



To: Marcus McMillan, Manager Overseas Investment Office

ASSESSMENT REPORT: NZ Healthcare Bidco Limited

Date	19 May 2022	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	202100783	Suggested deadline	As soon as possible (for commercial reasons) Assessment Timeframe 8 June 2022

Purpose

We seek your decision on an application for consent to acquire significant business assets and an interest in residential (but not otherwise) sensitive land under the non-residential use and incidental residential use tests in the Overseas Investment Act 2005 (**Act**).

This decision has been delegated to the OIO.¹

Action sought

1. Review this report.
2. Determine whether to grant consent and, if so, on what conditions.
3. Indicate your decision from page 2.

Key information

Applicant	NZ Healthcare Bidco Limited (Australia 86%, South Korea 4%, Peoples Republic of China 4%, Others 6% ²)
Target	Evolution Healthcare Holdings Limited
Vendor(s)	Current shareholders of the Target [s 9(2)(b)(ii)]
Land	0.4466ha being approximately: <ul style="list-style-type: none"> • 0.0632ha (Kipling Avenue cross leases, Auckland) • 0.1628ha (Royston hospital leasehold properties, Hastings) • 0.2206ha (Rehabilitation cross lease facilities, Gisborne)

¹ All decisions where the land is residential (but not otherwise sensitive) are delegated to the OIO under Table A, row C, item 1 and business decisions under Table A Row A of the Designation and Delegation letter dated 24 November 2021.

² During processing of the Application, it was announced that [s 9(2)(b)(ii)], were seeking to acquire new or additional interests in the Applicant (which could result in a change to the nationality shares set out in the table). However, it is expected that the underlying beneficial ownership will remain predominantly Australian.

Consideration	\$746,000,000 ³
Application type	Sensitive land – non-residential use and incidental residential use Significant business assets
Relevant tests	Investor test: s 16(1)(a) and s 18A Residential land tests: s 16(1)(b)(i)(C) and (D) National interest test: s 16(1)(g)

Timing

4. The Overseas Investment Regulations 2005 specify the total assessment timeframe for this application is 55 days. There were 51 pause days in the application due to waiting on significant information from the applicant. This application is currently on day 37.

A. Decision

Investor test

5. I determine that:

5.1 The 'relevant overseas person' (ROP) is (collectively):

ROP	ROLE
NZ Healthcare Bidco Limited (Applicant)	Applicant and new owner of the shares in the Target
NZ Healthcare Holdco Limited (Holdco)	100% parent of the Applicant
QIC Group	
QIC Global Infrastructure Fund and the QGIF co-investors (QGIF) comprised of (now) three trusts (QGIF Trusts) and their trustees (QGIF Trustees)	approximate [s] underlying owner of the Applicant
QIC Private Capital Pty Limited (QPC)	Investment advisor and manager for QGIF, the QGIF Trustees, [s 9(2)(b)(ii)] for the purposes of this investment
QIC Limited (QIC)	Ultimate owner and manager of QPC and manager of one of the QGIF Trusts
Australian Retirement Trust	
Australian Retirement Trust (ART) ⁴	approximate [s] ⁵ underlying owner of the Applicant

³ The consideration is split approximately [s] between NZ and Australian assets respectively.

⁴ During processing of the Application, Sunsuper Group was merged into the new ART and both it and its trustee were renamed.

⁵ [s 9(2)(b)(ii)]

Australian Retirement Trust Pty Ltd (ART Trustee)	trustee of ART's interest in the Applicant
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5.2 the 'individuals with control of the relevant overseas person' (**IWC**) are:

IWC	Role
Benedict Joseph Thynne	New directors of the Applicant and Holdco
Thomas Duncan Hodgkinson	
Graeme Andrew Blair	
Richard Stanley Grenfell	
QIC individuals	
Geoffrey Ian Martin	Director of QPC and Chairperson of QIC
Claire Marite Blake	Chief Financial Officer of QIC, director of QGIF Trustee
Mark David McDonald	Head of QIC Operations and Technology, director of QGIF Trustee
Gillian Brown	Directors of QPC and QIC
John Charles Battams	
Simone Desmarchelier	
William Stephen Leigh Whatmore	Director of QGIF Trustee
Ross Daniel Israel	Director of QGIF Trustee
Michael Kevin O'Brien	Director of QGIF Trustee
ART individuals	
Ian David Patrick	Chief Investment Officer of ART
Andrew Colin Robinson	Portfolio Manager of ART
Michael Philip Weaver	Head of Private Real & Mid-Risk Assets of ART

