

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

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<b>Date</b>	29 March 2012
<b>Security Level</b>	Commercial: In Confidence
<b>Priority</b>	<b>URGENT</b>
<b>Report/Case Number</b>	1090 / 201110035
<b>Contractual Date</b>	31 May 2012

Instructions

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

Contact for Telephone Discussion

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<b>Name</b>	<b>Position</b>	<b>Telephone (wk)</b>	<b>Cellphone</b>	<b>First Contact</b>
Annelies McClure	Manager, Overseas Investment Office	██████████	██████████	✓

## MEMORANDUM

### Annexure:

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

### Judicial review proceedings

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3. On 13 April 2011, the Overseas Investment Office received an application for consent from Milk New Zealand Holding Limited ("the Applicant") to acquire freehold interests in 16 farms located in the central North Island collectively known as the "Crafar Farms". The Overseas Investment Office analysed this application and provided its report and recommendation to you on 19 January 2012.
4. On 24 January 2012, Baytown Investments Limited (a company associated with Sir Michael Fay and David Richwhite) and the Tiroa E and Te Hape B Trusts (collectively, "the plaintiffs") brought judicial review proceedings challenging the Overseas Investment Office's recommendation to you. The plaintiffs alleged that the Overseas Investment Office had not correctly applied the 'business experience and acumen' criterion in s 16(1)(a) of the Overseas Investment Act 2005 ("the Act").
5. On 26 January 2012, you granted consent to the overseas investment.
6. On 30 January 2012, the plaintiffs amended their claim to also challenge the Overseas Investment Office's application of the 'benefit' criteria in ss 16(1)(e)(ii) and (iii) of the Act, and your 26 January 2012 decision.
7. Miller J heard the plaintiffs' claim on 3 February 2012, and delivered the Court's judgment on 15 February 2012.
  - (a) The first ground of review (regarding the business experience and acumen) failed. Miller J made comments about the test which the Overseas Investment Office will apply in future cases.<sup>1</sup>
  - (b) The second ground of review was made out. Miller J set aside your consent and directed that you reconsider the Applicant's application. Miller J directed that you assess the economic factors in s 17(2)(a) by assessing what would happen 'with and without' the overseas investment, rather than the 'before and after' test applied by the Overseas Investment Office<sup>2</sup>.
8. In relation to the reconsideration of the application, Miller J noted:

No one suggested that reconsideration need take long. On the face of it, the OIO may simply recalibrate its existing recommendation.<sup>3</sup>

### Miller J's 'with and without' test

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9. Miller J held that the "statute requires that [the Ministers] assess those [economic factors in s 17(2)(a)] by assessing what would happen 'with and without' the overseas investment that they are being asked to approve."<sup>4</sup>

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<sup>1</sup> *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147 at [26]-[29] [*Tiroa E*].

<sup>2</sup> *Tiroa E* at [44].

<sup>3</sup> *Tiroa E* at [60].

<sup>4</sup> *Tiroa E* at [44].

10. Miller J held that it is a matter of inquiring, for each claimed economic benefit, whether it is likely to happen absent the overseas investment:

It is a matter of inquiring, for each claimed economic benefit, whether it is likely to happen absent the overseas investment and is substantial and identifiable. The weighing of economic benefits among themselves and against non-economic benefits requires not calculation but Ministerial judgement.<sup>5</sup>

11. Miller J did not accept that a complex analysis of alternative scenarios is required.

Mr Hancock characterised a ‘with and ‘without’ counterfactual as unworkable, saying that it would force the OIO to commission complex analyses of alternative scenarios, even to evaluate competing offers in a case such as this. To some extent this submission gained momentum from Mr Galbraith’s reliance on the Commerce Commission’s business acquisition guidelines, which employ a ‘with and without’ counterfactual and insist that benefits and detriments be quantified so far as possible. *But I do not accept that so disciplined an analysis is demanded here.*<sup>6</sup>

(emphasis added)

12. Miller J held that the Act does not require the benefits to be quantified.

The Act does not require that benefits be quantified, however, only that the Ministers be satisfied, for farm land, that substantial and identifiable benefits are likely to flow from the overseas investment.<sup>7</sup>

### Application of the ‘with and without’ test

13. The Overseas Investment Office considers that the appropriate counterfactual is what would likely happen under the ownership of an alternative New Zealand purchaser, who would operate and invest in the farms in a manner that could be expected of a reasonably competent (and adequately funded) dairy farmer (“Alternative New Zealand Purchaser”).

