Agreement* dated 23 September 2015. The initial purchase price payable under the *Agreement* is NZ\$250 million subject to working capital and other adjustments.
51. The Target, through a subsidiary, indirectly owns a manufacturing facility which is located on a 14ha site near Palmerston North. The land on which the plant is located is "sensitive land" as defined in the Act because it is non-urban land exceeding 5ha. The land appears in the following map (shaded pink) and photographs:



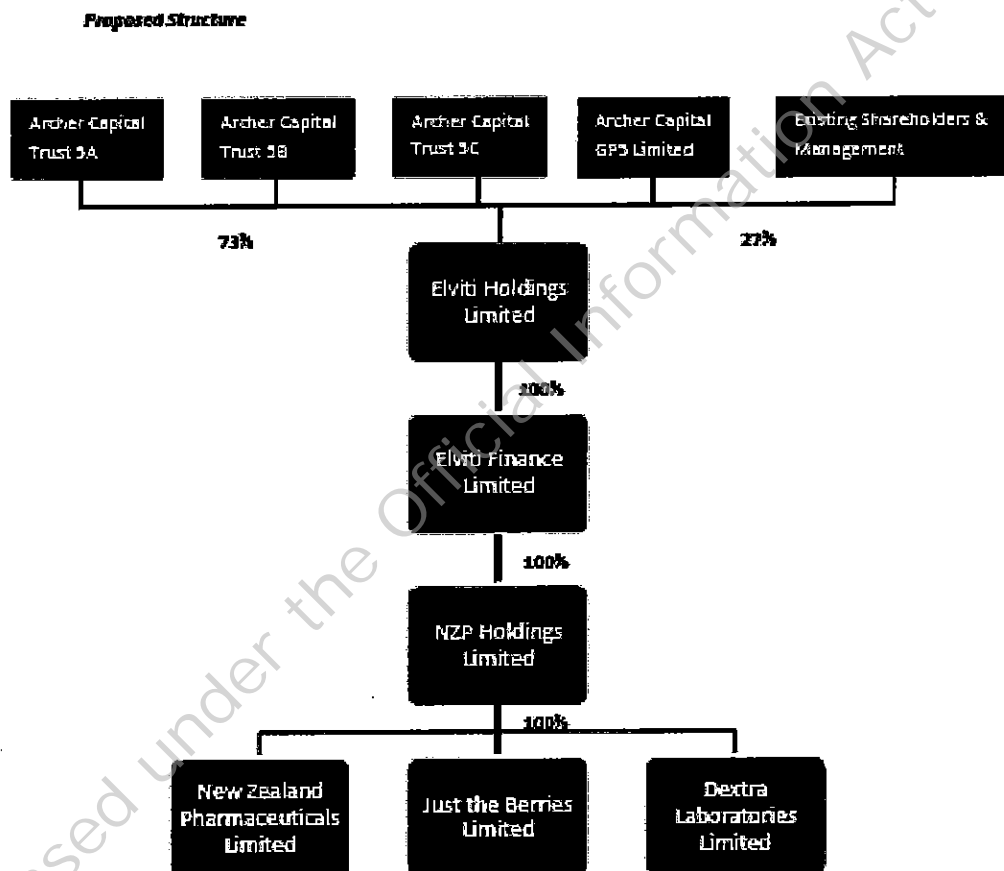
52. The manufacturing facility itself occupies approximately 2ha of the land; the remaining land being unutilised and grass covered. Assuming [s 9(2)(b)(ii)] [s 9(2)(b)(ii)] will likely mean an additional 2ha of the site will be utilised.
53. Elviti will finance the Investment with a combination of debt and equity. The exact proportions of equity and debt funding have not yet been determined. The debt will be borrowed from [s 9(2)(b)(ii)] [s 9(2)(b)(ii)]. The amount Elviti is expected to borrow is approximately [s 9(2)(b)(ii)] [s 9(2)(b)(ii)].



54. The Target is currently just over 91% owned by New Zealanders. As part of the transaction, existing shareholders and staff across the Target business will be offered participation in equity in Elviti (through its parent company Elviti Holdings Limited), with the largest stakes being offered to senior managers. These persons are expected to hold an approximate 27% stake in Elviti and there will therefore continue to be significant underlying NZ ownership of the Target.\*

\* The Applicant later confirmed that **25% of the shares** to be held by existing shareholders/managers will be held by New Zealanders. The remaining 2% of the 27% will be held by UK residents.

55. These managers/owners will retain their current employment positions in the Target Business and will be entitled to have up to two directors appointed to the Board of Elviti Holdings to represent their interests. Provided the offered participation is taken up, the likely final structure of the Applicant will be:



## Rationale for the Investment

56. Archer does not have a specific industry focus but evaluates a wide range of prospective acquisitions where careful use of leverage in the capital structure, supported by a clear strategy for improving the business, combine to provide an attractive investment.

57. Archer's plan is to partner with the current shareholders and management of the Target to execute growth initiatives. Archer's investment plan involves continuing to support the Target's position as a leader in the pharmaceutical sector, including investing in the manufacturing infrastructure and workforce to facilitate business growth.

58. The Target's investment plan is focused on [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] which are in [ s 9(2)(b)(ii) ] Upon achieving this, which is expected during [ s 9(2)(b) ] Elviti would incur spend estimated at between [ s 9(2)(b)(ii) ] with the subsequent creation of around **45** full time equivalent jobs.
59. Even if these Projects do not proceed (which seems unlikely), Elviti will still create **8 immediate new full time positions** [ s 9(2)(b)(ii) ] Archer has also committed to investing [ s 9(2)(b)(ii) ] capital during [ s 9(2)(b) ] which, although mainly allocated to Project [ s 9(2)(b) ] is not contingent on uncertain milestones.
60. An owner who supports the current [ s 9(2)(b)(ii) ] and has the ability to fund capital expenditure on this scale is vital to the Target maximizing its growth potential. The securing of Archer as majority investor will provide the Target with the additional confidence to invest capital and make additional staff appointments with an emphasis on [ s 9(2)(b)(ii) ]
61. The prospects of [ s 9(2)(b)(ii) ] are much higher under Elviti's ownership, due to its ability to [ s 9(2)(b)(ii) ] and support [ s 9(2)(b)(ii) ]
62. Major developments are summarised in the following table:

Proposed initiative over the next five years	Approx Cost	Likely new jobs	Likely Assessment	Counterfactual
[ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] mostly devoted to Project [ s 9(2)(b) ] (but not dependent on uncertain Project milestones)	[ s 9(2)(b)(ii) ]	8 permanent	Under the likely status quo counterfactual, the Target intends to spend approximately [ s 9(2)(b)(ii) ] but would create no new positions.	
[ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] mostly devoted to Project [ s 9(2)(b) ]	[ s 9(2)(b)(ii) ]			
Project [ s 9(2)(b) ] if this proceeds [ s 9(2)(b)(ii) ]	[ s 9(2)(b)(ii) ]	30 permanent 50 construction	Without Archer's investment, the Target will not have [ s 9(2)(b)(ii) ]	No new construction or jobs
Project [ s 9(2)(b) ] if this proceeds [ s 9(2)(b)(ii) ]	[ s 9(2)(b)(ii) ]	15 permanent 30 construction	Without Archer's investment, existing shareholders are likely to seek to [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ]	No new construction or jobs
Project [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ]	[ s 9(2)(b)(ii) ]		Without Archer's investment, existing shareholders are likely to seek to [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ]	No new construction or jobs
<b>Projected Total</b>	[ s 9(2)(b)(ii) ]	<b>53 permanent</b> <b>80 construction</b>	[ s 9(2)(b)(ii) ]	<b>No new construction or jobs</b>

## Sensitive Land

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63. The Target has indirect interests in sensitive land. See Appendix 2.

