

Decision required under the Overseas Investment Act 2005: Metlifecare Limited – Increased Housing Test – One off

Date	10 July 2019
Security Level	Commercial: In Confidence
Priority	Medium
Case Number	201900270
Decision Required By	23 July 2019 (OIO condition date)

Contact for Telephone Discussion

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Released under the Official Information Act 1982

Executive Summary:

Applicant

1. The Applicant is Metlifecare Limited (**Applicant**).
2. The Applicant is a NZ incorporated publicly listed company (on both the NZX and the ASX) which owns, develops and operates retirement villages in NZ.
3. The Applicant is one of NZ's largest retirement village operators. It owns and operates approximately 24 villages in the North Island and owns assets valued at approximately [s 9(2)(b)(ii)]. It is the third largest NZ-based company on the NZX by market capitalisation at \$1 billion.
4. The Applicant, although almost 70% owned by New Zealanders, is an overseas person under the Act as it is 25% or more owned by overseas persons. The largest single shareholder in the Applicant is New Zealand Superannuation Fund Nominees Ltd (with almost 20%).

One off consent – Increased Housing Test

5. The Applicant is seeking consent to acquire sensitive land, being residential freehold land located in Kerikeri (the **New Land**).
6. The Applicant has applied for consent under the Increased Housing Test as set out in s16(1)(b)(i)(B) and Schedule 2, clause 11 of the Act.
7. The New Land is adjacent to land owned by the Applicant upon which it operates Oakridge Villas retirement village (**Oakridge**).
8. The New Land is also adjacent to other adjoining land already owned by the Applicant which will also be the site of additional new buildings (**Adjoining Land**).
9. Acquisition and development of the New Land (in conjunction with the Adjoining Land) will enable an expansion of Oakridge.
10. The Vendor is Kerikeri R.S.A. Trust Fund Incorporated. The Vendor is not an overseas person.
11. The Applicant has made several previous applications under the Act, and has very recently (12 June 2019) been granted an Increased Housing standing consent.
12. The proposed investment comprises the acquisition of approximately 2,650m².
13. The consideration is \$253,500.

Residential (but not otherwise sensitive) land

14. Under section 16(1), the Increased Housing Test can only apply to land which is residential (but not otherwise sensitive land).
15. We are satisfied that the New Land is residential (but not otherwise sensitive) land.

Investor test

16. Under section 16(1), the Investor Test set out in section 16(2) must be satisfied.
17. We are satisfied that the relevant overseas persons and individuals with control meet the investor test, as they have relevant business experience and acumen, have demonstrated financial commitment to the investment, are of good character, and are eligible for visas or entry permissions under the Immigration Act 2009.

Recommendation

18. We recommend consent is **granted**.

Instructions

19. Please see **Appendix 2** for instructions on how to make a decision and guidance on the relevant factors and criteria for consent.

Decision:

20. I have determined that:

(a) the '**relevant overseas person**' is (collectively):

Entity	Relationship
Metlifecare Oakridge Limited (MOL)	New registered proprietor
Metlifecare Holdings Limited (MHL)	100% owner of MOL
Metlifecare Limited	Applicant and 100% ultimate owner of MOL

(b) the '**individuals with control of the relevant overseas person**' are:

Individual	Role
Glen Sowry	CEO of the Applicant and director of MOL & MHL
Richard Thomson	CFO of the Applicant and director of MOL & MHL
Charles Anderson	GM Property and Development of the Applicant
Christopher Gerard Aiken	Director of the Applicant
Mark James Binns	Director of the Applicant
Kimmit Rowland Ellis	Director of the Applicant
Alistair Bruce Ryan	Director of the Applicant
Roderick James Snodgrass	Director of the Applicant
Carolyn Mary Steele	Director of the Applicant
Dr Noeline Beryl Whitehead	Director of the Applicant

21. I am satisfied that the criteria for consent in section 16(1) and Schedule 2, clause 11 have been met, and in particular:

Residential (but not otherwise sensitive) land

- (a) that the New Land is residential (but not otherwise sensitive) land; and

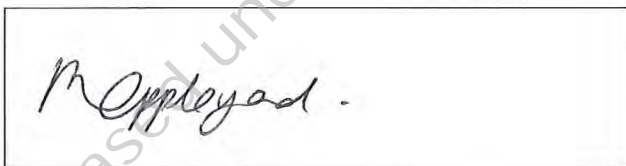
Investor test

- (b) the relevant overseas person has business experience and acumen relevant to the overseas investment; and
(c) the relevant overseas person has demonstrated financial commitment to the overseas investment; and
(d) the individuals who comprise the relevant overseas person are of good character; and
(e) the individuals who comprise the relevant overseas person are not individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009; and

