

Decision required under the Overseas Investment Act 2005: Milk New Zealand Holding Limited

Date	19 January 2012
Security Level	Commercial: In Confidence
Priority	URGENT
Report/Case Number	1086 / 201110035
Contractual Date	31 January 2012

Instructions

	Action Sought	Deadline
Associate Minister of Finance	1. Sign the attached memorandum 2. Forward the memorandum and annexure to the Minister for Land Information	NA
Minister for Land Information	1. Sign the attached memorandum 2. Forward the memorandum and annexure to the Overseas Investment Office	30 January 2012

Contact for Telephone Discussion

Name	Position	Telephone (wk)	Cellphone	First Contact
Annelies McClure	Manager	460 2783	027 278 2893	✓

MEMORANDUM

Annexure:

1. Report of the Overseas Investment Office on the proposed overseas investment (Report).
2. Application for consent with supporting material (Application for Consent).

Instructions:

3. If required, staff from the Overseas Investment Office are available to brief you on the office's recommendations.
4. In considering whether or not to grant consent, you must grant consent if satisfied that all of the criteria in sections 16 and 18 are met.
5. You must decline to grant consent if not satisfied that all of the criteria in sections 16 and 18 are met.
6. For a transaction that is more than 1 category of overseas investment, you must have regard to the criteria that apply to all of the relevant categories. However, if the criteria are the same, you need only consider the same criteria once (and not consider them under each relevant category).
7. If section 16(1)(e)(ii) and (iii) apply, you must consider all of the factors in section 17(2) and regulation 28, and determine which of the factors (or parts of them) are relevant to the overseas investment.
8. Having determined which factors (or parts of them) are relevant, you must determine the relative importance to be given to each relevant factor (or parts of them).
9. As a result of this transaction, the Applicant will own or control farm land that is more than ten times the average farm size for the principal farming activity (dairy cattle farming) that is proposed to be carried out. Accordingly, sections 17(2)(a)(i) to 17(2)(a)(vi) – the “economic benefit” factors, regulation 28(i) – the “economic interests” factor and regulation 28(j) – the “mitigating” factor, are of high relative importance.
10. You must then determine whether section 16(1)(e)(ii) and (iii) have been met, with regard to the relevant factors (or parts of them), weighted for importance.
11. If you wish to make any changes to the conditions of consent, those changes should be discussed with the Overseas Investment Office, and the other Minister, before being finalised.
12. If you propose to disagree with the decision of the other Minister, you should discuss your proposed decision with the Overseas Investment Office and the other Minister.

Recommendations:

13. I recommend that you
 - (a) determine that:
 - (i) Milk New Zealand Holding Limited, Shanghai Pengxin Group Co., Limited, Nangtong Yingxin Investment Co., Limited and Mr Jiang Zhaobai are the relevant overseas persons; and
 - (ii) Zhaobai Jiang, Lei Jiang, and the other directors of Shanghai Pengxin Group Co., Limited, Xu Honglin, Wang Bing, and Zhao Weimao are the individuals with control of the relevant overseas persons; and
 - (iii) the individuals with control of the relevant overseas persons collectively have business experience and acumen relevant to the overseas investment; and

- (iv) the relevant overseas persons have demonstrated financial commitment to the overseas investment; and
 - (v) all the individuals with control of the relevant overseas persons are of good character; and
 - (vi) each individual with control of the relevant overseas persons is not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009; and
 - (vii) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
 - (viii) the benefit will be, or is likely to be, substantial and identifiable; and
 - (ix) the farm land or the securities to which the overseas investment relates have been offered for acquisition on the open market to persons who are not overseas persons in accordance with the procedure set out in regulations; and
- (b) accordingly you:
- (i) are satisfied that the criteria for consent in sections 16 and 18 have been met; and

Associate Minister of Finance:

Satisfied

Not Satisfied

Minister for Land Information:

Satisfied

Not Satisfied

- (ii) grant consent to the overseas investment subject to the conditions in appendix 1 of the Report.

Associate Minister of Finance:

Consent Granted

Consent Declined

Minister for Land Information:

Consent Granted

Consent Declined

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Associate Minister of Finance

Date

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Minister for Land Information

Date

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**Report of the Overseas Investment Office
on the application for consent by
Milk New Zealand Holding Limited
Case 201110035**

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Summary

1. Summary of key information:

Applicant	Milk New Zealand Holding Limited (China, People's Republic of 100.0%)
Vendors	Hillside Limited (in receivership & liquidation) Plateau Farms Limited (in receivership & liquidation) Ferry View Farms Limited (in receivership & liquidation) Taharua Limited (in receivership & liquidation) Ferry View Farms (in receivership & liquidation), Ian Ross Blackman and Robert Scott Crafar (All New Zealand 100.0%)
Consideration	NZD \$ [REDACTED] plus livestock (estimated to be NZD \$ [REDACTED])
Recommendation	GRANT CONSENT

Application

2. For consent for the Applicant to acquire a freehold interest in sixteen farms (thirteen dairy and three drystock) located in the central North Island collectively known as the Crafar Farms and comprising approximately 7885 hectares (dairy area approximately 5990 hectares) individually known as:

- Plateau Road (323 hectares)
- Rawhiti Road (128 hectares)
- Pine View (398 hectares)
- Cirenester (341 hectares)
- Broadlands (404 hectares)
- Lake View (205 hectares)
- Forest Park (250 hectares)
- Glyn Park (647 hectares)
- Waverly (206 hectares)
- Karangahape Road (627 hectares)
- Benneydale II (792 hectares)
- Benneydale I (895 hectares)
- Collins Road (393 hectares)
- Tiwhaiti (131 hectares)
- Taharua (1750 hectares)
- Ferry View (378 hectares)

(the Investment)

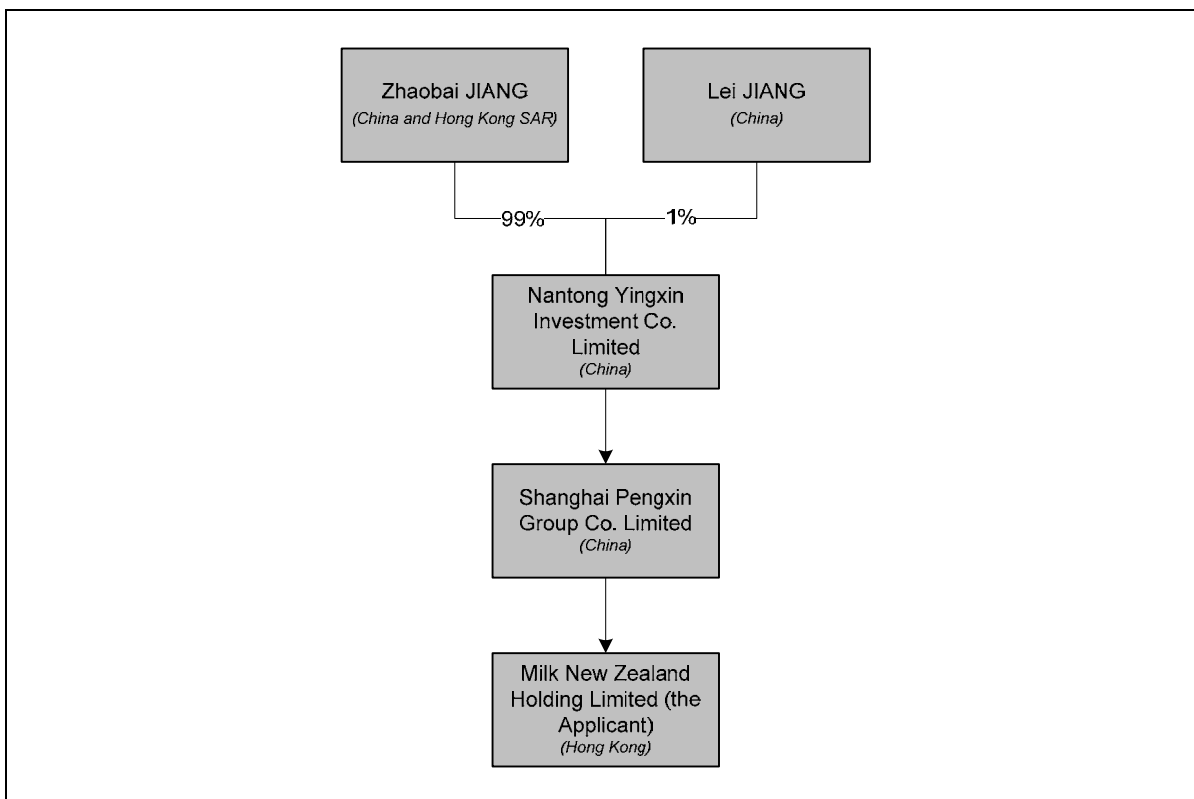
Applicant

3. The Applicant is Milk New Zealand Holding Limited ("the Applicant"), a Hong Kong incorporated company which is an overseas person under the Act.
4. The Applicant will register as an overseas company under the New Zealand Companies Act 1993 prior to acquiring the Investment. The Applicant does not have any current interests in New Zealand as at the date of this Application.¹

¹ The 99% ultimate owner of the Applicant, Zhaobai Jiang, has a [REDACTED] % interest in a company ([REDACTED]) that has applied for consent to acquire development land at [REDACTED]. No decision has yet been made on this application.

- The Applicant was formed to acquire and then own the Crafar Farms and other assets which are the subject of the underlying transaction and, if the opportunities arise, any future dairy or agricultural related investments by its parent group in New Zealand.

Ownership of the Applicant



- All of the shares in the Applicant are owned by Chinese company Shanghai Pengxin Group Co., Limited ("SPGL") which was incorporated in Shanghai, China, in March 1997. SPGL's business covers four main sectors: real estate development, agribusiness, mining and infrastructure construction.
- SPGL has a fast growing international agribusiness which includes investment in sheep breeding, wheat, soy and maize production in China and South America. [REDACTED] SPGL also has a 60% interest in a farm in Bolivia producing income of around NZD \$ [REDACTED] m from soybeans, corns and sorghum per annum. SPGL is committed to a sustainable agribusiness ethos.
- SPGL is also a very successful property developer in China. In 2010, the total residential floor area under development was approximately 308,000m². SPGL has developed a concept under the "Aqua City" brand comprising large scale multi functional centres which integrate a retail shopping mall, hotel, offices, convention facilities, apartments, car parking and public open space areas. The first Aqua City opened in Nanjing in 2008 and a second will open in Tianjin in 2011. Others are under construction in Wuhan and Panjin and within the next 5 years SPGL will have opened [REDACTED] Aqua City centres.
- SPGL has invested USD \$ [REDACTED] m in a majority share of a copper deposit in the Congo with production of [REDACTED] tonnes of copper per annum. SPGL has also invested in infrastructure and private equity funds. Its investment in infrastructure is approximately USD \$ [REDACTED] m. SPGL has also developed an online platform to facilitate the marketing of foreign products and services into China, especially for small, innovative companies. These facilities are available to New Zealand companies.
- All of the shares in SPGL are owned by Nantong Yingxin Investment Co. Ltd ("Nantong"), another Chinese company which was incorporated in November 2006.

11. Nangtong is owned by Zhaobai Jiang and his brother Lei Jiang (with 99% and 1% shareholdings respectively). The brothers are therefore the ultimate underlying owners of the Applicant. Zhaobai Jiang is also the sole director of the Applicant and Chairman of the SPGL Group of companies. Lei Jiang is the President of SPGL.
12. Zhaobai Jiang is a Chinese and Hong Kong citizen who was listed on the *2010 Forbes List* of the wealthiest persons in China. He is a professional engineer who founded his own real estate construction company in 1988. He is also the vice president of the China Non-Governmental Enterprise Directors Association, a non-profit organisation founded to support the development of private small and medium sized enterprises in China.

Background to the Investment

13. The sensitive land being acquired comprises fifteen farms owned by four Crafar family controlled companies which are now in receivership and liquidation (Plateau Farms Limited, Hillside Limited, Taharua Limited and Ferry View Farms Limited). These companies all have common directors and shareholders, being Frank, Alan and Elizabeth Crafar. The sixteenth farm is jointly owned by Hillside Limited (4/5 share) and two other individuals (1/5).
14. UBNZ Funds Management Limited, a company associated with May Wang, Jack Chen and Natural Dairy (NZ) Holdings Limited) agreed to acquire 22 farms (the 16 farms subject to this application and six others) from the Crafar family in May 2009. Before the transactions could be settled, Michael Stiassny and Brendan Gibson (KordaMentha) were appointed by Westpac² to act as receivers of the four Crafar companies.
15. UBNZ Funds Management Limited, Natural Dairy (NZ) Holdings Limited and their associates still wished to acquire the farms. The sale of four of the six additional farms (whose owning companies were not in receivership) was settled (without Overseas Investment Office consent³) in February 2010. The agreements to acquire the final two additional farms came to an end.
16. The remaining 16 farms were widely advertised for sale by the receivers. Bids were called for, and on 21 May 2010, UBNZ Funds Management Limited and the receivers entered into conditional agreements to acquire the 16 farms. We understand that unsuccessful bids were made by Landcorp (for all 16 farms) and individual bidders (for individual farms).
17. In July and August 2010, UBNZ Funds Management Limited, Natural Dairy (NZ) Holdings Limited and others applied for consent to acquire 20 of the 22 farms⁴. Hon Kate Wilkinson (acting under a transfer of responsibility from the Minister of Finance) and Hon Maurice Williamson (Minister for Land Information) declined to grant consent to these transactions in December 2010.
18. The Applicant submitted an expression of interest in June 2010 and a submission to the original tender was submitted in July 2010. On 19 November 2010 the receivers and the Applicant entered into an agreement for sale and purchase to acquire the 16 farms.⁵ This was before Hon Kate Wilkinson and Hon Maurice Williamson declined to grant consent to the UBNZ Funds Management Limited and Natural Dairy (NZ) Holdings Limited transactions. The Applicant's offer was accepted conditional upon the UBNZ Funds Management Limited being terminated.
19. We understand that in September 2011 a group of individual purchasers (who refer to themselves as the Crafar Farms Independent Purchaser Group) led by Sir Michael Fay have also offered to acquire the 16 farms. We understand that their bid was not accepted by the receivers.

² On 5 October 2009

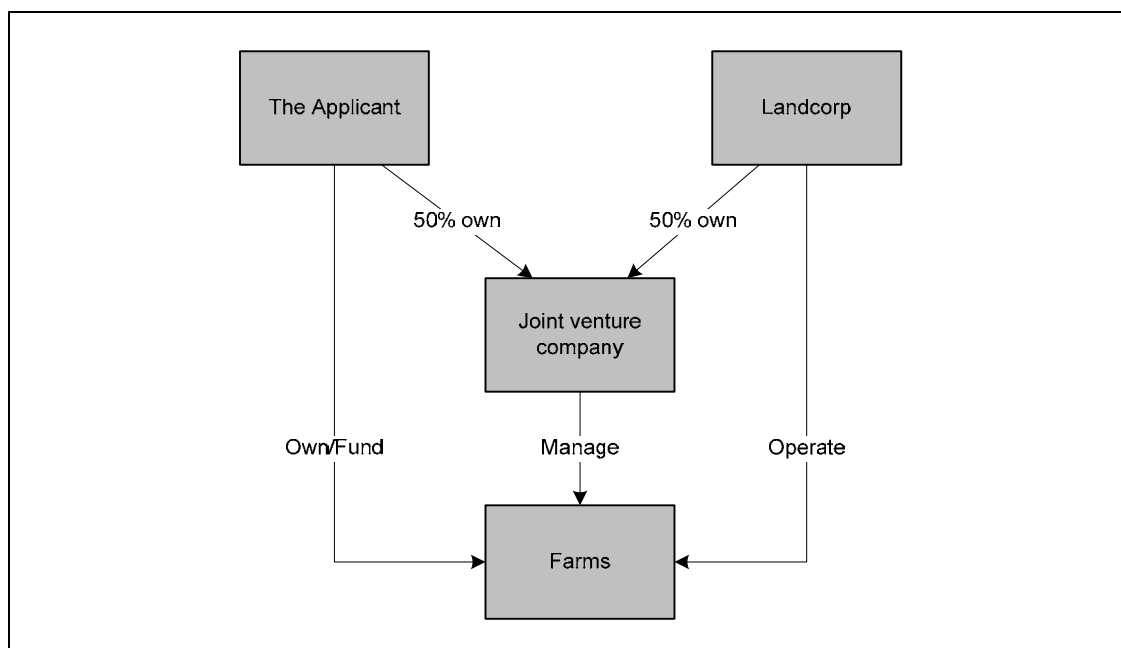
³ These four farms are still owned by UBNZ Assets Holdings Limited, an associate of UBNZ Funds Management and Natural Dairy (NZ) Holdings Limited. The [REDACTED]

⁴ Two of the six farms were excluded from the transaction altogether when the Crafar companies were placed in receivership.

⁵ Strictly speaking, the agreement was entered into between the receivers and an associate of the Applicant. The associate will nominate the Applicant to be the purchase prior to settlement. However, nothing turns on this distinction and for simplicity we will treat the agreement as if it had been entered into by the Applicant.

Outline of the Investment

20. The Applicant is seeking consent to acquire both sensitive land and significant business assets under the Act.
21. The Applicant has entered into an Agreement for Sale and Purchase (conditional on obtaining consent under the Act) to purchase the 16 Farms, together with the livestock, chattels and machinery on the farms and the approximately [REDACTED] Fonterra Co-operative Group Limited ("Fonterra") shares associated with the farms. The Fonterra shares comprise approximately [REDACTED]% of total Fonterra shares. The Applicant has been nominated to complete the proposed transaction.
22. The sixteen farms are located in four main areas of the North Island. Three of the farms are currently drystock farms, the remaining thirteen being operational dairy farms. Currently, due to the receivership, the farms do not have long term investment plans and the Applicant claims that productivity is below the potential of these farms.
23. The Applicant has agreed to pay NZD \$[REDACTED]m for the land, chattels, machinery on the farms, and the approximately [REDACTED] Fonterra shares. The price for the livestock (approximately [REDACTED] cows) will be set by an independent valuer. When the application was submitted, the Applicant estimated the cows to be worth at approximately NZD \$[REDACTED]m. Changes in cow prices since then mean the cows may now be worth as much as NZD \$[REDACTED]m.
24. The Applicant will finance the acquisition by way of [REDACTED]. Two deposits of NZD \$[REDACTED] were paid in [REDACTED] and a third deposit of NZD \$[REDACTED] will be paid if consent to the transaction is granted under the Act.
25. The Applicant intends to partner with Landcorp Farming Limited ("Landcorp"), a state owned enterprise farming company.
 - (a) The Applicant will acquire dairy farms, and fund the management and development of them.
 - (b) A joint venture company⁶ to be owned 50/50 by the Applicant and Landcorp will develop and manage the Applicant's farm portfolio. The majority of the planning, budgeting and reporting relating to the farms will take place within the joint venture company
 - (c) Landcorp will operate the farms on the Applicant's behalf, and provide operational services and advice. Landcorp will also manage the disposal and acquisition of properties for the Applicant's portfolio, and undertake capital expenditure on its behalf.



⁶ This company, to be named Milk New Zealand Farming Limited, is yet to be incorporated.

26. A key feature of the relationship with Landcorp, will be the Applicant funding an on-farm training facility for dairy farm workers on one of the farms. The establishment of this facility will be funded by the Applicant (estimated NZD \$█m) before being operated by Landcorp. The applicant will support the students of the facility with two annual NZD \$5k scholarships.
27. The Applicant's relationship with Landcorp will be documented in three agreements: a letter of intent (already executed); a "Property Management Agreement" (to be executed if consent is granted); and a "Farm Operations Agreement" (to be executed if consent is granted).

Rationale for the Investment

28. The Applicant intends the acquisition of the 16 farms to be the commencement of Applicant's wider dairy business in New Zealand. The Applicant's ultimate goal appears to be to supply value added dairy products to Asian markets.
29. The Applicant's plan has three main parts:
 - (a) Acquiring the 16 dairy farms;
 - (b) Forming partnerships with local dairy companies to process milk into value added products;
 - (c) Marketing value added New Zealand dairy products in Asia.
30. The Applicant has worked with and taken advice from leading New Zealand businesses including Landcorp, Pricewaterhouse Coopers, Perrin Ag Consultants Limited ("Perrin Ag"), Chapman Tripp and Russell McVeagh to develop its business plan. The Applicant has also discussed business opportunities with Fonterra, and the Sutton Group. The Applicant believes the proposed investments will prove successful and benefit trade relationships between New Zealand and China.

Acquisition and development of the 16 farms

31. The proposed transaction will allow the Applicant to participate in the New Zealand dairy industry. The Applicant believes that New Zealand has the world's best pasture farmland, best dairy research and development institutions and management systems and that there are huge opportunities for the New Zealand dairy industry in China over the next decade.
32. The Applicant's advisers have provided evidence that production levels on the 16 farms can be significantly improved and the Applicant intends to reinvest in the farms to increase their production in a sustainable way. The Applicant intends to increase production from the farms over the next three years by investing in items such as herd improvement, soil fertility and regrassing.
33. The Applicant is also considering a conversion of one of the three dry stock farms to dairy as an option to increase production. However, the Applicant will assess the costs of such conversion more fully following completion of the transaction and by comparison to the cost of selling one or more of those farms and purchasing an existing dairy farm (taking into account the necessary consents and approvals required).

Processing of dairy products

34. The Applicant considers the Investment is the commencement of its operations in the dairy industry in New Zealand. It intends to identify New Zealand dairy processing and development operations which may be appropriate for partnership type arrangements. █
█ The Applicant intends to establish joint ventures with existing processors to process new value added products for export.
35. It is not the Applicant's stated intention to build or own milk processing plants. If the Applicant's needs cannot be satisfied by existing plant capacity, the Applicant may invest with its joint venture partners in expanding that capacity.

Marketing of dairy products in Asia

36. The Applicant believes that with rapid economic growth, Chinese middle class people will need more, safer, high quality dairy products from New Zealand, the biggest dairy exporter in the world. The Applicant's parent, SPGL, intends to invest NZD \$100m, over the next five years to promote New Zealand dairy products⁷ in China and elsewhere in Asia.
- (a) NZD \$█m is budgeted for █
 - (b) NZD \$█m is budgeted for █ (NZD \$█m is budgeted in year one and year two, and NZD \$█m is budgeted for each of the following three years).
 - (c) The Applicant claims that the NZD \$100m budget is a 'low end estimate' and more funds will be made available depending on performance.
37. The Applicant has developed and registered two brands ("Nature Pure"⁸ and "Pure 100"⁹) in New Zealand.