## Assessment Process

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64. 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.
65. We did not consider it necessary to seek input from third parties in order to verify the information or evidence gathered.
- (a) We have determined that the 'relevant overseas person' is:
- **Elviti Finance Limited (Elviti)** - the Applicant – the new owner of the shares in the Target and new indirect owner of the sensitive land);
  - the collective group of underlying investment fund entities (being Archer Capital Trusts 5A, 5B, 5C and Archer Capital Offshore 5, LP) which together constitute **Archer Capital Fund 5**;
  - **Archer Capital Pty Limited (Archer)** - the manager of the Archer Fund 5 entities which will be the majority investor in Elviti).
- (b) the 'individuals with control of the relevant overseas person' are:
- the **directors of Elviti** (Peter Gold and Tomas Chubb);
  - the **directors of Archer** (Peter Gold, Peter Wiggs, Benjamin Frewin and David Bull).

## Counterfactual Analysis

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66. 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".<sup>4</sup> 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".
67. Following an initial request from the OIO upon acceptance of the Application, Archer engaged further with the Vendors who confirmed that the most likely counterfactual is **a status quo scenario** from their perspective.
68. The Vendors believe that it is unlikely that they will find a suitable alternative NZ purchaser given the results of a recent marketing campaign as set out below.

### *Marketing and advertising*

69. The Vendors appointed PricewaterhouseCoopers (PwC) to advise on the potential sale of the Target in 2013.
70. Reasonably advanced negotiations were initially held with another overseas person, but these negotiations did not come to fruition.
71. Following this, PwC approached a number of potential bidders during 2015. An investor presentation was provided to 11 potential investors. One of those potential investors was NZ based.

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<sup>4</sup> *Tiroa E* at [37].

72. Indicative bids were made by 6 parties, including the NZ based party. The Vendors assessed those bids, and decided to take 4 forward to the next phase of the process. The NZ party was not taken forward as the Vendors took the view that that bid was not credible from an economic or strategic perspective.
73. Due diligence material was made available to the 4 remaining potential investors taken forward. Of those, 2 submitted final bids.
74. Shortly after receiving those final bids, the Vendors entered into exclusive negotiations with Archer, leading to execution of the binding *Agreement for Purchase*.
75. It is possible that, should the proposed investment not proceed, the Vendors would seek a new purchaser for the Target. The Vendors consider that a new buyer is likely to be an overseas person, based on the fact that the bid submitted by the only NZ participant in the bidding process was at a level significantly below that at which the Vendors would consider selling.

*Conclusion re Counterfactual*

76. The OIO believes that the most likely outcome without the overseas investment is that **the status quo** will continue for the foreseeable future. It is unlikely that an alternative viable NZ purchaser will be forthcoming in the short term given the result of advertising efforts to date.
77. If the status quo does continue, then it is unlikely that similar benefits to those listed under the individual factors below could otherwise arise.
78. The current majority financial investor in the Target is Direct Capital III Fund – a fund raised in 2005 and now in its realisation phase. The remaining existing shareholders are largely NZ individuals. If current ownership continues, the Vendors have stated that:

*If the proposed investment did not proceed the Target's ability to fund future expansion would be limited. In particular, it would not be in a position to fully capture the*

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

79. Archer Group has greater access to capital than the existing shareholders, and its investment is predicated on contributing the further capital investment required to

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

80. Without the overseas investment, given the limited appetite of the existing shareholders to invest further to grow the Target Business, a continuation of the status quo is likely to adversely affect

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

[ s 9(2)(b) ] lessening their prospects of commercial success. If this was to occur, it is unlikely that equivalent benefits to those set out under the individual factors would otherwise arise.

**Criteria set out in sections 16 and 18**

81. s16(1)(a) and 18(1)(a) Overseas Investment Act 2005

<p><b>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?</b></p>	<p>✓</p>
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The Court of Appeal has confirmed that the wording of this criterion allows considerable flexibility in determining what business experience and acumen is relevant to a proposed investment. More or less specific expertise may be required depending on the nature of the investment. Business experience and acumen that contributes to an investment's success may be treated as relevant even though the investor may have to supplement its experience and acumen by utilising the experience and acumen of others to ensure the investment succeeds.

In this case, the overseas investment can be described as the acquisition of a pharmaceutical manufacturing company (the Target) by Elviti.

The relevant overseas person is (collectively):

- Elviti (which will own all of the shares in the Target and become its new owner);
- the underlying Archer Capital Fund 5 entities which will be the majority investors in Elviti;
- Archer (the manager of the majority Archer 5 investment fund entities).

The individuals with control will be the directors of Elviti and Archer, which will control the investment on behalf of the Elviti shareholders.

The OIO has reviewed the biographical information provided for each of the individuals with control and notes that the directors of Archer and Elviti have extensive investment experience (Archer being one of Australia's leading private equity investment groups).

In addition, approximately 80 existing managers and staff across the Target Business will be offered participation in equity, with the largest stakes being offered to senior managers. These managers/owners will retain their current employment positions and will provide ongoing technical expertise to the Target Business. These shareholders will also provide two directors to the Board of Elviti Holdings Ltd (the immediate parent of Elviti).

Having regard to the above, the OIO **is satisfied** that the individuals with control of the relevant overseas persons collectively have business experience and acumen relevant to the overseas investment.

82. s16(1)(b) and 18(1)(b) Overseas Investment Act 2005

<b>Has the relevant overseas person demonstrated financial commitment to the overseas investment?</b>	✓
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The 'financial commitment' criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the Investment (intentions are not sufficient).

In this case, the OIO **is satisfied** that the relevant overseas person has demonstrated financial commitment by:

- incurring significant costs in investigating the proposed investment and preparing the OIO Application for consent;
- engaging Bell Gully as external legal advisers to undertake due diligence in preparation of the OIO Application;
- engaging KPMG to undertake financial due diligence in respect of the acquisition;
- engaging Ernst & Young to undertake tax due diligence in respect of the acquisition;
- engaging LEK Consultants to assess the Target business and the future market opportunity;
- engaging Risk Advisory Services to undertake insurance due diligence in respect of the Target.