Increased Housing Test

- (a) an increased housing outcome is likely to occur on the residential land (being construction of a long-term accommodation facility on the residential land, or an increase in the number of dwellings in a long-term accommodation facility that is on the residential land);
(b) the on-sale outcome is not required as a long-term accommodation facility will operate from the residential land within a specified period;
(c) the non-occupation outcome will likely occur;
(d) all mandatory conditions have been imposed.

22. Consent is granted to the overseas investment in the form of the Proposed Decision in **Appendix 1** and subject to the conditions set out in the Proposed Decision.



Michael Appleyard – Manager Applications
(Residential & Forestry)

Date 10/7/2019.

**Report of the Overseas Investment Office
on the application for consent by
METLIFECARE LIMITED
Case: 201900270**

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What is the Investment?

Applicant	Metlifecare Limited (NZ 69.23%, Australia 18.59%, USA 6.37%, Various 5.81%)
Vendor	Kerikeri R.S.A. Trust Fund Incorporated (NZ 100%)
Consideration	\$253,500
Recommendation	Grant Consent

Who is making the Investment

Who the Applicant is

1. The Applicant is Metlifecare Limited (**Applicant**).
2. The Applicant is a NZ incorporated company (1984 – CN 237544) which is an overseas person under the Act - as it is 25% or more owned by overseas persons.
3. The Applicant is one of NZ's largest retirement village operators. It owns and operates approximately 24 villages in the North Island and owns assets valued at approximately [s 9(2)(b)(ii)]. It is the third largest NZ-based company on the NZX by market capitalisation at \$1 billion.
4. The Applicant has its head office in Auckland and is publicly listed on both the NZX and the ASX.

Who owns the Applicant

5. Almost 70% of shares in the Applicant are held by NZ shareholders.
6. Approximately 30.7% of the shares are owned by "overseas persons" for the purposes of the Act. Those holding more than 5% are Australian (18.5%) and USA (6.3%) shareholders.
7. Underlying beneficial ownership of the Applicant (those holding more than 5%) is set out in the following table:

New Zealand Superannuation Fund Nominees Ltd	19.8%	As nominee for the NZ Superannuation Fund being property of HMQ in right of NZ and managed by the Guardians of NZ Superannuation.
ANZ New Zealand Investments Limited	10.9%	(e.g. Kiwisaver investments on behalf of NZ citizens; investments for NZ businesses; individuals; Trusts; Incorporated Societies etc).
Devon Funds Management Limited	5.9%	in its capacity as investment manager for various businesses, individuals, Trusts and Incorporated Societies etc.
Accident Compensation Corporation (ACC)	5.0%	With respect to investment products managed on behalf of ACC.

8. The Applicant has made several previous applications under the Act as set out in the following table:

Date	Case number(s)	Applicant	Application
31 May 2012	201210032	Metlifecare Oakwoods Limited (Nelson)	Sensitive land
9 July 2012	201210076 & 21220003	Metlifecare Limited	Sensitive land and significant business assets
3 August 2012	201210042 & 201210043	Metlifecare Limited	Sensitive land and significant business assets
12 April 2018	201720107 (Orion Point)	Metlifecare Limited	Sensitive land

9. In addition, the Applicant has very recently (June 2019) been granted an Increased Housing standing consent (201810184).

Who controls the Applicant and its parent entities for the purposes of this investment?

10. The Applicant is governed by a Board consisting of 7 directors (the **Board**).
11. The directors are set out in the table of individuals with control (**IWC**) below. All directors of the Applicant are NZ citizens.

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

13.

Day to day management

14. Once the expansion is completed and ready to be operational, the New Land will be transferred to Metlifecare Oakridge Limited (**MOL**), being a wholly owned subsidiary of the Applicant.
15. MOL is 100% owned by Metlifecare Holdings Limited (**MHL**), which is itself 100% owned by the Applicant. MHL has the same directors as MOL.

