

OVERSEAS INVESTMENT OFFICE

**Decision required under the Overseas Investment Act 2005:
Adams NZ Bidco Limited and 2719970 Ontario Limited –
201900631**

Date	13 March 2020
Security Level	Commercial: In Confidence
Priority	High
Case Number	201900631
Decision Required By	As soon as possible

Contact for Telephone Discussion

Name	Position	Telephone	Contact
Michael Appleyard	Manager (Residential & Forestry)	04 830 3880	✓

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Executive Summary:

Applicants

1. The joint applicants are Adams NZ Bidco Limited (**Adams NZ Bidco**) and 2719970 Ontario Limited (**OTPP SPV**). Both applicants are overseas persons under the Act.
2. The proposed investment involves two prominent investment groups (the Australian **BGH Group** and the Canadian **OTPP Group**).
3. The joint applicants have applied for consent for Adams NZ Bidco to acquire up to 100% of the fully paid ordinary shares in New Zealand incorporated Abano Healthcare Group Limited (**Target**), along with an immediate related post-acquisition parental share restructure between the parent groups.
4. The Target is currently publicly listed on the NZX.
5. The Target's business includes the "Lumino The Dentists" brand in New Zealand and the "Maven Dental Group" in Australia.
6. The proposed investment consists of two steps:
 - *Step 1: Initial acquisition of the Target* - the initial acquisition of the Target by Adams NZ Bidco;
 - *Step 2: subsequent internal rearrangement* - the subsequent ownership rearrangement between the two ultimate beneficial owner investment groups whereby OTPP Group increases its indirect shareholding in the Target.
7. We consider the two steps are sufficiently interrelated that they can be treated as a single transaction for the purposes of the Act.
8. The overseas investment comprises a targeted takeover of a New Zealand company. The acquisition is governed by Part 15 of the Companies Act 1993, which permits court approved takeovers of target companies with the assistance of the Takeovers Panel.
9. The proposed acquisition was announced through the NZX in November 2019, and is scheduled to be voted on by the Target's shareholders in mid-March 2020.

Step 1 - Initial acquisition of the Target

10. Adams NZ Bidco is initially seeking consent to acquire 100% of the fully paid ordinary shares in the Target.
11. Adams NZ Bidco is owned by a chain of 100% parent entities - at the top of which is Adams Group Aus Holdings Pty Limited (**AU Holdco**).
12. At the time of this initial acquisition, AU Holdco (and therefore ultimately Adams NZ Bidco) will be ultimately owned by:
 - three Australian investment funds (**BGH Fund** - part of BGH Group) as to a majority share (**76%**);
 - the Canadian OTPP Group as to a minority share (29.9% - noting that of the OTPP stake, **24%** will be held directly by OTPP SPV with the remainder held through an indirect interest held in the BGH Fund).
13. BGH Fund is one of the largest domestic private equity funds in Australia and New Zealand, whilst OTPP Group operates the largest single-profession (teachers) pension fund in Canada.

Step 2 - Post-acquisition restructure between parent groups

14. [REDACTED]
15. Following this restructure, BGH Fund will hold **60%** - including OTPP's small indirect interest.
16. This post-acquisition restructure is intended to be completed immediately following the initial acquisition (no later than a week from the initial acquisition).

Consent required

17. The proposed takeover comprises the acquisition of both sensitive land and of significant business assets:
- *Sensitive land* - the Target leases a small amount of land categorised as residential (but not otherwise sensitive) land – being approximately 0.5ha. The Applicants are seeking to acquire this land under the non-residential use test (the leased land being used for dental premises). Consent is required under section 12(b) of the Act for both the initial acquisition of the shares in the Target and the post-acquisition share increase restructure;
 - *Significant business assets* - consideration payable for the initial acquisition of the shares in the Target is approximately \$149m and the value of the Target's gross assets is approximately \$344m (as at May 2019). Both sums exceed the \$100 million threshold for significant business assets set out in section 13 of the Act
18. The proposed transaction also requires approval from the New Zealand High Court (twice), the Australian Foreign Investment Review Board (**FIRB**), and the Target's shareholders. First stage approval has been granted by the High Court whilst approval from the FIRB was obtained in February 2020.

Good character

19. Overall, we are, and remain, **satisfied** that the relevant overseas person and individuals with control of the relevant overseas person are of good character.

Non-Residential Use

20. The leased residential land is used to operate commercial dental practices.
21. We are satisfied that the use of the relevant land will meet the non-residential use outcomes.

Recommendation

22. We recommend consent is **granted**.

Decision:

23. I have determined that:
- a. the '**relevant overseas person**' is (collectively):

Entity	Relationship
Adams NZ Bidco Limited (Adams NZ Bidco)	the acquiring entity of 100% of the shares in the Target

BGH Group including: - BGH Capital Pty Ltd (BGH Capital) - BGH Capital Offshore GP I Limited (GP OLP) - BGH Fund entities (being BGH Capital Offshore I, LP, BGH Trust IA and BGH Trust IB.	The new ultimate majority beneficial owner group of the shares in the Target
OTPP Group including: - 2719970 Ontario Limited (OTPP SPV) - OTPP Equities Investment Committee (OTPP Committee)	The new ultimate minority beneficial owner group of the shares in the Target
Adams Group Aus Holdings Pty Limited (AU Holdco)	The holding entity through which BGH and OTPP Groups will ultimately hold their shares in the Target and Adams NZ Bidco