5.3 None of the ROP and IWC have established any of the factors contained in section 18A(4) of the Act.

5.4 The first six listed QIC individuals were IWC in recent application 202100179.

6. I am satisfied that the investor test in section 18A has been met.

Non-residential use and incidental residential use tests

7. I am satisfied that:

- (a) the 'relevant business' is the healthcare business of the Target (being a large healthcare business in NZ);
- (b) having regard to that use of the Land, the relevant indirect interest in the Land (through the acquisition of shares in the land-leasing Target) is likely to be acquired in the ordinary course of the business of the ROP;
- (c) the Land is likely to continue to be used either for non-residential or incidental residential purposes in the ordinary course of business for the relevant business;
- (d) the conditions imposed on this consent include the non-residential use and incidental residential use outcomes (which are required to be imposed under these consent pathways).

Transaction of national interest

- 8. The investment includes a transaction of national interest under section 20A because the transaction involves an investment by non-NZ government investors.
- 9. A national interest assessment has been undertaken (separately) and the Minister of Finance has not declined consent to the transaction under section 20C of the Act.

Decision

- 10. I am satisfied that the criteria for consent have been met (set out above). I grant consent to the Investment in the form of the Proposed Decision in **Attachment 1**.



MARCUS MCMILLAN

Manager (Overseas Investment Office)

Date: 23/05/2022

B. Background and proposed transaction

11. The Applicant is NZ Healthcare Bidco Limited (**the Applicant**), a NZ company incorporated in November 2021 for the purposes of this investment.
12. The Applicant is predominantly owned by two Australian based underlying investment fund groups:
 - **QIC Group** (associated with the Queensland State government) – approximately (now) [s 9(2)]
 - **Australian Retirement Trust/Sunsuper Group**⁶ – approximately [s 9(2)(b)(ii)]
13. The proposed transaction is of national interest due to associated underlying interests of both Australian (approximately 42%) and South Korean (up to 15.34%) government entities⁷. These interests are discussed separately later in this report.

The Target

14. The Applicant is seeking consent to acquire all of the shares in healthcare provider Evolution Healthcare Holdings Limited (**Target**). The Target's business represents approximately [s 9(2)] of the private healthcare market in NZ.
15. The Target is currently owned and controlled by overseas persons (associated with the [s 9(2)(b)(ii)] – so the transaction will result in the replacement of one overseas person by another overseas person.
16. The Target leases sensitive residential land (**Land**), and the value of the consideration for the proposed investment is [s 9(2)(b)] split approximately [s 9(2)] between NZ and Australian assets respectively.
17. Further details of the Target's business are set out separately later in the Report.

Transaction

18. The Applicant and Vendor groups entered an agreement for sale and purchase of the shares in the Target in December 2021 which was conditional upon OIO consent. No other regulatory approvals are required for the proposed purchase.
19. The Applicant was selected as the successful bidder after a competitive process involving multiple interested parties. The proposed sale was mentioned in a *Financial Times* article in September 2021⁸ and QIC subsequently announced its successful bid in December 2021⁹.

C. Application of the Act

The Assets

20. The Applicant is acquiring an indirect interest in the Land through the acquisition of all of the shares in the Target which leases the Land.

⁶ Following the merger referred to above in footnote 5, ART now owns Sunsuper's interest in the Applicant.

⁷ [s 9(2)(b)(ii)]

⁸ <https://www.afr.com/street-talk/pep-cranks-up-evolution-healthcare-auction-bids-in-oct-20210919-p58sxq>

⁹ <https://www.qic.com.au/knowledge-centre/evolution-healthcare-20211209>

21. The Land is sensitive because it is residential (but not otherwise sensitive) land,¹⁰ so consent is required.¹¹ The Land is described in further detail below.
22. The assets are also significant business assets because they exceed the relevant monetary threshold (the consideration for the purchase is \$746 million, most of which applies to the NZ assets)¹².

Consent requirements

23. The following criteria apply to this application:¹³
 - 23.1 The investor test must be met.¹⁴
 - 23.2 The non-residential use and incidental residential use tests must be met.¹⁵
 - 23.3 You must also note whether the investment is a transaction of national interest and, if so, whether the Minister of Finance has decided that the investment is contrary to NZ's national interest.¹⁶
24. We assess the investor test in Part D, the Residential land tests in Part E, and discuss national interest matters in Part F.