Relevant Overseas Person

16. For the reasons set out in the preceding paragraph, we have determined that the '**relevant overseas person**' is (collectively):

Entity	Relationship
Metlifecare Oakridge Limited (MOL)	New registered proprietor
Metlifecare Holdings Limited (MHL)	100% owner of MOL
Metlifecare Limited	Applicant and 100% ultimate owner of MOL

Individuals with Control

17. For the reasons set out in the preceding paragraphs, in the circumstances relating to this specific investment, we have determined that the '**individuals with control of the relevant overseas person**' are (collectively):

Individual	Role
Glen Sowry	CEO of the Applicant and director of MOL & MHL
Richard Thomson	CFO of the Applicant and director of MOL & MHL
Charles Anderson	GM Property and Development of the Applicant
Christopher Gerard Aiken	Director of the Applicant
Mark James Binns	Director of the Applicant
Kimmitt Rowland Ellis	Director of the Applicant
Alistair Bruce Ryan	Director of the Applicant
Roderick James Snodgrass	Director of the Applicant
Carolyn Mary Steele	Director of the Applicant
Dr Noeline Beryl Whitehead	Director of the Applicant

18. These persons were also selected as the IWC in the recent standing consent 201810184 granted to the Applicant in June 2019.

Business Activities

19. The Applicant has been operating in NZ since 1984.
20. The Applicant currently operates 24 retirement villages caring for over 29(2) New Zealanders.
21. In addition, the Applicant is currently developing four retirement village sites located in Auckland.

Description of Investment

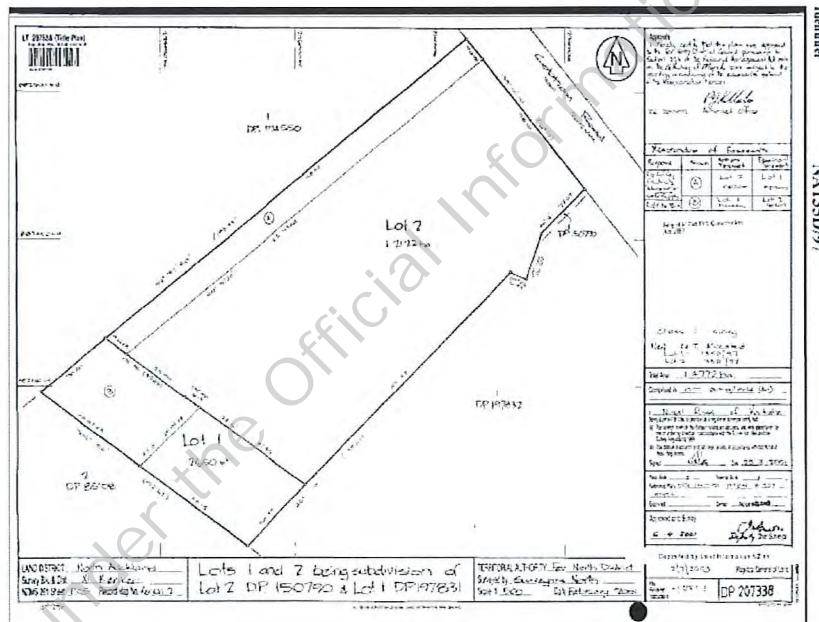
22. The Applicant is seeking consent to acquire sensitive land (**the New Land**), being residential freehold land located in Kerikeri. Details of the New Land are set out in the Sensitive Assets section below.
23. The Applicant and the Vendor entered into an *Agreement for Sale and Purchase (ASP)* on 23 April 2019. The ASP is conditional upon consent under the Act being granted.
24. The total purchase price for the Relevant Land is \$253,500.
25. The purchase price will be funded by [s 9(2)(b)(ii)]

Vendor

- 26. The Vendor is Kerikeri R.S.A. Trust Fund Incorporated.
- 27. The Vendor is a current neighbour of the Applicant.
- 28. Currently situated on the New Land is a four-bedroom residential dwelling with two detached sheds and single carport. The residential dwelling was previously tenanted by the Vendor up until December 2018 and is now being utilised by the Vendor as an office for the R.S.A.
- 29. The Vendor is not an overseas person under the Act.

Sensitive Assets

- 30. The New Land is 2,650m² of freehold land located at 37B Cobham Road, Kerikeri, Far North District, and is comprised in Record of Title (RT) NA135D/97 (Lot 1 DP 207338):



- 31. The New Land is outlined in red in the following photos:



- 32. The Applicant has no existing interest in the New Land (apart from the benefit of a parking easement - which is an exempted interest under the Act).
- 33. The New Land is sensitive by virtue of its classification as Residential Land as defined under the Act. The New Land is not sensitive land for any other reason.