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

Individual	Role	Resides
Simon Harle	Director of Adams NZ Bidco, AU Holdco, BGH Capital and Founding Partner of BGH Group	Australia
Sir Ralph Norris	Director of Adams NZ Bidco	New Zealand
Rajeev Ruparelia	Director of Adams NZ Bidco, AU Holdco, OTPP SPV, member of OTPP Committee	Hong Kong
Amit Sobti	Director of Adams NZ Bidco, AU Holdco, OTPP SPV	Hong Kong
David Brooks	Director of AU Holdco	Australia
Robin Bishop	Director of BGH Capital and Founding Partner of BGH Group	Australia
[s 6(2)(a)]	Director of BGH Capital and Founding Partner of BGH Group	Australia
	Director of GP-OLP	Guernsey
	Director of GP-OLP	Guernsey
	Director of GP-OLP	Guernsey
	Director of GP-OLP	United Kingdom
	Director of GP-OLP	USA
	Member of OTPP Committee	Canada

[s 9(2)(a)]	Member of OTPP Committee	Canada
	Member of OTPP Committee	Canada
	Member of OTPP Committee	Canada
	Member of OTPP Committee	London
	Member of OTPP Committee	Canada
	Member of OTPP Committee	Canada
	Member of OTPP Committee	Hong Kong

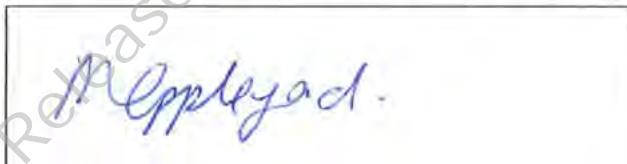
24. I have reviewed the application and all appendices and the information set out in this report.

Investor test

25. I am satisfied that the criteria for consent in sections 16(2) and 18 have been met:
- the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment; and
 - the relevant overseas person has demonstrated financial commitment to the overseas investment; and
 - all the individuals with control of the relevant overseas person are of good character; and
 - 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.

Non-residential use test

26. I am satisfied that the criteria for consent as set out in sections 16(1)(b)(i)(C) (criteria for consent) and Schedule 2, clause 13 (**non-residential use test**) are met.
27. The consent is subject to the mandatory conditions imposed by Schedule 2, clause 18(2), detailed below.
28. Consent is granted in the form of the Proposed Decision in **Appendix 1**.



Michael Appleyard – Manager Applications
(Residential & Forestry)

Date 13/03/2020.

Report of the Overseas Investment Office
 on the application for consent by
 Adams NZ Bidco Limited and 2719970 Ontario Limited
 Case: 201900631

Contents

WHAT IS THE INVESTMENT? 6

DESCRIPTION OF THE INVESTMENT 6

WHO IS MAKING THE INVESTMENT 9

DOES THE APPLICANT MEET THE INVESTOR TEST CRITERIA? 17

SENSITIVE LAND 18

INVESTMENT PLAN 19

NON-RESIDENTIAL USE TEST..... 19

RECOMMENDATION 21

THIRD PARTY SUBMISSIONS..... 21

APPENDIX 1 - PROPOSED DECISION..... 22

APPENDIX 2 - SENSITIVE LAND 29

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What is the Investment?

Applicants (as at completion of the proposed restructure)	Adams NZ Bidco Limited [s 9(2)(b)(ii)] [REDACTED] 2719970 Ontario Limited (Canada – 100%)
Vendor	Shareholders in Abano Healthcare Group Limited (New Zealand 93.9%, Australia 3%, Singapore 1.4%, United States 1.1%, Various 0.6%)
Consideration for shares	\$149,808,756
Recommendation	Grant consent

Description of the Investment

- The joint applicants are Adams NZ Bidco Limited (**Adams NZ Bidco**) and 2719970 Ontario Limited (**OTPP SPV**). Both applicants are overseas persons under the Act.
- The joint applicants represent two prominent investment groups (the Australian **BGH Group** and the Canadian **OTPP Group**).
- The joint applicants have applied for consent for Adams NZ Bidco to acquire up to 100% of the fully paid ordinary shares in New Zealand incorporated Abano Healthcare Group Limited (**Target**), along with a related post-acquisition parental entity share restructure.
- The proposed investment consists of two steps:
 - Step 1: Initial acquisition of the Target* - the initial acquisition of the Target by Adams NZ Bidco;
 - Step 2: Subsequent internal rearrangement* - the subsequent ownership rearrangement between the two ultimate beneficial owner investment groups whereby OTPP Group increases its indirect shareholding in the Target.
- The proposed acquisition of the shares by Adams NZ Bidco will be funded by external bank debt and equity subscription from the BGH Group entities and OTPP SPV in their respective proportions. BGH Group will utilize an existing debt facility whilst OTPP Group will utilize internal cash resources.