D. Applicant and investor test

Relevant overseas person

25. The Applicant is NZ Healthcare Bidco Limited.
26. The Applicant is an NZ registered company (CN 8266465) incorporated in November 2021. The Applicant is solely owned by NZ Healthcare Holdco Limited (**Holdco** - CN 8266451) which was incorporated at the same time.
27. The ultimate underlying owners of the Applicant and Holdco mostly belong to two Australian investment fund groups which will (now) hold the following approximate shareholdings in the Applicant's sole parent Holdco:
 - [s 9(2)(b)(ii)] - Queensland Investment Corporation Group entities (**QIC Group**) [s 9(2)(b)(ii)]
 - [s 9(2)(b)(ii)] - Australian Retirement Trust entities (**ART/Sunsuper Group**)¹⁷;
28. [s 9(2)(b)(ii)]
29. An indicative diagram of the proposed ownership structure is in **Attachment 3**. The ownership and control is complex and accordingly the diagram does not include all entities which we consider to be ROP or IWCs.
30. QIC Group, ART/Sunsuper Group, [s 9(2)(b)(ii)] are discussed separately below.

QIC Group

*QIC Global Infrastructure Fund (**QGIF Fund**)*

¹⁰ Table 1, Part 1, Schedule 1 of the Act.

¹¹ Under sections 10(1)(a) and 12(b)(i) of the Act.

¹² Section 13 of the Act as modified by Part 5 of the Regulations

¹³ Set out in sections 16(1) of the Act.

¹⁴ Section 16(1)(a) and 18A of the Act.

¹⁵ Section 16(1)(b)(i)(C & D) of the Act.

¹⁶ Section 16(1)(g) of the Act.

¹⁷ Note that this Group also has a further small (less than 5%) interest in the Applicant through an investment in QIC Group.

31. Launched in 2014, QGIF Fund is an unlisted investment vehicle which includes (now) [s 9(2)(b)(ii)] (QGIF Trustees).
32. The Fund provides institutional investors with access to a broad class of infrastructure assets currently valued at A\$3,273m. QGIF Fund is currently invested in eleven assets globally (including seven in Australia). The largest underlying owners of the QGIF Fund are set out separately below.
33. The boards of the QGIF Trustees approved the investment, will approve any future equity or debt funding to Holdco, and could approve divestment of the investment.

QIC Limited (QIC - formerly known as the Queensland Investment Corporation)

34. QIC is the ultimate owner and controller of the investment manager for the QGIF Fund.
35. QIC was created in 1991 by the Queensland State Government to serve its long-term investment responsibilities. QIC is a global diversified alternative investment manager with over [s 9(2)(b)] in assets under management (as at 31 December 2020), focusing on infrastructure, real estate, liquid strategies, private capital and multi-asset solutions. Although owned by the Queensland Government through two state officials, QIC operates as an independent and fully commercial entity under the Queensland Investment Corporation Act 1991.

Additional new QIC Group co-investors

36. During the processing of the Application, it was confirmed that various new co-investors and their maximum shares have now been identified.
37. [s 9(2)(b)(ii)]
38. [s 9(2)(b)(ii)]
39. In addition, two new investors are now intended to acquire an indirect stake in the Applicant (through the acquisition of shares in Holdco), being:
- an Iwi investor (up to a maximum of 5% of the Applicant); and
 - senior executives of the Target (up to a maximum of 2.7% of the Applicant).
40. The new co-Investors, iwi and management interests will reduce down the overall QGIF interest in Holdco to approximately (now) 42% (the ART interest in Holdco will remain at 40% of ordinary shares directly. Overall there will be a reduction in the underlying ART interest in the Applicant only as a result of the QGIF interests reducing).

Current underlying co-investors

41. The largest individual current investors in QGIF Fund are (now) approximately:

Entity	Type of Entity	% in QIC Fund	Maximum % of Applicant
[s 9(2)(b)(ii)]			

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

* these interests in the Applicant will now have dropped due to the investment by the new co-investors.

QIC Private Capital Pty Ltd (QPC) - Investment advisor

42. QGIF Fund is advised by QPC (which is owned by QIC) to which it provides various services. QPC assesses investment opportunities and makes investment recommendations to the QGIF Trustees.

43. QPC will also be the investment manager for the other [s 9(2)(b)(ii)]

Prior QIC Group investments in NZ

44. QIC Group recently participated in a consortium to acquire Tilt Renewables Limited which was the subject of Application 202100179 (**Tilt Application** - granted consent in June 2021). QIC (as the owner of the trustees for the trusts making up QGIF) and one of the QGIF Trustees were listed as an ROP and QIC's directors were all IWC in that Application. QIC was also screened under the National Interest test for the purposes of the Tilt Application.

45. In addition, QIC Group is the majority owner of NZ's largest electricity (and second largest gas) distribution network (via Powerco NZ Holdings Limited) which it acquired following applications in 2008 and 2009.

46. Another QIC Group entity (QIC Strategy Timber No.1 Limited) purchased three NZ forests in 2014/15 after being granted consent under the Act¹⁸.