14. We consider that the status quo is not the appropriate counterfactual in relation to s 17(2)(a) as it is unlikely that, in the hands of an Alternative New Zealand Purchaser, the farms will remain in their present state. We consider that these conclusions are consistent with two statements of Miller J:

[t]he Crafar farms will be sold to someone. The status quo may serve as the counterfactual under s 17(2)(a) only if the Ministers think it likely that in the hands of another owner, or owners, the farms will remain in their present state.<sup>8</sup>

No one suggested that the farms are likely to remain in their present unsatisfactory state, whoever purchases them. Any solvent purchaser can be expected to bring their production up to its potential.<sup>9</sup>

<sup>5</sup> *Tiroa E* at [39].

<sup>6</sup> *Tiroa E* at [39].

<sup>7</sup> *Tiroa E* at [39].

<sup>8</sup> *Tiroa E* at [42].

<sup>9</sup> *Tiroa E* at [57].

Economic factors

15. Miller J made a number of statements in respect of the “economic factors” in s 17(2)(a) of the Act:

The causal connection between investment and most of the permissible benefits must be assessed by reference to some other state of affairs – that is, a counterfactual. Such requirement is explicit in the s 17(2)(a) economic factors, notably whether the investment will result in “increased” processing or “added” competition or “additional” overseas investment, or “the creation of new job opportunities” or retention of existing jobs “that would or might otherwise be lost”.<sup>10</sup>

... the statute’s perspective is forward looking ... [i]f it is to isolate economic benefits attributable to the overseas investment, the counterfactual must similarly be forward-looking, requiring that the OIO ask what will happen if the investment is not made.<sup>11</sup>

... the statute contemplates for several reasons that the economic factors in s 17(2)(a) may be accounted benefits only if they will not or might not happen absent the overseas investment.<sup>12</sup>

Non-economic factors

16. Miller J stated that the drafting of the non-economic factors in s 17(2)(b)-(e) “expressly allows the status quo to be used as a counterfactual and, at the same time, attaches less significance to causation”<sup>13</sup>.
17. The Overseas Investment Office considered using the status quo as the counterfactual in relation to the non-economic factors. However, our view is that, in this case, using the status quo may overstate the non-economic benefits, and therefore the Overseas Investment Office has applied the same counterfactual to that applied to the economic benefits.

Regulation 28 factors

18. The Overseas Investment Office has not applied a counterfactual analysis to any of the factors in r 28 of the Overseas Investment Regulations 2005. Miller J noted that:

The criteria listed in reg 28 deal, for the most part, with benefits that only an overseas buyer could provide or what may be loosely described as strategic considerations, so they do not require a counterfactual analysis.<sup>14</sup>

Instructions:

19. Ministers are required to grant consent in respect of this application if they are satisfied that all of the criteria in ss 16 and 18 are met. They must decline consent if they are not satisfied that all of the criteria in ss 16 and 18 are met. Ministers must not take into account any criteria or factors other than those identified in the applicable provisions (here, ss 16, 17 and 18 and reg 28).
20. Where the criteria under ss 16 and 18 are the same, Ministers need only consider each criterion once.
21. In the attached Report the Overseas Investment Office identifies each of the criteria and factors under ss 16, 17 and 18 and r 28 that Ministers are required to consider in this case.
22. Conditions may be imposed on any consent that is granted, under s 25. The attached Report recommends some conditions that Ministers may wish to consider imposing in this case.

<sup>10</sup> *Tiroa E* at [33].

<sup>11</sup> *Tiroa E* at [37].

<sup>12</sup> *Tiroa E* at [35].

<sup>13</sup> *Tiroa E* at [36].

<sup>14</sup> *Tiroa E* at [36].