Takeover Scheme Implementation Agreement

- The overseas investment comprises a targeted takeover of a New Zealand company. The acquisition is governed by Part 15 of the Companies Act 1993, which permits court approved takeovers of target companies with the assistance of the Takeovers Panel.
- Scheme Implementation Agreements (SIAs)* under Part 15 of the Companies Act 1993 are statutory Court-approved procedures that allow the reorganisation of the rights and obligations of shareholders and companies. These schemes are subject to scrutiny by the Takeovers Panel, which approves an independent advisor to report on the merits of the proposed scheme.
- Adams NZ Bidco and the Target entered a SIA in November 2019 by which Adams NZ Bidco will acquire all fully paid ordinary shares in the Target.

9. The proposed acquisition was announced through the NZX in November 2019, and is scheduled to be voted on by the Target's shareholders in mid-March 2020.
10. The proposed investment also requires approval from the High Court, the Australian Foreign Investment Review Board (FIRB), and the Target's shareholders.
11. FIRB approval was granted on 12 February 2020.
12. The indicative timetable for the proposed investment is set out in the following table:

Early February	First Court Date	Abano will seek orders in relation to holding a meeting of its shareholders to approve the Proposed Transaction.
Mid-March	Abano Special Meeting of Shareholders to consider the Proposed Transaction	Shareholders consider and vote on Proposed Transaction.
Late March	Second Court Date	Subject to Abano shareholder approval being received at the Special Meeting, the Court makes orders to give effect to the Proposed Transaction.
Early April	Scheme Implemented	Consideration paid to Abano shareholders, and NZ Bidco becomes the owner of the Abano Shares.

13. It was announced by the NZX on 14 February 2020 that the High Court had granted the initial orders for Abano to proceed.

Step 1- Initial acquisition of the Target

14. Adams NZ Bidco is initially seeking consent to buy 100% of the fully paid ordinary shares in the Target.
15. Adams NZ Bidco is owned by a chain of 100% parent entities - at the top of which is Adams Group Aus Holdings Pty Limited (**AU Holdco**).
16. At the time of this initial acquisition, Adams NZ Bidco (and AU Holdco) will be ultimately owned by:
 - three Australian investment funds (**BGH Fund**, part of BGH Group) as to a majority share (**76%**);
 - the Canadian OTPP Group as to a minority share (29.9% - noting that of the OTPP stake, **24%** will be held by OTPP SPV with the remainder held through an indirect interest in the BGH Fund).
17. An ownership diagram showing the underlying investment structure at the time of the initial acquisition is set out in paragraph 76 below.

Post-acquisition restructure of AU Holdco

18. [s 9(2)(b)(ii)]
19. [s 9(2)(b)(ii)]
20. This post-acquisition restructure is intended to be completed immediately following the initial acquisition (no later than a week from the initial acquisition).

21. An ownership diagram showing the investment structure at the time of the restructure is set out in paragraph 77 below.

Consent required – sensitive residential land and significant business assets

Section 12(b) – acquisition of securities in a sensitive land-owning entity

22. The initial acquisition of the Target will constitute an investment in sensitive land as the Target leases a small amount (0.4751 hectares) of land categorised as residential (but not otherwise sensitive) land – being four leasehold parcels of land used for dental practices.
23. The post-acquisition restructure which will increase OTPP's interest in AU Holdco will also require consent, being an increase in an existing interest of more than 25% in the sensitive land-owning Target.
24. Adams NZ Bidco and OTPP are seeking consent to acquire these interests in the sensitive land under section 16(1)(b)(i)(C) - the non-residential use pathway.

Section 13 – acquisition of significant business assets

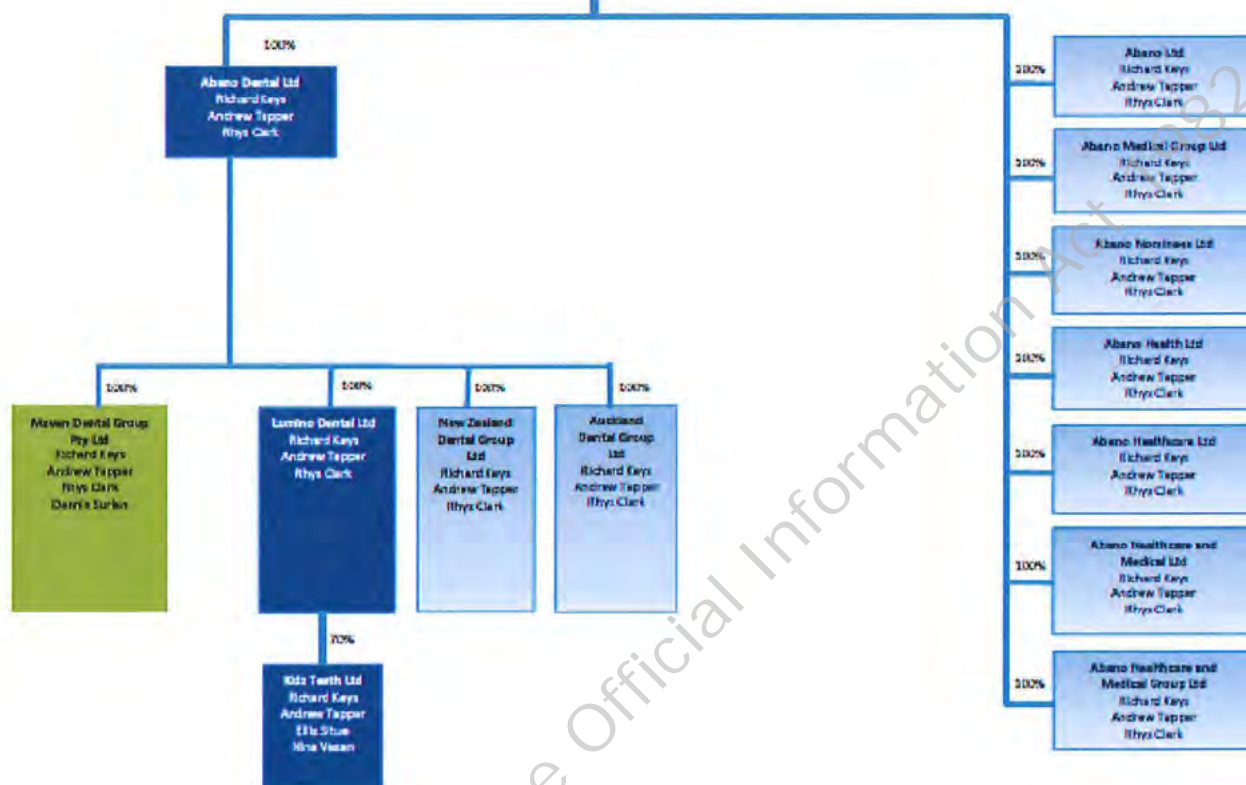
25. Consideration payable for the initial acquisition of the shares in the Target is approximately \$149 million (\$5.70 per Abano share) and the value of the Target's gross assets is approximately \$344 million (as at May 2019). Both sums exceed the \$100 million threshold for significant business assets set out in section 13 of the Act.