Sensitive Land

38. The Applicant is acquiring sensitive land: see Appendix 2 for details.

Assessment Process

39. We have sought sufficient information from the Applicant for us to be assured about the accuracy of the information supplied and have sought sufficient evidence from the Applicant for us to be able to judge whether the criteria and factors that apply to the relevant category of overseas investment are likely to eventuate.
40. We have also consulted with the Department of Conservation, the New Zealand Walking Access Commission, Ministry of Foreign Affairs and Trade (Beijing embassy), New Zealand Police, China's Ministry of Public Security, and the New Zealand Historic Places Trust.
41. As a result of this transaction, the Applicant will own or control farm land that is more than ten times the average farm size for the principal farming activity (dairy cattle farming) that is proposed to be carried out. Accordingly, sections 17(2)(a)(i) to 17(2)(a)(vi)¹⁰ and regulations 28(i)¹¹-(j)¹² are of high relative importance.
42. In our view:
- (a) Milk New Zealand Holding Limited, Shanghai Pengxin Group Co., Limited, Nangtong Yingxin Investment Co., Limited and Mr Jiang Zhaobai are the relevant overseas persons; and
 - (b) Zhaobai Jiang, Lei Jiang, and the other directors of Shanghai Pengxin Group Co., Limited, Xu Honglin, Wang Bing, and Zhao Weimao are the individuals with control of the relevant overseas persons;
- for the overseas investment.

⁷ We assume that these are dairy products being sold in China and elsewhere in Asia by SPGL.

⁸ New Zealand trademark 834002

⁹ New Zealand trademark 834001


¹⁰ Which relate to certain economic benefits

¹¹ Regulation 28(i) deals with whether New Zealand's economic interests will be adequately promoted by the overseas investment.

¹² Regulation 28(j) deals with extent to which persons who are not overseas persons are likely to be able to oversee or participate in the investment or the relevant overseas person.

Criteria set out in sections 16 and 18 of the Overseas Investment Act 2005

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

Does the relevant overseas person, or do the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to that overseas investment?	
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Applicant's Claims:

The background of the Applicant's sole director Zhaobai Jiang, and SPGL's successful off-shore agribusiness ventures, shows the Applicant has the commercial ability to ensure the successful operation of the farming business proposed to be operated on the land. Such an operation requires highly skilled people and the Applicant will employ those with the required expertise.

The Applicant entered into a management agreement with Landcorp in September 2011 whereby Landcorp will be responsible for the farming operations on the 16 farms. Landcorp is an expert provider of farm management skills and the most updated business plan (September 2011) for the farming business was prepared in consultation with Landcorp. Landcorp has an excellent track record in investment in dairy farms.


A well capitalised, experienced investor which is willing to seek and follow expert industry-specific advice is, in the Applicant's submission, very likely to be successful.

OIO Assessment:

The Overseas Investment Office is satisfied that the individuals with control of the relevant overseas persons have business experience and acumen relevant to the overseas investment. The Applicant's parent company group has extensive investment experience and Landcorp will provide the required specialist New Zealand dairying expertise.

We recommend that you impose conditions of consent requiring the Applicant to maintain a contractual relationship with Landcorp: see draft consent conditions 1, 3(b) and 10.

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

Has the relevant overseas person demonstrated financial commitment to the overseas investment?	
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Applicant's Claims:

The Applicant has paid a total of NZD \$█m as a deposit for the acquisition of the Crafar farms. The Applicant has also incurred substantial costs internally and with New Zealand consultants and advisors in identifying the subject land and in undertaking due diligence work.

The Applicant intends to finance the transaction by way of a █.

OIO Assessment:

The Overseas Investment Office is satisfied that the relevant overseas person has demonstrated financial commitment to the overseas investment.

The Applicant has also agreed to the Receivers undertaking urgent capital expenditure of just over NZD \$█k (plus GST) in order to protect the farm quality and environment. This amount will be added to the final purchase price.

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

Is the relevant overseas person, or are all the individuals with control of the relevant overseas person, of good character?	✓
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OIO Assessment:

The Overseas Investment Office is satisfied that the individuals with control of the relevant overseas person are of good character.

For further details, please see the memorandum "Further analysis of the good character and Immigration Act 2009 criteria" attached as Appendix 5.

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

Is the relevant overseas person, or is each individual with control of the relevant overseas person, not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009?	✓
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OIO Assessment:

The Overseas Investment Office is satisfied that none of the individuals with control of the relevant overseas person are individuals of a kind referred to in section 15 or 16 of the Immigration Act 2009.

For further details, please see the memorandum "Further analysis of the good character and Immigration Act 2009 criteria" attached as Appendix 6.

47. s16(1)(e)(ii) Overseas Investment Act 2005

Will the overseas investment benefit, or is it likely to benefit, New Zealand (or any part of it or group of New Zealanders)?	✓
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OIO Assessment:

The proposed overseas investment is or is likely to benefit New Zealand (or any part of it or group of New Zealanders) having regard to the following factors:

Overseas Investment Act 2005

- 17(2)(a)(i) – Creation/Retention of jobs
- 17(2)(a)(iii) – Increased export receipts
- 17(2)(a)(iv) – Added market competition/productivity
- 17(2)(a)(v) – Additional investment for development purposes
- 17(2)(a)(vi) – Increased processing of primary products
- 17(2)(b) – Indigenous Vegetation/Fauna
- 17(2)(c) – Trout, salmon, wildlife and game
- 17(2)(d) – Historic Heritage
- 17(2)(e) – Walking Access
- 17(2)(f) – Offer to gift riverbed to the Crown

Overseas Investment Regulations 2005

28(a) – Consequential Benefits

28(f) – Advance significant government policy or strategy

28(i) – Economic Interests

48. s16(1)(e)(iii) Overseas Investment Act 2005

Will the benefit be, or is the benefit likely to be, substantial and identifiable?	✓
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Applicant's Claims:

The acquisition of the land is likely to benefit New Zealand as a whole and in particular the Waikato, Manawatu, Taranaki and Central Plateau regions through:

- creation of job opportunities in New Zealand [REDACTED]
- additional capital investment in the farms for development purposes;
- enhanced production from the farms which will result in increased export receipts and increased processing of primary products, resulting in further increases in export earnings;
- enhanced ecological sustainability in the farming operations on the land;
- protection and enhancement of native flora and fauna;
- furtherance of New Zealand's commercial relationship with China; and
- introduction of overseas agribusiness expertise and identification of marketing opportunities for New Zealand in China, which may extend to other New Zealand products beyond dairying.

OIO Assessment:

The Overseas Investment Office is satisfied that the benefits of the overseas investment are likely to be substantial and identifiable. The Overseas Investment Office notes however that under the Agreements [REDACTED]

49. s16(1)(f) Overseas Investment Act 2005

Has the farm land, or have the farm land securities, been offered for acquisition on the open market to persons who are not overseas persons, in accordance with the Overseas Investment Regulations 2005?	✓
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OIO Assessment:

The Overseas Investment Office is satisfied that the farm land has been advertised in accordance with the requirements of the Overseas Investment Regulations 2005.

A more comprehensive analysis of the advertising requirements and how those requirements have been satisfied can be found in appendix 8.

Factors Set Out in section 17 of the Overseas Investment Act 2005

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

Will the overseas investment result in, or is it likely to result in, the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost?	✓
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This factor is of high relative importance

Applicant's Claims:

The Applicant believes that total new jobs will be at least 5 Full Time Equivalent (FTE) and up to 8 FTE positions if the conditions to the Landcorp Agreement are satisfied.

Under the proposed arrangements with Landcorp, 

The Applicant and Landcorp estimate having 88 Full Time Equivalent (FTE) positions on the farms (including casual labour). The receivers have not advised the number of persons currently engaged by the farm operators but it is not expected to exceed 88 FTEs.

The Applicant notes that production from the farms dropped significantly last year and that some existing jobs may be under threat if production cannot be increased through necessary new investment and better management. Given the reducing performance of the farms under receivership, there is a plausible threat that the number of employees that the farms require may be reduced. Accordingly, the employment benefit resulting from the proposed transaction is both the creation of new jobs, and the retention of jobs that are likely to be at risk. It is difficult to quantify that risk.

The operation of the farms will be overseen and managed by a management company. This company will have a board of directors comprised of a maximum of five directors, being 2 directors appointed by each of the Applicant and Landcorp and 1 independent director who will be chairman. While these director roles will not be full time roles, together, the two certain New Zealand directors roles (total 1 FTE position) are new roles that will be created by the proposed transaction.

The Applicant intends to employ one FTE General Manager, which in our submission is the creation of a new FTE position. Current thinking is that another operations manager may be required for supervision of the farms, but that is not yet certain.

Three new jobs are also likely to be created by the investments SPGL intends to make in marketing and (indirectly through joint ventures) in processing dairy products. These investments will not be made unless SPGL establishes its business in New Zealand by the acquisition of the farms, through the Applicant, and therefore can be said to be related to the acquisition of the farms.

Another two new jobs will be created if the proposed on-farm training facility to be established with Landcorp proceeds.

OIO Assessment:

The Overseas Investment Office is satisfied that the overseas investment is likely to result in the retention of existing jobs and creation of new job opportunities in New Zealand.

While it is likely that new jobs will be created, the number of new jobs is modest given the size of the business operating on the properties. In our view, the most certain of the new jobs are the two jobs associated with the on-farm training facility. The on-farm training facility is being developed by the Applicant and is to be operated by Landcorp. The Overseas Investment Office considers that this facility would not be developed but for the Applicant's proposed relationship with Landcorp. Accordingly, we recommend that you impose conditions of consent requiring the establishment of this facility (and thus the establishment of these two new positions).

The Overseas Investment Office considers that the three new jobs that the Applicant contends may be created by investments in marketing and processing of dairy products are too remote from the Investment to be relevant. In any event, the creation of these new jobs is uncertain in that the investments have not yet been identified.

We have insufficient information to quantify the number of new job opportunities that may result from an increase in the productivity of the farms, but we do not expect the number to be large.

However we consider that the significant investment in new housing, fencing, fertilizing and other farm infrastructure is likely to create significant short term employment opportunities for local businesses, although again we have insufficient information to quantify these new jobs.

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

Will the overseas investment result in, or is it likely to result in, the introduction into New Zealand of new technology or business skills?	X
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This factor is of high relative importance

Applicant's Claims:

The proposed transaction will not directly introduce new technology into New Zealand. The Applicant will however introduce its business skills learned in its international agribusiness interests.

The SPGL Group's knowledge of the Chinese market place and investment required to establish brands in that market place are new skills which will be introduced to New Zealand when the farms are acquired, and are currently lacking in New Zealand. As a major property developer in China, the Applicant has good understanding of the needs of high-end consumers in different parts of China, owns and runs large shopping malls and shopping complexes and has a number of very strong contacts within the supermarket industry. It is through those contacts and links that the Applicant intends to develop opportunities for New Zealand dairy products. Without a vested interest in the performance of New Zealand's dairy industry, the Applicant will not be incentivised to take those steps.

The Applicant considers that its expertise and contacts for dealing with the Chinese market are skills that are not sufficiently present in New Zealand at this time. The Applicant considers that this is clearly shown in New Zealand Trade and Enterprise's China 2009-10 Strategy which states that New Zealand exporters are generally poorly prepared to approach the Chinese market. In addition, media reports indicate that there are opportunities in Chinese markets for New Zealand manufactured dairy products which are not being taken up by New Zealand exporters to sufficient levels to meet the demand of the Chinese markets.

In its discussions with third parties to date, the Applicant has not been able to discover whether these business skills are in New Zealand or not.

OIO Assessment:

The Overseas Investment Office considers that the Applicant has not provided sufficient evidence that it will introduce new technology or business skills into New Zealand. Expertise in dealing with the Chinese market is already present within the dairy industry.

52. s17(2)(a)(iii) Overseas Investment Act 2005

Will the overseas investment result in, or is it likely to result in, increased export receipts for New Zealand exporters?	✓
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This factor is of high relative importance

Applicant's Claims:

By increasing production from the farms and selling the increased milk products to New Zealand dairy companies (including Fonterra), an increase in export receipts for New Zealand exporters will occur.

The objective is to increase the production of milk solids from the farms in accordance with the Business Plan. In summary, the production from the farms in the 2009/10 season was approximately [REDACTED] million kgMS and the estimated production in the 2010/11 season is [REDACTED] million kgMS. These figures are below the average production in the relevant geographical areas. The Applicant's target production, without any dairy conversion, is [REDACTED] million kgMS in the 2012/13 season, increasing to [REDACTED] million kgMS in 2013/14 and [REDACTED] million kgMS by 2016/17 at which time production is expected to stabilise.

The Applicant intends to identify possible New Zealand dairy operations which may be appropriate for the Applicant to enter into partnership-type arrangements to further develop New Zealand's dairy industry, with a particular goal of increased supply of dairy products to Asian markets and developing new value-added New Zealand dairy products for export. This will result in a further increase in New Zealand's export income through dairy farming.



SPGL intends to invest more than NZD \$100m over the following five years to promote New Zealand dairy products in China and elsewhere in Asia. As and when the appropriate opportunity arises, the Applicant will also utilise its contacts in China to assist with identifying new purchases of New Zealand milk products in the Chinese market.

China is a big market but establishing recognised dairy brands is not easy. The proposed NZD \$100m is a low end estimate to establish a market for the first five years. More funds will be made available depending on performance and these funds will be spent according to the real needs of business development in accordance with annual budgets.

OIO Assessment:

The Overseas Investment Office is satisfied that the overseas investment is likely to result in increased export receipts for New Zealand exporters through the increased production of milk products.

The Applicant has not yet entered into partnerships, and until it does, it is unlikely that the marketing campaign will proceed. Accordingly, the Overseas Investment Office considers that an increase in export receipts from the partnerships and marketing campaign cannot be described as likely to occur.

53. s17(2)(a)(iv) Overseas Investment Act 2005

Will the overseas investment result in, or is it likely to result in, added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand?	✓
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This factor is of high relative importance

Applicant's Claims:

The Applicant considers that the acquisition of the farms will result in greater efficiency or productivity. The Applicant's business plan is focussed on better utilising the farms to increase production, which will result in an improved use of the farms when compared against the current receivership position.

As stated above, the objective is to increase the production of milk solids from the farms in accordance with the Business Plan. In summary, the production from the farms in the 2009/10 season was approximately [redacted] million kgMS and the estimated production in the 2010/11 season is [redacted] million kgMS. These figures are below the average production in the relevant geographical areas. The Applicant's target production, without any dairy conversion, is [redacted] million kgMS in the 2012/13 season, increasing to [redacted] million kgMS in 2013/14 and [redacted] million kgMS by 2016/17 at which time production is expected to stabilise.

The Business Plan demonstrates that greater productivity will result from increased investments in the farms (for example in pasture quality, herd genetics, feeding and watering systems and farm machinery). The Applicant notes that the current performance of the farms is in many cases hampered by overdue capital expenditure requirements, soil fertility levels, quality and management of stock and total annual feed supply relative to the number of stock.

The Applicant will also "...add competition to the dairy export (sic) by its collateral activities, especially value added consumer dairy products exported to China and East Asia markets..."

OIO Assessment:

The Overseas Investment Office is satisfied that the overseas investment is likely to result in greater efficiency or productivity from the farms. The Overseas Investment Office considers that the Applicant's partnership with Landcorp makes it more likely that the claimed increases in productivity will occur.

The investment is not likely to result in added market competition or enhanced domestic services in New Zealand.

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

Will the overseas investment result in, or is it likely to result in, the introduction into New Zealand of additional investment for development purposes?	✓
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This factor is of high relative importance

Applicant's Claims:

The Applicant intends to invest NZD \$15.75m (this includes over NZD \$[redacted]m for Fonterra shares) in the land and farms within the first two years. These funds will be used to allow the farms to achieve full productive potential, ensure the highest standards in environmental compliance and sustainability are met and ensuring employees have access to good infrastructure and accommodation.

Specific investment (totalling NZD \$[redacted] m) includes:

- Machinery purchases: NZD \$[redacted]m
- New Housing : NZD \$[redacted]m
- Regrassing: NZD \$[redacted]m
- Water supply: NZD \$[redacted]m
- Fonterra shares: NZD \$[redacted]m
- House repairs: NZD \$[redacted]k
- Provision for DOC: NZD \$[redacted]k
- Soil fertility: NZD \$[redacted]k
- Plant upgrades: NZD \$[redacted]k
- Races, culverts, bridges: NZD \$[redacted]k
- Contingency: NZD \$[redacted]k
- Planting/riparian/environmental: NZD \$[redacted]k
- Effluent systems: NZD \$[redacted]k

In addition, the Applicant is considering proposals from Landcorp for significant further expenditure on [redacted] utilising New Zealand based high technology. This will involve further investment in excess of NZD \$[redacted]m.

The final dollar values of capital expenditure are subject to variance due to currency exchange rates, global commodity prices and other market forces. The items listed in the Business Plan are based on the Applicant's current knowledge of the farms and are all intended to be completed as per the schedule laid out, provided materials can be appropriately sourced at the time. However, a lack of availability of appropriate materials or resources could lead to a short term delay in implementation of some capital expenditure items.

The Applicant has also agreed to urgent capital expenditure of just over NZD \$█k (plus GST) suggested by the receivers in the current financial year in order to protect the farm quality and environment which the Applicant agreed to add to the final price.

Much of the capital expenditure recommended for 2012/13 and 2013/14 is largely operational in nature, including the implementation of a significant improvement programme in farm infrastructure and productive capacity.

Further expenditure may be needed for new vehicles and replacement of cow sheds and the Applicant will make further capital expenditure in the following years, the exact amount and focus of which will be determined following consideration of the needs of the farming business closer to the time.

The proposed expenditure will create a direct benefit for those suppliers within the New Zealand economy that supply the capital expenditure items. In addition, there will be flow on benefits that result from the above capital expenditure items, such as the positive environmental benefits from investment in areas such as effluent facilities, environmental protection and weed control.

In addition, the Applicant estimates that total cattle purchases for the 2012/13 year will be approximately NZD \$█m.

OIO Assessment:

Some of the Applicant's claimed investment for development purposes should be discounted. For example, the Overseas Investment Office does not consider the purchase of Fonterra shares to be investment for development purposes. Also, it is unclear the extent to which the claimed investment is in fact the maintenance or repair of existing assets and the extent to which it represents new or upgraded assets.

Nonetheless, the Overseas Investment Office is satisfied that the overseas investment is likely to result in the introduction into New Zealand of significant additional investment for development purposes. The Overseas Investment Office considers that the Applicant's partnership with Landcorp makes it more likely that the claimed investment for development purposes will occur.

The Applicant's detailed analysis of the proposed investment for development purposes is attached at appendix 7.

The Overseas Investment Office recommends that you impose conditions of consent requiring the Applicant to give effect to the capital expenditure plan outlined above.

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

Will the overseas investment result in, or is it likely to result in, increased processing in New Zealand of New Zealand's primary products?	✓
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This factor is of high relative importance

Applicant's Claims:

The Applicant is purchasing shares in Fonterra and initially intends to sell its milk products to Fonterra for processing. As and when appropriate opportunities arise, the Applicant would be interested in collaborating with New Zealand dairy companies and research institutes with a view to increasing the processing of milk products in New Zealand to target international markets.

In particular, the Applicant would be interested in offering expertise from China to collaborate to develop new dairy products for the Asian (and particularly the Chinese) market such as baby formula, milk powder for targeted age groups or sports and value added dairy products like cheeses and ice creams. This initiative would add to the volume of New Zealand primary products being processed in New Zealand.

OIO Assessment:

The Overseas Investment Office considers that an increase in production will result in an increase in increased processing of primary products in New Zealand as the extra milk produced cannot practically be exported in an unprocessed state. Accordingly, the Overseas Investment Office is satisfied that the overseas investment is likely to result in increased processing of primary products in New Zealand.

56. s17(2)(b)-(c) Overseas Investment Act 2005

Are there, or will there be, adequate mechanisms in place for protecting or enhancing existing areas of significant indigenous vegetation and significant habitats of indigenous fauna?	✓
Are there, or will there be, adequate mechanisms in place for protecting or enhancing existing areas of significant habitats of trout, salmon, protected wildlife and game, and providing, protecting or improving walking access to those habitats?	✓

Applicant's Claims:

The Applicant is committed to adopting each of the recommendations made in five reports by Wildland Consultants. The Applicant considers that a number of the recommendations that the Applicant is prepared to comply with regards to flora and fauna will also have the benefit of protecting any wildlife habitats and trout, salmon and game on the farms, particularly with regards to the riparian fencing and any replanting.

OIO Assessment:

The Applicant has budgeted NZD \$800k for the works associated with these factors, and with the factors in sections 17(2)(d) (historic heritage) and 17(2)(e) (walking access).

The Applicant commissioned Wildland Consultants to prepare ecological reports for four of the sixteen farms which are the subject of this Application. A fifth Wildland Consultants report was prepared for Natural Dairy in respect of an additional property. These reports include numerous recommendations for protective and enhancement measures which include retiring conservation areas from grazing, removal of wilding pines, formal protection of some areas through legal covenants, pest control and introducing riparian buffers.

Key benefits include:

- **Taharua Farm:** Taharua Farm adjoins the Kaimanawa Forest Park. The Applicant has discussed with DOC a plan to protect riparian stream margins through stock proof fencing and the Applicant has agreed to implement DOC's preferred option from options outlined in the Wildland Report.
- **Ferry View Farm:** DOC agrees with the recommendations made in the Wildland Report in relation to this farm and accordingly the Applicant will adopt each of the recommendations made in relation to this farm. These measures include stock exclusion fencing, restoration of a wetland area and researching a possible whitebait spawning habitat.
- **Tiwhaiti Farm:** DOC has advised that while it may be unlikely that there are significant areas of indigenous vegetation or significant habitats present on this farm, DOC would prefer a precautionary approach. The Applicant is committed to adopting each of the recommendations made by the Wildland Report in relation to this farm. In addition to those recommendations the Applicant is committed adopting the additional measures suggested by DOC which include fencing, surveying fish numbers and weed and pest control.
- **Plateau Farms:** Further Wildland Consultants reports were prepared for the Plateau Farms as part of the previous Natural Dairy application and these reports were subsequently considered by the Applicant. The Applicant notes the recommendations that Wildland made in the context of the Natural Dairy application and is prepared to commit to also adopting the Wildland recommendations made in respect of those farms. DOC has previously indicated that it supports these recommendations.

The Overseas Investment Office is satisfied that there are adequate mechanisms in place for protecting or enhancing existing areas of significant indigenous vegetation and protecting or enhancing existing areas of significant habitats of trout, salmon and other protected wildlife.