23. In this case, s 16 requires Ministers to decide, among other things, whether they are satisfied in relation to the following “benefit to New Zealand” criteria:
- the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined by the relevant Ministers under s 17 (s 16(1)(e)(ii));
  - that benefit will be, or is likely to be, substantial and identifiable (s 16(1)(e)(iii)).
24. In applying the benefit to New Zealand criteria, Ministers are required to consider each of the factors in s 17(2), determine which of the factors are relevant to the investment, and have regard to the relevant s 17(2) factors. The relative importance to be given to each factor is a matter to be determined by Ministers. In particular, the Act does not require economic factors to be given more weight than non-economic factors, or vice versa. The directions<sup>15</sup> that Ministers have given to the Overseas Investment Office on the relative importance of certain factors are not binding on Ministers. It is a matter for you, in carrying out your overall evaluation, to decide what weight to give to each factor.
25. The application of the benefit to New Zealand criteria involves the exercise of Ministerial judgement. The fact that responsibility for making this decision has been conferred on Ministers confirms that this is a high-level decision with a significant policy content. That is also apparent from the language and content of the factors that must be considered, many of which require a high degree of evaluative judgement, and are not capable of quantification or calculation.
26. The decision must of course be made on the basis of an accurate understanding of the legal framework for the decision. As discussed above, an important aspect of that framework has been clarified by *Tiroa E* requiring the “economic benefit” factors in s 17(2)(a) to be assessed on the basis of a “counterfactual test”. That is, Ministers must consider with respect to each s 17(2)(a) factor whether the overseas investment is likely to result in a benefit to New Zealand over and above any benefit that is likely to be achieved even if the overseas investment does not proceed. It is only the additional benefit from the overseas investment that is relevant when applying the “benefit to New Zealand” criteria.
27. Although the position is not free from doubt, the better view is that the same question – will this benefit be achieved even if the overseas investment does not occur – should be asked in relation to the other “non-economic” factors listed in s 17(2)(b)-(e). The High Court judgment suggested<sup>16</sup> that there could be a benefit in respect of the non-economic factors even if the same benefit would be achieved in the absence of the investment. But as the Court noted<sup>17</sup>, it is not easy to see how a benefit that will happen anyway could be regarded as substantial for the purposes of s 16(1)(e)(iii). In a case such as the present where s 16(1)(e)(iii) applies, the better view is that Ministers should not treat benefits that are likely to be achieved in any event as contributing to the “substantial and identifiable benefit” criterion.
28. Some aspects of the statutory framework are not easy to interpret and apply, and in certain areas the attached Report identifies competing views about its interpretation. In each case the Report suggests a preferred interpretation, and the implications of that interpretation. It also identifies other readings of the Act that may be open, and their implications. Ultimately, these are of course matters for Ministers to form a view on in the light of the advice and information provided. You may consider that it is desirable to “stress-test” your decision by:
- applying the approach which you consider preferable on each of the relevant factors, and making an overall decision in the light of that approach;

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<sup>15</sup> On 8 December 2010, the Minister of Finance directed the regulator, under s 34 of the Act, that the factors in s 17(2)(a)(i)-(vi), r 28(i) and r 28(j) are of high relative importance to the determination of whether overseas investment in ‘large’ areas of “farm land” will, or is likely to, benefit New Zealand (or any part of it, or group of New Zealanders) and whether that benefit will be, or is likely to be, substantial and identifiable. The Minister of Finance indicated that an overseas investment in farm land was considered large when it exceeds ten times the average farm size for the relevant farm type. In this case, the farm land being acquired is more than 45 times the size of the average dairy farm.

<sup>16</sup> *Tiroa E* at [36].

<sup>17</sup> *Tiroa E* at [38].

- considering whether your overall decision would be different, if you took a different approach on one or more of the more problematic factors.
29. The decision that you are required to make should be based on information available to you that you consider is sufficiently reliable for that purpose. The information that the Overseas Investment Office has taken into account in making its recommendation is summarised in the attached Report, and is contained in the accompanying four volumes of supporting material.
  30. 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.
  31. 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.
  32. The Overseas Investment Office recommends that you consider giving reasons for your decision (whether your decision is to grant consent, or to decline to grant consent). If you wish to give reasons, the Overseas Investment Office and the Crown Law Office are available to document these for you.
  33. If required, staff from the Overseas Investment Office are available to brief you on the office's recommendations.