Target – Abano Healthcare Group Limited

26. The Target is a New Zealand company incorporated in 1961 (CN13802) which is listed on the NZX (NZX:ABA).
27. The Target had approximately 2,800 shareholders as at July 2019. It is estimated that approximately 93.9% of these shareholders are New Zealanders, with the largest shareholders being Harbour Asset Management Group Limited (15.92%), Forsyth Barr Management Limited (9.43%) and Accident Compensation Corporation (5.18%).
28. Abano is the owner of one of the largest dental groups in Australia and New Zealand. Abano operates through two brands ("Lumino The Dentists" in New Zealand (operated by Lumino Dental Limited) and "Maven Dental Group" in Australia) and engages over 2,300 people across more than 239 dental practices. The business also includes Orthodontix Cashmere, operated by Orthodontix Limited.
29. The Vendor has provided the following Abano group structure diagram for the Target's New Zealand business:



Key	
NZ Entities (Trading)	
NZ Entities (Non-Trading)	
Australian Entities (Trading)	
Australian Entities (Non-Trading)	



Who is making the Investment

Applicant

Who the applicant is

30. The joint applicants are Adams NZ Bidco Limited (**Adams NZ Bidco**) and 2719970 Ontario Limited (**OTPP SPV**).

Adams NZ Bidco and its parent entities

31. Adams NZ Bidco (CN 7807717) is a new limited liability New Zealand company incorporated in November 2019.
32. We consider that, as acquiring entity, it is part of the collective Relevant Overseas Person (**ROP**) for the purposes of this investment.
33. We also consider that the directors of Adams NZ Bidco are individuals with control (**IWC**) for the purposes of this investment.
34. Adams NZ Bidco is owned by a chain of 100% Australian incorporated parents (being Adams Aus Bidco Pty Limited, Adams Aus Midco Pty Limited and Adams Aus Mezzco Pty Limited, all of which were also recently incorporated for the purposes of the proposed

investment, for convenience and financing efficiencies). We consider that these intermediary entities are **not** part of the collective ROP as they will have no significant ownership or control role in the proposed investment.

AU Holdco

35. The parent of Adams Aus Mezzco Pty Limited is Adams Group Aus Holdings Pty Limited (**AU Holdco**) – another new (October 2019) Australian incorporated company.
36. The parent chain of Adams NZ Bidco is set out in the following diagram provided by the Applicants:



37. The two underlying investment groups will hold their indirect interest in Adams NZ Bidco (and therefore the Target) through AU Holdco.
38. AU Holdco will be delegated various responsibilities in relation to Abano (including shareholder governance, reporting and investment approvals).
39. We consider that, as the direct holding entity for the two underlying investment groups, it is part of the collective ROP for the purposes of this investment.
40. We also consider that the directors of AU Holdco are IWC for the purposes of this investment.
41. Upon completion, Adams NZ Bidco is intended to be ultimately majority owned by the Australian BGH Group and minority owned by the Canadian OTPP Group, of which details of each are set out below.

BGH Group

42. BGH Group will be the majority underlying owner of Adams NZ Bidco (and therefore the Target) if the proposed transaction proceeds.
43. Funding for the investment will be provided by three BH Group entities, which together form the **BGH Fund**, these funds being:
- BGH Capital Offshore I, LP (**BGH OLP**);
 - BGH Trust IA;
 - BGH Trust IB.
44. BGH Fund is one of the largest domestic private equity funds in Australia and New Zealand.

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

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

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

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

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

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

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

Control of BGH Group – the investment managers

51. BGH Capital Pty Ltd (**BGH Capital**) is the investment manager of BGH Trust IA and BGH Trust IB. BGH Capital was incorporated in Australia in 2017 by three founding partners, all of whom will be IWC for the purposes of this investment. BGH Capital is privately owned and managed by the founding partners.