ART/Sunsuper Group

47. The Sunsuper Superannuation Fund (**Sunsuper Fund**) is an Australian superannuation fund owned by its members. As at April 2021, the fund had 1.4 million members and [s 9(2)] in funds under management. There is no single beneficial owner of a more than 5% interest in the Sunsuper Fund. [s 9(2)(b)(ii)]

48. During the processing of the Application, Sunsuper Fund announced a statutory merger with the State Public Sector Superannuation Scheme (**QSuper Fund**) resulting in the transfer of fund assets and members of Sunsuper Fund to the new Australian Retirement Trust (**ART**). This took place in late February 2022.

49. Sunsuper Pty Ltd (**Sunsuper Trustee**) was the trustee of the Sunsuper Fund and is now the trustee of ART. As part of this merger, Sunsuper Trustee has itself now been renamed Australian Retirement Trust Pty Ltd (**ART Trustee**). [s 9(2)(b)(ii)]

¹⁸ Applications 201420084, 201420039 and 201510076. [s 9(2)(b)(ii)]

50. As a result, the Sunsuper Fund interests in the Applicant are now held by ART moving forward. The relevant individuals with control of ART Trustee will continue to be those previously with control of Sunsuper Trustee for the purposes of this investment.

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

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

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

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

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

55. [s 9(2)(b)(ii)] itself does not have any single substantial underlying beneficial owners and all of its interests in the Applicant/Target will still be ultimately managed by a QIC Group entity (being QIC), with a third of its interest in the Applicant/Target being acquired directly through QGIF itself.

56. Consequently, we consider that [s 9(2)(b)(ii)] should not be included as part of the collective ROP, which is set out in the following table:

ROP	ROLE
NZ Healthcare Bidco Limited (Applicant)	Applicant and new owner of the shares in the Target
NZ Healthcare Holdco Limited (Holdco)	100% parent of the Applicant
QIC Group	
QIC Global Infrastructure Fund and the QGIF co-investors (QGIF) comprised of (now) three trusts (QGIF Trusts) and their trustees (QGIF Trustees)	approximate [s 9(2)(b)(ii)] underlying owner of the Applicant
QIC Private Capital Pty Limited (QPC)	Investment advisor and manager for QGIF, the QGIF Trustees, [s 9(2)(b)(ii)] for the purposes of this investment
QIC Limited (QIC)	Ultimate owner and manager of QPC and manager of one of the QGIF Trusts
Australian Retirement Trust/Sunsuper Group	

Australian Retirement Trust (ART) ¹⁹	approximate [s 9(2)(b)(ii)] ²⁰ underlying owner of the Applicant
Sunsuper Pty Ltd/Australian Retirement Trust Pty Ltd (Sunsuper Trustee/ART Trustee)	trustee of ART's interest in the Applicant

57. As stated above, QIC (on behalf of QGIF), along with one of the QGIF Trustees, was part of the ROP for the recent Tilt Application.
58. Also as stated above, although it is likely that further investors may acquire an interest in the Applicant/Target (Iwi, up to 5% and current executives up to 2.7%), we do not consider that they should be included in the ROP given they each will own less than 25% of the investment²¹ and in the case of Iwi are unlikely to be an overseas person.

Control

We consider that the IWC for the ROP for the purposes of this investment are as follows.

Applicant and Holdco

59. The Applicant and Holdco now have four new directors. At the time of lodgement, it had a single director who has resigned and will have no further role in the investment. He was also not involved in making the decision to make the investment. We do not consider he is an IWC. The four new directors of the Applicant and Holdco are Benedict Thynne, Thomas Hodgkinson, Graeme Blair and Richard Grenfell.

QIC Group

60. For the purposes of this investment (being the acquisition of shares in the Target, and therefore an indirect interest in sensitive land), five directors of the QGIF Trustees are IWC, along with the directors of QIC and QPC.
61. The five trustee directors are Claire Blake (also the CFO of QIC), Mark McDonald (also head of QIC Operations and Technology), Ross Israel, Steve Whatmore and Michael O'Brien. The directors of QIC are Geoffrey Martin (also the Chairperson), Gillian Brown, John Battams and Simone Desmarchelier (the three latter persons are also directors of QPC).
62. QPC/QIC will be responsible for the management of the investment on behalf of the underlying investors, [s 9(2)(b)(ii)]. QIC Group follows a detailed decision making process in relation to investments such as that proposed. Ultimately, final approval for the investment was made by the relevant trustees for QGIF and the co-investors.