### Recommendations:

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34. 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 s 15 or 16 of the Immigration Act 2009; and
    - (vii) where necessary, an appropriate counterfactual analysis has been applied, having regard to the facts of this case;
    - (viii) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
    - (ix) the benefit will be, or is likely to be, substantial and identifiable; and
    - (x) 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 ss 16 and 18 have been met; and

Associate Minister of Finance:

Satisfied

Not Satisfied

<input type="checkbox"/>
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Minister for Land Information:

Satisfied

Not Satisfied

<input type="checkbox"/>
<input type="checkbox"/>

(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

<input type="checkbox"/>
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Minister for Land Information:

Consent Granted

Consent Declined

<input type="checkbox"/>
<input type="checkbox"/>

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Associate Minister of Finance

Date

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Minister for Land Information

Date

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Annelies McClure – Manager  
Overseas Investment Office

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

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## Summary

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### 1. Summary of key information:

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

## Application

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### 2. For consent for Milk New Zealand Holding Limited ("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 7892 hectares (dairy area approximately 5990 hectares) individually known as:

- Plateau Road (323 hectares)
- Rawhiti Road (129 hectares)
- Pine View (398 hectares)
- Cirenester (341 hectares)
- Broadlands (405 hectares)
- Lake View (206 hectares)
- Forest Park (drystock, 250 hectares)
- Glyn Park (drystock, 647 hectares)
- Waverley (drystock, 206 hectares)
- Karangahape Road (627 hectares)
- Benneydale 1 (896 hectares)
- Benneydale 2 (792 hectares)
- Collins Road (393 hectares)
- Tiwhaiti (148 hectares)
- Taharua (1751 hectares)
- Ferry View (379 hectares)

("the Investment")

## Applicant

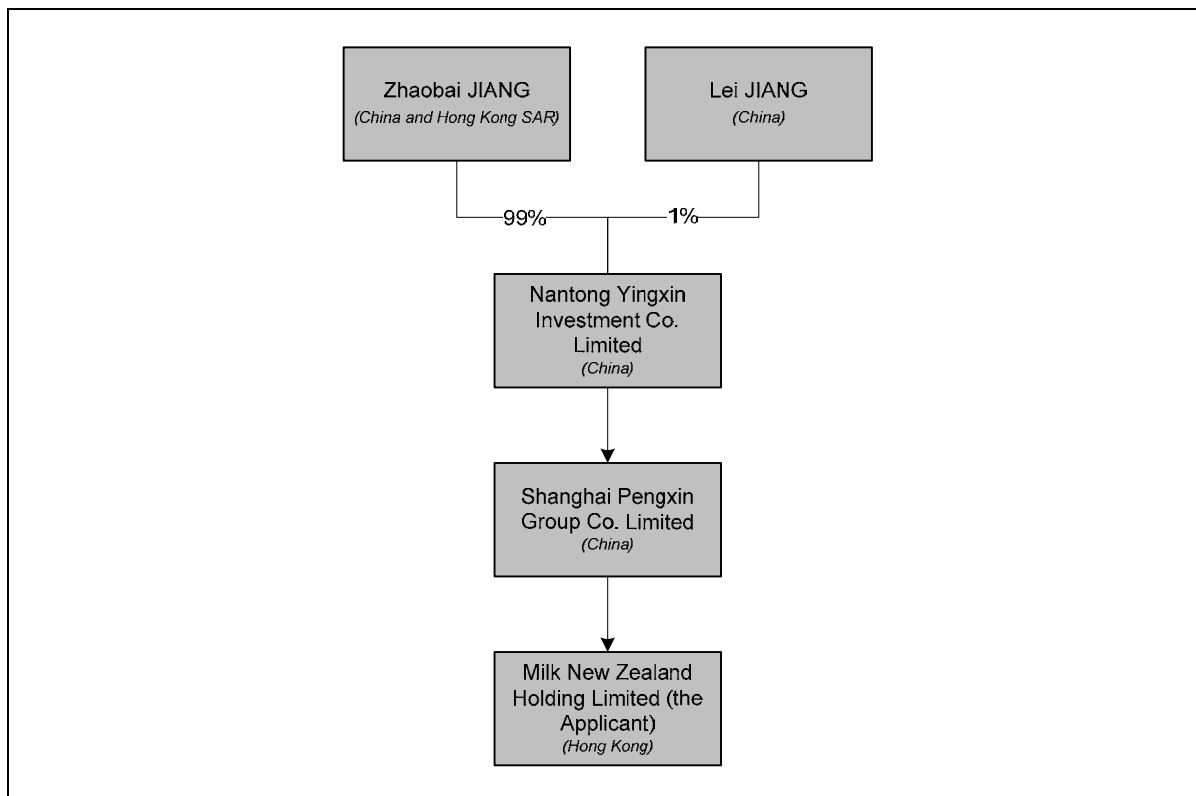
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3. The Applicant is a Hong Kong incorporated company which is an overseas person under the Overseas Investment Act 2005 ("the Act").
4. The Applicant will register as an overseas company under the New Zealand Companies Act 1993 prior to acquiring the Investment. The Applicant does not have any current interests in New Zealand at the date of this application.<sup>18</sup>
5. 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.