The Overseas Investment Office recommends that you impose conditions of consent requiring the Applicant to implement all measures agreed to with the Department of Conservation (which has considered and commented on the various Wildland Reports). The Applicant has budgeted NZD \$800k for the cost of complying with additional environmental and recreational works.

57. s17(2)(d) Overseas Investment Act 2005

Are there, or will there be, adequate mechanisms in place for protecting or enhancing historic heritage within the relevant land?	✓
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Applicant's Claims:

The following historic heritage features have been identified:

- **Benneydale Farms:** One of the Benneydale farms contains the Nga Heranga pa site located on the corner of the property and closely adjacent to a public road. The Office of Treaty Settlements (OTS) has indicated to the receivers that the Crown is interested in purchasing an area of approximately 1.6 hectares (which comprises the pa site) as a part of an historical Treaty settlement with Ngati Rereahu. The Applicant recognises the significance of the pa site to Ngati Rereahu and its importance to resolving the historical treaty settlement. Accordingly, if this Application is successful, the Applicant intends to meet with OTS to reach agreement on the basis on which the pa site can be sold to the Crown. The Applicant undertakes to use all reasonable commercial endeavours to reach an agreement with OTS which facilitates the sale of the pa site to the Crown and provides reasonable access to the Nga Heranga pa site following that sale. Until such time as the pa site has been transferred to the Crown, the Applicant will retire that area from grazing and will ensure that fencing is adequate to protect the site.
- **Tiwhaiti Farm:** Tiwhaiti Farm contains an archaeological pa site numbered Q21.5 in the New Zealand Archaeological Association site record. The New Zealand Historic Places Trust has requested that the owner enter into a heritage covenant in respect of this pa site. The receivers have advised that at this stage they do not intend to enter into the covenant. However, the Applicant recognises the importance of protecting this pa site and will enter into the heritage covenant.

OIO Assessment:

The Applicant has budgeted NZD \$800k for the works associated with this factor, and with the factors in sections 17(2)(b) (indigenous vegetation/fauna), 17(2)(c) (trout, salmon, protected wildlife and game) and 17(2)(e) (walking access).

The Overseas Investment Office is satisfied that there are adequate mechanisms in place for protecting or enhancing historic heritage within the relevant land.

The Overseas Investment Office recommends that you impose conditions of consent requiring the Applicant to register heritage covenants to protect the pa site on Tiwhaiti Farm and to transfer the pa site on Benneydale Farm to the Crown.

58. s17(2)(e) Overseas Investment Act 2005

Are there, or will there be, adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land, or a relevant part of that land, by the public or any section of the public?	✓
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Applicant's Claims:

The Applicant is prepared to commit to work together with the Department of Conservation (DOC) and the New Zealand Walking Access Commission (WAC) with a view to facilitate public walking access in respect of the following areas:

- Benneydale Farm: The Applicant will work with WAC to provide walking access (including agreement to a walking easement in gross if required) to complete the link between the existing marginal strips which allow public access alongside the river to the public road. This access will provide a more direct link between the road and the land managed by DOC for the Te Araroa Trail. The Applicant is committed to riparian fencing and WAC's advice is that it is that it may be possible to include the walking access within these fenced off riparian areas without the need for any additional walking facility. Accordingly, the Applicant will work with WAC with a view to the incorporation of the walking access within the riparian fencing on these farms.

The Applicant will work with WAC to provide walking access (including agreement to a walking easement in gross if required) for the approximately 250 metres from SH30 across Benneydale Farm to the unlogged podocarp forests of the Waipapa Ecological Area. WAC has advised that the proposed access over the Benneydale farms will not necessarily require a formed access if the terrain does not require a formed access, or if a formed access would otherwise detract from the natural beauty of the area. Accordingly, the Applicant will work with WAC with a view to the incorporation of the walking access within the riparian fencing on these farms.

- Taharua Station: The Applicant will work with WAC to provide walking access (including agreement to a walking access easement in gross if required) along the Taharua River and also the Te Rere Falls and also possibly enabling vehicle access for maintenance work and for the public (for those with mobility problems) along the east side of the Taharua River.

OIO Assessment:

The Applicant has budgeted NZD \$800k for the works associated with this factor, and with the factors in sections 17(2)(b) (indigenous vegetation/fauna), 17(2)(c) (trout, salmon, protected wildlife and game) and 17(2)(d) (historic heritage).

The Benneydale Farms adjoin the Department of Conservation (DOC) administered Pureora Forest Park and the adjoining Waipapa Ecological Area, which is regarded as one of the Public Conservation Estate's most ecologically valuable mainland forest areas.

The Overseas Investment Office is satisfied that there are adequate mechanisms in place for providing, protecting or improving walking access over the relevant land by the public.

The Overseas Investment Office recommends that you impose conditions of consent requiring the Applicant to provide permanent public walking access over Benneydale Farm and Taharua Station.

59. s17(2)(f) Overseas Investment Act 2005

Has any foreshore, seabed, riverbed, or lakebed been offered to the Crown?	✓
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Applicant's Claims:

Four of the Crafar Farms include special land riverbed which has been offered to the Crown. The special land comprises:

- Benneydale I: the Waimiha Stream and Te Kakaho Stream;
- Tiwhaiti: the Kiwitahi and Mangimangi streams;
- Taharua: the Taharua River;
- Scotts Ferry: the Rangitikei River.

OIO Assessment:

The relevant land includes riverbed which has been offered to the Crown for nil consideration in accordance with the 2005 Regulations. A separate special land recommendation report will be forwarded to the Ministers in due course.

60. r28(a) Overseas Investment Regulations 2005

Will the overseas investment result in, or is it likely to result in, other consequential benefits to New Zealand (whether tangible or intangible benefits (such as, for example, additional investments in New Zealand or sponsorship of community projects))?	✓
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Applicant's Claims:

The Applicant will investigate opportunities to establish farming scholarships in partnership with appropriate educational institutions such as Massey University. The Applicant recognises New Zealand's leading expertise in dairy farming and will promote New Zealand's educational institutions to encourage increased Chinese students to come to New Zealand to study farming.

The Landcorp Agreement provides for:

- The Applicant to establish (at a cost of NZD \$█m) a farm school on one of the acquired farms to be operated by Landcorp to train students in farming. Two of the students per year will be given NZD \$5000 scholarships to attend universities;
- Landcorp to assist the Applicant to develop its sheep farming business in China with genetic technology;
- The Applicant, through its associated contacts, will assist Landcorp to extend its business to, and market its products, in China.

As a result of his interest in the Crafar Farms acquisition, Mr Jiang has committed to █ which can also be considered a consequential benefit to New Zealand. This investment is the acquisition of development land at █ by a joint venture in which Mr Jiang has a █% interest (case █).

OIO Assessment:

The Overseas Investment Office does not consider that Landcorp assisting the Applicant to develop its sheep farming business in China with genetic technology is a consequential benefit.

The Overseas Investment Office has assessed the application relating to development land at █ though no decision has yet been made. However, the Overseas Investment Office does not consider that two transactions are sufficiently related to qualify as a consequential benefit.

Nonetheless, the Overseas Investment Office is still satisfied that the overseas investment is likely to result in consequential benefits to New Zealand. The Overseas Investment Office recommends that you impose conditions of consent requiring the Applicant to:

- establish the on-farm training facility;
- award a minimum of two NZD \$5,000 scholarships annually; and
- assist Landcorp to extend its business to, and market its products, in China.

61. r28(b) Overseas Investment Regulations 2005

Is the relevant overseas person a key person in a key industry of a country with which New Zealand will, or is likely to, benefit from having improved relations?	Unknown
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Applicant's Claims:

SPGL is already a key person in China's commercial property industry, and in the future intends to be a key person in agribusiness and specifically the dairy industry. Existing relationships with Chinese supermarkets developed through the commercial property business will assist in establishing new distribution channels in China for processed dairy products. China is already New Zealand's second biggest trading partner and there are clear potential benefits in improving commercial relations. In this regard, the 2011 China Top 10 Commercial Estate Developers list ranks SPGL at number 6 on that list.

OIO Assessment:

The Overseas Investment Office accepts that the commercial property industry is probably a key industry in China. The Overseas Investment Office considers that China is a country with which New Zealand will, or is likely to benefit from, having improved relations. The Free Trade Agreement between New Zealand and China came into force on 1 October 2008. The Ministry of Foreign Affairs and Trade's website states that China is growing rapidly in importance to New Zealand both bilaterally and regionally as an economic and trading partner.

However, while the Overseas Investment Office accepts that Zhaobai Jiang and SPGL are successfully commercial property developers, we are not certain that they are key persons in China's commercial property industry.

62. r28(c) Overseas Investment Regulations 2005

Will refusal adversely affect, or likely adversely affect, New Zealand's image overseas or its trade or international relations, or result in New Zealand breaching any of its international obligations?	Unknown
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Applicant's Claims:

The Applicant submits that this Application is from a well established and reputable Chinese investment company, that it meets or exceeds the statutory criteria, and that it should be approved at the earliest possible time.

Refusing this Application may adversely affect New Zealand's trade relations with China. In April 2008, New Zealand and China completed negotiations and signed a Free Trade Agreement (FTA). The FTA contains measures to encourage and promote the flow of investment between New Zealand and China. New Zealand is the first OECD country to sign a FTA with China and this was appreciated by China. Both countries have agreed to give Most Favoured Nation treatment to investors of the other country (except in respect of fisheries and maritime matters) and to treat investors and investments of the other country at least as well as they treat their own investors (subject to existing laws). This means that any better investment treatment that New Zealand extends to third countries must also be extended to China.

Fonterra has been treated as a local investor and consent granted to set up three dairy farms in China. New Zealand dairy products have entered into the China market in much greater volume after the FTA. China is now the biggest importer of New Zealand dairy products by value. In 2010, China purchased about 353 million kg of New Zealand milk products, a more than fivefold increase from 69 million kg in 2008, the year the FTA was entered into. In 2010, more than 60% of the imported dairy products in China market were from New Zealand.

The Chinese Government recently confirmed that it saw New Zealand as an attractive place for investment and was encouraging Chinese companies to invest in strategic assets such as dairy farms. If this Application is refused without convincing reasoning linked to non-compliance with the Act or the Regulations (which we submit is not the case), that decision will be widely reported both domestically and internationally and will be likely to send a negative message about New Zealand's attitude towards Chinese investment and about whether the commitments made in the New Zealand-China FTA are being honoured.

This would seem specifically relevant given the recent consents given, on similar grounds, to the acquisition of dairy farms in Southland by Swiss and German interests. Given the recent approvals of similar investments by majority owned Swiss and German consortiums, refusal could be interpreted as a tacit anti-Chinese bias. It is noted also that Fonterra is actively increasing its existing investment in dairy farming operations in China.

SPGL is a credible and well respected business in China with strong business acumen and ability. The Chinese Government is viewing the Applicant's proposed acquisition of the farms with interest and the acquisition presents an interesting opportunity for Chinese business to develop a model farming skill set in New Zealand with a view to taking such knowledge and applying expertise and farming practices in a China-wide context. SPGL is also planning to export safe and high quality New Zealand dairy consumer products to China to satisfy the huge demand. This activity is entirely consistent with agriculture policies between the two countries.

This Application has been well reported in the main Chinese news media as the second attempt at the largest investment in New Zealand farms by a Chinese company. Those articles also state Mr Jiang's credibility of being No.284 on the Chinese rich list and having experience in farming operations. Mr Jiang has successful investments in Canada, Africa and other Asian countries which do not have FTA relationships with China. He also has an agribusiness in Bolivia. In addition, Mr Jiang's position as the Vice Chairman of the Chinese Private Enterprises Board means that there are a number of private Chinese businesses that are very interested to know the outcome of the Application and that are likely to consider their own future investments in New Zealand in light of that outcome.

The Applicant has acted entirely in good faith and has used all its best endeavours, including extensive use of consultants within New Zealand, to satisfy the requirements of the Act. If after taking such steps the Applicant can not have the Application processed and a decision made within a reasonable time, then in our submission that would reflect very badly upon New Zealand's official processes, and send a message to world markets that New Zealand, despite the official pronouncements and indeed the free trade agreement with China, does not in fact encourage foreign investment.

Therefore the Applicant submits that declining this Application is likely to adversely affect New Zealand's image abroad as an investment friendly destination (and in particular New Zealand's trade relations with China).

OIO Assessment:

The Overseas Investment Act 2005 (the Act) states that it is a privilege for overseas persons to own or control sensitive New Zealand assets. The Act is one of the agreed exceptions to the principle in the New Zealand-China FTA that New Zealand and China will treat investors and investments of the other country at least as well as they treat their own investors. Each application for consent under the Act is assessed on its own merits and against the criteria and factors set out in the Overseas Investment legislation. Consents granted under the Act to other investors are not a relevant consideration under this factor. Fonterra's investments in China are also not a relevant consideration.

The Overseas Investment Office does accept that, given the scale of the proposed investment, a decline would attract some publicity, but any decline would be on the basis that Ministers were not satisfied that the relevant criteria for consent were met. The Office would think it unlikely that a well reasoned decision to decline will or is likely to adversely affect New Zealand's image overseas.

63. r28(d) Overseas Investment Regulations 2005

Will granting the application for consent result in, or is it likely to result in, the owner of the relevant land undertaking other significant investment in New Zealand?	Not Relevant
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64. r28(e) Overseas Investment Regulations 2005

Has the relevant overseas person previously undertaken investments that have been, or are, of benefit to New Zealand?	Not Relevant
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65. r28(f) Overseas Investment Regulations 2005

Will the overseas investment give effect to or advance, or is it likely to give effect to or advance, a significant Government policy or strategy?	✓
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Applicant's Claims:

Approval of this Application will confirm compliance with the New Zealand-China FTA and advance the strategy of promoting Chinese investment in New Zealand. The increased export receipts and other business initiatives that are likely to flow from the transaction may also further the Government's Economic Growth Agenda to deliver greater prosperity, security and opportunities to all New Zealanders by fostering economic development.

Further, the Applicant considers that the ecological initiatives it proposes to take and the investments the Applicant will make into effluent disposal systems accord with the Ministry of Agriculture and Forestry's objectives of promoting sustainable dairy farming in New Zealand, including reducing the impacts of dairying on the quality of New Zealand streams, rivers, lakes, ground water and wetlands.

We understand the New Zealand Government (MFAT) will soon release a statement on investment policy relative to China (in conjunction with policy on the United States and Australia) which further supports the Applicant's stated position relative to inward investment in the New Zealand economy.

The Applicant believes that the Government policies and strategies which would be advanced by granting the application include:

- compliance with Article 136 of the New Zealand-China FTA;
- compliance with the Government's Economic Growth Agenda in relation to (i) expanding the high value food sector (ii) supporting the efforts of business to connect internationally (iii) improving access to capital for business growth;
- compliance with MAF's and MOE's objectives of promoting sustainable dairy farming in New Zealand as set out in the Dairying and Clean Streams Accord;
- improving investment flows between New Zealand and Asia, particularly Asian investment in New Zealand . See page 37 of MFAT's publication "Our future in Asia".

OIO Assessment:

The Overseas Investment Office considers that the overseas investment is likely to give effect to or advance a significant Government policy or strategy.

It is possible that granting consent may advance the Government's action plan for enabling better science, innovation and trade (part of the Economic Growth Agenda) by supporting the efforts of business to connect internationally.

The Overseas Investment Office considers that granting consent will advance the Dairying and Clean Streams Accord, as the Overseas Investment Office has recommended that you impose consent conditions requiring riparian fencing on some of the farms.

66. r28(g) Overseas Investment Regulations 2005

Will the overseas investment enhance, or is it likely to enhance the ongoing viability of other overseas investments undertaken by the relevant overseas person?	Not Relevant
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Applicant's Claims:

As the Applicant has not made any other investments in New Zealand, the transaction will not enhance the viability of other investment undertaken by the Applicant. However, the expansion and diversification of SPGL's agribusiness into dairy is likely to enhance the ongoing viability of that business. The approval of this Application will encourage the Applicant to bring its business partners from China to invest in New Zealand. SPGL will actively seek out other areas for investment in New Zealand.

OIO Assessment:

The Overseas Investment Office agrees that the overseas investment will not enhance the ongoing viability of other overseas investments undertaken by the relevant overseas person. Enhancing the viability of SPGL's existing agribusiness investments overseas, and encouraging the Applicant to bring its business partners to invest in New Zealand are not relevant to this factor.

67. r28(h) Overseas Investment Regulations 2005

Will the overseas investment assist, or is it likely to assist, New Zealand to maintain New Zealand control of strategically important infrastructure on sensitive land?	Not Relevant
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OIO Assessment:

This factor is not relevant as the overseas investment is not an investment in strategically important infrastructure on sensitive land.

68. r28(i) Overseas Investment Regulations 2005

Will New Zealand's economic interests be adequately promoted by the overseas investment?	✓
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This factor is of high relative importance

Applicant's Claims:

The Crafar farming operations proved unsustainable under the previous financial and management model resulting in historical problems with animal health and ecological sustainability. Acquisition by a financially strong party such as the Applicant will secure increased and sustainable production of dairy products which are a key element of New Zealand's economy so as to assist New Zealand in becoming a more reliable supplier of primary products in the future. The acquisition of and significant investment in the improvement of the farms by the Applicant has been demonstrated in this Application to lead to an increase in sustainable production of milk solids. Under the existing arrangements with Fonterra, those increased milk solids will be processed in New Zealand and therefore enhance New Zealand's ability to be a reliable supplier of primary products.

The Crafar Farms are currently suffering from significant capital underinvestment evidenced by poor pasture quality, inefficient small and old dairy sheds and particularly poor housing. Their compliance with ecological guidelines is also poor. The significant capital investment which the Applicant will make into the farms will rectify these issues and will ensure that there are sustainable, and clean, increases in milk solid production over the next few years.

The Applicant's acquisition will lift the farms from marginal and poorly resourced farms to modern and highly productive farms. This will benefit the economy by increased production in the longer term. The capital to acquire and invest in these farms to the extent committed is clearly not freely available in New Zealand given that the price the Applicant is willing to pay, and the amounts it is willing to invest, are significantly superior to those of any other bidder. The price paid will also return a larger part of the distressed debt to the existing lenders than any other offer to date. Further, the consequential benefits which we submit are likely to arise as a consequence of investment in branding, production and export of dairy products from future investments to be made by the Pengxin Group, together with educational opportunities in New Zealand, opportunities for Landcorp's business, and the introduction of other Chinese investment capital should also be considered in this category.

The Applicant will honour the supply agreements it has with Fonterra, [REDACTED].

Enhanced production of milk solids supplied to Fonterra will enhance New Zealand's ability to supply a product to the global economy that forms an important part of New Zealand's export earnings. In addition, the Applicant has expressed a realistic desire to invest in the development in marketing of products in China and other Asian markets which will further enhance processing in New Zealand and increase export earnings by adding value to products which currently are exported largely in commodity form. Therefore, insofar as such elements can relate to a relatively small proportion of New Zealand's dairy farms, this will promote New Zealand's economic interests by increasing the reliability of supply of primary products and the ability to supply the global economy and to improve New Zealand's economic capacity and improve New Zealand's key economic capacity.

The transaction will also confirm New Zealand's compliance with the New Zealand-China FTA and therefore enhance New Zealand's strategic interests. SPGL will also actively seek other opportunities for investment, particularly in the production and marketing of value added dairy products in China.

The Applicant intends to establish a New Zealand company to cooperate and collaborate with New Zealand partners to develop, process and export dairy products. This company may also indirectly create additional jobs by the extension of dairy processing lines in related New Zealand dairy plants. If the Applicant's demands cannot be satisfied by existing plant capacity, the Applicant may invest with its joint venturers in expanding that capacity. The Overseas Investment Office has expressed concern regarding "vertically integrated firms which involve production, processing and distribution of products from the sector on a large scale". The expressed concern about "vertical integration" is unfounded. As set out in the Application, the Applicant intends to establish joint ventures with existing processors to process new value added products for export, using their knowledge of brands and markets in China. It is not their intention to construct or own milk processing plants. If the Applicant's demands cannot be satisfied by existing plant capacity, the Applicant may invest with its joint venturers in expanding that capacity.

The Applicant has no intention to establish its own processing plants, and no intention to process the milk produced from its own farms, unless this is coincidental, or is a requirement of the processor to ensure continuity of supply and which is not available elsewhere. The Applicant may, as required, invest with its joint venture partners in the creation of further processing capacity.

It is accepted that SPGL wishes to be involved in the branding, joint venture production and export of consumer products to China. This in itself will give an opportunity within New Zealand for further processing of branded high value consumer products by existing or expanded production facilities on a joint venture basis with SPGL. This is not vertical integration as it is not intended to process only SPGL's milk and SPGL will not be the only party involved.

Given the scale of the New Zealand dairy industry, the production from these farms is minimal. Any "investment in vertically integrated firms which involve production processing and distribution of productions for the land based primary sector on a large scale" would, in this context, require investment by SPGA in existing or new production facilities on a financial scale which in itself would require a separate consent under the Act.

The Applicant submits there are no strategic or security concerns in the Applicant's investment. If anything, permitting the Investment would enhance New Zealand's increasingly strategic relationship with China.

The applicant's submission for these reasons is therefore that the Minister should have no concerns in relation to this factor.

OIO Assessment:

In his directive letter (under section 34 of the Act) the Minister of Finance directed the regulator about the Government's general policy approach to overseas investments in the land based primary sector. The Minister of Finance identified two specific concerns about overseas investment in the land based primary sector. The first concern related to overseas investment in vertically integrated firms which involve production, processing, and distribution of products from the land based primary sector on a large scale. The second concern relates to the aggregation of farmland by overseas investors which may not be beneficial to New Zealand's economic interests for example, in relation to New Zealand's ability to:

- be a reliable supplier of primary products in the future;
- supply a product to the global economy that forms an important part of New Zealand's export earnings; and
- protect strategic and security interests.

The Overseas Investment Office considers that the acquisition of the farms is not the Applicant's ultimate business goal, but that the acquisition of the farms is the first step in a process leading to the Applicant supplying value-added New Zealand milk products to China. While the Applicant says that it intends to establish joint ventures with existing processors to process products for export, it is not its intention to construct or own milk processing plants. If the Applicant's needs cannot be satisfied by existing plant capacity, the Applicant may invest with its joint venture partners in expanding that capacity.