Reason for the Investment

- 34. The New Land adjoins Oakridge retirement village (**Oakridge**), which is owned and operated by the Applicant.
- 35. In order to service the need for long-term accommodation facilities for older persons in the Northland region, the Applicant wishes to expand Oakridge to service the community and the ageing population.
- 36. To enable this expansion, the New Land will be incorporated into Oakridge.
- 37. The New Land also adjoins other yet to be developed land owned by the Applicant. This land is comprised in RTs 291986 and 291985 (**Adjoining Land**).
- 38. The Applicant intends to demolish the current residential dwelling on the New Land used by the RSA as an office to undertake its proposed expansion.
- 39. The Applicant proposes to develop ^s complete new independent living units on the New Land as part of the Applicant's extension of Oakridge Villas. In addition, parts of other new units also straddle the New Land.
- 40. The proposed development is set out in the following plan (the New Land being outlined bottom left with the ^s new units coloured red):



- 41. The current and proposed land use is set out in the following table:

37B Cobham Road, Kerikeri		
Land use	Current (ha)	Proposed (ha)
Vacant undeveloped land	0.1106 ha	0 ha
Residential Dwelling	0.0119 ha	0.1022 ha (includes garages)
Carparking Easement in favour of Adjoining Land owners (the Applicant)	0.1325 ha	0 ha Easement will become redundant.
Ancillary detached sheds and carport	.0120 ha	0 ha
Private driveway/ access / outdoor amenity/ resident gardens/ decks	0 ha (note carpark easement)	0.1628 ha
Total	0.2650 ha	0.2650 ha

Development Milestones

42. The main consents required and authorisations for the expansion are resource and building consents.
43. The table below sets out the details of the Applicant's key consents and the associated timing of these, the commencement and completion of construction and the commencement of operations.

Proposed Development Stages	Timeframe / Programme
Resource Consent lodged	[s 9(2)(b)(ii)]
Building Consent lodged	
Building Consent uplift	
Commencement of Construction	
Completion of Construction	
Commencement of Operations	

44. The above programme is a best endeavours plan and is subject to the performance of contractors, consultants and also extraneous variables (such as weather) which can impact construction programmes.
45. **Special condition 3** will set out various development milestones based upon the above programme which must be satisfied by the Applicant.

Does the Applicant meet the Investor Test criteria?

Business Experience s16(2)(a)

The relevant overseas person, or the individuals with control of the relevant overseas person, must have business experience and acumen relevant to the overseas investment. There is considerable flexibility in determining what is relevant and more or less specific expertise may be required depending on the nature of the investment. Business experience and acumen that contributes to an investment's success may be treated as relevant even though the investor may have to supplement its experience and acumen by utilising the experience and acumen of others to ensure the investment succeeds.

46. In this case, the Investment can be described as the acquisition of land for the inclusion into, expansion and ongoing operation of a retirement village.
47. We have reviewed the biographical information provided by the Applicant for each of the individuals with control of the relevant overseas person (**IWC**) and note that the Applicant has extensive experience investing and managing retirement homes in NZ (currently 24 villages with more under construction).
48. Having regard to the above, **we are satisfied** that the IWC collectively have business experience and acumen relevant to the overseas investment.

Financial Commitment s16(2)(b)

The financial commitment criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the overseas investment.

49. In this case **we are satisfied** that the relevant overseas person has demonstrated financial commitment as follows.
50. The Applicant has incurred costs (including consultant, legal fees and council fees in excess of **9(2)** for the New Land in relation to:
 - negotiating and agreeing the terms of the ASP and associated documentation;
 - engaging design consultants and engineering consultants to complete feasibility work to enable the proposed expansion;
 - engaging consultants and undertaking an initial due diligence investigation before an offer was presented.

Good Character s16(2)(c)

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):

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

51. The Applicant has provided a statutory declaration recently stating that the IWC 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. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957.
52. In addition to this application, the Applicant has very recently been granted an Increased Housing standing consent application for which the IWC were the same as in this application.