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<sup>18</sup> 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.

## Ownership of the Applicant



6. 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.
7. SPGL is a very successful property developer in China. In 2010, the total residential floor area under development was approximately 308,000m<sup>2</sup>. 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 █ Aqua City centres.
8. SPGL also has a fast growing international agribusiness which includes investment in sheep breeding, wheat, soy and maize production in China and South America. █  
█ SPGL also has a 60% interest in a farm in Bolivia producing income of around NZD \$█m from soybeans, corns and sorghum per annum. SPGL is committed to a sustainable agribusiness ethos.
9. SPGL has invested USD \$█m in a majority share of a copper deposit in the Congo with production of █ tonnes of copper per annum. SPGL has also invested in infrastructure and private equity funds. Its investment in infrastructure is approximately USD \$█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.
10. 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. Nantong 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

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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 Westpac<sup>19</sup> 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 consent<sup>20</sup>) 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 Farming Limited ("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 farms<sup>21</sup>. 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 (prior to consent to the UBNZ Funds Management Limited and Natural Dairy (NZ) Holdings Limited transactions being declined) the receivers and the Applicant entered into an agreement for sale and purchase to acquire the 16 farms.<sup>22</sup> 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 ("CFIPG")) led by Sir Michael Fay, offered to acquire the 16 farms. We understand that their bid was not accepted by the receivers.

## Outline of the Investment

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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 Crafar 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.

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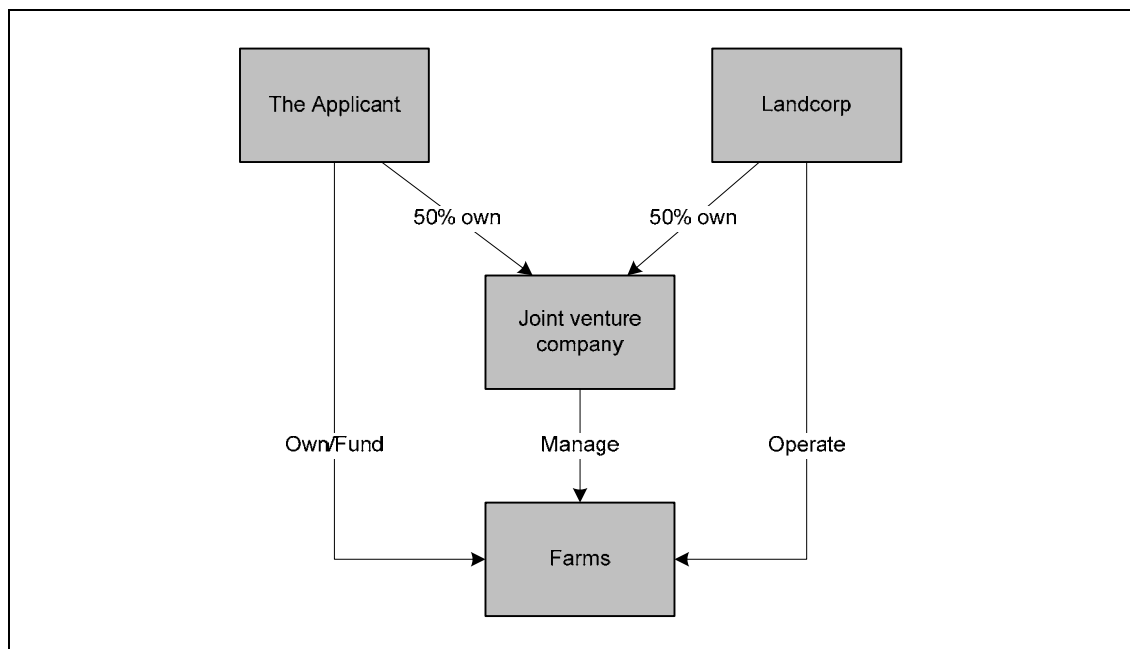
<sup>19</sup> On 5 October 2009.