In assessing this factor, the Overseas Investment Office has considered the four matters referred to in regulation 28(i):

- (a) The Overseas Investment Office considers that the Investment will result in New Zealand becoming a more reliable supplier of primary products in the future. However, given the scale of New Zealand's dairy industry, the increase in reliability is relatively small.
- (b) The Overseas Investment Office does not consider that New Zealand's ability to supply the global economy with a product that forms an important part of New Zealand's export earnings will be less likely to be controlled by a single overseas person or its associates. The scale and structure of New Zealand's dairy industry means that it would be virtually impossible for a single overseas person or its associates to control New Zealand's ability to supply the global economy with dairy products.
- (c) The Overseas Investment Office does not consider that the Investment will enhance New Zealand's strategic and security interests. This Investment raises no strategic or security issues.
- (d) The Overseas Investment Office considers that the Investment will improve New Zealand's key economic capacity. However, given the scale of New Zealand's dairy industry, the increase in reliability is relatively small.

Having regard for the four matters above, and the nature of the Applicant's proposed investment, the Overseas Investment Office considers that the Applicant's proposed investment will adequately promote New Zealand's economic interests, provided that any investment in milk processing facilities is done in partnership with New Zealand interests. Accordingly the Overseas Investment Office recommends that consent conditions be imposed limiting the Applicant to investing in milk processing facilities in New Zealand to where a 50% or more ownership or control interest in those facilities is held by non-overseas persons.

To what extent will New Zealanders be, or are likely to be, able to oversee or participate in the overseas investment and any relevant overseas person?	unknown
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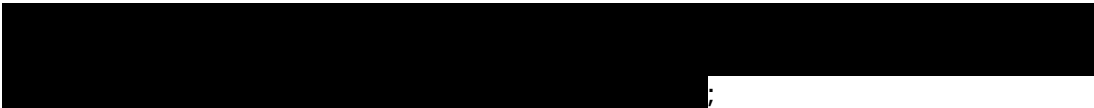
This factor is of high relative importance

Applicant's Claims:

The Applicant is attracted to New Zealand in large part because of the significant expertise which New Zealand has in dairy farming and production of dairy products, which the Applicant feels is underutilized in producing high value consumer products for export to China.

The Landcorp Agreement summarises the mutual agreement for the future management and operation of the farms that are the subject of the Application. Milk New Zealand Farming, the company managing the farming operation, will become 50% owned by the Applicant and 50% owned by Landcorp.

The Applicant considers that there are substantial opportunities for New Zealanders to participate in the overseas investment by virtue of:

- the conditional agreement with Landcorp, a New Zealand SOE, represents a significant opportunity for a New Zealand corporate to participate in the operation, management and revenues from the farms. The Agreement in Principle provides for (i) Landcorp to have a 50% equity interest in the farm management company and (ii) Landcorp to manage the operation of the farms;
- the proposed management structure of the Management company which provides both opportunities for New Zealand directors and for New Zealanders to take influential management roles;
- the involvement of New Zealand consultants in providing advice and guidance to the Applicant in relation to decisions regarding the proposed investment;
- ;
- the Applicant is actively seeking opportunities to joint venture with New Zealanders in the development and marketing of value-added dairy products;
- the company which will be established to operate the farms, Milk New Zealand Farming, will offer between two and four directorships to New Zealanders and full time employment for thirteen New Zealanders. This will include one new full time position as GM.

OIO Assessment:

The Overseas Investment Office considers that regulation 28(j) should be interpreted as relating to oversight and participation in the overseas investment or relevant overseas person at an *ownership* or *control* level, rather than the ability to oversee or participate in the day to day business that may be carried out on the relevant land by New Zealanders.

We have already outlined the Government's general policy approach to overseas investments in the land based primary sector in the section above.

In assessing this factor, the Overseas Investment Office has considered the six matters referred to in regulation 28(j):

- (a) There is no requirement that 1 or more New Zealanders must be part of a relevant overseas person's governing body. The relevant overseas person comprises Milk New Zealand Holding Limited, Shanghai Pengxin Group Co., Limited, Nangtong Yingxin Investment Co., Limited and Zhaobai Jiang. None of the three companies has any requirement that one or more New Zealanders must be part of its governing body.
- (b) None of the relevant overseas persons are or will be incorporated in New Zealand.

- (c) The Applicant (one of the relevant overseas persons) will have a significant business presence in New Zealand, through its ownership of dairy farms, and its future partnerships with milk processers. However, the Applicant's ultimate business objective is to sell New Zealand milk products in China and elsewhere in Asia. It is possible that its principal place of business will be New Zealand, but it is also possible that its principal place of business will be Hong Kong or China. In light of this, the Overseas Investment Office cannot be certain that the Applicant's principal place of business is New Zealand. None of the other relevant overseas persons have their principal place of business in New Zealand. None of the relevant overseas persons have their head office in New Zealand.
- (d) None of the relevant overseas persons will be party to a listing agreement with NZX limited or any other registered exchange that operates a securities market in New Zealand.
- (e) New Zealanders will not have any partial ownership or controlling stake in the overseas investment or in a relevant overseas person.
- (f) Ownership and control of the overseas investment and the relevant overseas persons is concentrated in a very small number of associated overseas persons.

The Overseas Investment Office does not accept the Applicant's six examples of opportunities for New Zealanders to participate in the overseas investment.

- While Landcorp will operate the farms, it won't have any opportunity to participate (through ownership) or oversee (through control) the Investment or a relevant overseas person. The Overseas Investment Office considers that Landcorp's role falls below the thresholds of 'participation' and 'oversight'.
- While the proposed management structure of the Management company may provides opportunities for New Zealand directors and for New Zealanders to take influential management roles, neither of these would give the New Zealanders and opportunity to participate in or oversee the Investment (the land) or a relevant overseas person. The New Zealanders' roles appear to be one step removed the necessary degree of oversight, and their roles provide no opportunity to 'participate'.
- The involvement of New Zealand consultants in providing advice and guidance to the Applicant in relation to decisions regarding the proposed Investment is also one step removed from oversight of the Investment. Oversight will remain with the individuals with control of the relevant overseas persons, while the New Zealanders will be advisors only.
- The Overseas Investment Office considers that sharemilkers neither oversee not participate in the ownership of the land on which they milk their herds. Accordingly, [REDACTED] is not relevant to this factor.
- While the Overseas Investment Office considers that a joint venture participant would participate in and likely oversee the assets of the joint venture, the proposed milk processing joint ventures are not directly related to the Investment.
- While Milk New Zealand Farming Limited will offer directorships and full time employment to New Zealanders, the Overseas Investment Office considers that these roles do not give those New Zealanders an opportunity to oversee or participate in the Investment or a relevant overseas person.

Having regard for the six matters above, the Applicants claims and the general ownership and control structures of Applicant, the Overseas Investment Office considers that persons who are not overseas persons (New Zealanders) will have little or no opportunity to participate in or oversee the overseas investment and any relevant overseas persons.

However, as the Overseas Investment Office cannot be certain where the Applicant's principal place of business will be, we cannot say that this factor is satisfied or not.

Third Party Submissions

70. Third party submissions were received from

[REDACTED]

[REDACTED]

[REDACTED]

(d) Horizons Regional Council;

(e) Sport Manawatu;

[REDACTED]

(g) New Zealand Historic Places Trust;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(l) Crafar Farms Independent Purchaser Group¹³

[REDACTED]

71. Summaries of the submissions and the Applicant's responses are set out in Appendix 3.

72. Summaries of relevant submissions received for the prior Crafar Farms Application 201010030 are set out in Appendix 4.

73. A comprehensive analysis and response to the submission from the Crafar Farms Independent Purchaser Group is set out in Appendix 5.

¹³ This group, led by Sir Michael Fay, has also offered to purchase the farms from the receivers.

Appendix 1 – Conditions of Consent

Consent is granted to the Applicant subject to the following conditions:

When the Investment may be acquired

1. No person other than the Applicant may acquire the Investment under this consent.
2. The Investment must not be acquired by the Applicant until:
 - (a) the Applicant has executed the “Property Management Agreement” and “Farm Operation Agreement” (“the Agreements”) with Landcorp in forms that are materially the same as those in attachment “1” and attachment “2” respectively; and
 - (b) the Applicant has provided both Microsoft Word and scanned executed copies of the Agreements to the Overseas Investment Office; and
 - (c) the Overseas Investment Office has confirmed in writing to the Applicant that it considers the Agreements to be materially the same as those in attachment “1” and attachment “2”.
3. The consent will lapse if:
 - (a) the Investment has not been acquired by the Applicant within twelve months of the date of consent; or
 - (b) the Agreements are terminated or materially changed prior to the Investment being acquired by the Applicant.

Good character

4. The individuals with control of the relevant overseas person must:
 - (a) continue to be of good character; and
 - (b) not become individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.
5. If an individual with control of the relevant overseas person ceases to be of good character, or becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009, the Applicant must either ensure that individual immediately ceases to be an individual with control of the relevant overseas person, or dispose of the Investment in accordance with condition 22.

Special Conditions

6. The Applicant must invest the higher of NZD \$14m or the value agreed between the Applicant and Landcorp in clause 4.4 of the draft Property Management Agreement (see attachment “1”) on investment for development purposes on the Investment.
 - (a) Unless compliance should reasonably be excused, the investment for development purposes must include the items listed in paragraphs 2.7.4 and 2.7.5 of the 29 September 2011 Perrin Ag report.
 - (b) For the avoidance of doubt, the NZD \$14m investment excludes the cost of acquiring shares in Fonterra Co-operative Group Limited.
 - (c) The investment for development purposes is to be completed by 31 December 2016. The Applicant must dispose of the Investment in accordance with condition 22 if the investment for development purposes has not been made by 31 December 2016.

7. The Applicant must establish an on-farm training facility for dairy farm workers in accordance with clause 5(c) of the draft Property Management Agreement (see attachment "1"). The Applicant must contribute a minimum of NZD \$█ towards the capital cost of establishing this facility. The Applicant must apply for any consents required to establish the facility by 30 June 2012, and subject to those consents being available, the facility must be established by 31 December 2013. The Applicant must dispose of the Investment in accordance with condition 22 if the on-farm training facility has not been established by 31 December 2013, unless the Applicant can establish to the Overseas Investment Office's satisfaction that the construction of the facility was materially delayed by the unavailability of a required consent and that it has taken and continues to take all reasonable steps to obtain that consent.
8. The Applicant must give two scholarships of not less than NZD \$5,000 each year to students of the on-farm training facility. The first two scholarships are to be awarded by 31 December 2013.
9. The Applicant must use reasonable endeavours to assist Landcorp to extend its business to, and market its products, in China.
10. The Applicant must maintain its contractual relationship with Landcorp in materially the same terms as contained in the Agreements. The Applicant must dispose of the property in accordance with condition 22 if:
 - (a) the Agreements are terminated (other than termination at the expiry of the Agreements) and not replaced with new agreements that are materially the same as those that were terminated; or
 - (b) the Agreements are varied in a material way.
11. The Applicant and their associates must not acquire an ownership or control interest in milk processing facilities in New Zealand unless a 50% or more ownership or control interest in those facilities is held by non-overseas persons. If the Applicant or its associates acquire an ownership or control interest in milk processing facilities in New Zealand in breach of this condition, the Applicant must dispose of the Investment in accordance with condition 22.
12. The Applicant must provide public walking access over Benneydale Farm and Taharua Station, in consultation with the Department of Conservation ("DOC") and New Zealand Walking Access Commission ("WAC").
 - (a) The Applicant must provide public walking access:
 - (i) between State Highway 30 (Scott Road) and the unlogged podocarp forests of the Waipapa Ecological Area; and
 - (ii) from Maraeroa Road along the Kahaho Stream and the Waimiha Stream to the Pureora Forest Park.
 - (b) The Applicant must provide public walking access along the Taharua River and to the Te Rere Falls. The Applicant must also provide reasonable vehicle access along the eastern side of the Taharua River for maintenance and for those with mobility problems, if required by DOC or WAC.
 - (c) Public walking access to Benneydale Farm and Taharua Station is to be available by 30 June 2013.
 - (d) Consultation with DOC and WAC must commence by 31 December 2012.
 - (e) If required by DOC or WAC, the Applicant must register an easement, or other suitable instrument to secure the access required by conditions 12(a) and 12(b). The Applicant must meet the cost of registration, and the cost of any survey required to support the registration of an instrument. The relevant instrument must be registered within two years of being required to do so by DOC or WAC.
 - (f) For so long as the Applicant or an associate of the Applicant is the registered proprietor of Benneydale Farm and Taharua Station, the Applicant must meet the cost of forming and maintaining the accessway if reasonably required by DOC or WAC.
 - (g) Dispute resolution:
 - (i) Any dispute, difference or claim between DOC, WAC and the Applicant will be referred to and finally resolved by arbitration. The tribunal will consist of a sole arbitrator appointed by agreement between the parties or if the parties cannot agree by the President of the New Zealand Law Society. The place of arbitration will be Wellington, the language of the arbitration will be English.

- (ii) The Applicant will share the cost of any such arbitration equally with the other the parties to the arbitration.
 - (iii) The Applicant must provide a copy of any award made by the arbitrator to the Overseas Investment Office within 14 days of the award being made.
 - (iv) Conditions 12(g)(i) to 12(g)(iii) will not apply if DOC, WAC and the Applicant agree otherwise.
13. The Applicant must take reasonable steps to protect and enhance existing areas of significant indigenous vegetation and significant habitats of indigenous fauna, protect and enhance existing areas of significant habitats of trout, salmon, wildlife protected under section 3 of the Wildlife Act 1953, and game as defined in sections 2(1) of that Act.
- (a) The Applicant must implement the recommendations in the Wildland Consultants reports (2618a-2618d dated February and March 2011, and 2441e dated June 2010). The Applicant must consult DOC before implementing the recommendations.
 - (b) Consultation with DOC must commence by 31 December 2012.
 - (c) Nothing in condition 13(a) prevents the Applicant and DOC agreeing an alternative means of satisfying condition 13(a).
 - (d) The dispute resolution procedure in condition 12(g) (excluding references to WAC) shall apply to any dispute between the Applicant and DOC.
14. The Applicant must register a heritage covenant in respect of the Te Ruaki pa site on computer register TNC1/383 by 31 December 2014. The heritage covenant must be in the form appearing in appendix "S" of the 12 April 2011 application letter, or as otherwise agreed between the New Zealand Historic Places Trust and the Applicant.
15. If required by the Office of Treaty Settlements ("OTS"), the Applicant must transfer the Nga Herenga pa site (approximately 1.6ha located on Benneydale Farm) to the Crown for nil consideration.
- (a) The transfer must be completed within one year of OTS's requirement being communicated in writing to the Applicant.
 - (b) The Applicant must meet the cost of any survey required to support the transfer of the Nga Herenga pa site to the Crown.
 - (c) Within three months of the Investment being acquired, the Applicant must retire the Nga Herenga pa site from grazing and must ensure that adequate fencing is in place to protect the site.
 - (d) The Applicant must make permanent arrangements for walking access to the Nga Herenga pa site, in consultation with OTS.
 - (i) Consultation with OTS must commence by 31 December 2012, and walking access arrangements must be in place by 30 June 2013.
 - (ii) If required by OTS, the Applicant must register an easement, or other suitable instrument to secure the access required by condition 15(d). The Applicant must meet the cost of registration, and the cost of any survey required to support the registration of an instrument. The Applicant must register the relevant instrument within two years of being required to do so by OTS. The relevant instrument must be registered within two years of being required to do so by OTS.
 - (iii) For the avoidance of doubt, the permanent walking access arrangements made under this condition may limit the right to access the Nga Herenga pa site to those with a legitimate interest in the site.
 - (e) The dispute resolution procedure in condition 12(g) (replacing references to DOC and WAC with references to OTS) shall apply to any dispute between the Applicant and OTS.
16. The Applicant must:
- (a) deal with the Crown in accordance with the Overseas Investment Regulations 2005 as if the Applicant was the party offering the special land to the Crown; and

- (b) be bound by any arrangement that the previous owner entered into with the Crown in relation to the special land and, if required by the Crown, enter into an Encumbrance or other Instrument with the Crown to be so bound.

Reporting to the Overseas Investment Office

17. The Applicant must report to the Overseas Investment Office in writing within one month of acquiring the Investment. The report must include:
- (a) the date of settlement;
 - (b) final consideration paid;
 - (c) the structure by which the acquisition was made, and whether an associate of the Applicant acquired the Investment;
 - (d) where applicable, copies of transfer documents and settlement statements; and
 - (e) any other information that would aid the Overseas Investment Office in its function to monitor conditions of consent.
18. If the consent lapses, the Applicant must report in writing within one month of the consent lapsing detailing the circumstances which caused the consent to lapse.
19. The Applicant must notify the Overseas Investment Office within 20 working days if:
- (a) the Applicant;
 - (b) a relevant overseas person;
 - (c) an individual with control of a relevant overseas person; or
 - (d) any person in which the Applicant, a relevant overseas person or an individual with control of a relevant overseas person has, or had at the time of the offence or contravention, a 25% or more ownership or control interest;
- commits an offence or contravenes the law (whether convicted or not) apart from any minor offence or contravention where such offence or contravention would not be regarded by a reasonable person as indicating that the Applicant or that individual is not of good character.
20. The Applicant must notify the Overseas Investment Office in writing within 20 working days if the Applicant disposes of the Investment or ceases to be an overseas person.
21. The Applicant must provide an annual report in writing to the Overseas Investment Office. The purpose of the report is to provide information with which the Overseas Investment Office can monitor conditions of consent.
- (a) Unless the Overseas Investment Office waives this requirement (in full or in part), each report must:
 - (i) detail any investment for development purposes, including:
 - a description of the investment;
 - the amount of the investment; and
 - (where appropriate) photographs of the product of the investment;
 - (ii) detail progress towards establishing the on-farm training facility, and when the facility is established, a summary of the facility's operations including the number of students enrolled;
 - (iii) provide the name and a brief biography of the individuals who have been awarded scholarships;
 - (iv) detail the extent to which the Applicant has complied with 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, including:
 - the number of new and retained jobs, including the location and nature of each job;

- an analysis of production levels, including a comparison with previous years and a comparison with the proposed production levels in the Perrin Ag Report;
 - copies of any business plans or budgets prepared under the Agreements since the previous report;
 - copies of any management reports provided to the Applicant by Landcorp or any other related entity; and
 - a description of the extent to which the Landcorp “Farmpride QA” and “Work Safe” programmes have been complied with;
- (v) detail the extent to which the Applicant has complied with conditions 11-16, including:
- copies of any agreements entered into with DOC, WAC, OTS or others;
 - copies of any documents registered on the titles of the Investment; and
 - whether any dispute resolution process has been used, and copies of any documents used in that process;
- (vi) provide evidence of compliance with condition 4 (good character); and
- (vii) if required by the Overseas Investment Office, include police certificates for each individual deemed by the Overseas Investment Office to be an individual with control of the Applicant.
- (b) The Applicant must report:
- (i) by 28 February 2013, for the period ended 31 December 2012; and
 - (ii) annually thereafter until advised by the Overseas Investment Office that no further reports are required (it is anticipated that a *minimum* of five annual reports will be required); and
 - (iii) at such other times as required by the Overseas Investment Office.

Disposal of the Investment

22. If these conditions require the Applicant to dispose of the Investment:

- (a) The Applicant must, within six weeks:
- (i) procure from an independent registered valuer, and provide to the Overseas Investment Office, a written market valuation of the Investment; and
 - (ii) appoint licensed real estate agents to actively market and appropriately advertise the Investment for sale on the open market; and
- (b) Within two years, the Applicant must dispose of the Investment. If the Applicant has not disposed of the Investment at the expiry of the two year period, the Applicant must offer the Investment for sale by auction or tender within a further three months (with no reserve price or minimum bid set for the auction or tender).
- (c) The Applicant must provide a written report to the Overseas Investment Office quarterly (by the last day of March, June, September and December) about the marketing activities undertaken and offers received for the Investment. The Applicant must also report at any other time if required by the Overseas Investment Office.
- (d) The Applicant must provide a written report to the Overseas Investment Office within one month of the Investment being disposed of, providing evidence that:
- (i) the Applicant has disposed of the Investment (including copies of any sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor); and
 - (ii) evidence that the purchaser is not an associate of the Applicant.