## 83. s16(1)(c) and 18(1)(c) Overseas Investment Act 2005

<b>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?</b>	✓
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The decision maker must be satisfied that the individuals with control are of good character. Section 19 of the Act specifies that the decision-maker must take the following factors into account (without limitation) in assessing whether a person is of good character:

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

The OIO notes that the Financial Markets Authority is currently taking civil proceedings against Archer for alleged breaches of the Securities Market Act 1988. However, this matter was fully investigated as part of prior Application 201520003 (which involved the same Archer Fund 5 entities) where it was concluded that the individuals with control remain of good character. A summary of the relevant legal opinion for that Application is attached to this Report as *Appendix 3*.

The individuals with control have each provided a statutory declaration stating that the individuals with control are of good character, have not committed an offence or contravened the law as described above and know of no other matter that reflects adversely on their fitness to have the Investment. The OIO is satisfied that the statutory declarations can be relied on as they comply with the requirements of the Oaths and Declarations Act 1957. We have also conducted open source background checks on the individuals with control.

Consequently the OIO is **satisfied** that the individuals with control of the relevant overseas person are of good character.

## 84. s16(1)(d) and 18(1)(d) Overseas Investment Act 2005

<b>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?</b>	✓
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Section 15 of the Immigration Act specifies that certain convicted or deported persons are not eligible for a visa or permission to enter or be in NZ. Section 16 provides a power to deny a visa or permission to enter NZ for other specified reasons, such as if the individual is likely to be a threat or risk to security or public order.

The individuals with control have each provided a statutory declaration stating that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009. We are satisfied that the statutory declarations can be relied on as they comply with the requirements of the Oaths and Declarations Act 1957. We have also conducted open source background checks on those individuals and found nothing relevant to this criterion.

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.

## 85. s16(1)(e)(ii) Overseas Investment Act 2005

<b>Will the overseas investment benefit, or is it likely to benefit, New Zealand (or any part of it or group of New Zealanders)?</b>	✓
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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) – Creation of Jobs (**high weighting**)
- 17(2)(a)(iv) – Greater productivity and efficiency
- 17(2)(a)(v) – Introduction of development capital (**high weighting**)

**Overseas Investment Regulations 2005**

- 28(e) – Previous investments
- 28(f) – Advance significant Government policy or strategy
- 28(j) – Oversight and participation by New Zealanders (**high weighting**)

## 86. s16(1)(e)(iii) Overseas Investment Act 2005

<b>Will the benefit be, or is the benefit likely to be, substantial and identifiable?</b>	✓
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The Investment being assessed in this Report can be described as the acquisition of a pharmaceutical manufacturing company (the Target) by Elviti. The Investment is likely to meet the following economic factors over and above the counterfactual:

- creation and retention of jobs (**high weighting**);
- greater productivity and efficiency;
- additional investment for development purposes (**high weighting**);

The OIO is also satisfied that the Investment satisfies the following other benefit factors, specifically:

- previous investments;
- Advance significant Government policy or strategy;
- the participation of New Zealanders in the investment (**high weighting**).

The benefits listed above flow from Archer's plans to grow the Target's business. Elviti is committed to [ s 9(2)(b)(ii) ]

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

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

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

the Target will spend

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

A condition of consent will

require Archer to undertake [ s 9(2)(b)(ii) ]

In addition,

Elviti will immediately employ 8 new full time permanent staff.

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

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

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

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

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

both of these

If these proceed

estimated at between

with the subsequent creation of

around 45 permanent full time equivalent jobs.

In addition to the significant economic benefits which are likely to arise, there is likely to be a significant level of NZ underlying ownership of the Target. The Target is currently just over 91% owned by New Zealanders. As part of the transaction, existing shareholders and staff across the Target business will be offered participation in equity in Elviti, with the largest stakes being offered to senior managers. These persons are expected to hold an approximate 27% stake in Elviti and there will therefore continue to be significant underlying NZ ownership of the Target.\*

\* The Applicant later confirmed that 25% of the shares to be held by existing shareholders/managers will be held by New Zealanders. The remaining 2% of the 27% will be held by UK residents.

*Counterfactual*


The OIO believes that the most likely counterfactual without overseas investment is that the status quo will continue. If the latter occurs, there is no possibility that the Target business could grow to the extent forecast by Elviti (as the existing owners are capital constrained and will look instead to mostly maintain the business).

The OIO has considered the significance of the above benefits and has formed the view that **collectively these benefits are substantial and identifiable.**

**Factors Set Out in section 17**

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

<p><b>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?</b></p>	
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This factor relates to the creation and retention of jobs in NZ. New job opportunities may be created within the relevant overseas person or the business it is acquiring (direct jobs) or created upstream or downstream of the investment such as in suppliers and distributors (indirect jobs). To demonstrate job retention, the Applicants must first show that existing jobs will or might be lost without the overseas investment.

There are three key elements to this factor:

1. *New Job Opportunities* - the "new job opportunities" must be new, or if existing jobs are being "retained", the existing jobs would or might otherwise be lost if the investment does not proceed;

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2. *NZ Jobs* - the new job opportunities or retained jobs must be in NZ;
3. *Counterfactual* - the new job opportunities or retained jobs that are likely to result from the overseas investment must be additional to those which are likely to occur 'without the overseas investment.

### *Background*

Currently, the Target Business has a total of 120 full time equivalent positions (FTE) in its NZ operations (including central head office functions). Staff members are predominantly salaried full time professionals (being scientists and managers).

#### *1. New Job Opportunities*

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

#### Immediate new jobs

Under Elviti's ownership, the Target intends to employ 10 new FTE hires, of which at least **8 will be in New Zealand** at a total salary package of [ s 9(2)(b)(ii) ]. These new hires include: a new General Manager; a Finance Manager; a Head of Quality; 2 R&D technicians; 2 operators; and 1 administration staff member.

These jobs will be created in 2016/17 irrespective of the outcome of any of the contingencies applicable to [ s 9(2)(b)(ii) ] and a condition of consent will require their immediate creation.

#### Potential new jobs if [ s 9(2)(b)(ii) ]

If Projects [ s 9(2)(b)(ii) ] are successful, which is expected by [ s 9(2)(b) ] the Target will create around **45 permanent full time equivalent jobs**, most of which will be located in Palmerston North.

Temporary employment opportunities will also result from the [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ]

equivalent to approximately **80 short-term FTE** over a period of [ s 9(2)(b)(iii) ] years.

2. *New jobs located in NZ*- most of the new positions will be created at the Target's Palmerston North facilities and will be created over the next [ s 9(2)(b)(iii) ] years.

#### *3. Counterfactual:*

If the proposed investment does not proceed, the Target's current plans would not create the same number of increased job opportunities in NZ (either in the short or long term).

If the transaction does not proceed, then the 8 new immediate FTE roles in NZ would not be required under the status quo ownership because the Target will focus solely [ s 9(2)(b)(ii) ] which are already well catered for in terms of current employee resources.