<sup>20</sup> 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]

<sup>21</sup> Two of the six farms were excluded from the transaction altogether when the Crafar companies were placed in receivership.

<sup>22</sup> 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 purchaser 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.

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. A copy of the Applicant's application letter, and September 2011 and February 2012 'further information' letters can be found in supporting material, volume A, tabs 1-3 respectively. A copy of the Applicant's business plan can be found in supporting material, volume C.
26. The Applicant intends to partner with 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 company 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.



27. A key feature of the relationship with Landcorp will be the Applicant establishing (at a cost of NZD \$ [redacted] m) a farm school on one of the acquired farms to be operated by Landcorp to train students in farming. Each year, two students will be given NZD \$5000 scholarships to attend universities. The aim of the on-farm training facility is to produce job-ready farming graduates who will have the skills to manage a progressive dairy farm in New Zealand. They will be financially literate, skilled in the use of a range of technologies, and able to implement farm business plans.
28. The Applicant's relationship with Landcorp is documented in two agreements: a "Property Management Agreement"; and a "Farm Operations Agreement", together "the Landcorp Agreements". A copy of the Landcorp Agreements can be found in supporting material, volume B, tab 4.

## Rationale for the Investment

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29. 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.
30. 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.
31. 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

32. 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.
33. 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.
34. 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

35. 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. [REDACTED]  
[REDACTED] The Applicant intends to establish joint ventures with existing processors to process new value added products for export.
36. 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 joint venture partners in expanding that capacity.

## Marketing of dairy products in Asia

37. 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 products<sup>23</sup> 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.
38. The Applicant has developed and registered two brands ("Nature Pure"<sup>24</sup> and "Pure 100"<sup>25</sup>) in New Zealand.

## Sensitive land

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

## Assessment process

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40. The Overseas Investment Office has sought sufficient information from the Applicant to be assured about the accuracy of the information supplied and has sought sufficient evidence from the Applicant for it to be able to judge whether the criteria and factors that apply to the relevant category of overseas investment are likely to eventuate.
41. We have liaised with, or received submissions<sup>26</sup> from, a number of parties including:
- (a) the Department of Conservation ("DOC");
  - (b) the New Zealand Walking Access Commission ("WAC");
  - (c) the Ministry of Foreign Affairs and Trade ("MFAT");
  - (d) the New Zealand Police;
  - (e) China's Ministry of Public Security;
  - (f) the New Zealand Historic Places Trust ("HPT"); and
  - (g) the Office of Treaty Settlements ("OTS").
42. In our view:
- (a) Milk New Zealand Holding Limited, SPGL, 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 SPGL, Xu Honglin, Wang Bing, and Zhao Weimao are the individuals with control of the relevant overseas persons;
- for the overseas investment.

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<sup>23</sup> We assume that these are dairy products being sold in China and elsewhere in Asia by SPGL.

<sup>24</sup> New Zealand trademark 834002.

<sup>25</sup> New Zealand trademark 834001.

<sup>26</sup> See Appendix 3 for a list of third party submissions received by the Overseas Investment Office.

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

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

<b>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?</b>	✓
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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 the Landcorp Agreements in February 2012 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 recommended consent conditions 1 and 8 in Appendix 1.

Information relevant to the business experience and acumen of the individuals with control of the relevant overseas person can be found in supporting material, volume A, tab 1, pages A-11 and A-12, and tab 4.

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

<b>Has the relevant overseas person demonstrated financial commitment to the overseas investment?</b>	✓
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#### Applicant's Claims:

The Applicant has paid a total of NZD \$ [REDACTED]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.

In September 2011, the Applicant agreed to the receivers undertaking urgent capital expenditure of just over NZD \$ [REDACTED]k (plus GST) in order to protect the farm quality and environment. In March 2012, the Applicant agreed to the receivers undertaking further urgent capital expenditure of up to NZD \$2.7m (plus GST). These amounts will be added to the final purchase price.