Appendix 2 – Sensitive Land

(a) “Plateau Road” – Reporoa

Land Interest	Freehold Interest (323 hectares)
CTs	SA25A/682 SA29B/507, SA29B/508, SA50B/874 (South Auckland)
Sensitivity	Is more than 5 hectares of non-urban land

(b) “Rawhiti” - Reporoa

Land Interest	Freehold Interest (128 hectares)
CTs	SA11B/326 (South Auckland)
Sensitivity	Is more than 5 hectares of non-urban land

(c) “Pine View” – Reporoa

Land Interest	Freehold Interest (398 hectares)
CTs	SA49C/262, SA48B/941, Part SA49B/480 (South Auckland Registry)
Sensitivity	Is more than 5 hectares of non-urban land

(d) “Cirenester” - Reporoa

Land Interest	Freehold Interest (341 hectares)
CTs	401236, SA49B/595, SA49B/596, Part SA49B/480 (South Auckland Registry)
Sensitivity	Is more than 5 hectares of non-urban land

(e) “Broadlands” - Reporoa

Land Interest	Freehold Interest (404 hectares)
CTs	SA23B/1334, SA23B/1335, SA23B/1336, SA23B/1337 (South Auckland)
Sensitivity	Is more than 5 hectares of non-urban land

(f) “Lake View” - Atiamuri

Land Interest	Freehold Interest (394.0522 hectares)
CTs	SA40B/653, SA46B/822, SA62A/326 (South Auckland)
Sensitivity	Is more than 5 hectares of non-urban land
	Adjoins the bed of a lake

(g) “Forest Park” - Bulls

Land Interest	Freehold Interest (250 hectares)
CTs	WN25A/43, WN35A/822 (Wellington)
Sensitivity	Is more than 5 hectares of non-urban land

(h) Glyn Park” - Maxwell

Land Interest	Freehold Interest (647 hectares)
CTs	22202, 22203, WN159/108, WN159/109, WN189/178, WN322/141, Part WN385/79, WN38C/699, WN38C/700, WN38C/703, WN43A/182 (1/3 share), WN43C/840, WN43C/841, WN47B/630, WN48A/401, WN49A/43, WN50B/666, WN52D/258, WN56A/702, WN570/18, WN58B/503, WN6C/686, WN6C/687, WN7C/421 and WNC2/308 (Wellington Registry)
Sensitivity	Is more than 5 hectares of non-urban land
	Adjoins land that is over 0.4 hectares and is a scientific, scenic, historic, or nature reserve under the Reserves Act 1977 that is administered by the Department of Conservation
	Adjoins land that is over 0.4 hectares that includes a historic place, historic area, wahi tapu, or wahi tapu area that is registered or for which there is an application or proposal for registration under the Historic Places Act 1993

(i) “Waverly” - Waverley

Land Interest	Freehold Interest (206 hectares)
CTs	TN94/21, TNF3/815 (Taranaki)
Sensitivity	Is more than 5 hectares of non-urban land

(j) “Karangahape Road” - Turangi

Land Interest	Freehold Interest (627 hectares)
CTs	SA43B/384, SA43B/499, SA50B/763, SA50B/764, SA57C/924 (South Auckland)
Sensitivity	Is more than 5 hectares of non-urban land

(k) “Benneydale 1” - South Waikato

Land Interest	Freehold Interest (895 hectares)
CTs	SA20C/435, SA22C/1471, SA22C/1472, SA37D/109, SA50B/300, SA51C/39 (South Auckland registry)
Sensitivity	Is more than 5 hectares of non-urban land
	Includes riverbed
	Adjoins land that is over 0.4 hectares and is held for conservation purposes under the Conservation Act 1987

(l) “Benneydale 2” - South Waikato

Land Interest	Freehold Interest (792 hectares)
CTs	SA44C/4
Sensitivity	Is more than 5 hectares of non-urban land
	Adjoins land that is over 0.4 hectares and is held for conservation purposes under the Conservation Act 1987

(m) "Collins Road" - Hamilton

Land Interest	Freehold Interest (393 hectares)
CTs	SA42A/483, SA48B/773, SA48B/774 (South Auckland)
Sensitivity	Is more than 5 hectares of non-urban land

(n) "Tiwhaiti" - Hawera

Land Interest	Freehold Interest (148 hectares)
CTs	TN238/26, TNC1/383, TNC1/384, TNG2/1138 (Taranaki)
Sensitivity	Is more than 5 hectares of non-urban land
	Includes riverbed

(o) "Taharua" - Rangaitaiki

Land Interest	Freehold Interest (1750 hectares)
CTs	SA28B/122, SA30A/353, SA33C/279, SA67B/177, SA67B/178 (South Auckland)
Sensitivity	Is more than 5 hectares of non-urban land
	Adjoins land that is over 0.4 hectares and is held for conservation purposes under the Conservation Act 1987
	Includes riverbed

(p) "Ferry View" - Bulls

Land Interest	Freehold Interest (378 hectares)
CTs	335989, 439797, WN29C/164, Part WNF2/1375 (Wellington)
Sensitivity	Is more than 5 hectares of non-urban land
	Includes riverbed
	Adjoins land that is over 0.4 hectares that includes a historic place, historic area, wahi tapu, or wahi tapu area that is registered or for which there is an application or proposal for registration under the Historic Places Act 1993

Appendix 3 – Third Party Submissions

1. Seventeen submissions from third parties were received by the Overseas Investment Office (“OIO”) in relation to the Applicants’ application (“the Application”). Three submissions have been omitted from this report as they do relate to properties that are not being acquired by the Applicant.

Submission: general concern re sale of land to foreign investors

2. The majority of submissions received in relation to the Application opposed the sale of New Zealand land to foreign investors. A general concern raised was that the profits would go offshore to overseas investors and the farms would no longer be available for future generations.
3. One submitter argued that allowing overseas companies to buy New Zealand farmland means there is less opportunity for New Zealanders to buy such farmland because overseas buyers pay a premium above market value, therefore increasing the price so it is out of reach for New Zealanders.
4. A further submitter raised a concern that overseas investment would put New Zealand’s productive soils in danger. It was argued that overseas investment would produce food for profit to the detriment of our soils and that New Zealand would have no control over farming methods, soil additives or guarantee that the labour market employed would include New Zealanders.
5. Another submitter suggested that New Zealand only lease land to approved overseas financial investors. The submitter refers to the situation in Rarotonga where companies are able to lease land for commercial use but can not own it.

Response

6. The Overseas Investment Act recognises that it is a privilege for overseas persons to own or control sensitive New Zealand assets by requiring overseas investments in those assets, before being made, to meet criteria for consent. However, it does not otherwise limit investment in New Zealand. This is consistent with the Government’s policy to encourage overseas investment in New Zealand where it is of benefit to New Zealand. Specific matters considered are whether the investment will or is likely to result in, for example, the creation of new job opportunities, increased exports for New Zealand exporters, greater productivity in New Zealand and increased processing in New Zealand of New Zealand’s primary products.
7. The benefits resulting from the proposed acquisition of land by the Applicant have been considered in the Overseas Investment Office’s main report on the Application.
8. On the larger policy question, New Zealand firms have also looked abroad and purchased farmland to expand their own business activities. Restricting foreign ownership of farmland would run counter to the policy operating in other countries, which could damage both New Zealand’s reputation overseas and restrict the opportunities available for New Zealand firms seeking to expand overseas.

Submission: concern re Shanghai Pengxin Group’s character

9. One submitter alleged that Shanghai Pengxin Group Co. Ltd (the sole shareholder of the Applicant) had been involved in commercial bribery with Shanghai Zhongxiang Group and competitive underworld killings with Mr Xiao di Zhou.
10. Another submitter claims to have found fraud in the accounting materials of Shanghai Pengxin Group. This submitter refers to the Shanghai Pengxin’s registered capital, annual sales and taxes paid.

Response

11. With the assistance of the New Zealand Police Counsellor and the Economic Counsellor at the New Zealand Embassy in Beijing, the Overseas Investment Office has satisfied itself that no evidence exists to support the claims of bribery and killings. See appendix 6 for more information.
12. The Overseas Investment Office has not been able to discover any evidence that SPGL’s accounts are fraudulent.

Submission: concern re sale of land, related to China

13. One submitter expressed concern at the sale of land to a Chinese company. The submitter suggested that if Chinese people want to buy New Zealand assets, they ought to become New Zealand citizens. The submitter also expressed a general concern about Chinese investors, citing an article in The Economist that suggests some Chinese firms have significant accounting deficiencies.
14. Another submitter referred to the situation in Africa where it is claimed that there are over 1 million Chinese in Africa farming land that they purchased from locals. The submitter alleges that the locals were chased from their land and the farm land has become an extension of China.

Response

15. The Overseas Investment Act recognises it is a privilege for overseas persons to own or control sensitive New Zealand assets by requiring overseas investments to meet criteria for consent before investing. However, it does not differentiate between overseas investors from one country or another, and there is nothing in New Zealand law that requires overseas persons to become New Zealand citizens before investing in land.
16. The ability for overseas persons to acquire land in other countries is not relevant to the assessment of this application.

Submission: no benefit to New Zealand

17. One submitter claimed that the Applicant's proposal contains no benefits to New Zealand. In particular, the farming plans relating to herd and farm improvement are nothing more than what an average New Zealand farmer would do if given the chance to purchase the properties. Also, the proposed environmental plans essentially follow the Clean Streams Accord which is what any New Zealand farmer is obliged to comply with and the Applicant's proposal to export its own product is questionable.
18. Another submitter claimed that there is no benefit in retaining the existing sharemilkers because those sharemilkers would never be able to buy the Chinese owned farms in the future.

Response

19. The Overseas Investment Act does not require an overseas person investor to do more than a New Zealand investor would do to the land. Instead, the Overseas Investment Act tests only whether the investment will or is likely to benefit New Zealand, a part of New Zealand or a group of New Zealanders, and whether that benefit will be substantial and identifiable. That test is by reference to a number of benefit 'factors' which must be considered by the relevant Ministers. In any event, the submitter misstates the Applicant's farm improvement plans and its environmental plans.
20. The Overseas Investment Office understands [REDACTED]
21. The Overseas Investment Act is neutral as to the nationality of the investor. The question of reciprocity is therefore a policy matter outside the scope of the Overseas Investment Office's function when considering applications under the Overseas Investment Act. We note nevertheless that a consequence of New Zealand's free trade agreement with China, is that both Chinese and New Zealand businesses are able to invest in property in each country. However, unlike New Zealand, in China both Chinese and foreign citizens may only apply for a long-term leasehold of land. Private, fee-simple ownership of land does not exist in China.

Submission: Historic and cultural site

22. The New Zealand Historic Places Trust ("HPT") is concerned with the protection of Te Ruaki pa, a significant archaeological and cultural site, located the Tiwhaiti Farm in Hawera.
23. HPT seeks that the Application be conditional upon a heritage covenant over Te Ruaki pa and the Applicant providing written support for a proposal to register Te Ruaki Pa as a waahi tapu.
24. HPT also requests an advice note requiring the landowner to obtain authority from HPT for any activity that may modify, damage or destroy any archaeological site(s) (such as earthworks, fencing or landscaping).

Response

25. A condition of consent will require the Applicant to register a heritage covenant in respect of the Te Ruaki pa.
26. The Overseas Investment Office considers that the 'advice note' is unnecessary as the 'advice note' simply repeats the Applicant's existing legal obligations.

Submission: complaints re receivers' process

27. One submitter made a complaint about how the receivers of the Crafar farms conducted the sale process. In particular, the complaint related to bundling the farms together for sale which made it difficult for the submitter and other New Zealanders to purchase the properties. It was submitted that the receivers had breached the Overseas Investment Act 2005 by refusing to market the properties individually.
28. Another submitter claims that the Crafar properties have already been sold and has filed documents in the High Court seeking to have the receivers cease from interfering with the Crafar properties.

Response

29. The Overseas Investment Regulations ("Regulations") set out the requirements which owners of sensitive land must comply with before a sale of land to overseas persons can be approved. These requirements are high level (advertising of the land for sale etc) and expressly do not require the land to be offered on any particular terms or that local buyers be preferred.
30. The receivers complied with the requirements of the Regulations in relation to the 16 farms covered by the Application.
31. The submitter's claim that the farms have been sold to her was rejected by the High Court (Allen J) on 12 September 2011.

Submission: Irrelevant properties

32. Two submissions related to properties owned by UBNZ Asset Holdings Limited located in Palmerston North. These submissions raised environmental and public access concerns in respect of the Manawatu River.

Response

33. The Application only relates to the Crafar properties being sold by the receivers and not the properties owned by UBNZ Assets Holdings Limited. Therefore, these two submissions are not relevant to this application.

Table of Third Party Submissions

Submission No.	Submitter	Content of submission	Information on which based
AT-6-1	[REDACTED]	<ul style="list-style-type: none"> Complaint about how the receivers of the Crafar Farms conducted the sale process Alleges Korda Mentha breached the OIA by refusing to market properties individually Pengxin's farming plans provide no benefit to New Zealand, queries the benefit of exporting own product 	Personal involvement in tendering process of Crafar Farms
AT-6-2	[REDACTED]	<ul style="list-style-type: none"> Should not sell any more land to overseas interests Queries whether Pengxin is interested in sustainably managing the farm 	Personal view
AT-6-3	[REDACTED]	<ul style="list-style-type: none"> Should not allow overseas ownership of resources Wants to protect soil from contamination by maintaining control of resources Overseas investment will detriment soils, no control over farming methods, labour market 	Personal view
AT-6-5	Unknown	<ul style="list-style-type: none"> Alleges Shanghai Pengxin Group has been involved in commercial bribery and competitive underworld killings with Mr Xiao di Zhou 	Personal view, refers to the New Zealand Chinese Herald 16 April 2011
AT-6-8	Unknown	<ul style="list-style-type: none"> Chinese people who wish to buy NZ assets ought to become NZ citizens Thinks the Crafar and PSSW deals involved tricksters Concern over ability to sort out who is "bona fide" and who isn't. 	Personal view, refers to The Economist article 9 April 2011 that alleges Chinese firms account for a quarter of the back-door company registrations
AT-6-9	[REDACTED]	<ul style="list-style-type: none"> No benefit in retaining existing sharemilkers because they would never be able to buy the farms in the future Farm prices will rise and become out of reach for New Zealanders Pengxin will take profits off shore Sets a dangerous precedent for overseas companies to buy our next generation's future livelihood 	Personal view
AT-6-10	New Zealand Historic Places Trust ("NZHPT")	<ul style="list-style-type: none"> Te Ruaki pa is a significant archaeological and cultural site located on land subject to the Application near Ohangai Road, Hawera Requests a condition requiring a heritage covenant for Te Ruakipa pa to be executed between the landowner and NZHPT prior to sale of land Requests support for registering Te Ruakipa as a Waahi Tapu Requests an advice note requiring authority from NZHPT for any activity that may modify, damage or destroy any archaeological site(s) 	NZHPT

Submission No.	Submitter	Content of submission	Information on which based
AT-6-11	Unknown	<ul style="list-style-type: none"> • Large farms are not more efficient • More profit goes offshore 	Personal view and refers to a letter to the editor
AT-6-12	Unknown	<ul style="list-style-type: none"> • Recommends the Overseas Investment Office reads the book "The Coming Fathom" written by Julian Cribbs • By 2050 world food demand will double and there will be mass migration • New Zealand couldn't feed the world • Don't sell or lease our land to overseas populations 	Personal view and refers to the book "The Coming Fathom" written by Julian Cribbs
AT-6-13	[REDACTED]	<ul style="list-style-type: none"> • Do not let us become like some African countries where their economies do not gain from Chinese land purchase • There are in excess of 1 million Chinese in Africa farming the land they have purchased. The African locals have been chased from this land and it has become an extension of China 	Personal view and refers to various internet news websites and other organisations
AT-6-14	[REDACTED]	<ul style="list-style-type: none"> • Refers to Rarotonga where the people lease land for commercial uses but do not sell the land • New Zealand's oil is its productive land and it will be as valuable as oil one day • Fine to lease to approved overseas financial investors, but not to sell 	Personal view
AT-6-15	[REDACTED]	<ul style="list-style-type: none"> • The Crafar properties have already been sold • The submitter filed documents in the High Court to have the receivers cease and desist from interfering with the Crafars as the submitter's tenants 	Personal view and refers to a sale and purchase agreement signed between the submitter and the Crafars on 27 August 2011
AT-6-16	Crafar Farms Independent Purchaser Group	<ul style="list-style-type: none"> • See appendix 5 for a comprehensive analysis and response to this submission. 	
AT-6-17	[REDACTED]	<ul style="list-style-type: none"> • Alleges to have found fraud in the accounting materials of Shanghai Pengxin • Shanghai Pengxin does not seem to be a credible company 	Personal view and refers to Shanghai Pengxin's registered capital, assets, annual sales and paid taxes.

Appendix 4 – Third Party Submissions and responses relating to an application by UBNZ and Natural Dairy to acquire the Crafar Farms

1. The submissions which appear below were made in connection with two earlier applications for consent to acquire the Crafar farms by Natural Dairy (NZ) Holdings Limited and its associates. Submissions that related specifically to Natural Dairy, and its associates have been omitted. The submissions that remain relate generically to the Crafar Farms, Chinese investment in New Zealand and foreign direct investment generally.

Submission: economic arguments related to Fonterra

2. A significant number of submitters expressed concern about the impact on Fonterra of the sale of the Crafar farms to Natural Dairy.

Response

3. The Overseas Investment Act contains a number of factors that must be considered in assessing the benefit to New Zealand of an investment. However, none explicitly require Ministers to consider the impact of the investment on other New Zealand businesses.

Submission: economic arguments related to difficulty for New Zealanders to compete with foreign interests

4. A number of submitters expressed concern that overseas investors push up prices in New Zealand and make it difficult for New Zealanders to compete.

Response

5. The Overseas Investment Act requires vendors of New Zealand farm land to offer the land for sale in New Zealand before it may be purchased by an overseas investor. However, there are no requirements as to the terms of the offer.
6. Current government policy acknowledges that farm sales are conducted in an open market which offers New Zealand farmers the best possible price for their asset. In practice rural land prices reflect many factors, including the export value of what the land produces.

Submission: general concern re sale of land/assets

7. Almost all the submissions received in relation to the Natural Dairy applications opposed the sale of New Zealand land to foreign investors. A significantly smaller number opposed asset sales generally. In many cases no specific reasons were given for the opposition. In others the concern stemmed from a view that land was a strategic and productive asset that New Zealanders should retain control of.
8. Many submitters argued strenuously that New Zealanders should control New Zealand land for the benefit of generations to come.

Response

9. The Overseas Investment Act recognises that it is a privilege for overseas persons to own or control sensitive New Zealand assets by requiring overseas investments in those assets, before being made, to meet criteria for consent. However it does not otherwise limit investment in New Zealand. This is consistent with the government's policy to encourage overseas investment in New Zealand where it is of benefit to New Zealand. Specific matters considered are whether the investment will or is likely to result in, for example, the creation of new job opportunities, increased exports for New Zealand exporters, greater productivity in New Zealand and increased processing in New Zealand of New Zealand's primary products.
10. On the larger policy question, New Zealand firms have also looked abroad and purchased farmland to expand their own business activity. Restricting foreign ownership of farmland would run counter to the policy operated in other countries, which could damage both New Zealand's reputation overseas and restrict the opportunities available for New Zealand firms seeking to expand overseas.

Submission: concern re sale of land, related to China

11. A significant number of submitters expressed concern at the sale of foreign land to a Chinese company. These concerns were for a variety of reasons including the Chinese being “different” from New Zealanders, coming from a culture “focused on money”, and a general feeling that the Chinese are “taking over the world”.

Response

12. The nationality of the overseas investor in relation to an application for consent is not a matter that may be taken into account by the Overseas Investment Office when considering applications under the Overseas Investment Act.

Submission: concern re sale of land/assets, related particularly to New Zealand’s clean, green image, and China’s reputation following the SanLu affair

13. A significant number of submitters expressed concern that a Chinese buyer would bring in foreign workers, flout New Zealand’s environmental laws and could damage New Zealand’s clean green image.

Response

14. The criteria against which the Overseas Investment Office assesses applications for consent to invest in sensitive land in New Zealand include the good character of those who will control the investment, and the impact the investment will have on the environment, (for example, whether there are or will be adequate mechanisms in place for protecting or enhancing existing areas of significant indigenous vegetation and significant habitats of indigenous fauna). These are in addition to the general laws which cover anyone owning land in New Zealand.
15. An overseas owner of sensitive land is subject to the same laws around employment of immigrant labour as other New Zealand employers and is also subject to the same environmental laws. It is precisely because of New Zealand’s clean green image that the Applicant has indicated it wishes to produce dairy products here. It would therefore be in the Applicant’s interests to comply with New Zealand laws.

Submission: concern re sale of land, particularly because New Zealanders cannot buy land in China

16. A significant number of submitters said that they did not support the sale of New Zealand land to persons from overseas countries in which New Zealanders could not buy land, such as China.

Response

17. As noted earlier, the Overseas Investment Act is neutral as to the nationality of the investor. The question of reciprocity is therefore a policy matter outside the scope of the Overseas Investment Office’s function when considering applications under the Overseas Investment Act. We note nevertheless that a consequence of New Zealand’s free trade agreement with China, is that both Chinese and New Zealand businesses are able to invest in property in each country. However, unlike New Zealand, in China both Chinese and foreign citizens may only apply for a long-term leasehold of land. Private, fee-simple ownership of land does not exist in China.

Submission: concern re sale of land, a lease should be preferred

18. Several submitters said they would be happy for New Zealand farm land to be leased to overseas persons, but did not want it sold.

Response

19. This is a policy matter outside the scope of the Overseas Investment Office’s function when considering applications under the Overseas Investment Act.

Submission: Government should buy land

20. A significant number of submitters said that they would support the government buying the Crafar farms via one of its agencies, with some saying the farms should then be set up as training farms, or balloted to New Zealand farmers as was done after the Second World War.

Response

21. The suggestion that the government should buy the Crafar farms is a policy matter outside the scope of the Overseas Investment Office's function when considering applications under the Overseas Investment Act.

Submission: complaints re receivers' processes

22. Four submitters made complaints about how the receivers of the Crafar farms had conducted the sale process. The complaints related partially to the bundling of the farms together for sale which made it difficult for neighbouring farmers to make sensible offers for smaller parcels of land in which they were interested. There were also questions raised about whether the Fonterra shares associated with the farms were included in the sale (which we understand is now the subject of subsequent court proceedings between the Crafars and KordaMentha, the receivers of four of the Crafar companies).

Response

23. The Overseas Investment Regulations set out requirements with which owners of sensitive land are required to comply before a sale of the land to an overseas person can be approved. These requirements are high level (advertising of the land for sale etc) and expressly do not require the land to be offered on any particular terms or a local buyer to be given precedence.
24. The receivers complied with the requirements of the Regulations in relation to the 16 farms covered by the principal application.

Submission: miscellaneous

25. One submitter said the purchaser should do something positive to show the purchase is for the national benefit (eg. retire Taharua Station from farming).
26. The New Zealand Native Forests Restoration Trust noted that it had an agreement with the government that the North and South blocks of the Pureora native forest should be reconnected at the least by corridors of revegetated forest in the gullies, but preferably by a wide swathe of farm land (the Crafar farm) being purchased and restored to forest. The Trust was keen to discuss purchase of property and/or wanted conditions stipulated to the sale of the farms that all the north/south gullies linking the North and South blocks of the Pureora Forest should be fenced and revegetated with native species.
27. One submitter said that a massive tax should be put on sales to foreigners. Another said that New Zealand should not let foreigners buy its dairy farms until it has better environmental laws in place.

Response

28. The Overseas Investment Office does not consider it appropriate to impose a condition requiring the Applicant to retire Taharua Station from farming.
29. The Applicant has agreed to the recommendations in a report prepared by Wildland Consultants which the Overseas Investment Office considers will largely meet the concerns of the New Zealand Native Forest Restoration Trust.
30. The other miscellaneous submissions refer to policy matters which are outside the scope of the Overseas Investment Office's role when considering applications under the Overseas Investment Act 2005.