Furthermore, given the current majority shareholder's desire to minimise further investment and to maximise shareholder returns, the Target would most likely look to

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

It is also possible that the existing owners could reduce staff numbers if the investment does not proceed. In response to a request for further information, Elviti replied:

*In the lead up to a sale process, Direct Capital has initiated work on certain projects to better position the business for growth under a new owner. Building on this work through additional investment and job hires is one of the main attractions to Archer of acquiring NZP.*

*Direct Capital does not have the same investment capacity or time horizon such that if it retained ownership of the business it would not proceed with a number of these projects and instead focus on reducing costs and increasing the efficiency of the existing business.*

*Not only would this not require the additional hires referred to in Archer's application, it would lead to a number of redundancies as the focus shifted from long term research and investment to short term cash maximisation.*

*Conclusion re job opportunities:*

88. Potential new jobs are summarised in the following table:

Initiative	When	New Jobs
[ s 9(2)(b)(ii) ]	Immediate	8 permanent
Project [ s 9(2)(b)(ii) ] [ s 9(2)(b) ]	Expected by [ s 9(2)(b) ]	30 permanent 50 construction
Project [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ]	Expected by [ s 9(2)(b)(ii) ]	15 permanent 30 construction
<b>Total</b>		<b>53 permanent</b> <b>80 construction</b>

The OIO **is satisfied** that the investment is likely to result in the creation of a significant number of new jobs (potentially 53 FTE permanent jobs). Without the investment, there is little possibility of a similar number being created (and some job losses are possible).

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

<b>Will the overseas investment result in, or is it likely to result in, the introduction into New Zealand of new technology or business skills?</b>	<b>x</b>
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90. s17(2)(a)(iii) Overseas Investment Act 2005

<b>Will the overseas investment result in, or is it likely to result in, increased export receipts for New Zealand exporters?</b>	<b>x</b>
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The OIO **can not be certain at this time** that the Investment is likely to result in increased export receipts as a result of Elviti's investment into the Target Business.

This factor is relevant where the investment is likely to increase NZ's export income. There are two key elements to this factor:

1. *Increased* - export receipts must be increased;
2. *Counterfactual* - the increased export receipts that are likely to result from the overseas investment must be additional to those which are likely to occur without the overseas investment.

1. *Increase in export receipts:*

Elviti has claimed that exports are expected to increase [ s 9(2)(b)(ii) ]  
[ s 9(2)(b)(ii) ]

It is claimed that Archer's implementation of [ s 9(2)(b)(ii) ]  
[ s 9(2)(b)(ii) ]  
the [ s 9(2)(b) ] period by [ s 9(2) ] - not counting additional exports likely to be generated  
by Projects [ s 9(2)(b)(ii) ] etc. However, it is not possible to confirm from the  
information provided how this increase will be generated.

The Target generates in excess of [ s 9(2) ] of its revenues from export sales, with the  
company distributing its products to many of the world's leading pharmaceutical  
companies. [ s 9(2)(b)(ii) ]  
[ s 9(2)(b)(ii) ]

The Target's revenue for products produced in the last financial year was  
approximately \$74m. Annual revenue is forecast to [ s 9(2)(b)(ii) ]  
[ s 9(2)(b)(ii) ] under Elviti's ownership. Of this, over [ s ] of annual revenue is  
expected to be generated from exports.

Elviti has claimed that the increase in export receipts will be primarily driven by the  
[ s 9(2)(b)(ii) ]  
[ s 9(2)(b)(ii) ]  
undertaken\*

\* The OIO sought further clarification as to how the aggregate [ s 9(2)(b)(ii) ] increase was likely to be  
generated [ s 9(2)(b)(ii) ] Elviti responded:

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

*Export receipts are expected to increase under Archer ownership as a result of the following:*

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

In summary, Elviti claims that export receipts under Archer ownership as compared to  
the likely counterfactual (the status quo) are forecast to be (without including  
[ s 9(2)(b)(ii) ] etc):

	Forecast export receipts NZ\$m if investment proceeds	Forecast export receipts NZ\$m if status quo continues
2016	[ s 9(2)(b)(ii) ]	
2017		
2018		
2019		
2020		
<b>Total</b>		

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

## 2. Counterfactual:

Without the investment, it is most likely that the status quo will continue for the reasons set out in the Counterfactual Analysis set out above. If the status quo continues, the Applicant believes that exports are likely to be significantly less than projected under Elviti ownership as the current owners try to extract as much as possible from the historical business lines (given their strategy will be to "maintain" rather than "grow" the Target Business).

### Conclusion re increased exports:

From the information provided, the OIO **is not certain** that the overseas investment is likely to result in increased export receipts for NZ exporters at this time given the

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

## 91. s17(2)(a)(iv) Overseas Investment Act 2005

<b>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?</b>	✓
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Although Elviti has not claimed this as a benefit, the OIO **is satisfied** that the investment will likely result in productivity and efficiency gains for the Target Business which are unlikely to arise without the investment.

There are three key elements to this factor:

1. *Type* - the overseas investment must result in one or more of added market competition; greater efficiency or productivity; or enhanced domestic services;
2. *In NZ* - the added market competition, greater efficiency or productivity, or enhanced domestic services must occur in NZ;
3. *Counterfactual* - the added market competition, greater efficiency or productivity, or enhanced domestic services likely to result from the overseas investment must be additional to that which is likely to occur without the overseas investment.

### 1. Type - Greater efficiency or productivity:

- *Greater efficiency* is the **improvement of use of an existing resource or asset** (i.e. Improving the input/output ratio).
- *Greater productivity* is increasing the amount of goods or services produced. Increases in productivity typically result from increased efficiency, the introduction of new technology or business skills, or the **introduction of capital to expand the existing operations**.

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

*In NZ*

Any productivity or efficiency gains will take place at the Target's Palmerston North site.

*Counterfactual*

Without the investment, the existing owners will likely retain the Target Business and they have no intention to invest equivalent sums to create greater productivity or efficiencies. Most significantly, the owners will look to [ s 9(2)(b)(ii) ]  
 [ s 9(2)(b)(ii) ]  
 [ s 9(2)(b)(ii) ] resulting in the Land being considerably less productive than it potentially will be.

For completeness we note that the Investment is unlikely to result in added market competition or enhanced domestic services.

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

<b>Will the overseas investment result in, or is it likely to result in, the introduction into New Zealand of additional investment for development purposes?</b>	✓
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The OIO **is satisfied** that the Investment is likely to result in the introduction of considerable additional investment for development purposes [ s 9(2)(b)(ii) ]

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

In order to meet the requirements of this factor the "investment" must be:

1. *Additional* - occur after the initial acquisition and be additional to the purchase price;
2. *Introduced to NZ* - be funded in the form of foreign direct investment (including retained earnings that would otherwise be remitted overseas);
3. *Development purpose* - have the effect of increasing the productive capacity of the assets being acquired;
4. *Counterfactual* - the additional investment that is likely to result from the overseas investment must be additional to that which is likely to occur without the overseas investment.