52. BGH Capital invests in Australia and New Zealand.

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

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

BGH Capital

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

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

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

57. BGH Capital is a wholly owned subsidiary of BGH Capital Holdings of which the BGH Founding Partners are the ultimate beneficial owners.

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

- | [Redacted]
- | [Redacted]
- | [Redacted]

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

[s 9(2)]

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

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

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

OTPP Group

- 63. OTPP Group will be the minority underlying owner of Adams NZ Bidco if the proposed transaction proceeds.
- 64. OTPP SPV is a new limited liability company that was incorporated in Ontario, Canada in October 2019.
- 65. OTPP SPV is owned 100% by the Ontario Teachers' Pension Plan Board (**OTPP**) and is Canada's largest single-profession pension plan (CA\$201 billion) which pays defined benefit pensions and invests assets on behalf of approximately 327,000 retired and working teachers.
- 66. OTPP invests around the world, in virtually every investment sector. OTPP was incorporated under the Teachers' Pension Act (Ontario) and is a corporation without share capital.
- 67. Accordingly it does not have any shareholders or owners. Under the Teachers' Pension Act (Ontario), OTPP is jointly sponsored by the Ontario Teachers' Fund, a professional organisation of which all of the teachers in publicly funded schools in the Province of Ontario are members, and the Ontario Government.
- 68. OTPP invests for the long term and has a global diversified investment portfolio containing an asset mix of equities (public and private), inflation sensitive investments (real-return

bonds, real estate, infrastructure and natural resources), fixed income and absolute return strategies.

69. In New Zealand:

- OTPP owns 100% of OTPP New Zealand Forest Investments Limited, which acquired 30,000 hectares of pine forests in the central North Island in 2004. OIO consent (200320137) was obtained for this transaction. The forest is managed by Hancock Forest Management; and
- OTPP and Unitas Capital acquired NZ Yellow Pages in 2007 (200710021). OTPP exited this investment in 2011.

70. As well as the direct interest OTPP SPV will have in the Target (expected to be 40% of Class A shares upon completion of the restructure), OTPP itself will have a further interest through another 7.78% investment in the majority shareholder BGH Fund.

Control of OTPP Group

71. OTPP has clear delegated authorities in place for the approval of new investments and the management of its existing investments. The applicable delegated authority for who has approval and management responsibilities is determined by the size and location of the investment, as set out below in respect of Abano:

Transaction size ⁴	Approval
[s 9(2)(b)(ii)]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

72. [s 9(2)(b)(ii)] [Redacted]

73. [s 9(2)(b)(ii)] [Redacted]

74. The directors of OTPP SPV are senior members of the OTPP PC Deal Team and are tasked with negotiating and signing transaction documents in relation to the Proposed Transaction.

75. Accordingly, OTPP's indirect economic interest in NZ Bidco is ultimately controlled and managed by the OTPP Committee. Consequently, we consider the directors of the OTPP Committee are IWC for the purposes of this investment.

Summary of proposed underlying ownership of the Target

76. The Applicants have provided the following diagram showing ownership and control of the Target following the initial acquisition:

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¹ Class A shares contain all rights other than director appointment and removal voting rights
Class B shares contain only director appointment rights and nominal / immaterial economic rights

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

Relevant Overseas Person

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

Entity	Relationship
Adams NZ Bidco Limited (Adams NZ Bidco)	the acquiring entity of 100% of the shares in the Target
BGH Group including: - BGH Capital Pty Ltd (BGH Capital) - BGH Capital Offshore GP I Limited (GP OLP) - BGH Fund entities (being BGH Capital Offshore I, LP, BGH Trust IA and BGH Trust IB.	The new ultimate majority beneficial owner group of the shares in the Target

OTPP Group including: - 2719970 Ontario Limited (OTPP SPV) - OTPP Equities Investment Committee (OTPP Committee)	The new ultimate minority beneficial owner group of the shares in the Target
Adams Group Aus Holdings Pty Limited (AU Holdco)	The holding entity through which BGH and OTPP Groups will ultimately hold their shares in the Target and Adams NZ Bidco

Individuals with Control

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

Individual	Role	Resides
Simon Harle	Director of Adams NZ Bidco, AU Holdco, BGH Capital and Founding Partner of BGH Group	Australia
Sir Ralph Norris	Director of Adams NZ Bidco	New Zealand
Rajeev Ruparelia	Director of Adams NZ Bidco, AU Holdco, OTPP SPV, member of OTPP Committee	Hong Kong
Amit Sobti	Director of Adams NZ Bidco, AU Holdco, OTPP SPV	Hong Kong
David Brooks	Director of AU Holdco	Australia
Robin Bishop	Director of BGH Capital and Founding Partner of BGH Group	Australia
Benjamin Gray	Director of BGH Capital and Founding Partner of BGH Group	Australia
[s 9(2)(a)]	Director of GP-OLP	Guernsey
[s 9(2)(a)]	Director of GP-OLP	Guernsey
[s 9(2)(a)]	Director of GP-OLP	Guernsey
[s 9(2)(a)]	Director of GP-OLP	United Kingdom
[s 9(2)(a)]	Director of GP-OLP	USA
[s 9(2)(a)]	Member of OTPP Committee	Canada
[s 9(2)(a)]	Member of OTPP Committee	Canada
[s 9(2)(a)]	Member of OTPP Committee	Canada
[s 9(2)(a)]	Member of OTPP Committee	Canada

[s 9(2)(a)]	Member of OTPP Committee	London
	Member of OTPP Committee	Canada
	Member of OTPP Committee	Canada
	Member of OTPP Committee	Hong Kong

Does the applicant meet the investor test criteria?