Table of Third Party Submissions

Regarding general economic arguments

Submission No.	Submitter	Content of submission	Information on which based
AT-2-22	██████████	<ul style="list-style-type: none"> • Sale will lead to self-repeating chain of earnings going overseas, bigger overseas deficit, more borrowing from China etc to pay for that, more sales to China of NZ's export-producing assets • If sell land are selling forever the tools we need to pay NZ's debts 	Personal view
AT-4-9	██████	<ul style="list-style-type: none"> • Free market will be distorted by foreign investment; pushes up farm prices; rural market needs to correct self • Foreign investment should lead to wealth created in New Zealand staying in New Zealand and being taxed here 	Personal view
AT-4-19	██████████	<ul style="list-style-type: none"> • Vertically integrated products from dairying, processing, and selling products overseas all under foreign ownership will deny New Zealand income, and inflow of capital through sale of land will in no way make up for loss 	Personal view
AT-4-25	██████	<ul style="list-style-type: none"> • Trend overseas for Chinese to buy up land to secure food production 	Personal view
AT-4-28	██████████	<ul style="list-style-type: none"> • To have vertically integrated fully Chinese owned competitor operating in NZ's favourable climate is not in NZ's best interests 	Personal view
AT-5-5	██████████	<ul style="list-style-type: none"> • Letting foreign companies make mass land purchases and build factories processing high value products only will destroy the New Zealand dairy industry 	Personal view
AT-5-7	██████	<ul style="list-style-type: none"> • The accumulation of farmland by the Crafars should never have been allowed for social, industrial, political and business reasons. • Massive ownership of livestock grazing farmland leads to declining per acre production and profitability. Massive ownership by people who are focused on enriching themselves through the HK share market has even less to offer • When ownership of wealth-producing industry and charging services is elsewhere, economy doesn't perform as well as other economies suggest it might 	Personal view
AT-5-10	██████████	<ul style="list-style-type: none"> • Likely to be big economic boom re food and would be madness to sell off Crafar farms, our forests or NZ's mines to Chinese now. Last thing NZ's want is for a foreign company to own the means of production. • Likely foreign vertically integrated companies will take processing of raw products to their own countries so NZ will lose that value too 	Personal view
AT-5-22	██████	<ul style="list-style-type: none"> • Overseas purchasers are able to evade New Zealand taxation using transfer pricing ie. attaching a low export price to their end product to meet production costs but no more. Any profit will be made in China • Opposes investments that exploit this country 	Personal view

Regarding economic arguments related to Fonterra

Submission No.	Submitter	Content of submission	Information on which based
AT-2-13	██████████	<ul style="list-style-type: none"> Fonterra's dominant position shouldn't be put at risk so we end up with similar problems to the sheep industry 	Personal view
AT-2-26	██████████	<ul style="list-style-type: none"> Will be threat to Fonterra 	Personal view
AT-3-3	██████████	<ul style="list-style-type: none"> Fonterra does not need competition unless from New Zealand based company. Will in time undermine our own lucrative milk industry and put in jeopardy many more farms 	Personal view
AT-3-4	██████████	<ul style="list-style-type: none"> Chinese interests will undermine Fonterra's position 	Quoting Andrew Saunders, a Te Kauwhata farmer
AT-3-9	██████████	<ul style="list-style-type: none"> Deal should be that the produce must enter the Fonterra system and all farms bought must have Fonterra shares 	Personal view
AT-3-11	██████████	<ul style="list-style-type: none"> Company may lower prices sufficiently to put competitors such as Fonterra out of business 	Personal view
AT-3-15	██████████	<ul style="list-style-type: none"> This may snowball and be the demise of Fonterra 	Personal view
AT-3-18	██████████	<ul style="list-style-type: none"> Based on other Chinese purchases internationally, non-Chinese do not benefit What actions is government taking to ensure this type of deal is not used to undermine the position of Fonterra and other New Zealand milk product producers in the Chinese market? 	Personal view
AT-3-27	██████████	<ul style="list-style-type: none"> Worried dairy industry will become fragmented and destroy all the great work of the Dairy Board and Fonterra to build the dairy industry There are enough new dairy companies starting up 	Personal view (is Fonterra supplier)
AT-4-6	██████████	<ul style="list-style-type: none"> Concern that will result in competition for Fonterra 	Personal view
AT-4-13	██████████	<ul style="list-style-type: none"> Concern re what will happen to dairy market if Chinese take milk from New Zealand directly and import it to China in competition to Fonterra and New Zealand farmers 	Personal view
AT-4-18	██████████	<ul style="list-style-type: none"> Concern re "opposition" to Fonterra 	Personal view
AT-5-1	██████████	<ul style="list-style-type: none"> Height of folly for government to allow a competitor to buy land to undercut Fonterra's products 	Personal view

Related to difficulty for New Zealanders to compete with foreign interests

Submission No.	Submitter	Content of submission	Information on which based
AT-2-15	██████████	<ul style="list-style-type: none"> Younger people can't afford to buy land 	Personal view
AT-3-27	██████████	<ul style="list-style-type: none"> Will drive up land prices 	Personal view

Submission No.	Submitter	Content of submission	Information on which based
AT-4-2	[REDACTED]	<ul style="list-style-type: none"> Overseas investors make farms unaffordable for New Zealanders 	Personal view
AT-4-13	[REDACTED]	<ul style="list-style-type: none"> Concern re what will happen to dairy market if Chinese take milk from New Zealand directly and import it to China in competition to Fonterra and New Zealand farmers 	Personal view
AT-4-25	[REDACTED]	<ul style="list-style-type: none"> Young New Zealand investors shouldn't have to compete with foreign entities 	Personal view
AT-5-7	[REDACTED]	<ul style="list-style-type: none"> Selling foreigners the land prices New Zealanders out, hoists the land prices according to different price/value scales, and forces competent New Zealanders into being tenants or worse in their own country 	Personal view
AT-5-8	[REDACTED]	<ul style="list-style-type: none"> Capital resources of a sovereign fund or large corporation allow them to absorb losses for a number of years, so can afford to pay more than a small investor. If the overseas investor is acting on behalf of a government with long-term strategic food security objectives the disparity becomes even bigger 	Personal view

Related particularly to New Zealand's clean, green image, and China's reputation following SanLu

Submission No.	Submitter	Content of submission	Information on which based
AT-2-9	[REDACTED]	<ul style="list-style-type: none"> Overseas buyers want pure NZ 	Personal view
AT-2-19	[REDACTED]	<ul style="list-style-type: none"> Will introduce their own labour and flout environmental laws 	Personal view
AT-3-1	[REDACTED]	<ul style="list-style-type: none"> Will not care about the welfare of animals or environmental concerns 	Personal view
AT-3-2	[REDACTED]	<ul style="list-style-type: none"> New Internationalist article "China in Charge" NZ 423, portrays Chinese disregard for the environment 	Personal view, plus New Internationalist article
AT-3-4	[REDACTED]	<ul style="list-style-type: none"> Concerned re how livestock will be looked after under foreign ownership 	Personal view
AT-3-23	[REDACTED]	<ul style="list-style-type: none"> NZ will lose quality control and possible will bring our clean green image into question 	Personal view
AT-3-30	[REDACTED]	<ul style="list-style-type: none"> We'll end up with Chinese farms polluting our beautiful waterways. Look at Sanlu. 	Personal view
AT-4-16	[REDACTED]	<ul style="list-style-type: none"> Grave concerns re tainting of dairy industry (eg. milk quality contamination with a NZ logo) 	Personal view

Concern regarding sale of New Zealand land/assets

Submission No.	Submitter	Content of submission	Information on which based
AT-2-2	[REDACTED]	<ul style="list-style-type: none"> Doesn't want foreign asset sales 	Personal view

Submission No.	Submitter	Content of submission	Information on which based
AT-2-3	[REDACTED]	<ul style="list-style-type: none"> Doesn't want foreign ownership of NZ farmlands 	Personal view
AT-2-5	[REDACTED]	<ul style="list-style-type: none"> Need stronger rules around foreign asset sales Lose productive land and profits out of New Zealand Pushes New Zealanders out of market 	Personal view
AT-2-6	[REDACTED]	<ul style="list-style-type: none"> As above, and suggests joint venture where NZ own land and animals belong to foreign interests 	Personal view
AT-2-8	[REDACTED]	<ul style="list-style-type: none"> As above 	Personal view
AT-2-11	[REDACTED]	<ul style="list-style-type: none"> As above, plus doesn't want outside country to hold a share in Fonterra 	Personal view
AT-2-12	[REDACTED]	<ul style="list-style-type: none"> NZ IP being sold - food and fresh water are the new oil 	Personal view
AT-2-13	[REDACTED]	<ul style="list-style-type: none"> Foreign investment in New Zealand primary industry not what average kiwi wants 	Personal view
AT-2-14	[REDACTED]	<ul style="list-style-type: none"> Foreign investment in New Zealand primary industry not what average kiwi wants 	Personal view
AT-2-18	[REDACTED]	<ul style="list-style-type: none"> Productive land should be considered a strategic resource 	Personal view
AT-2-19	[REDACTED]	<ul style="list-style-type: none"> Purchase of dairy farms abhorrent to our Kiwi way of life and future of this country 	Personal view
AT-2-25	[REDACTED]	<ul style="list-style-type: none"> Too much sold overseas already 	Personal view
AT-2-27	[REDACTED]	<ul style="list-style-type: none"> Too much sold overseas already 	Personal view
AT-2-29	[REDACTED]	<ul style="list-style-type: none"> Too much sold overseas already 	Personal view
AT-2-30	[REDACTED]	<ul style="list-style-type: none"> Too much sold overseas already 	Personal view
AT-3-13	[REDACTED]	<ul style="list-style-type: none"> Please don't sell farm land to foreign buyers 	Personal view
AT-3-19	[REDACTED]	<ul style="list-style-type: none"> Aotearoa is precious and land should be kept in New Zealand hands 	Personal view
AT-3-22	[REDACTED]	<ul style="list-style-type: none"> Our land and dairy assets should be protected at all costs 	Personal view
AT-3-23	[REDACTED]	<ul style="list-style-type: none"> Doesn't believe should be selling land to any foreign interest 	Personal view
AT-3-25	[REDACTED]	<ul style="list-style-type: none"> Too much sold already 	Personal view
AT-3-26	[REDACTED]	<ul style="list-style-type: none"> In our collective interest to retain ownership of productive land Should consider limit on overall amount of productive land that can be sold, and making all sales that breach OIA null and void 	Personal view
AT-3-31	[REDACTED]	<ul style="list-style-type: none"> Sale will lead to loss of overseas income. NZ's greatest asset is its land 	Personal view

Submission No.	Submitter	Content of submission	Information on which based
AT-4-2	[REDACTED]	<ul style="list-style-type: none"> Multiple reasons for opposing this sale, including concern re land being part of our productive sector 	Personal view
AT-4-4	[REDACTED]	<ul style="list-style-type: none"> Dairy industry and good agricultural land are too strategic and shouldn't be sold into foreign hands like has already happened with other assets Not racist, rather selling New Zealand agricultural land to foreign countries has no basis in common sense let alone economics China will have more respect for NZ if sale is turned down Issue of national sovereignty and environmental protection 	Personal view
AT-4-5	[REDACTED]	<ul style="list-style-type: none"> NZ land should be farmed by Kiwis 	Personal view
AT-4-8	[REDACTED]	<ul style="list-style-type: none"> Farms are strategic assets 	Personal view
AT-4-10	[REDACTED]	<ul style="list-style-type: none"> Sale of farms to overseas investors will have a terrible impact on future generations 	Personal view
AT-4-14	[REDACTED]	<ul style="list-style-type: none"> As above 	Personal view
AT-4-17	[REDACTED]	<ul style="list-style-type: none"> As above – should limit amount of land foreigners can buy 	Personal view
AT-4-18	[REDACTED]	<ul style="list-style-type: none"> Vital New Zealand lands stay in New Zealand hands 	Personal view
AT-4-20	[REDACTED]	<ul style="list-style-type: none"> Our farmlands should stay in New Zealand hands 	Personal view
AT-4-21	[REDACTED]	<ul style="list-style-type: none"> Another nail in the coffin for precious ownership of land in New Zealand 	Personal view
AT-4-25	[REDACTED]	<ul style="list-style-type: none"> Need to prevent sale of New Zealand land to foreigners. Floodgates will open 	Personal view
AT-4-27	[REDACTED]	<ul style="list-style-type: none"> Land is NZ's most treasured possession 	Personal view
AT-4-29	[REDACTED]	<ul style="list-style-type: none"> Don't want land sold to overseas people, profits taken offshore, and opportunity of NZ children ever owning land in New Zealand going as well 	Personal view
AT-4-30	[REDACTED]	<ul style="list-style-type: none"> Stupid to let Chinese companies own New Zealand farms so they can take profits and produce back 	Personal view
AT-4-31	[REDACTED]	<ul style="list-style-type: none"> Concern predominantly Australian owned banks selling off farm land will start a trend that will damage NZ's agricultural future 	Personal view
AT-5-1	[REDACTED]	<ul style="list-style-type: none"> Time has come to draw a line in the sand about how much land can be sold to foreign ownership 	Personal view
AT-5-2	[REDACTED]	<ul style="list-style-type: none"> Productive land adds value to New Zealand exports. 	Personal view
AT-5-4	[REDACTED]	<ul style="list-style-type: none"> We don't want NZ land sold. Otherwise foreign investment is fine. 	Personal view

Submission No.	Submitter	Content of submission	Information on which based
AT-5-6	[REDACTED]	<ul style="list-style-type: none"> • Opposition to Crafar farms sale not racist, rather reflects reasonable concerns about financial viability of the company and the down-stream effects on many rural firms should Natural Dairy fail, and concern about selling huge blocks of land to overseas investors • Climate change, food production and population issues suggest land should be regarded as a strategic asset that NZ does not lightly sell off 	Personal view
AT-5-8	[REDACTED]	<ul style="list-style-type: none"> • Widespread feeling of unease in the community about a significant area of our productive farmland being transferred to overseas ownership and control • In today's world of globalisation and free trade likely to be a long-term increase in the value of food relative to other products so that land and water will become even more strategic assets 	Personal view
AT-5-12	[REDACTED]	<ul style="list-style-type: none"> • Urges Minister not to allow assets of the nation to be sold to off shore interests but to look after NZ's people and NZ's future generations 	Personal view
AT-5-13	[REDACTED]	<ul style="list-style-type: none"> • Suspects most kiwis are opposed to the sale of large tracts of New Zealand land to foreigners of any ethnicity purely on the basis we can never get it back and therefore have potential to become tenants in our own country, not necessarily for racist reasons 	Personal view
AT-5-14	[REDACTED]	<ul style="list-style-type: none"> • Disputes opposition to Crafar farms sale being racially motivated. Is legitimate opposition based on desire for New Zealand to maintain security of food supply as well as sovereignty over nationally important productive assets • Some foreign ownership is beneficial, but are certain strategically important assets which must remain in national ownership – eg. security of food, water and energy • Different if foreigners move here compared with foreign corporations purchasing land solely to make a profit 	Personal view
AT-5-15	[REDACTED]	<ul style="list-style-type: none"> • NZ land should stay in New Zealand ownership • Sending the means of production, and profits, off shore, is like a carpenter selling off his tools because he needs the money 	Personal view
AT-5-17	[REDACTED]	<ul style="list-style-type: none"> • Offended at comments that opposition to farm sales is racist. Both strongly oppose sale of land to any overseas based individuals or companies because of money lost to New Zealand economy from remittances overseas and inflation of land prices 	Personal view
AT-5-18	[REDACTED]	<ul style="list-style-type: none"> • NZ land is here for New Zealanders and should not be sold off to anyone who has the money but is not prepared to live here • Even if no New Zealanders can afford to buy farms now there will be New Zealanders one day looking for and needing to buy land 	Personal view
AT-5-21	[REDACTED]	<ul style="list-style-type: none"> • Too much money is made using New Zealand resources and taken off shore. All is well if land in New Zealand not sold to overseas people. We feel at one with the land. 	Personal view

Submission No.	Submitter	Content of submission	Information on which based
AT-5-24	[REDACTED]	<ul style="list-style-type: none"> Sell meat, wool, milk etc, but not NZ land. Once sold NZ will never get it back Should expand Kiwibank and create a rural bank run by the government to support hardworking Kiwi farmers to push production and exports for the benefit of all New Zealanders Corporate farmers are ruining NZ's animal welfare image 	Personal view

Related to China

Submission No.	Submitter	Content of submission	Information on which based
AT-2-8	[REDACTED]	<ul style="list-style-type: none"> Concerned re 100s of Chinese workers coming in 	Personal view
AT-2-11	[REDACTED]	<ul style="list-style-type: none"> Come from culture where bribes are taken 	Personal view
AT-2-17	[REDACTED]	<ul style="list-style-type: none"> Need to stop Chinese dairy and land ownership 	Personal view
AT-2-21	[REDACTED]	<ul style="list-style-type: none"> Concern re business ethics of Chinese They generally only employ their fellow nationalities. Will not employ New Zealanders 	Personal view
AT-2-24	[REDACTED]	<ul style="list-style-type: none"> We have country that is envy of the world. China has history New Zealanders may find questionable. 	Personal view
AT-2-26	[REDACTED]	<ul style="list-style-type: none"> Concern will bring in cheap labour 	Personal view
AT-2-28	[REDACTED]	<ul style="list-style-type: none"> Farms will probably be run by Chinese not New Zealanders 	Personal view
AT-2-31	[REDACTED]	<ul style="list-style-type: none"> General concern re sale 	Personal view
AT-3-2	[REDACTED]	<ul style="list-style-type: none"> Will all be for China's benefit not for NZ's 	Personal view, plus New Internationalist article
AT-3-4	[REDACTED]	<ul style="list-style-type: none"> Chinese are law unto themselves. Look at Tibet Quotes Andrew Saunders, a Te Kauwhata farmer, that it will bring in its own labour, pay them \$5 an hour and sell the dairy products cheaply in China 	Personal view
AT-3-8	[REDACTED]	<ul style="list-style-type: none"> China is taking over the world 	Personal view
AT-3-10	[REDACTED]	<ul style="list-style-type: none"> Chinese are not part of the Western world 	Personal view

Submission No.	Submitter	Content of submission	Information on which based
AT-3-11 AT-3-16	[REDACTED]	<ul style="list-style-type: none"> Part of Chinese infiltration and undermining of Western democracies Totalitarian country with history of oppression of its own people should not be allowed to own areas in NZ Sent News Weekly and National Observer articles about Chinese investment 	Personal views, Chinese friends, and News Weekly and National Observer articles
AT-3-18	[REDACTED]	<ul style="list-style-type: none"> Non-Chinese do not benefit from these purchases and local economy ends up as loser 	Personal view
AT-3-24	[REDACTED]	<ul style="list-style-type: none"> Chinese are money orientated and don't have New Zealand values 	Personal view
AT-3-21	[REDACTED]	<ul style="list-style-type: none"> Agrees with Julie Ford 	Personal view
AT-3-25	[REDACTED]	<ul style="list-style-type: none"> Chinese are out for themselves 	Personal view
AT-3-28	[REDACTED]	<ul style="list-style-type: none"> Transaction represents threat to our economy and New Zealand way of life 	Personal view
AT-4-1	[REDACTED]	<ul style="list-style-type: none"> Concerned re any sales of land, but particularly to China 	Personal view
AT-4-7	[REDACTED]	<ul style="list-style-type: none"> As above 	Personal view
AT-4-13	[REDACTED]	<ul style="list-style-type: none"> As above. There is nothing in this deal for NZ 	Personal view
AT-5-9	[REDACTED]	<ul style="list-style-type: none"> Opposition to proposed Crafar farm sale to Asians is not racist but reflects fact hundreds of young New Zealand farmers would love opportunity to farm and own land, but it is out of their reach NZers can farm the land and sell the milk products to the Asians Asians own most food outlets as it is, are quietly infiltrating New Zealand and owning more and more businesses. Crafars may have got into difficulty but they are true New Zealand farmers. 	Personal view
AT-5-19	[REDACTED]	<ul style="list-style-type: none"> Doesn't mind foreign ownership so long as buyer fits into New Zealand culture (as earlier Chinese mining immigrants did). Current Chinese don't. They are taking over the Pacific and submitter doesn't like their attitude and behaviour. 	Personal view
AT-5-26	[REDACTED]	<ul style="list-style-type: none"> Selling vital Kiwi Assets such as farm land, mining sites, fisheries, etc. to Asians should be stopped. 	