1. *Additional investment:*

An aggregate of approximately [ s 9(2)(b) ] of new capital will need to be spent in NZ over the next [ s ] years to [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ]

The estimates of development costs (all excluding GST) to be incurred post-settlement, and the likely counterfactual, is set out below:

Proposed initiative over the next five years	Approx Cost	Likely new jobs	Likely Counterfactual Assessment
[ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] mostly devoted to Project [ s 9(2)(b) ] (but not dependent on uncertain Project milestones)	[ s 9(2)(b)(ii) ]	8 permanent	Under the likely status quo counterfactual, the Target intends to spend approximately [ s 9(2) ] but would create no new positions.
[ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] mostly devoted to Project [ s ]	[ s 9(2)(b)(ii) ]		
Project [ s ] if this proceeds [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ]	[ s 9(2)(b)(ii) ]	30 permanent 50 construction	Without Archer's investment, the Target will not have the [ s 9(2)(b) ] [ s 9(2) ] and will further [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] No new construction or jobs
Project [ s 9(2)(b) ] if this proceeds [ s 9(2)(b) ] [ s 9(2)(b)(ii) ]	[ s 9(2)(b)(ii) ]	15 permanent 30 construction	Without Archer's investment, existing shareholders are likely to seek to [ s 9(2)(b)(ii) ] No new construction or jobs
Project [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ]	[ s 9(2)(b)(ii) ]		Without Archer's investment, existing shareholders are likely to seek to [ s 9(2)(b)(ii) ] No new construction or jobs
<b>Projected Total</b>	[ s 9(2)(b)(ii) ]	<b>53 permanent 80 construction</b>	[ s 9(2)(b)(ii) ] <b>No new construction or jobs (possible job losses)</b>

*Research & Development*

During [ s 9(2)(b) ] the Target intends to invest [ s 9(2) ] on its [ s 9(2)(b)(ii) ] in NZ. Without Elviti's funding, the Target's [ s 9(2)(b)(ii) ] is likely to be less than [ s ] during this period. Although mainly allocated to Project [ s 9(2) ] the [ s 9(2)(b)(ii) ] is not contingent on uncertain milestones being achieved in the [ s 9(2) ] projects listed below.

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

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

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

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

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

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

*2. Introduced into NZ*

The OIO queried with the Applicant how development funds will be "introduced" into NZ. The Applicant responded that, in relation to the [ s 9(2)(b)(ii) ] this will be funded from retained earnings from the Target business. There are no plans for Elviti to pay any dividends. Archer's general investment policy is that re-investing retained earnings into a business is the best route to growth and value creation.

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

*3. For development purposes*

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

#### 4. The likely Counterfactual

Archer has greater access to capital than the existing shareholders and its investment is predicated on [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] Archer will not be looking to extract cash out of the Target but will instead be re-investing 100% of profits to grow the business over the foreseeable future.

If current ownership remains unchanged, a limited amount of capital expenditure to progress new business development initiatives would be made, but this is likely to be a minimal amount (in the region of \$1-2 million across all of the Development Projects).

[ s 9(2)(b)(ii) ] under the status quo, the existing shareholders would be capital constrained and would not have the ability to fund [ s 9(2)(b)(ii) ] If current ownership continues, the Vendors have stated that:

*If the proposed investment did not proceed the Target's ability to fund future expansion would be limited. In particular, it would not be in a position to fully capture the [ s 9(2)(b)(ii) ] It would likely focus on manufacturing its key products [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ]*

NZ would therefore miss out on the potential additional investment required for the [ s 9(2)(b)(ii) ] (which would have a number of significant positive effects for the NZ economy).

#### Conclusion re introduction of development capital

The OIO is **satisfied** that the overseas investment will likely result in the introduction into NZ of significant additional investment capital for development. A condition of consent will be imposed requiring that Elviti immediately fund the [ s 9(2)(b)(ii) ] development which is not dependent on the other projects proceeding. With this condition imposed, and given the high likelihood that much greater sums are likely to be invested [ s 9(2)(b)(ii) ] proceed (as seems likely), the OIO is satisfied that this factor is met. Given the amount of potential development capital, the OIO has given this factor a **high weighting**.

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

<b>Will the overseas investment result in, or is it likely to result in, increased processing in New Zealand of New Zealand's primary products?</b>	<b>Does not apply to this type of application</b>
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94. s17(2)(b) Overseas Investment Act 2005

<b>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?</b>	<b>Not Relevant</b>
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95. s17(2)(c) Overseas Investment Act 2005

<b>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?</b>	<b>Not Relevant</b>
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96. s17(2)(d) Overseas Investment Act 2005

<b>Are there, or will there be, adequate mechanisms in place for protecting or enhancing historic heritage within the relevant land?</b>	<b>Not Relevant</b>
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97. s17(2)(e) Overseas Investment Act 2005

<b>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?</b>	<b>Not Relevant</b>
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98. s17(2)(f) Overseas Investment Act 2005

<b>Has any foreshore, seabed, riverbed, or lakebed been offered to the Crown?</b>	<b>Not Relevant</b>
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The sensitive land has a boundary to the Manawatu River which could constitute special land under the Act. However, as the registered proprietor is not changing, there is no obligation on the owner to offer any such riverbed rights to the Crown.

99. r28(a) Overseas Investment Regulations 2005

<b>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))?</b>	<b>x</b>
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100. r28(b) Overseas Investment Regulations 2005

<b>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?</b>	<b>x</b>
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101. r28(c) Overseas Investment Regulations 2005

<b>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?</b>	<b>x</b>
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The Applicant has claimed that refusing this Application may adversely impact on NZ's image or its trade or international relations. In particular it may adversely impact on the willingness of investors in Australia (and other overseas persons) to invest, or consider investing, in NZ if precedents exist for transactions of this nature not being approved, particularly given the ongoing contribution by Archer and its affiliates to the NZ economy. Investors of the scope and calibre of Archer and its affiliates add significant value to the NZ business environment. Refusal of consent may adversely affect the likelihood of attracting further investment from Australia and other major trading nations or inward investment from other investors of that calibre.

The OIO **is not satisfied** that refusal will likely adversely affect NZ's image overseas provided any refusal is due to the Application not meeting the requirements of the Act. Refusal is unlikely to adversely affect NZ's trade or international relations or result in NZ breaching any of its international obligations.

102. r28(d) Overseas Investment Regulations 2005

<b>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?</b>	<b>x</b>
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103. r28(e) Overseas Investment Regulations 2005

<b>Has the relevant overseas person previously undertaken investments that have been, or are, of benefit to New Zealand?</b>	<b>✓</b>
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There are two key elements to this factor:

1. The *relevant overseas* person must have previously undertaken investments.
2. The previous investments must have been, or are, of *benefit to NZ*.

*1. Previous investments*

Archer (part of the collective relevant overseas person) has completed a range of previous investments in NZ domiciled businesses on behalf of various Archer funds.

Most recently, Archer (on behalf of the same Archer Fund 5 entities) signed an agreement to acquire education group *Aspire2 Group*, for a consideration of \$200m. That acquisition was the subject of a separate application to the OIO (number 201520003) which was granted delegated consent in late 2015.

*2. Benefit to NZ*

Archer has been granted consent under the Act to a number of previous applications under the Act on the basis that these investments were likely to be beneficial to NZ.