53. As part of the concurrent standing consent application, open source background checks on the IWC (together with information supplied by the Metlifecare) located information about a suspected homicide at a Metlifecare village, complaints regarding the standard of care of certain residents, a complaint regarding a lack of communication for building remediation works, a director involved in an allegation of breaching market regulations, and a director's association with offshore tax companies.
54. Having reviewed these matters, it was concluded that overall **we are satisfied** that the individuals with control are of good character and we remain of this opinion for the purposes of this application.

Immigration Act s16(2)(d)

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 New Zealand. Section 16 provides a power to deny a visa or permission to enter New Zealand for other specified reasons, such as if the individual is likely to be a threat or risk to security or public order.

55. The Applicant has recently provided a statutory declaration stating that none of the IWC are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009. We are satisfied that the statutory declaration can be relied on as it complies 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.
56. Therefore, **we are satisfied** that none of the IWC are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.

Is the relevant land residential (but not otherwise sensitive)?

57. Under section 16(1)(b), any land acquired under the Increased Housing Test must be residential (but not otherwise sensitive) land.
58. **We are satisfied** from the land status certificate provided by the Applicant, and from our own investigations, that the New Land (being the relevant land for the purposes of the Test) is residential (but not otherwise sensitive land).

Increased Housing Test – Schedule 2(11)

59. The **Increased Housing Test** is set out Schedule 2(11) of the Overseas Investment Act 2005 as set out below.

11 How increased housing test is met

- (1) The increased housing test is met if the relevant Ministers are satisfied that—
- (a) **1 or more** of the following outcomes (the **increased housing outcomes**) will, or are likely to, occur on the residential land:
- (i) an increase in the number of residential dwellings constructed on the residential land (including an increase from 0);
 - (ii) construction of a long-term accommodation facility on the residential land, or an increase in the number of dwellings in a long-term accommodation facility that is on the residential land;
 - (iii) development works on the land to support the doing of things described in either or both of subparagraphs (i) and (ii); and
- (b) the following outcomes (as defined in clause 17) will, or are likely to, occur:
- (i) the on-sale outcome (unless exempt from this outcome under subclause (2)); and

(ii) the **non-occupation outcome**.

(2) Subclause (1)(b)(i) does not apply,—

(a) if the increased housing outcome is as described in subclause (1)(a)(ii) and the relevant Ministers are satisfied that the long-term accommodation facility will, or is likely to, operate from the residential land within a specified period, to the extent that the relevant Ministers are satisfied that the land will, or is likely to, be used for those operations; or

(b) if an exemption under clause 20 (exemption for large developments with shared equity, rent-to-buy, and rental arrangements) applies.

(3) The increased housing outcomes are measured by comparing the expected result of the overseas investment against the state of the residential land before the transaction takes effect.

(4) In this clause (and in clause 19), development works—

(a) includes the construction, alteration, demolition, or removal of a building or infrastructure; and

(b) includes siteworks (including earthworks) that are preparatory to, or associated with, the matters set out in paragraph (a); but

(c) does not include subdivision of land without other development works.

(5) See also **clause 18** (which sets out certain conditions to be imposed on consents that rely on meeting this test).

Which increased housing outcome is met?

60. In order for the Increased Housing Test to be satisfied, one or more of the increased housing outcomes set out above must be likely to result.

61. **We are satisfied** that one of the increased housing outcomes will result from the proposed investment, being:

*(ii) construction of a long-term accommodation facility on the residential land, or an **increase in the number of dwellings in a long-term accommodation facility** that is on the residential land.*

as the New Land will be incorporated into (and allow the construction of new dwellings within) Oakridge - which is a long-term accommodation facility, being a retirement village¹.

62. The proposed expansion will result in the direct or indirect development of a further **s 9(2)** independent living units - an increase of **s 9(2)** dwellings located completely on the New Land and part of **s 9(2)** independent living units with the other part on the Adjoining Land.

63. **Special condition 1** will ensure that this increased housing outcome will likely result.

¹ "Long-term accommodation facility" is defined in section 6 of the Act as:

long-term accommodation facility—

(a) means—

(i) a retirement village or rest home; or

(ii) a hostel within the meaning of **section 2** of the Education Act 1989, or other facility used or intended to be used to provide accommodation to students in accordance with the requirements of **section 5B** of the Residential Tenancies Act 1986; but

(b) does not include any facility to the extent that it is, or is part of, an excluded accommodation facility

Oakridge is **not** an "excluded accommodation facility".

Do the on-sale and non-occupation outcomes apply?