Particularly because China not reciprocal

Submission No.	Submitter	Content of submission	Information on which based
AT-2-2	[REDACTED]	<ul style="list-style-type: none"> Why does NZ let people buy land here when NZers can't buy in their country? 	Personal view
AT-3-3	[REDACTED]	<ul style="list-style-type: none"> Only ones to benefit will be foreign owned banks 	Personal view
AT-3-12	[REDACTED]	<ul style="list-style-type: none"> Doing New Zealand a disservice by selling 	Personal view
AT-3-29	[REDACTED]	<ul style="list-style-type: none"> Full consideration should be given to ownership policies in purchasing countries 	Personal view

Submission No.	Submitter	Content of submission	Information on which based
AT-4-4		<ul style="list-style-type: none"> NZ is naïve – other countries don't allow New Zealand to buy up huge tracts of strategic land there 	Personal view
AT-4-7		<ul style="list-style-type: none"> China has strong protection of its property 	Personal view
AT-4-16		<ul style="list-style-type: none"> Does China allow NZers to own freehold land there? 	Personal view
AT-4-18		<ul style="list-style-type: none"> NZers cannot buy large scale land in China or any other country 	Personal view
AT-4-25		<ul style="list-style-type: none"> Chinese probably think NZers are stupid to allow land sales 	Personal view
AT-4-31		<ul style="list-style-type: none"> NZers need to protect NZs valuable agricultural sector from being sold off to a nation protecting their food chain. Requests a level playing field 	Personal view
AT-5-1		<ul style="list-style-type: none"> If China and other countries don't let NZers buy their land, NZ shouldn't let them buy its 	Personal view
AT-5-20		<ul style="list-style-type: none"> Opposition likely to be based on fact can't own Chinese land, yet they seek to own NZs land, and send the fruits of it back to China 	Personal view

Should give lease instead

Submission No.	Submitter	Content of submission	Information on which based
AT-3-5		<ul style="list-style-type: none"> Has 99 year lease been considered as an option? 	Personal view
AT-3-6		<ul style="list-style-type: none"> Suggests a lease instead of a sale 	Personal view
AT-4-17		<ul style="list-style-type: none"> Anything over .5ha should be leased 	Personal view
AT-5-6-		<ul style="list-style-type: none"> If the investment is a good idea, why not lease the land 	Personal view
AT-5-18		<ul style="list-style-type: none"> Why not let the "foreigner" be the tenant on a 99 yr lease 	Personal view

Government should buy land

Submission No.	Submitter	Content of submission	Information on which based
AT-2-9		<ul style="list-style-type: none"> Government should step in, buy our valuable New Zealand dairying land and business and give jobs to New Zealanders 	Personal view
AT-2-10		<ul style="list-style-type: none"> Government should set up opportunity for Kiwis to support NZ's productive base and invest money collectively to keep these assets in New Zealand ownership Or should be opportunity for Kiwisaver 	Personal view
AT-2-20		<ul style="list-style-type: none"> Represents opportunity for Government to purchase and secure a large income producing property portfolio, and use farms as valuable tool to assist troubled youths 	Personal view

Submission No.	Submitter	Content of submission	Information on which based
AT-2-25	██████	<ul style="list-style-type: none"> Government should buy the farms and set up as training entities for up and coming farmers, allowing them to pay off the farms like they did after the last war 	Personal view
AT-2-28	██████	<ul style="list-style-type: none"> NZ people should be given the change to buy them in smaller blocks, perhaps with Govt assistance (Rural Bank) like NZ used to give young farmers 	Personal view
AT-3-17	██████	<ul style="list-style-type: none"> Farms should be sold individually to New Zealanders with children in the same way as the returned servicemen got their farms 50 yrs ago 	Personal view
AT-3-20	██████	<ul style="list-style-type: none"> Government should purchase properties and place them in control of Lincoln & Massey universities to be used for scientific and training purposes and to generate income Crafars could work the land 	Personal view
AT-3-25	██████	<ul style="list-style-type: none"> Government should buy farms and at some future date return them to private ownership 	Personal view
AT-4-4	██████	<ul style="list-style-type: none"> Tracts should be sold off separately or in small agglomerations to New Zealanders 	Personal view
AT-4-20	██████	<ul style="list-style-type: none"> Give Landcorp the green light to buy farms 	Personal view
AT-4-28	██████	<ul style="list-style-type: none"> Happy if Landcorp become purchasers 	Personal view
AT-5-2	██████	<ul style="list-style-type: none"> Landcorp is a good choice re farms 	Personal view
AT-5-9	██████	<ul style="list-style-type: none"> Should let Landcorp buy the farms 	Personal view
AT-5-20	██████	<ul style="list-style-type: none"> Government should be looking at partnership to install young New Zealand farmers on land rather than seeking short term gain and losing future income. Land should be placed in public ownership 	Personal view
AT-5-24	██████	<ul style="list-style-type: none"> Let Landcorp buy the Crafar farms and keep them in New Zealand ownership 	Personal view

Complaints re receivers' processes

Submission No.	Submitter	Content of submission	Information on which based
AT-4-11	██████	<ul style="list-style-type: none"> Inflated price – Plateau Farms value far too high Not really trying to sell to anyone else – titles bundled together Pushing out other farmers – sold with sharemilkers in place Not clear what included in sale One farm has herd house without consent and no consent to track to another farm 	Personal involvement

Submission No.	Submitter	Content of submission	Information on which based
AT-4-16	[REDACTED]	<ul style="list-style-type: none"> Not clear what included in sale eg. Fonterra shares Were told marketing was a charade 	Personal involvement
AT-4-22	[REDACTED]	<ul style="list-style-type: none"> Alleges breach of procedure around sale process, including failure to provide relevant title history to blocks 	Personal involvement
AT-4-25	[REDACTED]	<ul style="list-style-type: none"> Told already sold 	Personal involvement

Miscellaneous

Submission No.	Submitter	Content of submission	Information on which based
AT-2-16	[REDACTED]	<ul style="list-style-type: none"> Purchaser should do something positive to show the purchase is for the national benefit (eg. retire the Taupo Crafar farm) 	Personal view
AT-3-14	Geoff Davidson, NZ Native Forests Restoration Trust	<ul style="list-style-type: none"> Have agreement with government that the North and South blocks of the Pureora native forest should be reconnected at the least by corridors of revegetated forest in the gullies, but preferably by the wide swathe of farm land (the Crafar farm) being purchased and restored to forest Keen to discuss purchase of property Want conditions stipulated that all the Nth/Sth gullies linking the North and South blocks of the Pureora Forest should be fenced and revegetated with native species 	Personal involvement of Trust
AT-4-15	[REDACTED]	<ul style="list-style-type: none"> A massive tax should be put on sales to foreigners 	Personal view
AT-4-23	[REDACTED]	<ul style="list-style-type: none"> NZ should not let foreigners buy NZ dairy farms until NZ has better environmental laws in place 	Personal view
AT-5-8	[REDACTED]	<ul style="list-style-type: none"> Are rationale reasons for restricting sale of farmland to overseas interests. However, difficulty with giving a lease is that a lease requires an owner, and in case of Crafar farms government does not want to be involved in that way Suggests a sale for a finite period eg. over 35 years may be an alternative 	Personal view
AT-5-16	[REDACTED]	<ul style="list-style-type: none"> Agrees opposition to sale of farms to Chinese interests is racist. Those who don't admit we need Chinese investment are deluding themselves economically 	Personal view

Appendix 5 – Third Party Submission from Crafar Farms Independent Purchaser Group

1. The Crafar Farms Independent Purchaser Group (“CFIPG”) is an unincorporated group of interested parties, including Tiroa E and Te Hape B Trusts, Jamieson Farms Limited, Tahara Hapu Trusts, Aitchison Farms Limited, Wairarapa Moana Incorporation Farms Limited, WD Holmes 2000 Trust, Mark and Sophie Dibley, Mac and Kath Pacey, Donovan Group Limited, Brent Cook and Sir Michael Fay, each of whom has offered to purchase one or more of the farms formerly owned by the Crafar family, which are the subject of the Application. The submitters claim to have an interest in the Application because they claim its determination will substantially affect their rights and interests in terms of their ability to purchase the farms.
2. CFIPG submits that the Application, as they understand it, does not satisfy the criteria for approval of an application for consent to acquire sensitive land. CFIPG’s submission focuses on:
 - (a) Section 16(1)(a) – Business Experience and Acumen
 - (b) Section 16(1)(c) - Character of Individuals in Control of Investment
 - (c) Section 16(1)(e)(iii) - Substantial and Identifiable Benefit
 - (d) Sections 17(2)(a)(i) to (vi) - The Economic Factors
 - (e) Section 17(2)(d) - Protection of Historic Sites
 - (f) Regulation 28(d) - Further Significant Investment in New Zealand
 - (g) Regulation 28(i)(i) - New Zealand as a Reliable Supplier of Primary Products
 - (h) Regulation 28(i)(iii) - New Zealand's Strategic and Security Interests
 - (i) Regulation 28(i)(iv) -Improvement of New Zealand's Key Economic Capacity
 - (j) Section 16(1)(f) - Farm Land Advertisement
3. In a further submission, Chen Palmer (on behalf of the CFIPG) supplied copies of reports prepared by Jiasheng-Bix Credit Online Enterprise Research, and released by Landcorp under the Official Information Act. Chen Palmer referred specifically to aspects of the reports suggesting that Shanghai Pengxin Group Co., Ltd was in a ‘vulnerable financial position’.

Submission: section 16(1)(a) – business experience and acumen

4. CFIPG submits that the Applicant has no prior experience in dairy farm investment. They argue that investment in dairy farming requires specialist skill and experience which the Applicant, as a novice entrant to this field, does not possess.
5. CFIPG submits that the applicant's lack of experience is reflected in its business case. CFIPG argues that while Shanghai Pengxin intends to increase production on the farms, this cannot be achieved on an economically sustainable basis, bearing in mind the price paid to acquire the farms and the cost of improvements.

Applicant’s response

6. The Applicant argues that its parent, Shanghai Pengxin Group Co., Ltd, is an experienced investor in international agri-business including sheep breeding and wheat, soy and maize production in China and South America.
7. While the Applicant itself has no direct dairy farm investment experience, it obtained advice from leading New Zealand consultancies such as Perrin Ag, Landcorp and PwC. The Applicant will also employ two New Zealand directors and an independent chairman to the board of Milk NZ Farming Limited, the farm management company, whose advice and experience will also be valuable.

Overseas Investment Office’s position

8. The Overseas Investment Office is satisfied that the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment. The Overseas Investment Office’s analysis may be found at paragraph 43 of the main report.

Submission: section 16(1)(c) - character of individuals in control of investment

9. CFIPG submits that this transaction may be tainted by the same fraud or misconduct which arose in respect of the application for consent by the UBNZ entities, which was declined by the relevant Ministers in December 2010, and which is now the subject of criminal proceedings in Hong Kong. In particular, CFIPG argues that:
- (a) the Applicant has not carried out any new or proper due diligence before entering into a contract to purchase them, which suggests that information was shared between UBNZ and Shanghai Pengxin;
 - (b) the Applicant has relied on the same agricultural consultancy reports prepared for UBNZ and relied on UBNZ in its application to the Overseas Investment Office;
 - (c) UBNZ's solicitor, Kerry Knight of Knight Coldicutt, also acts for the Applicant; and
 - (d) Jack Chen has been involved in a joint venture (relating to a hotel) in Hong Kong with Shanghai Pengxin.

Applicant's response

10. The Applicant denies any connection between Shanghai Pengxin Group Co., Ltd and the UBNZ entities, May Wang or Jack Chen.
11. The Applicant says that its parent, Shanghai Pengxin Group Co., Ltd undertook a due diligence process in 2010, and then entered into the sale and purchase agreement in November 2010 (prior to the Natural Dairy consent being declined).
12. The Applicant also says that it did use three of the consultants used by UBNZ (Wildland Consultants, Grayson Neal and Perrin Ag). These firms agreed to act on the basis that the UBNZ application was not proceeding and that there would be no sharing of information or cooperation. Obviously the familiarity those consultants have with the farms themselves was of benefit in their advice to SPGL.

Overseas Investment Office's Position

13. The Overseas Investment Office had previously asked the Applicant about possible connections between Shanghai Pengxin Group Co., Ltd and Natural Dairy, the UBNZ entities, May Wang or Jack Chen.
14. The Overseas Investment Office is satisfied that the Applicant's Perrin Ag report is not tainted by 'fraud and misconduct' [REDACTED]¹⁴.
15. The Overseas Investment Office notes that Wildland Consultants and Grayson Neal are frequently consulted by applicants to assist them to prepare applications for Overseas Investment Act consent.

Submission: Sections 17(2)(a)(i) to (vi) - The Economic Factors

16. CFIPG submits that the economic benefits identified by the application cannot be achieved on a long-term and economically sustainable basis. The purchase price exceeds NZD \$200m and is far in excess of any market valuation of the farms. On this basis, Shanghai Pengxin's offer for the farms appears to be based on the price offered by UBNZ (approximately NZD \$230m), rather than the market value of the farms. The price offered by UBNZ bore no relation to the value of the farm and was (allegedly) inflated as part of a fraud on the investors in Natural Dairy.
17. Having regard to this purchase price, Shanghai Pengxin will need to increase production on the farms by more than 1 million kilograms of milk solids per annum to make a return on its investment.
18. The only plausible explanation is that Shanghai Pengxin intends to use the dairy farms as part of a vertically integrated dairy processing business.

Applicant's response

19. The purchase price for the farms is NZD \$ [REDACTED] m, plus payment for the stock, estimated to be NZD \$ [REDACTED] m. The Applicant is willing to pay this price because:

¹⁴ [REDACTED]

- (a) it has access to relatively low cost capital;
 - (b) it is investing for the long term and believes strongly that taken across a 10 to 20 year timeframe New Zealand dairy products will continue to lead the world in quality and price therefore giving good returns on the capital invested both in the farms and their development, and in the development and marketing of new value added products; and
 - (c) the relatively modest, but very real, projected increases in production proposed by the business plan are sustainable and will be accompanied by investment in the farms which makes them both financially and ecologically sustainable.
20. The submission that a 1 million kg increase in production is planned or required is pure speculation and completely incorrect. A [REDACTED] % increase or [REDACTED] kg to a total of [REDACTED] million kg is planned in the 2013/2014 year stabilizing at around [REDACTED] million kg by 2016/2017. This is in fact less than the higher unsustainable levels of production achieved by the Crafars but a significant increase (just over [REDACTED] kg per annum) from the estimated [REDACTED] million kg under the receivers in 2012/2013.

Submission: Section 17(2)(d) - Protection of Historic Sites

21. CFIPG submits that two of the farms (Benneydale One and Two) contain wahi tapu which are important to the Rereahu iwi, but that the Rereahu iwi, has not been approached by the applicant, and there are no arrangements in place to protect them.

Applicant's response

22. The Applicant's application notes the existence of negotiations between the Office of Treaty Settlement's (OTS) and the vendor, and the Applicant has agreed to use all commercial endeavours to reach an agreement with OTS to facilitate the sale of the Nga Heranga Pa site to the Crown and provide reasonable access to it. In the interim, the Applicant agreed to retire the area from grazing and fence the site to protect it.
23. The Applicant has taken all steps available to it to make sure that both unofficial and officially acknowledged heritage areas are protected and preserved and will continue to do so. The Applicant acknowledges and accepts the importance of those sites to the local Iwi.

Overseas Investment Office's Position

24. The Overseas Investment Office recommends that a condition of consent require the Applicant to transfer the pa site to the Crown for no consideration, provide for access to the site, and to retire the site from farming. Refer to paragraph 57 of the main report for the Overseas Investment Office's analysis of historic heritage issues.

Submission: Regulation 28(d) - Further Significant Investment in New Zealand

25. CFIPG submits that the Applicant may be forced by low returns to make further significant investment in New Zealand. But such investment may not deliver a substantial and identifiable benefit to New Zealand and may in fact be contrary to the national interest, particularly if it results in the establishment of vertically integrated competitors to Fonterra. The Applicant would not necessarily require consent from the Office to establish a vertically integrated dairy processing business in New Zealand if it is permitted to acquire the farms (because such a transaction would not automatically involve sensitive land or significant business assets).

Applicant's response

26. The application itself has no element of vertical integration. It is accepted however that SPGL wishes to be involved in the branding, joint venture production and export of consumer products to China. This in itself will give an opportunity within New Zealand for further processing of branded high value consumer products by existing or expanded production facilities on a joint venture basis with SPGL. This is not vertical integration as it is not intended to process only SPGL's milk, and SPGL will not be the only party involved.

Overseas Investment Office's Position

27. The Overseas Investment Office considers that an element of vertical integration is present in the Applicant's longer term plans for investment in the New Zealand dairy industry. The Overseas Investment Office considers that this concern can be adequately managed by imposing a consent condition preventing the Applicant and its associates from acquiring an ownership or control interest in milk processing facilities in New Zealand unless a 50% or more ownership or control interest in those facilities is held by non-overseas persons.

Submission: Regulation 28(i) - New Zealand's economic interests

28. Section 28(i)(i): CFIPG submits that if the Application is approved, New Zealand will not become a more reliable supplier of primary products. On the contrary, the proposal to run the farms inefficiently at a poor rate of return increases the risk that the reliable supply of milk from the farms will be impaired, rather than enhanced.
29. Section 28(i)(iii): The investment in the farms cannot be operated on an economically rational basis. The investment will be operated on a marginal basis at best. We understand that a better return on investment could be obtained by purchasing fewer farms. One inference that can be drawn from this is that the basis for the investment is strategic, rather than commercial. It is not clear that an investment on such a basis would be consistent with New Zealand's strategic and security interests.
30. Section 28(i)(iv): New Zealand's key economic capacity will not be genuinely improved by the proposed investment. The fact is that the improvement in production will not be sustainable and will not survive Shanghai Pengxin's inevitable eventual exit from the investment. There will be no long-term improvement in New Zealand's economic capacity.

Applicant's response

31. The Submissions in relation to this regulation effectively repeats the incorrect submissions based on mistaken assumptions as the Applicant's purchase price and intended production increases.

Submission: section 16(1)(f) - farm and advertisement

32. CFIPG submits that the farms were not advertised for sale again between the Overseas Investment Office's decision to decline the application and the receiver's decision to accept the new offer from Shanghai Pengxin. CFIPG argues that the farms should have been advertised for sale again before the receivers accepted the offer from Shanghai Pengxin. In essence, the sale process had begun anew and potential domestic purchasers should have been notified afresh that the land was available for acquisition.

Applicant's response

33. The farms were extensively advertised by Bayleys leading up to the June 2010 tender. It was during this process that SPGL was introduced to the farms as a backup purchaser for the failing UBNZ contract. The farms have been advertised in the manner which comprehensively exceeds the minimum standard set by the Act and Regulations and the Submissions to the contrary are rejected.
34. As evidenced by the Submitter's own offer, the receivers have been amenable to back-up offers at all times. This includes the time the UBNZ agreement was conditional, when the Applicant's agreement was concluded, as well as during the time the Applicant's agreement remains conditional, when the Submitter's offer was rejected. It is not true to state that New Zealanders wanting to purchase all the farms did not have the opportunity to submit offers and have them considered. The Applicant is simply the party paying the best price, assuming the Submitter's stated price of NZD \$171.5m includes stock.

Overseas Investment Office's Position

35. The Overseas Investment Office does not accept CFIPG's submission that the farms should have been advertised for sale again before the receivers accepted the offer from Shanghai Pengxin. The regulations which prescribe the advertising procedure do not require the properties to be re-advertised as CFIPG submits.

36. The Overseas Investment Office is satisfied that the farms have been advertised in accordance with the Overseas Investment Regulations 2005. Refer to paragraph 49 and appendix 8 of the main report for the Overseas Investment Office's analysis of the advertising.

Submission: vulnerable financial position

37. CFIPH refers to two reports which (according to CFIPG) confirms that Shanghai Pengxin is in a vulnerable financial position. The reports show the company has total assets of approximately NZD \$355m and liabilities of approximately NZD \$325m. It is highly leveraged compared to comparable companies with a debt to assets ratio of over 90%. Further, it has low liquidity (estimated current ratio of 0.08:1) as a consequence of financing long-term investments using short-term debt. The credit risk grade of 59.5/100 calculated by the report's authors is described as "transaction upon average credit may be done in medium scale under strict supervision".
38. CFIPG says that it follows that the proposed investment in the former Crafar farms, worth in excess of NZD \$200m, is likely to put the company under extreme financial pressure. This reinforces CFIPG's concerns about the economic viability of the application.

Applicant's response

39. The "credit report" is based only on the financial statements of the holding company of Shanghai Pengxin Group Co. Ltd, in which [REDACTED] subsidiaries aren't consolidated. Therefore, the report doesn't show the overall liability-to-asset ratio of Shanghai Pengxin Group which is consistent to other large China based real estate development entities.
40. The consolidated liability-to-asset ratio of the group is circa [REDACTED]%, slightly below the average level of Chinese real estate companies.
41. In China it is practice for Real estate companies to credit advances received under presale contracts and as such the advances form a part of the liability of the development entity. Profit is only recognised when the properties are completed and transferred to the purchaser. As a consequence there is a timing difference of the advances received as the building is developed and the realisation of profit upon completion. In reality the company during any development project would receive strong cash inflows and increasing liabilities as representative of the asset being developed and then transferred.
42. Pengxin Group the sixth largest commercial property developer in China. The group has a very strong record of property development and commercial acumen. The aggregate of projects currently under construction is more than 1 million square metres which is significant for China and most western economies with the aggregate of properties held by the group in excess of 400,000 square metres -this is also significant.
43. The group manage a balance sheet with the expectation of a liability-to-asset ratio in these levels (above that of residential developers) and are very happy with the current position.
44. With all entities Pengxin Group is actively developing properties for sale and holding, which accordingly impacts upon the balance sheet of the total group. An example of this is the recent sale of the operating rights of A30 highway in China to Shanghai Construction & Transportation Committee for [REDACTED] RMB this year, which accordingly improved the liability-to-asset ratio of the group. These transactions are illustrative of the common workings of the group and ability to execute and deliver on large scale projects with substantial blue chip counter parties.
45. The business structure of Pengxin Group is healthy and its strategy is moderate and conservative. It is recognised by all major commercial banks in China and now Australia and New Zealand (ANZ Banking Group), and has access to significant loan quota to assist in further core projects of the group. Additional funding of circa [REDACTED] RMB loan quota has been provided to the group.
46. The acquisition of Crafar farms in New Zealand is included in the investment budget of the group and whilst appears to be a significant value transaction in NZ terms does not present an issue in funding for the group and is well below typical projects in which the group engages. Pengxin Group has safe cash flow from operating activities and financing ability to finance the acquisition of the New Zealand farms as outlined in their OIO application.

Submission: additional conditions required to provide time for judicial review

47. If the relevant Ministers grant consent, CFIPG intends to file proceedings in the High Court seeking a judicial review of that decision. CFIPG has asked the Overseas Investment Office for access to certain relevant information.

48. If Shanghai Pengxin were to complete the acquisition in the face of judicial review proceedings, that would produce an awkward outcome if the Court subsequently determines that the relevant Ministers' exercise of the statutory power was invalid and yet the overseas acquisition in question has occurred and cannot be reversed.
49. To ensure that Shanghai Pengxin is not able to thwart the opportunity for this issue to be considered by the Court in an effective way, CFIPG requests that any decision to grant consent to the application is made subject to a condition that will enable CFIPG to pursue their judicial review application before the acquisition is completed. Section 25(1)(c) of the Act allows consent to be granted subject to such a condition. The condition we propose is that any consent is on terms that the acquisition may not be completed until the earlier of:
- (a) seven days after the date of the decision, provided that no application for judicial review of that decision has been filed in the High Court within that seven day period; or
 - (b) if any application for judicial review has been filed within that seven day period, two months from the date of the decision to grant consent.
50. This proposed condition is intended to ensure that there is sufficient time for the High Court to determine a judicial review proceeding in an expedited manner. Although this may cause a short delay while the Court decides the matter, that should in our view be seen in the context of the importance and public interest in this particular transaction and the broader issues it raises. A short delay should also be weighed against the risk that, absent such a condition, Shanghai Pengxin could deprive New Zealanders concerned about this issue of any opportunity to have the matter considered by the Court in circumstances where an effective remedy is available.