Examples of beneficial previous investments include:

- Hirequip Projex - Hirequip Projex was the result of a merger executed by Archer Capital of Projex (a hire equipment company based in Auckland) and Hirequip (a South Island based equipment hire company with strong strategic fit with Projex). Throughout Archer's ownership, the business' earnings increased from NZ\$11 million to NZ\$13 million over two years.

- Onesource Group - Archer Capital acquired Onesource Group in September 2005. Throughout Archer's ownership period, Archer expanded the scale of the business operations through the acquisition of GDC (a large PABX and Enterprise telephone system provider in NZ at the time) and Danka Australia (the largest independent and only national dealer in Australia).

Archer Capital has also invested in a number of companies with substantial operations in NZ with a view to increase economic value and job creation in the region. Selected examples include: Tasman Building Products (1998), MCK Group (1998), RED Paper Group (2002), Cellarmasters (2007), and AeroCare (July 2014).

*Conclusion re previous investments*

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

104. r28(f) Overseas Investment Regulations 2005

<b>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?</b>	✓
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There are three key elements to this factor:

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

*1. Advance a specific policy or strategy*

The investment will give effect to and advance significant Government policies and strategies – amongst them job creation and the CER.

*Closer Economic Relations with Australia - CER*

Australia is NZ's principal trading partner, accounting for around 19% of exports and 17% of total imports in 2014. The two countries have one of the most open economic and trade relationships of any two countries. This is based on a comprehensive set of trade and economic arrangements, collectively known as *Closer Economic Relations (CER)*, which underpins substantial flows of merchandise trade, services, investment, labour and visitors between the two countries.

Both NZ and Australia are exploring options for reducing barriers to trans-Tasman capital flows by adding an investment component to CER. The Ministry of Foreign Affairs & Trade website states that the NZ and Australian Governments have committed to explore a long-term vision for a seamless trans-Tasman business environment – a Single Economic Market. The investment would be consistent with such a vision/policy.

2. The Government policy or strategy must be *significant*.

Job creation and CER policies are likely to be deemed significant by the NZ Government.

### 3. The Counterfactual

As set out under the Counterfactual Analysis above, it is unlikely that the Target will enjoy similar growth to create new jobs if consent is not granted.

#### *Conclusion re Government policies and strategies*

The OIO **is satisfied** that the investment is likely to give effect to or advance, or is it likely to give effect to or advance, a significant Government policy or strategy. In particular, it is likely to promote CER, along with job creation strategies.

#### 105. r28(g) Overseas Investment Regulations 2005

<b>Will the overseas investment enhance, or is it likely to enhance, the ongoing viability of other overseas investments undertaken by the relevant overseas person?</b>	<b>Not Relevant</b>
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#### 106. r28(h) Overseas Investment Regulations 2005

<b>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?</b>	<b>Not Relevant</b>
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#### 107. r28(i) Overseas Investment Regulations 2005

<b>Will New Zealand's economic interests be adequately promoted by the overseas investment?</b>	<b>x</b>
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The 'Economic Interests' factor is relevant to all overseas investments in sensitive land and concerns the effect of the overseas investment on the wider NZ economy. This factor has a higher threshold of 'will' rather than 'is likely to' result from the overseas investment and has a broader focus than the economic factors already discussed.

The OIO's overall assessment of this factor is that NZ's economic interests will be adequately promoted by the investment. However, the OIO **is not satisfied** that the requirements of this factor have been met **to an extent** sufficient to meet this factor as the major benefits will arise from new projects still requiring final USA approvals.

There are two key elements to this factor:

1. *Adequate promotion* - the overseas investment must adequately promote NZ's economic interests. The factor has a broader focus than the other economic factors and concerns the effect of the overseas investment on the wider New Zealand economy. This 'economic interests' factor allows the decision maker to consider a wider range of economic issues in their assessment of a particular investment, in particular whether NZ's economic interests are adequately promoted. A non-exhaustive list of examples is given in the regulation itself to provide a guide as to the interpretation of this factor. The requirements of this factor will not be met if the overseas investment will not have any material effect on NZ's economic interests.
2. *Counterfactual* - the promotion of NZ's economic interests that will result from the overseas investment must be additional to that which is likely to occur without the overseas investment.

In assessing this factor, the OIO has considered the four matters referred to in regulation 28(i). The four matters are examples of matters that may be taken into account in assessing whether NZ's economic interests are adequately promoted by the overseas investment. However, the decision-maker may also take into account other relevant matters such as vertical integration and aggregation as set out in the Minister's *Directive Letter*. The OIO believes that there is no concern with vertical integration or aggregation at this time as no farm land or primary product production is involved in this investment.

The Four Matters in Regulation 28(i)

*Whether New Zealand will become a more reliable supplier of primary products in the future*

This is not relevant as the Target business does not involve the supply of primary products.

*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*

This factor is concerned with the impact that a proposed investment has on the make-up of the relevant global industry, particularly where concentration could lead to distortions to competitive market outcomes. A particular concern is the extent to which an investment may allow an investor to control the global supply of a product. Further, this factor is also concerned with diversity of ownership within NZ industries and sectors so as to promote healthy competition.

The supply of pharmaceuticals comprises a relatively small part of NZ's export earnings. It is unlikely that the investment will lead to any distortion of NZ's ability to supply the global pharmaceutical industry.

*Whether New Zealand's strategic and security interests are or will be enhanced*

The overseas investments are unlikely to have any material effect on NZ's strategic and security interests.

*Whether New Zealand's key economic capacity is or will be improved*

The OIO is not satisfied that NZ's economic interests will be promoted to an extent sufficient to satisfy this factor.

*Conclusion re Promotion of Economic Interests*

The OIO **is not satisfied** that NZ's economic interests will be adequately promoted by the investment to an extent sufficient to satisfy this factor.

108. r28(j) Overseas Investment Regulations 2005

<b>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?</b>	✓
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This factor is relevant to all overseas investments in sensitive land. This factor focuses on NZ oversight and participation in the overseas investment or relevant overseas person at an ownership or control level. Other forms of oversight and participation, such as employing NZ managers or having NZ directors, are less relevant. Ownership interests are given greater weight than participation or management interests.

There are three key elements to this factor:

1. The relevant persons must be persons who are not overseas persons (*New Zealanders*).
2. The New Zealanders must be likely to be able to *oversee or participate* in the overseas investment or any relevant overseas person.
3. The oversight or participation must be *in the overseas investment or any relevant overseas person*.

In assessing this factor, the OIO has considered the six matters referred to in regulation 28(j). These six matters are examples that can be taken into account in assessing this factor. Overall, the OIO **is satisfied** that New Zealanders are likely to have significant ownership and participation in the Investments or relevant overseas person.

Matters in regulation 28(j)(i)-(vi)

The OIO has also considered the six matters referred to in regulation 28(j).

*Whether there is or will be any requirement that 1 or more New Zealanders must be part of a relevant overseas person's governing body:*

Existing NZ managers/owners will retain their current employment positions in the business and will be entitled to have up to two directors appointed to the Board of Elviti Holdings Ltd (the immediate parent of Elviti) to represent their interests.