Business experience and acumen 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.

80. In this case, the overseas investment can be described as the purchase of shares in a Target that owns and operates dental practices across New Zealand and Australia.
81. We have reviewed the supporting information provided for the business experience and acumen assessment.
82. The IWC have substantial experience in board and management roles of multinational corporations. For example:
- the directors of BGH Capital and GP-OLP have extensive experience relevant to the Proposed Transaction. For example, in their roles at TPG Capital, Mr Harle and Mr Gray jointly led investments in Asciano, Petbarn, Healthscope, Inghams and Cushman & Wakefield. Mr Bishop has led over A\$125 billion in M&A and advisory mandates and over A\$40 billion in capital raising assignments across a range of sectors and markets;
 - the members of the OTPP Equities Investment Committee similarly have extensive experience with Mr Chan, Ms Rowe, Ms Carmichael and Mr Ruparelia collectively having more than 80 years' private equity experience having worked in a variety of senior roles inside and outside of OTPP. The OTPP Equities Investment Committee members are experienced in successfully managing portfolio investment companies, for example, Ms Rowe has helped grow the OTPP private equity portfolio from \$10 billion to more than \$32 billion.
83. In terms of dental business expertise, the Target business employs over 2,300 people across more than 235 dental practices throughout New Zealand and Australia.
84. 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.

85. The Applicants have engaged a number of professional advisors in relation to the proposed transaction, including Bell Gully, King Wood Mallesons, EY, LEK and Jardens and has already expended significant resources in assessing and advancing the proposed transaction and entering into the SIA.

86. [s 9(2)(b)(ii)]
87. [s 9(2)(b)(ii)]
88. Having regard to the above, **we are satisfied** that the relevant overseas person has demonstrated financial commitment to the overseas investment.

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.

89. The joint applicants have provided statutory declarations 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 declarations can be relied on as they comply with the requirements of the Oaths and Declarations Act 1957.
90. In addition, Bell Gully has undertaken good character searches in accordance with the OIO’s guidelines. Representatives of the Applicants have reviewed and commented on the search results.
91. We also conducted open source background checks on the IWC, following which we considered a number of additional search results.
92. Having reviewed these matters, overall **we are satisfied** that the IWC are of good character.

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.

93. The Applicants have provided statutory declarations 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 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.
94. 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.

Sensitive Land

Residential land

95. The Target leases four parcels of residential (but not otherwise sensitive) land, being **(the Land.**
96. Further details of the land (including their use as dental practices) are set out in **Appendix 2.**

Investment Plan

General strategy

97. Lumino Dental Limited is an indirect wholly owned subsidiary of Abano. Following the proposed transaction, Lumino Dental Limited will be an indirect wholly owned subsidiary of the parent investment groups.
98. The parent groups intend to continue the operation of the Lumino Business following the proposed transaction. Given the Lumino Business' history of success in New Zealand and the parent groups' track record in building strong, sustainable and market-leading businesses, they fully expect the Lumino Business to continue to operate successfully in New Zealand.
99. The Land is used for non-residential purposes by Lumino Dental Limited in the ordinary course of the Lumino Business.

Non-residential use test

100. The Applicants seek consent under the non-residential use pathway for the residential land component of this investment.
101. This test is set out in Schedule 2, Clause 13 of the Act:

13 How non-residential use test is met

- (1) The non-residential use test is met if the relevant Ministers are satisfied that the residential land will be, or is likely to be (or will, or is likely to, continue to be)—
- (a) **used for non-residential purposes in the ordinary course of business** for the relevant business; and
- (b) **not used, nor held for future use, for any residential purposes.**
- (2) In any case where the relevant Ministers are not satisfied that the matters in subclause (1)(a) and (b) (the **non-residential use outcome**) will, or are likely to, occur within a short period after the overseas investment is given effect under the transaction, they may determine that the non-residential use test is met if—
- (a) either—
- (i) the relevant Ministers are satisfied that the non-occupation outcome (as defined in [clause 17](#)) will, or is likely to, occur; or
- (ii) the incidental residential use test is applied for and met in respect of the residential land; and
- (b) the relevant Ministers are satisfied that, within a specified period, the non-residential use outcome will be, or is likely to be, met.
- (3) Subclause (4) applies if the relevant Ministers determine that the non-residential use test is met only in respect of part of the residential land and no other test is applied for and met in respect of the remaining part of the residential land.
- (4) The relevant Ministers may determine that the non-residential use test is met if they are satisfied that the on-sale outcome (as defined in [clause 17](#)) will, or is likely to, occur for the remaining part of the residential land.
- (5) See also [clause 18](#) (which sets out certain conditions to be imposed on consents that rely on meeting this test).