Applicant's response

51. The Overseas Investment Office has not consulted the Applicant.

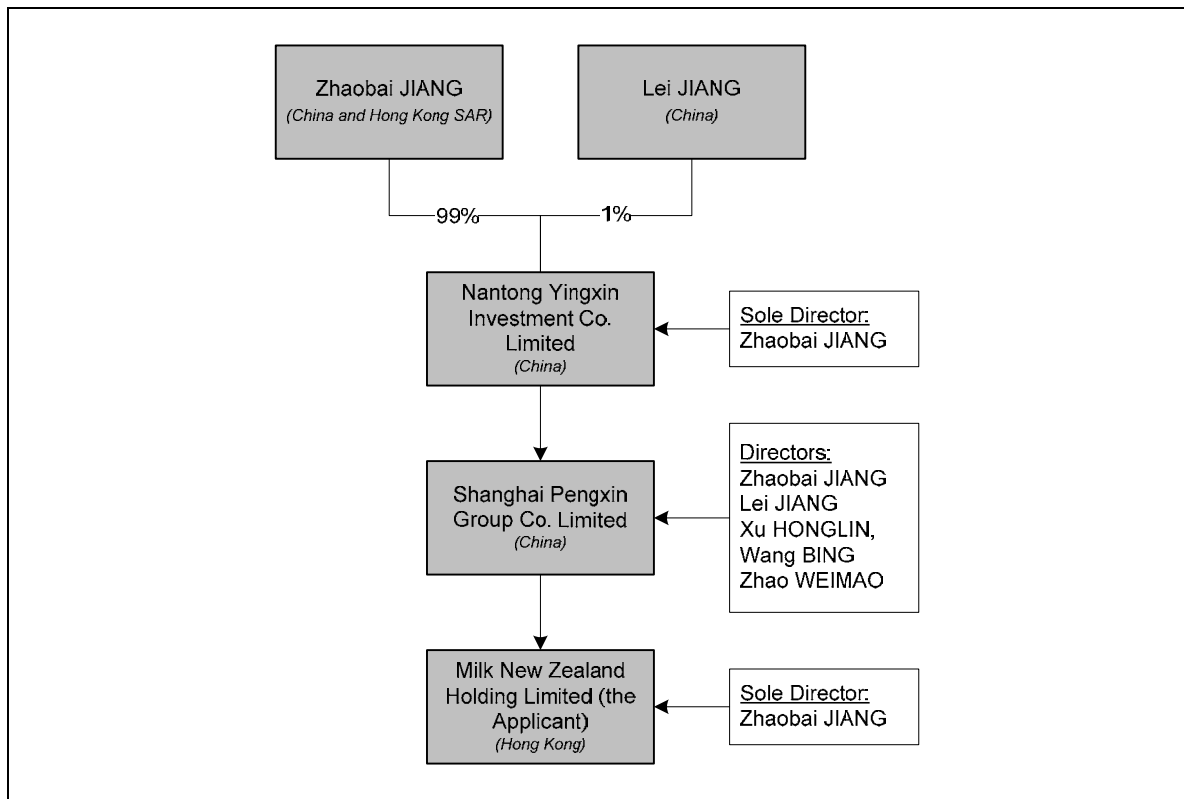
Overseas Investment Office's Position

52. The Overseas Investment Office will provide you with separate legal advice on this submission.

Appendix 6 – Good character & Immigration Act 2009 matters

Relevant Overseas Person and Individuals with Control

1. The Applicant is a company ultimately owned (as to 99%) and controlled by Zhaobai Jiang.



2. The Overseas Investment Office recommends that you determine that:
- the relevant overseas persons are Milk New Zealand Holding Limited, Shanghai Pengxin Group Co. Limited, Nantong Yingxin Investment Co. Limited and Zhaobai JIANG; and
 - the individuals with control of the relevant overseas persons are Zhaobai JIANG and Lei JIANG, and the other directors of Shanghai Pengxin Group Co. Limited, Xu HONGLIN, Wang BING, and Zhao WEIMAO.
3. Of the individuals with control of the relevant overseas persons, control is primarily with Zhaobai JIANG. Mr JIANG directly controls 99% of the shares Nantong Yingxin Investment Co. Limited, and indirectly controls 99% of the shares in Milk New Zealand Holding Limited (the Applicant) and Shanghai Pengxin Group Co. Limited (the Applicant's parent company).

Section 16(1)(c) - Good Character

4. The Overseas Investment Office's view is that the individuals with control of the relevant overseas person are of good character. We have considered the character of Zhaobai Jiang (whose influence appears to be the greatest) in more detail than the character of Lei Jiang, Xu Honglin, Wang Bing, and Zhao Weimao.

Zhaobai Jiang

5. Zhaobai Jiang is a citizen of the People's Republic of China. Zhaobai Jiang is also involved in [REDACTED], which has applied for consent to acquire land at [REDACTED].
6. The Overseas Investment Office has no reason to suspect that Zhaobai Jiang is not of good character:
- We have searched for information about Zhaobai Jiang on the internet, and found nothing relevant.

- (b) We have a statutory declaration from Zhaobai Jiang attesting to his good character.
- (c) We have confirmation from the Chinese Ministry of Public Security that it has no record of any convictions in respect of Mr Jiang or Shanghai Pengxin Group Co. Limited.
- (d) We have received an anonymous third party submission in respect of Zhaobai Jiang's character. In our view, the issues raised in the submission have been answered adequately.
- (i) The submission stated
- "Shanghai Pengxin Group used to be involved in commercial bribery with Shanghai Zhongxiang Group (100% share is government control) and competitive underworld killings with Mr Xiao di Zhou (Shanghai gang boss). Please see attachment."*
- (ii) In response to this allegation, we asked [REDACTED] in New Zealand embassy in Beijing, [REDACTED], to make enquiries of the Chinese Ministry of Public Security on our behalf. He reported that the Ministry of Public Security had no record of any convictions in respect of Zhaobai Jiang or Shanghai Pengxin Group Co. Limited.
- (iii) [REDACTED] in the New Zealand Embassy in Beijing examined the attachments to the email on our behalf, and conducted further internet searches.
- [REDACTED] confirmed a historical connection between Mr Xiao and Shanghai Pengxin Group Co. Limited. Shanghai Pengxin Group Co. Limited and Mr Xiao both appear to have acquired land from a corrupt official—the official did not own the land and had no right to sell it. There was no suggestion of wrongdoing on the part of Shanghai Pengxin Group Co. Limited. Subsequently, Mr Xiao sold the land to two different purchasers.
 - [REDACTED] also found evidence that Mr Xiao may have committed offences, including hiring someone to assault a business associate.
 - Mr Xiao has recently been imprisoned for 14 years in respect of his sale of the property and for the assault.

Lei Jiang

7. Lei Jiang is a Chinese citizen. He is the younger brother of Zhaobai Jiang, and is the President of Shanghai Pengxin Group Co. Limited. Lei Jiang indirectly controls 1% of the shares in the Applicant and Shanghai Pengxin Group Co. Limited (the Applicant's parent company), and directly controls 1% of the shares Nantong Yingxin Investment Co. Limited (Shanghai Pengxin Group Co. Limited's parent company).
8. The Overseas Investment Office has no reason to suspect that Lei Jiang is not of good character:
- (a) We have searched for information about Lei Jiang on the internet, and found nothing relevant.
- (b) We have a statutory declaration from Lei Jiang attesting to his good character.

The other directors

9. Xu Honglin is the Vice-President of Shanghai Pengxin Group Co. Limited, Wang Bing is the Chief Financial Officer of Shanghai Pengxin Group Co. Limited and Zhao Weimao is the President of Shanghai Pengxin Group Co. Limited's real estate group.
10. The Overseas Investment Office has no reason to suspect that the other directors of Shanghai Pengxin Group Co. Limited are not of good character:
- (a) We have searched for information about the other directors of Shanghai Pengxin Group Co. Limited, and found nothing relevant.
- (b) We have statutory declarations from Xu Honglin, Wang Bing and Zhao Weimao attesting to their good character.

Section 16(1)(d) – Immigration Act 2009

11. The Overseas Investment Office has no reason to suspect that any of the individuals with control of the relevant overseas person are individuals of a kind referred to in section 15 or 16 of the Immigration Act 2009.
 - (a) We have statutory declarations from each of the individuals with control of the relevant overseas person attesting to their status under sections 15 and 16 of the Immigration Act 2009.
 - (b) In respect of Zhaobai Jiang, we have received information from the Chinese Ministry of Public Security showing that it has no record of any of them having been convicted of an offence.
 - (c) Internet searches have not disclosed any information that leads us to believe that any of the individuals are individuals of a kind referred to in section 15 or 16 of the Immigration Act 2009.

Appendix 8 – Farm land advertising requirements

1. For the reasons that follow, the Overseas Investment Office is satisfied that the farm land has been advertised in accordance with the requirements of the Overseas Investment Regulations 2005.

Requirements of section 16(1)(f) and regulations 4-11

2. Section 16(1)(f) of the Overseas Investment Act 2005 provides that if the relevant land is or includes farm land, that farm land has been offered for acquisition on the open market to persons who are not overseas persons in accordance with the procedure set out in regulations (unless the overseas investment is exempt from this criterion under section 20).
3. Regulations 4-11 of the Overseas Investment Regulations 2005 set out the procedure for advertising farm land.
 - (a) Regulation 4 provides that the purpose of regulations 5 to 10 is to:
 - (i) prescribe, for the purposes of the criterion in section 16(1)(f) of the Act, the procedure for offering the farm land for acquisition on the open market to persons who are not overseas persons; and
 - (ii) ensure that persons who are not overseas persons but who wish to acquire the farm land have reasonable notice that they are available for acquisition.
 - (b) Regulation 5 provides that for the purposes of section 16(1)(f) of the Act, the farm land must be:
 - (i) offered for acquisition on the open market, to persons who are not overseas persons, in accordance with regulations 6 to 8; and
 - (ii) available on the open market for the minimum period required by regulation 9; and
 - (iii) advertised within the period required by regulation 10.
 - (c) Regulation 6 provides that the owner of the farm land must advertise that the farm land are available for acquisition.
 - (d) Regulation 7 provides that the advertisement under regulation 6 must:
 - (i) contain a general description of the relevant land; and
 - (ii) contain a statement that says that the farm land or the farm land securities are available for acquisition and offers are sought from potential purchasers; and
 - (iii) state the contact details of the owner.
 - (e) Regulation 8 provides that the advertisement under regulation 6 must be published—
 - (i) in any medium that is:
 - in the list set out in Schedule 1 of the Overseas Investment Regulations 2005 (or another medium that is generally used for advertising land for acquisition on the open market); and
 - generally available to persons in the district in which the relevant land is located; and
 - (ii) in accordance with the minimum requirements set out in Schedule 1 Overseas Investment Regulations 2005 for that particular medium (or, if another medium is used, in accordance with the general practice for advertising land for acquisition on the open market in that medium).
 - (f) Regulation 9 provides that the farm land must be available for acquisition on the open market—
 - (i) for at least 20 working days after an advertisement is first placed under regulation 6; or
 - (ii) for a longer period, if the advertisement under regulation 6 has stated or implied that offers will be accepted for that longer period.
 - (g) Regulation 9 further provides that the owner may accept an offer for the farm land or the farm land securities before the end of the period referred to in regulation 9(1) from a person who is not an overseas person.

- (h) Regulation 10 provides that the advertisement under regulation 6 must be published within the period of 12 months that precedes the date on which an application for consent to the relevant overseas investment transaction is made.
- (i) Regulation 11 provides that to avoid doubt, regulations 5 to 10 do not require any person to:
 - (i) unconditionally offer the farm land under any transaction; or
 - (ii) enter into any transaction for the farm land.

The farm land advertising meets the requirements of the Regulations

4. The Overseas Investment Office is satisfied that the farm land has been advertised in accordance with the requirements of the Overseas Investment Regulations 2005.
 - (a) Regulation 5 is satisfied as the farm land must was:
 - (i) offered for acquisition on the open market, to persons who are not overseas persons, in accordance with regulations 6 to 8; and
 - (ii) available on the open market for the minimum period required by regulation 9; and
 - (iii) advertised within the period required by regulation 10.
 - (b) Regulation 6 is satisfied as the owner of the farm land advertised that the farm land was available for acquisition. The owner undertook an extensive marketing campaign in major daily newspapers (including the New Zealand Herald, Sunday Star Times and New National Business Review), industry publications (including Dairy Exporter and Farmers Weekly), local publications (including the Waikato Times, and Manawatu Standard) and online (a website was developed specifically to market these properties). Information provided to the Overseas Investment Office by the Applicant suggests that the cost of this advertising campaign was nearly NZD \$50k plus GST.
 - (c) Regulation 7 is satisfied as the advertisements contained a general description of the relevant land, and contained a statement that says that the farm land or the farm land securities are available for acquisition; and offers are sought from potential purchasers, and stated the contact details of the owner (in this case, the owners agent). While many advertisements were placed, several representative examples appear at the end of this appendix.
 - (d) Regulation 8 is satisfied as the advertisements under regulation 6 were published:
 - (i) in media that are in the list in the list set out in Schedule 1 of the Overseas Investment Regulations 2005 and generally available to persons in the district in which the relevant land is located; and
 - (ii) in accordance with the minimum requirements set out in Schedule 1 of the Overseas Investment Regulations 2005 for that particular medium (or, if another medium is used, in accordance with the general practice for advertising land for acquisition on the open market in that medium).
 - (e) Advertisements were placed in National, local and industry publications generally available in the districts in which the properties were located. Examples include national publications (New Zealand Herald, Sunday Star Times and New National Business Review), industry publications (Dairy Exporter and Farmers Weekly) and local publications (including the Waikato Times, and Manawatu Standard). In some cases advertisements exceeded the minimum requirements (published with greater than usual prominence, and published multiple times when a single publication was sufficient).
 - (f) Regulation 9 is satisfied as the farm land was available for acquisition on the open market from 8 May until at least 7 July 2010. This is a period longer than the 20 working day minimum as at least one advertisement stated that offers would be accepted for that longer period.
 - (g) Regulation 10 is satisfied as the advertisement under regulation 6 was published within the period of 12 months that preceded the date on which the application for consent was made. The application was made on 13 April 2011, while the advertisements were published between May and June 2010.

NZ FARM PORTFOLIO

16 Farms – North Island, New Zealand

Under instructions from the Receiver, one of the largest and most highly anticipated rural portfolios to ever come to the market is presented for sale. The Grafar property portfolio represents a significant opportunity to invest in New Zealand's rural sector.

With 16 farms – 13 Dairy and 3 Drystock properties – strategically located throughout the central and western North Island there is the potential to purchase a single property, a selection of properties, or the entire portfolio.

With farms ranging in size from 129 to 1,750 hectares, this portfolio represents a total land area of almost 8,000 hectares, milking in excess of 16,000 cows, and producing approximately 0.5 percent of Fonterra's total production.

All farms are available for individual sale, in groups or as a single portfolio.

To register your interest visit
www.nzfarmportfolio.co.nz

1	'Collins Road' - Dairy - Hamilton - 393 hectares
2	'Lakeview' - Dairy - Atiamuri - 206 hectares
3	'Benneydale 1' - Dairy - South Waikato - 696 hectares
4	'Benneydale 2' - Dairy - South Waikato - 792 hectares
5	'Rawhiti' - Dairy - Reporoa - 129 hectares
6	'Pineview' - Dairy - Reporoa - 398 hectares
7	'Grenester' - Dairy - Reporoa - 341 hectares
8	'Plateau' - Dairy - Reporoa - 323 hectares
9	'Broadlands' - Dairy - Reporoa - 405 hectares
10	'Taharua' - Dairy - Rangitiki - 1,750 hectares
11	'Karangahape Rd' - Dairy - Turangi - 627 hectares
12	'Tiwahiti' - Dairy - Taranaki - 148 hectares
13	'Waverley' - Dry Stock - Waverley - 206 hectares
14	'Glyn Park' - Dry Stock - Wanganui - 642 hectares
15	'Forest Park' - Dry Stock - Bulls - 250 hectares
16	'Ferry View' - Dairy - Bulls - 325 hectares

International Tender
All properties to be sold by International Tender closing 5pm, Wednesday 23rd June 2010 (Unless sold prior by any other means).
Tenders to be submitted to Bayleys Real Estate Ltd, 4 Viaduct Harbour Avenue, Auckland CBD, New Zealand.

Mike Bayley Managing Director M +64 21 670 101 P +64 9 375 7475 mike.bayley@bayleys.co.nz	David Gubb Corporate Recovery Specialist M +64 21 758 298 P +64 9 375 8432 david.gubb@bayleys.co.nz	Richard Graham National Country Manager M +64 21 880 454 P +64 9 375 8495 richard.graham@bayleys.co.nz
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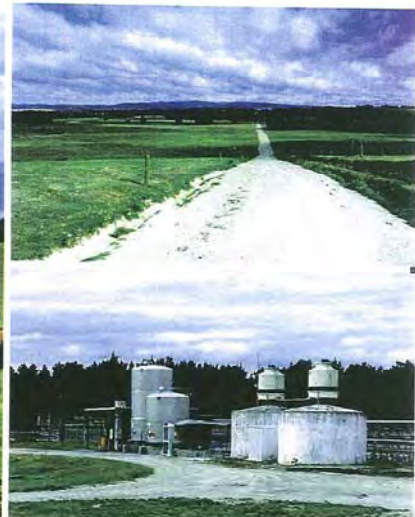
In association with
CUSHMAN & WAKEFIELD

BAYLEYS

Bayleys Real Estate Ltd
Licensed under the REA Act 2008
www.bayleys.co.nz

Every precaution has been taken to establish the accuracy of the material herein. Land areas are approximate only. Prospective purchasers should not confine themselves to the contents but make their own enquiries to satisfy themselves on all aspects.

Farmers Weekly – half page



Crafar Farm Portfolio

• Collins Road, Collins Rd, Hamilton	393ha	60ASHB	five homes
• Lakeview, Tia St, Atiamuri	206ha	44 bale rotary	two homes
• Benneydale 1, State Highway 30	896ha	72ASHB	five homes
• Benneydale 2, State Highway 30	792ha	74ASHB	four homes
• Plateau, Plateau Rd, Reporoa	323ha	104ASHB	four homes
• Cirenester, Short Rd, Reporoa	341ha	72ASHB	four homes
• Pineview, Short Rd, Reporoa	398ha	62ASHB	six homes
• Rawhiti, Rawhiti Rd, Reporoa	129ha	44ASHB	two homes
• Broadlands, Broadlands Rd, Reporoa	405ha	50 bale rotary	five homes
• Taharua, Taharua Rd, Rangitikei	1750ha	two dairysheds	ten homes
• K Road, Karangahape Road, Turangi	627ha	82ASHB	four homes

* Another five properties are available in Taranaki, Wanganui and Rangitikei
Call now for open day details and a full Property Information Memorandum

International Tenders Close
5pm, Wednesday 23 June 2010
4 Viaduct Harbour Avenue, Auckland
View phone for open day details
www.bayleys.co.nz/4100069
www.farmingnzportfolio.co.nz

Mike Fraser-Jones
M 027 475 9680
B 07 834 3841
mike.fraserjones@bayleys.co.nz

Mark Dawe
M 027 507 0861
B 07 834 3839
mark.dawe@bayleys.co.nz

Graham Beaufill
M 027 474 8073
B 07 349 5366
graham.beaufill@bayleys.co.nz

Waikato Times

NZ FARM PORTFOLIO



28 Tiwhaiti Road, Hawera

Take the Opportunity

Located in Southern Taranaki five kilometres from Hawera, Tiwhaiti is this 148 hectare dairy farm currently supplying Fonterra. Situated in a reliable area this is a well balanced property having a mix of both flat and undulating country with small stands of trees providing shelter and occupying non productive grazing areas. The milking platform has been assessed at 158 hectares effective, with the remainder classified as plantations, creeks and wetland. Boxthorn lined lineways provide an attractive outlook to the property with improvements including two houses, herringbone cowshed, two haysheds and numerous outbuildings.

Contact: Mark Monckton



Karahaki Road, Waverley

Compact Well Assigned Support Unit

This 206 hectare property is a compact dry stock dairy support unit, mainly 12 kilometres north of Waverley. Consisting of three titles, including:

- An excellent range of topography with over 20% of the property classified undulating/leasy, with the balance being steeper hill country and bush
- Strong productive soil types (Egmont series)
- Comprehensive infrastructure: two houses, numerous barns, woolshed, implement sheds, cattle and sheep yards, plus much more.

Divided into a tidy network of smaller paddocks, this property has numerous options including: Dairy conversion, finishing unit, run-off, cropping or revert back to its original role as a sheep and beef operation.

Contact: Knud Bukholt & Mark Monckton



1588 SH3, Maxwell, Wanganui

Vast Tracts of Easy Contour

Glyn Park is a comprehensive 542 hectare dry stock dairy support unit, in the Maxwell/Wanganui district. Made up of numerous titles, displaying:

- An excellent range of topography with a high percentage of easy-rolling country
- Strong productive soil types (Egmont ash/Westerns loam)

Supporting a good network of paddocks, laneways and traps, ensuring stock control and intensive pasture management is an achievable goal.

Four dwellings are situated on the three main blocks, with numerous yards, sheds and complementary facilities. Glyn Park is a great proposition capable of catering for numerous rural pursuits, including: dairy conversion, cropping, sheep and beef, dairy run-off or horticulture to name a few.

Contact: Knud Bukholt



563 Forest Road, Bulls

Dairy Support or Beef Finishing – 250 Hectares

Effectively flat, this property is made up predominantly of heavier Puke Puke sands, along with areas of lighter country providing winter balance. A number of small pine plantations are situated on light ridges.

Currently run as a dairy support unit, it was previously used for bull finishing. Centrally raced, it is mainly electric fenced, with stock water reticulated from a bore.

The comfortable three bedroom 1960s dwelling was extended circa 1980s. Other buildings comprise an older woolshed and implement sheds.

Located 18 kilometres from Bulls and within 11 kilometres of the dairy unit it currently supports (1904 Parewanui Road), the property also holds an effluent consent.

Contact: Peter Barnett



1904 Parewanui Road, Bulls

Highly Developed Rangitikei Dairy Farm – 378 Hectares

Developed to a standard few could match, with significant recent improvements on feed pads, tracks and a new effluent irrigation system.

High quality alluvial silt loams make up nearly half the property, the balance being contoured sand associations of both lighter and heavier types.

Around 340 hectares is irrigated by two centre pivot plus posts and a roto-raiser. Buildings include three dwellings, four self-contained units, an 80 ball rotary dairy shed and 11 inside cobstrum dairy sheds. Extensive yards and feed-past areas are supported by large concrete silage bunkers and feed storage areas.

Contact: Peter Barnett

International Tender All properties to be sold by International Tender closing 5pm, Wednesday 23rd June 2010 (unless sold prior by any other means). Tenders to be submitted to Bayley's Real Estate Ltd, 4 Viaduct Harbour Avenue, Auckland CBD, New Zealand.

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NZ FARM PORTFOLIO

16 Farms – North Island, New Zealand

Under instructions from the Receiver, one of the largest and most highly anticipated rural portfolios to ever come to the market is presented for sale. The Crafar property portfolio represents a significant opportunity to invest in New Zealand's rural sector.

To register your interest visit www.nzfarmportfolio.co.nz

International Tender

All properties to be sold by International Tender closing 5pm, Wednesday 23rd June 2010 (Unless sold prior by any other means). Tenders to be submitted to Bayleys Real Estate Ltd, 4 Viaduct Harbour Avenue, Auckland CBD, New Zealand.

All farms are available for individual sale, in groups or as a single portfolio.



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Every precaution has been taken to establish the accuracy of the material herein. Land areas are approximate only. Prospective purchasers should not confine themselves to the contents but make their own enquiries to satisfy themselves on all aspects.



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