*Whether a relevant overseas person is or will be incorporated in New Zealand*

Elviti is a NZ incorporated company. The Archer entities are Australian entities.

*Whether a relevant overseas person has or will have its head office or principal place of business in New Zealand*

Elviti and the Target will be based in Palmerston North at the existing facilities of the Target.

*Whether a relevant overseas person is or will be a party to a listing agreement with NZX Limited or any other registered exchange that operates a securities market in NZ*

No.

*The extent to which New Zealanders have or will have any partial ownership or controlling stake in the overseas investment or relevant overseas person*

The Target is currently just over 91% owned by New Zealanders. As part of the transaction, existing shareholders and staff across the Target business will be offered participation in equity in Elviti, with the largest stakes being offered to senior managers.

Approximately 80 managers and staff across the business will be offered participation in equity, with the largest stakes being offered to the senior managers: [ s 9(2)(a) ]

[ s 9(2)(a) ]

[ s 9(2)(a) ]

[ s 9(2)(a) ] These persons are expected to hold an approximate 27% stake in Elviti there will therefore continue to be significant underlying NZ ownership of Elviti and the Target\*.

\* The OIO queried with the Applicant how, given the consideration for the transaction is \$250m, how \$27m could acquire a 27% interest in Elviti. The Applicant responded: *statement is correct. A total of NZ\$100m will be invested in ordinary equity with the managers/staff investing NZ\$27m to obtain a 27% share of the company. Archer funds will invest the remaining 73%. The remainder of the NZ\$250m acquisition price will be funded by approximately NZ\$55m in loans provided by Archer funds and the rest via debt facilities provided by Westpac NZ.*

In response to a further query, the Applicant responded that 25% of the shares to be held by existing shareholders/managers will be held by New Zealanders. The remaining 2% of the 27% will be held by UK residents.

*The extent to which ownership or control of the overseas investment or of a relevant overseas person is or will be dispersed amongst a number of non-associated overseas persons*

Ownership or control of the overseas investment will be dispersed amongst a large number of non-associated overseas persons. The Archer Fund 5 entities are beneficially owned by numerous investors, none of which holds more than 10% of the overall interests in the four sub-fund entities.

#### Conclusion re NZ Participation

Given the Target is expected to be ultimately approximately a quarter owned by New Zealanders following the investment, and that most of these owners will be directly employed by the Target, the OIO **is satisfied** that this factor is met and that it should be given **high weighting**.

### Third Party Submissions

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109. No third party submissions were received.

Released under the Official Information Act 1982

## Appendix 1 – Conditions of Consent

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Consent is granted subject to the following conditions:

### Interpretation

Any term or expression that is defined in the Overseas Investment Act 2005 and used, but not defined, in this consent has the same meaning as in the Overseas Investment Act 2005.

**Act** means the Overseas Investment Act 2005.

**Application Letter** means the application letter dated 14 October 2015.

**Archer** means **Archer Capital Pty Limited**.

**Business Plan** means the business plan set out in *Appendix T* of Application 201520049 as updated by the Applicant on 25 November 2015.

**Consent Holder** means Elviti.

**Elviti** means **Elviti Finance Limited**.

**Individuals with Control** means:

(a) the individuals who have, directly or indirectly, a 25% or more ownership or control interest in the Consent Holder or a Parent of the Consent Holder; and

(b) the members of the governing body of the Consent Holder or a Parent of the Consent Holder; and

(c) includes, for the avoidance of doubt, the directors of Elviti and the directors of Archer.

**Investment** means the acquisition by Elviti of 100% of shares in the Target.

**Land** means approximately 13ha of land comprised in Computer Registers WN52D/582 and 11A/77.

**OIO** means Overseas Investment Office.

**Regulations** means the Overseas Investment Regulations 2005.

**Settlement Date** means the date the acquisition of the Investment took place.

**Shares** means the shares in the Target to be acquired by Elviti.

**Target** means **NZP Holdings Limited**.

### Special Conditions

*When the transaction must given effect*

1. The consent will lapse if the Investment has not been acquired by and transferred to the Consent Holder within 12 months of the date of consent.

*Good character*

2. The Individuals with Control 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.

*Additional Research & Development Investment and new Job creation Conditions*

3. Elviti must invest [ s 9(2)(b) ] into the Target's [ s 9(2)(b)(ii) ] by [ s [ s 9(2)(b)(ii) ]
4. Elviti must procure the Target to create at least 8 new jobs in New Zealand by 31 December 2017, such jobs to be generally similar to the job positions referred to in Appendix S of the Application.



*Reporting to the OIO*

5. Elviti must notify the OIO 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) details of the acquisition of shares in Elviti Holdings Limited by existing shareholders/employees as referred to in paragraph 1.1 of the Application Letter and in the Applicant's email dated 16 February 2016;
  - (b) Settlement Dates;
  - (c) final consideration paid (plus GST, if any);
  - (d) the structure by which the acquisitions were made, and who acquired the Investments;
  - (e) where applicable, copies of transfer documents and settlement statements; and
  - (f) any other information that would aid the OIO in its function to monitor conditions of consent.
6. Elviti must report in writing annually to the OIO detailing progress of its Business Plan ("**Annual Report**"), including the following:
- (a) Elviti's compliance with conditions 3 and 4;
  - (b) Any new jobs created as a result of the Investment;
  - (c) Any progress with Projects [ s 9(2)(b)(ii) ] as referred to in the Investment Plan;
  - (d) Any increases in exports result resulting from the Investment;
  - (e) The introduction of any capital for development.
- The first Annual Report is due on 1 July 2017 and the final report is due on 1 July 2020 (or such other date as advised by the OIO in writing).
7. Elviti must notify the OIO in writing within 20 working days if:
- (a) the Consent Holder, any Individuals with Control, or any person in which the Consent Holder or any Individual with Control 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
  - (b) any Individual with Control:
    - (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 an Individual with Control'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;
  - (c) the Consent Holder:
    - (i) ceases to be an overseas persons; or
    - (ii) disposes of the Investment.
8. If requested in writing by the OIO, the Consent Holder 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

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1. 68 Weld Street, Palmerston North – **NZ Pharmaceuticals Ltd – Pharmaceutical manufacturing and research site**

<b>Land Interest</b>	<b>Freehold Interest</b> (13.9296 hectares)
<b>CTs</b>	WN11A/77, WN52D/582 (Wellington)
<b>Sensitivity</b>	Is more than 5 hectares of non-urban land
	Includes possible special land riverbed

Released under the Official Information Act 1982

## Appendix 3 – Good Character Opinion from recent Application 201520003

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### Background

2. The Applicant advised that the Financial Markets Authority ("**FMA**") has brought civil proceedings against Archer Capital Pty Limited ("**Archer**") as one of two defendants in the High Court ("**FMA Proceedings**"). These proceedings relate to an alleged contravention of the substantial security holder disclosure provisions in the Securities Markets Act 1988 ("**Securities Market Act**") by Archer.
3. Internet background checks completed by the Overseas Investment Office have also identified the proceedings against Archer. These matters are potentially relevant to the good character criterion under 18(1)(c) of the Act as the individuals with control of Archer (being one of the entities which comprise the relevant overseas person) held their ownership and/or control interests at the time the alleged contravention of the Securities Market Act 1988 occurred.
4. The purpose of this section is to provide a summary of the allegations against Archer and the Applicant's comments on these matters and to provide legal advice regarding the interpretation and assessment of the good character criterion as it applies to the Application.