Relevant business

Schedule 2, clause 12 - What is the relevant business

(1) This clause applies if an overseas investment is being considered under the non-residential use test or the incidental residential use test.

(2) The relevant Ministers may determine which 1 or more of the following is the *relevant business*:

(a) a business of the relevant overseas person (A);

(b) a business of a person (B) if A owns or controls the relevant interest in the residential land primarily for B to use the residential land in that business.

(3) However, in making that determination, the relevant Ministers must be satisfied that the business is likely to continue for a reasonable period of time, given the circumstances and nature of the business.

102. For this investment, we consider the relevant business of the relevant overseas person in New Zealand is the investment into (and indirect ownership) of a dental business - being the Lumino dental business.
103. In reaching this view, we have taken into account that this investment forms part of BGH and OTPP Groups' investment strategy into New Zealand.
104. The relevant sensitive land is leased for dental premises by members of the Lumino business group and the Applicants will own their interest in the sensitive residential land primarily to allow this business to continue.
105. The Lumino dental business has operated in New Zealand since 2002 when it was acquired by Abano. In 2016 the Lumino dental business reached over 100 practices and is now the largest dentistry provider in New Zealand.
106. We consider that there is a firm basis to conclude the Lumino dental business is likely to continue for a reasonable period of time, given the circumstances and nature of the business.

Non-residential outcome

Test

107. The relevant decision maker must be satisfied that the residential land is likely to be (and will likely continue to be):
- (a) used for non-residential purposes in the ordinary course of business for the relevant business; and
 - (b) not used, nor held for future use, for any residential purposes.²
- (together being the **non-residential use outcome**).

(a) Used for non-residential purposes in the ordinary course of business

108. We have reviewed the submissions by the Applicants on the current and proposed use of the Land.
109. The Land is all used for dental practices in the ordinary course of the Lumino business.
110. We consider these are clearly non-residential uses. In each instance, we note that the Applicants do **not** plan to change their existing use as dental practices.
111. We are therefore **satisfied** that the Land will be used for non-residential purposes in the ordinary course of the relevant business.

(b) Not used or held for future use for residential purposes

112. The Applicants confirm that the existing dental premises use will continue and that the Land will not be used, or held for any future use, for any residential purposes. This will

² Overseas Investment Act 2005, Schedule 2, clause 13.

also be supported by the conditions of consent. We do not have any reason to consider that the existing uses are likely to change.

- 113. We are therefore **satisfied** this residential land will not be used or held for future use for residential purposes.

Conclusion

- 114. We are **satisfied** that the non-residential use test is met and that the residential use outcome will likely occur after the overseas investment.

Conditions

Mandatory

- 115. The relevant decision maker must impose the non-residential use outcome as a condition of consent.³
- 116. We have included that outcome as a condition of consent i.e. the Land must be used for non-residential purposes in the ordinary course of business for the relevant business; and not used, nor held for future use, for any residential purposes.

Discretionary

- 117. We do not consider there are any specific matters that require discretionary conditions in order to achieve the non-residential use outcome.

Recommendation

- 118. As **we are satisfied** that the criteria in sections 16(1) and Schedule 2, clause 13, and section 18 are met, we recommend that consent should be granted.

Third Party Submissions

- 119. We have received **no** third-party submissions.

Appendices

APPENDIX 1 - PROPOSED DECISION	22
APPENDIX 2 - SENSITIVE LAND	29

³ Overseas Investment At 2005, Schedule 2, clause 18(2).

Appendix 1 - Proposed Decision

See document **A3908099**

Consent for Overseas Person to Acquire Significant Business Assets and Sensitive 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.

Case	201900631
Consent type	One-off consent: <ul style="list-style-type: none"> • Significant business assets • Residential (but not otherwise sensitive) land (non-residential use).
Consent holders	Adams NZ Bidco Limited 2719970 Ontario Limited (You or the Consent Holder).
Consent	You may acquire the Shares and an indirect interest in the Land subject to the Conditions set out below. For the avoidance of doubt, this includes the exercise of a call option whereby 2719970 Ontario Limited may increase its shareholding of Class A shares in Adams Group Aus Holdings Pty Limited to 40%.
Shares	all of the shares in: <ul style="list-style-type: none"> • Abano Healthcare Group Limited (NZ company number 13802) • Adams Group Aus Holdings Pty Limited (Aust company number 637 089 162).
Land	(a) A leasehold interest in approximately 0.0789 hectares located at 37 Puckey Ave, Kaitaia (RT NA13B/93); (b) A leasehold interest in approximately 0.2636 hectares located at 1536 State Highway 10, Kerikeri (RT NA94D/848); (c) A leasehold interest in approximately 0.0809 hectares located at 16 McBride Street, Frankton, Queenstown (RT OTA1/342);

	(d) A leasehold interest in approximately 0.0517 hectares located at 36 and 36B Colombo Street, Cashmere, Christchurch (RT CB44C/370);
Use-by Date	31 March 2021

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 Shares and/or Land.

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

Special Conditions

You must comply with the following special conditions. These apply specifically to this Consent and include conditions that we must impose under the Act.