On-sale outcome

64. The on-sale outcome must be likely to occur under Schedule 2(11)(1)(b)(i) **unless exempted** under Schedule 2(11)(2)(a). This exemption **applies** in this case.
65. Under the Schedule 2(11)(2)(a) exemption, the on-sale outcome is not required: *(a) if the increased housing outcome is as described in subclause (1)(a)(ii) and the relevant Ministers are satisfied that the long-term accommodation facility will, or is likely to, operate from the residential land within a specified period, to the extent that the relevant Ministers are satisfied that the land will, or is likely to, be used for those operations;*
66. As a developer and operator of retirement villages, the Applicant's primary purpose in purchasing the New Land is to expand and operate a retirement village (which, as stated above, is a long-term accommodation facility, as defined under the Act).
67. As the Applicant will be operating long-term accommodation facilities on the New Land (and this will be the primary use of the land), **we are satisfied** that the proposed investment falls within the exemption from the on-sale outcome under Schedule 2(11)(2)(a).

Non-occupation outcome

68. The non-occupation outcome must be likely to occur under Schedule 2(11)(1)(b)(ii).
69. The non-occupation outcome is defined in Schedule 2(17):

17 What are on-sale outcome and non-occupation outcomes

(1) This clause defines the on-sale outcome and the non-occupation outcome for the purposes of various conditions and related tests.

(3) The **non-occupation outcome** is that, for so long as the relevant overseas person has a relevant interest in the residential land, none of the following occupy the land:

(a) the relevant overseas person (A):

(b) any overseas person (B) who has a 25% or more ownership or control interest in A:

(c) any overseas person (C) who occupies the land otherwise than on arm's-length terms (for example, a relative who occupies rent-free), where arm's-length terms means terms that—

(i) would be reasonable in the circumstances if the owner of the land (including their property agent) and C (including their associates) were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or

(ii) are less favourable to C than the terms referred to in subparagraph (i):

(d) any overseas person who has a beneficial interest in, or beneficial entitlement to, the relevant interest in the residential land:

(e) if A is a trust, a person who may (directly or indirectly) benefit under the trust at the discretion of the trustees.

- 70. The Applicant has submitted that no person of the class described in Schedule 2(17) of the Act will occupy the New Land, for so long as the relevant overseas person has an interest in the New Land.
- 71. **Special condition 2** will ensure that the non-occupation outcome will likely occur.

Mandatory Conditions

- 72. Schedule 2(11)(5) sets out certain mandatory conditions to be imposed on consents meeting the Increased Housing Test.
- 73. These mandatory conditions are set out in Schedule 2(18) as follows:

Conditions required under Schedule 2(18)

If consent is granted on the basis of the following test	... conditions that require the following must be imposed on the consent in relation to the residential land	... except in the following circumstances
1 Increased housing test	1 or more increased housing outcomes (as defined in clause 11) The on-sale outcome (as defined in clause 17) The non-occupation outcome (as defined in clause 17)	Clause 11(2)(a) applies (which relates to the operation of a long-term accommodation facility) to the extent that that clause applies Or an exemption under clause 20 applies (which relates to large developments with shared equity, rent-to-buy, and rental arrangements) (but see clause 20(3))

- 74. As set out above:
 - **special condition 1** will ensure that the relevant increased housing outcome is likely to occur;
 - the on-sale outcome is not required in this case due to the exemption in Clause 11(2)(a);
 - **special condition 2** will ensure that the non-occupation outcome is likely to occur.

Conclusion

- 75. On the basis of the information provided with the application (including appendices) and for the reasons set out above under the required criterion, we consider that the Increased Housing Test is met.
- 76. As detailed above, we are satisfied that the criteria in sections 16(1) and Schedule 2(11) are met, and therefore consent should be granted to the Investment.
- 77. We therefore **recommend that consent** is granted to this Investment.

Third Party Submissions

- 78. No third party submissions were received.