ART Group

63. For ART, approval for the investment was made by the [s 9(2)(b)(ii)]

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

¹⁹ During processing of the Application, Sunsuper Group was merged into the new ART and both it and its trustee were renamed.

²⁰ [s 9(2)(b)(ii)]

²¹ Section 12(1)(b)(i)

65. The above individuals for both QIC Group and Sunsuper/ART will approve any significant capital and operating expenditure, and approve any divestment of the assets.

Operational control of the Target's business

66. The executive team of the Target Group (under the supervision of the Board of HoldCo) will be responsible for day to day management of the Target Group. The Target Group's executive team is expected to be largely unchanged following acquisition, ensuring continuity of management.
67. For the above reasons, we recommend that the IWC²² are:

IWC	Role
Benedict Joseph Thynne	New directors of the Applicant and Holdco
Thomas Duncan Hodgkinson	
Graeme Andrew Blair	
Richard Stanley Grenfell	
QIC individuals	
Geoffrey Ian Martin	Director of QPC and Chairperson of QIC
Claire Marite Blake	Chief Financial Officer of QIC, director of QGIF Trustee
Mark David McDonald	Head of QIC Operations and Technology, director of QGIF Trustee
Gillian Brown	Directors of QPC and QIC
John Charles Battams	
Simone Desmarchelier	
William Stephen Leigh Whatmore	Director of QGIF Trustee
Ross Daniel Israel	Director of QGIF Trustee
Michael Kevin O'Brien	Director of QGIF Trustee
ART individuals	
Ian David Patrick	Chief Investment Officer of ART
Andrew Colin Robinson	Portfolio Manager of ART

²² Section 15.

68. We note that the first six listed QIC individuals were IWC for the recent Tilt Application.

Summary of investor test

69. The ROP and IWC established none of the factors contained in section 18A(4) of the Act.
70. For the reasons set out above, our conclusion is that **the investor test has been met**.

E. Proposed investment

71. This section describes the proposed investment and our assessment of whether it is likely to meet the test criteria in the Act.

Target

72. The Applicant is seeking consent to acquire 100% of the shares in Evolution Healthcare Holdings Limited (**the Target**).
73. The acquisition involves the acquisition of both significant business assets and sensitive land under the Act.

Significant business assets

74. The consideration for the proposed transaction of [s 9(2)] is split approximately [s 9(2)] between the NZ and Australian assets respectively.
75. The Target is a large healthcare provider in NZ (it also provides some services in Australia) through 44 subsidiaries.
76. The Target's assets include five comprehensive hospitals²³:
- Wakefield Hospital in Wellington;
 - Bowen Hospital in Wellington;
 - Royston Hospital in Hawke's Bay;
 - Grace Hospital in Tauranga;
 - Waratah Private Hospital in Sydney.
77. Its assets also include various specialist hospitals (Endoscopy Auckland, Shore Surgery and Quay Park in Auckland); two Birthcare centres (Auckland and Huntly); and seven Evolve in-patient rehabilitation centres along with dozens of specialist clinics nationwide.
78. The Target Group currently employs approximately 1,400 individuals.

²³ During the processing of the Application, we were informed that the Target is currently considering an additional investment in Anglesea Hospital Limited which is a private hospital located in Hamilton. The total Evolution investment is expected to be approximately [s 9(2)]. The current contractual close date for the Anglesea investment is expected to be during May 2022.

Sensitive Land

79. The Target leases residential (but not otherwise) sensitive land under the Act in three locations (the **Land**) summarised in the following table:

Kipling Avenue - Auckland	
Description	Two cross-lease titles (two flats) on the same section which adjoin a large medical centre operated by the Target Group as part of Auckland endoscopy facilities
Freehold area	632m ²
Purpose	part of wider medical hub (currently medical consultancy suites)
Royston Hospital - Hastings	
Description	Two adjoining 30 year leasehold (from 2017) sections which adjoin Royston Hospital.
Freehold area	1636m ²
Purpose	Hospital storage and expansion area to be incorporated into Royston Hospital expansion
Gisborne Rehabilitation Facility - Gisborne	
Description	Six cross-lease titles (six flats) on the same section
Freehold area	2206m ²
Purpose	Rehabilitation units

80. The total area of the sensitive land is 4466m².

Prior applications for the sensitive land

81. The Kipling Avenue land was the subject of a recent application under the non-residential use test – 202000622 which was granted consent in December 2020. The investment plan involved the conversion of two residential dwellings into medical consulting suites (which is the current use).
82. The Gisborne Rehabilitation land was the subject of two recent applications under the incidental residential use test – 202000819 (Flats 3-6) which was granted consent in February 2021 and 202100520 (Flats 1-2) which was granted consent in October 2021. These flats are used to provide sub-acute rehabilitation services to patients and this use will continue.
83. The Royston Hospital land was included in a prior sensitive land/significant business assets application – 20150005 which was granted consent in November 2015. At the time this land was deemed possibly sensitive due to a potential historic heritage sensitivity but this has not eventuated.
84. Further details of the Land are set out in **Attachment 2**.