The Applicant intends to finance the transaction by way of a [REDACTED].

#### OIO Assessment:

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

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

<b>Is the relevant overseas person, or are all the individuals with control of the relevant overseas person, of good character?</b>	✓
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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 Appendix 8.

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

<b>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?</b>	✓
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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 ss 15 or 16 of the Immigration Act 2009.

For further details, please see Appendix 8.

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

<b>Will the overseas investment benefit, or is it likely to benefit, New Zealand (or any part of it or group of New Zealanders)?</b>	✓
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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 of jobs
- 17(2)(a)(iv) Greater efficiency or productivity
- 17(2)(a)(v) Introduction into New Zealand of additional investment for development purposes
- 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
- 28(j) New Zealanders' ability to oversee or participate



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

<b>Will the benefit be, or is the benefit likely to be, substantial and identifiable?</b>	✓
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OIO Assessment:

The Overseas Investment Office considers that the benefit identified under s 16(1)(e)(ii) is substantial and identifiable.

*How to apply s 16(1)(e)(iii)*

Under s 16(1)(e)(ii) of the Act, the relevant Ministers must determine whether the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined by the relevant Ministers under s 17. Under s 16(1)(e)(iii) of the Act, the relevant Ministers must determine that the benefit under s 16(1)(e)(ii) will be, or is likely to be, substantial and identifiable, for consent to be granted.

Under s 17(1) the relevant Ministers:

- must consider all the factors in s 17(2) to determine which factor or factors (or parts of them) are relevant to the overseas investment; and
- must determine whether the criteria in s 16(1)(e)(ii) and (iii) are met after having regard to those relevant factors; and
- may, in doing so, determine the relative importance to be given to each relevant factor (or part).

In *Tiroa E*, Miller J says:<sup>27</sup>

The Act does not require that benefits be quantified, however, only that the Ministers be satisfied, for farm land, that substantial and identifiable benefits are likely to flow from the overseas investment. It is a matter of inquiring, for each claimed economic benefit, whether it is likely to happen absent the overseas investment and is substantial and identifiable. The weighing of economic benefits among themselves and against non-economic benefits requires not calculation but Ministerial judgement.

The Overseas Investment Office considers that the Act requires an assessment of the relevant factors collectively against the tests in s 16(1)(e)(ii) and (iii), rather than each relevant factor individually. This allows the relevant Ministers to determine the relative importance of each relevant factor (or part).

*The benefit is substantial and identifiable*

The Overseas Investment Office considers that the benefit under s 16(1)(e)(ii) is likely to be substantial and identifiable having regard to the relevant factors (listed in paragraph 47 above) collectively, and having particular regard for the following factors, all of which the Overseas Investment Office recommends you determine to be of high relative importance.

- The introduction into New Zealand of NZ\$12.5m from overseas for development purposes (s 17(2)(a)(v));
- The mechanisms for protecting or enhancing existing areas of significant indigenous vegetation, significant habitats of indigenous fauna, and protected wildlife, including the restoration of duneland and wetland areas, retirement of land from grazing, and the formal protection of areas, for example through the QEII Trust (s 17(2)(b)-(c));
- The mechanisms for protecting or enhancing historic heritage within the relevant land, including the transfer of the Nga Herenga pa site to the Crown for no consideration, and the entry into the heritage covenant of the Te Ruaki pa site at Tiwhaiti (s 17(2)(d));
- The mechanisms for providing, protecting, or improving walking access over Benneydale 1, Benneydale 2 and Taharua (s 17(2)(e));

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<sup>27</sup> *Tiroa E* at [39].

- Offer of riverbed to the Crown, including parts of the Waimiha Stream and the Te Kakaho Stream at Benneydale 1; the Mangemange Stream at Tiwhaiti; and the Taharua River at Taharua (s 17(2)(f));
- The consequential benefits flowing from the establishment of an on-farm training facility (r 28(a));
- The giving effect to or advancement of the NZ Inc China Strategy (a significant Government strategy), one of the aims of which is to increase bilateral investment to levels that reflect New Zealand’s growing commercial relationship with China (r 28(f)).