Appendices

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Released under the Official Information Act 1982

Attachment 1 - Proposed Decision

Consent for Overseas Person to Acquire Sensitive New Zealand Land

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

Consent – Increased Housing Test

Decision date: **10 July 2019**

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

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

Conditions

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

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

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

Special conditions

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

Definitions:

Act means Overseas Investment Act 2005

201900270 – Metlifecare Limited

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

Regulations means Overseas Investment Regulations 2005

Details	Required date						
Special Condition 1: Increased housing outcome							
<p>You must use the Land for the construction of a minimum of [s 9(2)(b)(ii)] independent living units in a long-term accommodation facility on the Land.</p> <p>If you do not comply with this Special Condition, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	[s 9(2)(b)(ii)]						
Special condition 2: Non-occupation outcome							
<p>None of the following people may occupy the land acquired under the standing consent for residential purposes:</p> <p>(a) You.</p> <p>(b) Any overseas person with a 25% or more ownership or control interest in any of the people in (a).</p> <p>(c) Any overseas person who occupies the Land other than on arm’s length terms².</p> <p>(d) Any overseas person who has a beneficial interest in, or beneficial entitlement to, the relevant interest in the Land.</p> <p>(e) If (a) is a trust, any beneficiary (direct or indirect) who may benefit under the trust at the trustees’ discretion.</p>	From settlement						
Special condition 3: Milestones							
You must complete the following milestones with regard to the development of the Land:							
<table border="1"> <thead> <tr> <th data-bbox="231 1695 727 1756">Milestone condition</th> <th data-bbox="727 1695 1222 1756">Date for completion</th> </tr> </thead> <tbody> <tr> <td data-bbox="231 1756 727 1883"> <p><i>Milestone 1</i></p> <p>Submission of resource consent for development</p> </td> <td data-bbox="727 1756 1222 1883">[s 9(2)(b)(ii)]</td> </tr> <tr> <td data-bbox="231 1883 727 1977"> <p><i>Milestone 2</i></p> <p>Commencement of construction of the</p> </td> <td data-bbox="727 1883 1222 1977">[s 9(2)(b)(ii)]</td> </tr> </tbody> </table>	Milestone condition	Date for completion	<p><i>Milestone 1</i></p> <p>Submission of resource consent for development</p>	[s 9(2)(b)(ii)]	<p><i>Milestone 2</i></p> <p>Commencement of construction of the</p>	[s 9(2)(b)(ii)]	
Milestone condition	Date for completion						
<p><i>Milestone 1</i></p> <p>Submission of resource consent for development</p>	[s 9(2)(b)(ii)]						
<p><i>Milestone 2</i></p> <p>Commencement of construction of the</p>	[s 9(2)(b)(ii)]						

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

independent living units		
<i>Milestone 3</i> Completion of construction of the independent living units	[s 9(2)(b)(ii)]	
If you do not, Standard Condition 6 will apply and we may require you to dispose of Land.		

Standard conditions

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

Details	Required date
Standard condition 1: acquire the Land	
<p>You must acquire the Land:</p> <ol style="list-style-type: none"> by the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Land, and using the acquisition, ownership and control structure you described in your application. Note, only you – the named Consent holder – may acquire the Land, not your subsidiary, trust or other entity. 	As stated in the Consent
Standard condition 2: tell us when you acquire the Land	
<p>You must tell us in writing when you have acquired the Land. Include details of:</p> <ol style="list-style-type: none"> the date you acquired the Land (Settlement), consideration paid (plus GST if any), the structure by which the acquisition was made and who acquired the Land, and copies of any transfer documents and Settlement statements. 	As soon as you can, and no later than two months after Settlement

Standard condition 3: allow us to inspect the Land	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions.</p> <p>We will give you at least two weeks' written notice if we want to do this.</p> <p>You must then:</p> <ol style="list-style-type: none"> 1. Allow a person we appoint (Inspector) to: <ol style="list-style-type: none"> (a) enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (Inspection), (b) remain there as long as is reasonably required to conduct the inspection, (c) gather information, (d) conduct surveys, inquiries, tests and measurements, (e) take photographs and video records, and (f) do all other things reasonably necessary to carry out the Inspection. 2. Take all reasonable steps to facilitate an Inspection including: <ol style="list-style-type: none"> (a) directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection, (b) being available, or requiring your employees, agents, tenants or other occupiers to be available, at all reasonable times during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required. <p>During an Inspection:</p> <ol style="list-style-type: none"> (a) we will not compel you and your employees, agents, tenants or other occupiers to answer our questions or to let us look at, copy or take away documents, (b) our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection. 	At all times
Standard condition 4: remain of good character	
You and the Individuals Who Control You:	At all times