Consultation and submissions about the Investment

85. Consultation with relevant stakeholders was undertaken with regard to the National Interest component of this application (which is the subject of a separate report). No

other consultation was undertaken (no reason to consult was identified) and no other third party submissions were sought or received.

What residential land tests are relevant for this application?

86. In this case, the Applicant seeks consent to acquire the Land on the basis of:
- the non-residential use test set out in clause 13 of Schedule 2 of the Act for part of the sensitive land;
 - the incidental residential use test set out in clause 14 of Schedule 2 of the Act for the other part of the sensitive land.
87. In order to satisfy these two tests, the decision-maker must be satisfied that the non-residential use and incidental residential use outcomes are met:²⁴

Relevant business

88. In order to utilise these two tests, the sensitive land must:
- be used in the ordinary course of the Applicant's relevant business;
 - that business must be likely to continue for a reasonable period of time, given the circumstances and nature of the business.

The relevant business

89. We consider the relevant business in this case is the private healthcare business of the Target. The Target's business represents approximately s of the NZ private healthcare market. 9(2)

Likelihood of continuation of the relevant business

90. The Applicant intends on continuing the operations of the Target following the proposed investment in materially the same fashion as the Target currently operates.
91. The Target has been successfully operating its medical business for many years and submits that it has a strong track record in NZ.
92. The Kipling Avenue Land is part of an endoscopy service which has been operating from adjoining land for 14 years and the Target is confident there is an ongoing need for extended facilities to secure the needs of the surrounding Auckland population.
93. The Royston Hospital Land is part of Royston Hospital which was built in 1921.
94. The Applicant submits that there is a genuine need for the Gisborne Rehab service to continue to be provided to the community and as such, the Target intends to continue providing this service for the foreseeable future.
95. The Applicant has submitted that the investment is expected to grow the Target's healthcare business (both organically and via the injection of additional capital), which in turn will result in an increase in employment opportunities for New Zealanders.
96. Having regard to the above, **we are satisfied** the business is likely to continue for a reasonable period of time.

²⁴ Schedule 2, Part 3 of the Act.

Does the Investment meet the non-residential use test?

Kipling Avenue and Royston Hospital Land

97. **We are satisfied** that the non-residential use test is met for both the Kipling Avenue and Royston Hospital Land, as this land will likely:
- *be used for non-residential purposes in the ordinary course of business for the relevant business; and*
 - *will not be used, nor held for future use, for any residential purposes*
- together being the non-residential use outcome.
98. The Kipling Avenue Land is currently being used for medical consultancy purposes to complement the existing endoscopy business operated on adjoining land. We note that consent has previously been granted under the Act to the acquisition of the Kipling Avenue Land on the basis that its current use was a valid non-residential use outcome²⁵. The Applicant has indicated that it plans to extend the Endoscopy Auckland facilities to secure the needs of the surrounding Auckland population.
99. The Royston Hospital Land is used in association with the main adjoining hospital land and is intended to be incorporated into an expansion of the operating and consultancy facilities of the main hospital..
100. All of this land will continue to be used by the Target for the same non-residential use healthcare purposes and the Applicant confirms that it will not be used or held for any residential purposes.

Conditions

101. The Act requires that condition(s) be imposed on any consent granted that require the non-residential use outcome to occur (clause 18, Schedule 2). **Proposed special condition 1** meets this requirement by requiring the Applicant to use the Kipling Avenue and Royston Hospital Land only for the provision of healthcare services in the ordinary course of business (and not for any residential purposes).

Does the Investment meet the incidental residential use test?

Gisborne Rehabilitation Facility Land

102. **We are satisfied** that the incidental residential use test is met for the Gisborne Rehabilitation Facility Land.
103. The incidental residential outcome requires that the Land will be, or is likely to be (or will, or is likely to, continue to be) used for residential purposes but only in support of the relevant business, where the relevant business is not (or is only exceptionally) in the business of using land for residential purposes.
104. **We are also satisfied** that, having regard to that use of the residential land, the relevant interest in the residential land will be, or is likely to be, acquired in the ordinary course of the business of the relevant overseas person.
105. The accommodation of patients on site is an incidental, but essential part of providing rehabilitation services. The Facility provides sub-acute rehabilitation services to patients recovering from brain injuries or suffering from a chronic illness. The aim for most patients is to reach the agreed rehabilitation goals and increase independence to the point where they are able to leave the facilities and return to independent living.