Definitions

Act means Overseas Investment Act 2005

Regulations means Overseas Investment Regulations 2005

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

Details	Required date
Special Condition 1: use Land for non-residential purposes only	
(a) You must use the Land for non-residential purposes in the ordinary course of business,	While the Consent applies.
(b) You must not use or hold the Land for any residential purposes.	
(c) If you do not comply with this Special Condition, Standard Condition 6 applies and we may require you to dispose of all or some of the 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 Shares	
<p>You must acquire the Shares:</p> <ol style="list-style-type: none"> 1. by the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Shares, and 2. using the acquisition, ownership and control structure you described in your application. Note, only you – the named Consent holder - may acquire the Shares, not your subsidiary, trust or other entity. 	By 31 March 2021
Standard Condition 2: tell us when you acquire the Shares	
<p>You must tell us in writing when you have acquired the Shares.</p> <p>Include details of:</p> <ol style="list-style-type: none"> 1. the date you acquired the Shares (Settlement), 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the Shares, and 4. 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, 	At all times.

<ul style="list-style-type: none"> (d) conduct surveys, inquiries, tests and measurements, (e) take photographs and video records, and (f) do all other things reasonably necessary to carry out the Inspection. <p>2. Take all reasonable steps to facilitate an Inspection including:</p> <ul style="list-style-type: none"> (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>3. During an Inspection:</p> <ul style="list-style-type: none"> (a) we will not compel you and your employees, agents, tenants or other occupiers to answer our questions or to let us look at, copy or take away documents, (b) our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection. 	
<p>Standard Condition 4: remain of good character</p>	
<p>You and the Individuals Who Control You:</p> <ul style="list-style-type: none"> 1. must continue to be of good character, and 2. must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009. <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 be 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, 	<p>At all times.</p>

<p>(b) directly or indirectly, own or control 25% or more of you or of a person who itself owns or controls 25% or more of you, and</p> <p>(c) are members of the governing body of the people referred to in paragraph (b) above.</p>	
<p>Standard Condition 5: tell us about changes that affect you, the people who control you, or people you control</p>	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <ol style="list-style-type: none"> 1. You, any Individual Who Controls You, or any person in which you or any individual who controls you hold (or at the time of the offence held) a 25% or more ownership or control interest commits an offence or contravenes the law anywhere in the world. This applies whether or not you or they were convicted of the offence. In particular, please tell us about any offences or contraventions that you are charged with or sued over and any investigation by enforcement or regulatory agencies or professional standard bodies. 2. An Individual Who Controls You ceases to be of good character; commits an offence or contravenes the law (whether they were convicted or not); becomes aware of any other matter that reflects adversely on their fitness to have the Land; or becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (see Standard Condition 4). 3. You cease to be an overseas person or dispose of all or any part of the Land. 4. You, any Individual Who Controls You, or any person in which you or any Individual Who Controls You hold (or at the time of the event held) a 25% or more ownership or control interest: <ol style="list-style-type: none"> (a) becomes bankrupt or insolvent (b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or (c) becomes subject to any form of external administration. 	<p>Within 20 working days after the change.</p>

Standard Condition 6: dispose of the Shares if you do not comply with key Special Conditions	
<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 Shares.</p> <p>If all or part of this Standard Condition 6 applies to a Special Condition, we have said so in that condition.</p> <p>We will give you written notice if we require you to dispose of the Shares. After we have given you notice, you must:</p>	
<p>Value the Shares: obtain and send us a copy of a market valuation of the Shares from a New Zealand registered valuer.</p>	<p>Within six weeks of the date of our notice.</p>
<p>Market the Shares: instruct a licensed agent to actively market the Shares 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 Shares 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 Shares within six months of our notice, offer the Shares or sale by auction or tender without a reserve price or minimum bid and dispose of the Shares.</p>	<p>Within nine months of our notice.</p>
<p>Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Shares.</p>	<p>By the last day of every March, June, September and December after our notice or at any other time we require.</p>
<p>Report disposal to us: send us, in writing, evidence:</p> <ul style="list-style-type: none"> (a) that you have disposed of the Shares, (b) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor), (c) the purchaser is not your associate. 	<p>Within one month after the Shares have been disposed of.</p>

Reporting conditions

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

1. You must notify us in writing if the land use of the Land changes in a material way. You must do this as soon as possible, but no later than one month after that change of use.
2. If requested in writing by the OIO, you 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.

Released under the Official Information Act 1982


Appendix 2 - Sensitive Land

37 Puckey Ave, Kaitaia	
	
Record of Title	NA13B/93
Land Area	0.0789 hectares
Estate	Leasehold
<u>Use</u>	Lumino Dentists – West Coast Dental
Sensitivities	Residential (but not otherwise sensitive)

1536 State Highway 10, Kerikeri	
	
Record of Title	NA94D/848
Land Area	0.2636 hectares
Estate	Leasehold
<u>Use</u>	Redwood Dentists

Sensitivities	Residential (but not otherwise sensitive)
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16 McBride Street, Frankton, Queenstown	
	
Record of Title	OTA1/342
Land Area	0.0809 hectares
Estate	Leasehold
Use	Frankton Dental
Sensitivities	Residential (but not otherwise sensitive)

36 and 36B Colombo Street, Cashmere, Christchurch	
	
Record of Title	CB44C/370
Land Area	0.0517 hectares
Estate	Leasehold
Use	Orthodontix Cashmere
Sensitivities	Residential (but not otherwise sensitive)