<p>1. must continue to be of good character, and</p> <p>2. must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009.</p> <p>In summary, these sections describe convicted or deported people who are not eligible for visa or entry permission to enter or be in New Zealand and people who are considered likely to commit an offence or to prevent a threat or risk to security, public order or the public interest.</p> <p>The Individuals Who Control You are individuals who:</p> <ul style="list-style-type: none"> (a) are members of your governing body, (b) directly or indirectly, own or control 25% or more of you or of a person who itself owns or controls 25% or more of you, and (c) are members of the governing body of the people referred to in paragraph (b) above. 	
<p>Standard condition 5: tell us about changes that affect you, the people who control you, or people you control</p>	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <ol style="list-style-type: none"> 1. You, any Individual Who Controls You, or any person in which you or any individual who controls you hold (or at the time of the offence held) a 25% or more ownership or control interest commits an offence or contravenes the law anywhere in the world. This applies whether or not you or they were convicted of the offence. In particular, please tell us about any offences or contraventions that you are charged with or sued over and any investigation by enforcement or regulatory agencies or professional standard bodies. 2. An Individual Who Controls You ceases to be of good character; commits an offence or contravenes the law (whether they were convicted or not); becomes aware of any other matter that reflects adversely on their fitness to have the Land; or becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (see standard condition 4). 3. You cease to be an overseas person or dispose of all or any part of the Land. 4. You, any Individual Who Controls You, or any person in which you or any Individual Who Controls You hold (or at the time of the event held) a 25% or more ownership or control interest: 	<p>Within 20 working days after the change</p>

<p>(d) becomes bankrupt or insolvent</p> <p>(e) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or</p> <p>(f) becomes subject to any form of external administration.</p>	
<p>Standard condition 6: dispose of the Land if you do not comply with key Special conditions</p>	
<p>Some of the special conditions were key to the decision to give consent. If we consider you have failed to comply with one of those special conditions in a material way we may require you to dispose of the Land.</p> <p>We may also require you to execute a security deed before you may acquire the Land. The security deed:</p> <ol style="list-style-type: none"> 1. must be in the form we require, 2. must be executed and delivered to us before you acquire the Land, 3. gives us power to appoint a receiver to dispose of the Land if you do not do that as required by this Standard condition 6, 4. will provide, among other things, that if we appoint a receiver, the receiver may dispose of the Land, deduct his or her costs from the proceeds of sale, and pay the remainder to you. <p>If all or part of this Standard condition 6 applies to a Special condition, we have said so in that condition.</p> <p>We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:</p>	
<p>Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.</p>	<p>Within six weeks of the date of our notice.</p>
<p>Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.</p>	<p>Within six weeks of the date of our notice.</p>
<p>Dispose of the Land: dispose of the Land to a third party who is not your associate.</p>	<p>Within six months of our notice.</p>
<p>Offer without reserve: : if you have not disposed of the Land within six months of our notice, offer the Land for sale by auction or tender without a reserve price or</p>	<p>Within nine months of our notice.</p>

minimum bid and dispose of the Land.	
Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.	By the last day of every March, June, September and December after our notice or at any other time we require.
Report disposal to us: send us, in writing, evidence: (a) that you have disposed of the Land, (b) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor), (c) the purchaser is not your associate.	Within one month after the Land has been disposed of.

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Reporting conditions

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

In addition to Standard Condition 2, you must lodge a report by no later than s 9(2)(b)(ii)] which must:

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

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Attachment 2 - Instructions

1. The regulator must grant consent to this overseas investment if it is satisfied that all of the relevant criteria in section 16(1) and Schedule 2(11) of the Overseas Investment Act 2005 ("the Act") are met.
2. It must decline to grant consent if it is not satisfied that all of the relevant criteria in section 16(1) and Schedule 2(11) are met. The regulator must not take into account any criteria or factors other than those identified in section 16(1) and Schedule 2(11).
3. In the attached Report the Overseas Investment Office identifies each of the relevant criteria under section 16(1) and Schedule 2(11) that the regulator is required to consider in this case.

Conditions

4. Under Schedule 2(11)(5), certain mandatory conditions must be imposed on any consent granted under Schedule 2(11).
5. Additional conditions may be imposed on any consent that is granted, under section 25A.
6. The attached Report sets out mandatory and discretionary conditions that you should consider imposing in this case.

Decision

7. 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.

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Attachment 3 - Sensitive Land

Land Interest	Freehold Interest (approximately 0.2650 hectares)
CTs	NA135D/97 (North Auckland)
Sensitivity	Includes residential land
	No other sensitivities

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