²⁵ Application 202000622 which was granted consent in December 2020.

106. Due to the severity of high clinical needs, some patients may never achieve independent living and so can remain in the facilities for more extended periods. Patients are only accommodated in support of their rehabilitation and care needs, and not for general residential purposes. The relevant business is therefore not in the business of using land for residential purposes.
107. We note that consent has previously been granted under the Act to the acquisition of the Gisborne Rehabilitation Land on the basis that its current use was a valid incidental residential use outcome²⁶.

Conditions

108. The Act requires that condition(s) be imposed on any consent granted that require the incidental residential use outcome to occur (clause 18, Schedule 2). **Proposed special condition 2** meets this requirement by requiring the Applicant to use the Gisborne Rehabilitation Facility Land only for residential purposes which are incidental to the provision of healthcare services in the ordinary course of business.

F. Transaction of national interest

109. The proposed overseas investment is a transaction of national interest under the mandatory criteria in the Act.²⁷ This is because the investment involves an investment by a non-NZ government investor.²⁸
110. The first step is for you to decide whether all of the other criteria for granting consent are met. We prepared a separate report to the Minister of Finance for the national interest assessment.
111. A national interest assessment has been undertaken (separately) and the Minister of Finance has not declined consent to the transaction under section 20C of the Act.

G. Conclusion and recommendation

112. We recommend you grant consent to the Investment (subject to Part F above) as we consider all of the relevant criteria have been met.
113. The conditions we recommend are set out in the Proposed Decision (**Attachment 1**). These conditions include all required mandatory conditions and additional discretionary conditions.



PHILLIP ANDERSON
Senior Advisor
Overseas Investment Office

Date: 19/05/2022

²⁶ Application 202000819 (Flats 3-6) which was granted consent in February 2021 and Application 202100520 (Flats 1-2) which was granted consent in October 2021.

²⁷ Section 20A of the Act.

²⁸ As defined in section 6 of the Act.

H. List of Attachments

1. Proposed Decision and Conditions
2. Intended ownership structure
3. Sensitive Land Details and Maps

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

Decision date: [date]

The following people have been given the following consent:

Case	202100783
Consent	The Consent holder may acquire the Shares (and an indirect interest in the Land) subject to the Conditions set out below
Consent holder	NZ Healthcare Bidco Limited (company number 8266465) We will also refer to the Consent holders as you
Land	<ul style="list-style-type: none">• Kipling Avenue Land• Royston Hospital Land• Gisborne Rehabilitation Facility Land
Shares	100% of the shares in the Target
Target	Evolution Healthcare Holdings Limited (CN 6938676)
Timeframe	you have until 30 April 2023 to acquire the Shares (and indirect interest in 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.

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 the Overseas Investment Act 2005.

Gisborne Rehabilitation Facility Land means approximately 0.2206ha of land located at 505 Aberdeen Road, Te Hapara, Gisborne being the land comprised in cross-lease records of title GS6B/187, GS6B/188, GS6B/189, GS6B/190, GS6B/191 and GS6B/192.

Incidental Residential Use Purpose means patient accommodation and rehabilitation services in the ordinary course of the Relevant Business.

Kipling Avenue Land means approximately 0.0632ha of land located at 24 Kipling Avenue, Auckland being the land comprised in cross-lease records of title NA15D/997 and NA119D/360.

Non-Residential Use Purpose means medical services which do not require persons to reside on the relevant land.

Regulations means the Overseas Investment Regulations 2005.

Relevant Business means the private healthcare business operated by the Target

Royston Hospital Land means approximately 0.1636ha of land located at 402 Knight Street and 315 Prospect Street, Hastings being part of the land comprised in leasehold record of title 816648.

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 the Kipling Avenue Land and Royston Hospital Land for the Non-Residential Use Purpose	
You must use the Kipling Avenue Land and Royston Hospital Land for the Non-Residential Use Purpose in the ordinary course of the Relevant Business. If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.	At all times.
Special condition 2: use the Gisborne Rehab Land for the Incidental Residential Use Purpose	
You must use the Gisborne Rehabilitation Facility Land for the Incidental Residential Use Purpose in support of the Relevant Business.	At all times.