### Good character criterion

5. Section 18(1)(c) of the Act requires that the decision maker is satisfied that all the individuals with control of the relevant overseas person are of good character. We consider that the directors of Archer are the individuals with control of Archer, which is one of the entities which comprises the relevant overseas person, therefore they are some of individuals with control of the relevant overseas person.
6. Section 19(1) of the Act states that the Ministers must take the following factors into account (without limitation), in assessing whether or not an individual is of good character:
  - (a) offences or contraventions of the law by the individual, or by any person in which they have, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not):
  - (b) any other matter that reflects adversely on the individual's fitness to have the particular overseas investment.
7. Gregory James Minton, Peter Spencer Wiggs and Peter Hilton Gold were the directors of Archer at the time of this Application ("**directors of Archer**") and are likely to have been so at the time that the alleged contravention of the Securities Market Act occurred. Gregory Minton has since resigned as a director of Archer.

### Allegations and Response

8. The FMA has filed and served civil proceedings against Archer and Healthcare Industry Limited ("**Healthcare Industry**"). The proceedings are for alleged breaches of the substantial shareholder disclosure obligations in the Securities Market Act, in relation to shares in Abano Healthcare Group Limited ("**Abano**").
9. On 16 September 2013, Archer and Healthcare Industry filed substantial shareholder notices under the Securities Market Act in relation to substantial holdings in Abano. The FMA alleges that an agreement, arrangement or understanding to act in concert in relation to Abano shares existed between the parties prior to 15 September 2013 and therefore the notices should have been filed earlier.
10. The FMA is seeking declarations of contravention and pecuniary penalties. The maximum pecuniary penalty for a contravention of the event disclosure provisions of the Act is \$1,000,000.

11. The Applicant has provided the following information in regard to the FMA Proceedings:

*To provide some context, the FMA have brought civil proceedings against Archer in relation to an alleged failure to file a substantial security holder notice at the appropriate time in accordance with the Securities Markets Act 1988. It is important to note that Archer did file a substantial security holder notice as soon as an exclusivity deed with two substantial shareholders of a target company was signed, in relation to a transaction that in fact never occurred. The FMA asserts that the notice should have been filed at some earlier point in time.*

*The FMA asserts that preparations for signing an exclusivity deed with certain shareholders of a target company (such as the drafting of a deed by legal advisers) were sufficient to amount to an "arrangement or understanding" which warranted a market disclosure prior to the deed being executed by the parties. Archer's position is that the preparatory communications regarding exclusivity were simply preparatory and no disclosure was required until the relevant documents were executed by the parties.*

*Disclosure was made the same day that the exclusivity deeds were executed. The case will likely prove to be a test case on these issues.*

*The FMA Proceedings are being vigorously defended. A three week hearing is set down for August 2016. There is presently no judgment which establishes any contravention by Archer.*

*In terms of the criteria in s18 and s19 of the Overseas Investment Act 2005:*

*Section 18(1)(c) refers to individuals with the control of the relevant overseas person being of good character. The FMA has not brought any proceedings against any of the individuals who have control over Archer; that is none of Archer's principals are defendants. The proceeding is against Archer Capital Pty Limited. The FMA's claims do not assert any dishonestly, any improper pecuniary advantage or any intentional breach of the relevant legislation. The issues concern proper timing of market disclosures and are not allegations which (even if proven) could be said to impugn Archer's good character.*

*Section 19 refers to offences or contraventions of the law. The FMA is pursuing civil pecuniary penalties, not criminal proceedings. There is no judgment, so no contravention to be taken into account. The FMA bears the burden of proof and it would obviously be premature for an alleged contravention (which is strongly denied) to be taken into account as a factor which weighs against Archer's application.*

*In light of the above, we consider that the FMA Proceedings are not relevant to the criteria under section 18(1)(c) and 19(1) of the Overseas Investment Act 2005.*

#### OIO Enquiries

12. On 31 July 2015, we made an enquiry of the FMA asking whether it had any information or concerns about the good character of the directors of Archer.
13. On 26 August 2015, the FMA responded to the OIO's request for information. The FMA's response was as follows:

*As you have noted Archer Capital Pty Limited is a party to the FMA proceeding. The directors are not individually named as parties to the FMA substantial shareholder disclosure proceeding and from our understanding of the facts, none of them were directly or personally involved in the specific activities that relate to the claim that the FMA has raised (which arose in 2013). However, I expect that they were directors of Archer at the time of the events in question (though I have not verified that) but we do not know to what extent the directors were aware of the matters that are the subject of the proceeding.*

*If successful, our proceeding would highlight the need for Archer as an entity to be mindful of disclosure obligations in its dealings in NZ and the Court may impose a pecuniary penalty against the Company. It would not result in any individual liability orders against the directors.*

### Assessment

14. We consider that the FMA Proceedings must be taken into account when assessing whether or not the individuals with control of the overseas person are of good character under section 19 of the Act.

*Our analysis on the individuals with control's character*

15. For the reasons set out below, our view is that the directors of Archer **are and remain of good character**:
- (a) The FMA Proceedings do not assert dishonestly, improper pecuniary advantage or an intentional breach of the Securities Markets Act. The proceedings concern the timing of market disclosures.
  - (b) There is no evidence that the directors of Archer attempted to knowingly or recklessly circumvent the Securities Markets Act.
  - (c) The FMA Proceedings relate to an issue of interpretation of the relevant provisions of the Securities Markets Act. Archer is defending the FMA Proceedings as it disagrees with the FMA's interpretation of the provisions.
  - (d) If the FMA Proceedings are successful, it would not result in any individual liability orders against the directors.
  - (e) The FMA has not brought any proceedings against any of the individual directors of Archer (as defendants).
  - (f) The information provided by the Applicant is consistent the information received from the FMA.
16. Having regard to the above, we consider that the FMA Proceedings are not matters that disqualify the individuals with control of the relevant overseas person from being considered of good character.
17. The directors of Archer at the time the actions occurred to which the FMA proceeding relate will not be the sole individuals with control. Archer has since appointed two new directors to its board and there is no overlap between the proposed board of directors of the Applicant and the directors of Archer.

### Conclusion

18. We have raised the allegations with the Applicant and are satisfied with its response. We have not identified any specific information or evidence that gives grounds to believe that the individuals with control of the relevant overseas person are not of good character.
19. Having regard to the above, **we consider that the good character statutory declarations provided can be relied upon and we can be satisfied that the individuals with control of the relevant overseas person are of good character.** We note that the conditions proposed in Appendix 1 include a requirement that the relevant individuals remain of good character and not become individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.