If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.	
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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
Automatic Condition: National interest	
You must not, in relation to the Shares and indirect interest in the Land, act or omit to act with a purpose or an intention of adversely affecting national security or public order.	At all times.
Standard condition 1: acquire the Shares (and indirect interest in the Land)	
<p>You must acquire the Shares:</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 Shares, and using the acquisition, ownership and control structure you described in your application. <p>Note, only you – the named Consent Holder - may acquire the Shares, not your subsidiary, trust or other entity.</p>	As stated in the Consent
Standard condition 2: tell us when you acquire the Shares (and indirect interest in the Land)	
<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"> the date you acquired the Shares (Settlement), consideration paid (plus GST if any), the structure by which the acquisition was made and who acquired the Shares, 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

Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions.

We will give you at least two weeks' written notice if we want to do this.

You must then:

1. Allow a person we appoint (**Inspector**) to:
 - (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:
 - (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.
3. During an Inspection:
 - (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 not unsuitable to invest in New Zealand	
<p>You, and to the extent that you are not an individual, the Individuals Who Control You must remain not unsuitable to own or control the Assets in accordance with section 18A(1) of the Act.</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 more than 25% of you or of a person who itself owns or controls more than 25% of you, and (c) are members of the governing body of the people referred to in paragraph (b) above. 	At all times
Standard condition 5: tell us about changes that affect you, the people who control you, or people you control	
<p>You must tell us in writing if any of the following events happens to any of the Consent Holders:</p> <ul style="list-style-type: none"> 4. You become aware that you and/or any Individual Who Controls you establishes any of the investor test factors listed in section 18A(4) of the Act. 5. You cease to be an overseas person or dispose of all or any part of the Shares. 6. Your New Zealand Service Address changes. This is the address you provided us in your application as the address which we will send any legal document we need to serve on you. 	Within 20 working days after the change
Standard condition 6: dispose of the Shares and indirect interest in the Land if you do not comply with key special conditions	
<p>If all or part of this Standard Condition 6 applies to a special condition, we have said so in that special condition.</p> <p>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 and indirect interest in the Land.</p> <p>We will give you written notice if we require you to dispose of the Shares and indirect interest in the Land. 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>	Within six weeks of the date of our notice.

Market the Shares: instruct a licensed agent to actively market the Shares for sale on the open market.	Within six weeks of the date of our notice.
Dispose of the Shares: dispose of the Shares to a third party who is not your associate.	Within six months of our notice.
Offer without reserve: if you have not disposed of the Shares within six months of our notice, offer the Shares for sale by auction or tender without a reserve price or minimum bid and dispose of the Shares.	Within nine months of our notice.
Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Shares.	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 of the following: <ul style="list-style-type: none"> (a) that you have disposed of the Shares (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor), and (b) that the purchaser is not your associate. 	Within one month after the Land has been disposed of.

Reporting conditions

We need information from you about how your Investment Plan is tracking so we can monitor your progress against the Conditions and so we can measure the benefits you have brought to New Zealand through your investment.

You must lodge a report to be sent to oiomonitoring@linz.govt.nz by 31 May 2023 which must:

1. contain information about your progress in implementing the special conditions;
2. follow the format of the template report published on our website (see <https://oio.linz.govt.nz/oio-consent-monitoring>).

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 the regulator as having been taken into account when the content was granted or
- (b) the conditions of this consent.

Released under the Official Information Act 1982

Attachment 2: Sensitive Land Details and Maps

KIPLING AVENUE AUCKLAND



1/24 and 2/24 Kipling Avenue, Epsom, Auckland

Land interest	Freehold Interest (approximately 0.0632 hectares)
Record(s) of Title	NA15D/997 & 119D/360
Estate	Cross-lease – Flats 1 & 2
Sensitivity	Includes residential land ("Residential" on the Auckland Council District Valuation Roll)

ROYSTON HOSPITAL PROPERTIES



315 Prospect Terrace, Hastings

Land interest	Leasehold Interest (approximately 0.0814 hectares)
Record(s) of Title	Part 816648 (Hawkes Bay)
Estate	Leasehold (30 years)
Sensitivity	Includes residential land ("Residential land" on the Hastings Council District Valuation Roll)

402 Knight Street, Hastings

Land interest	Leasehold Interest (approximately 0.0814 hectares)
Record(s) of Title	Part 816648 (Hawkes Bay)
Estate	Leasehold (30 years)
Sensitivity	Includes residential land ("Residential land" on the Hastings Council District Valuation Roll)

GISBORNE REHABILITATION FACILITIES



505 Aberdeen Road, Te Hapara, Gisborne

Land interest	Freehold Interest (approximately 0.2206 hectares)
Record(s) of Title	GS6B/187-192
Estate	Cross-lease – Flats 1 to 6
Sensitivity	Includes residential land ("Residential" under the Gisborne District Council Valuation Roll

Attachment 3: Intended Ownership Structure (indicative only)

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

Released under the Official Information Act 1982