A third party, CFIPG, submitted that:<sup>28</sup>


Section 16(1)(e)(iii) of the Act requires that the benefit to New Zealand must be “substantial and identifiable”. It follows that benefits which do not meet that threshold – because the degree of benefit is not “substantial” or because the nature or certainty of the benefit means it is not “identifiable” – should be disregarded for the purposes of the analysis.

The Overseas Investment Office considers that it is unnecessary to consider whether each benefit is substantial and identifiable. Instead, the Act requires an assessment of the relevant factors collectively against the tests in s 16(1)(e)(ii) and (iii), rather than each relevant factor individually. This allows you to determine the relative importance of each relevant factor (or part).

However, even if CFIPG’s proposed test were correct, the Overseas Investment Office considers that the benefits resulting from each of the seven bullet pointed factors above are both substantial and identifiable.

The Overseas Investment Office has also considered whether its recommendation in respect of s 16(1)(e)(ii) and (iii) would be affected if it were to adopt the alternative approaches to certain factors discussed below, either separately or in combination, and has concluded that its recommendation would be the same. In particular, none of the alternative approaches would result in a reduced benefit under any of the seven bullet pointed factors listed above.

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

<b>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?</b>	
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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 (“the Regulations”).

A more comprehensive analysis of the advertising requirements and how those requirements have been satisfied can be found in Appendix 9.

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<sup>28</sup> Further submission, supporting volume A, tab 9, page A-211.

## Factors set out in s 17 of the Overseas Investment Act 2005

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

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

Applicant's Claims:

The Applicant claims that there will be up to 8 new Full Time Equivalent ("FTE") positions created.

Under the proposed arrangements with Landcorp, [REDACTED]

The Applicant and Landcorp estimate having 88 FTE positions on the farms (including casual labour). The receivers have not advised, and the Applicant understands that the receivers are not aware of, the number of persons currently engaged by the farm operators but it is not expected to exceed 88 FTEs. In any event, the Applicant acknowledges that the number of FTE positions is likely to be less than the industry average.

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 their 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 the Applicant's parent company intends to make in marketing and (indirectly through joint ventures) in processing dairy products. These investments will not be made unless the Applicant establishes its business in New Zealand by the acquisition of the farms, and therefore can be said to be related to the acquisition of the farms.

The Applicant claims that it will establish an on-farm training facility, at a cost of NZD \$ [REDACTED] m. The aim of the on-farm training facility is to produce job-ready farming graduates who will have the skills to manage a progressive dairy farm in New Zealand. They will be financially literate, skilled in the use of a range of technologies, and able to implement farm business plans. The Applicant claims that there are no other dairy programmes within New Zealand that will produce a job ready graduate at the level (herd manager) envisaged for the on-farm training facility. Two FTE jobs will be created if the proposed on-farm training facility is established.

### OIO Assessment:

The Overseas Investment Office considers that this factor is relevant because the overseas investment is likely to result in the creation of two new job opportunities in New Zealand due to the creation of the on-farm training facility. However, the number of new jobs is modest given the size of the business operating on the properties.

However, the Overseas Investment Office is not certain that new job opportunities will or will likely be created in respect of the marketing and processing, greater productivity, and capital expenditure, as claimed by the Applicant.

#### *On-farm training facility*

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 the on-farm training facility will provide training services in addition to the on-the-job training that would ordinarily be given to dairy farm employees.

Without the Investment, the Overseas Investment Office considers that it is unlikely that the on-farm training facility would be developed. We recommend that you impose conditions of consent requiring the establishment of this facility (and thus the establishment of these two new positions).

#### *Marketing and processing*

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.

#### *Greater productivity/capital expenditure*

The Overseas Investment Office considers that any increase in productivity may result in new job opportunities.

The Overseas Investment Office considers that capital expenditure on new housing, fencing, fertilizing and other farm infrastructure is likely to create significant short term employment opportunities for local businesses, although we have insufficient information to quantify these new job opportunities.

However, the Overseas Investment Office does not consider it likely that the farms will remain in their present state in the hands of an Alternative New Zealand Purchaser. Without the investment, new job opportunities would likely still result. The Overseas Investment Office does not know whether the new job opportunities with the Investment will likely be greater than the new job opportunities without the Investment.

#### *Retention of existing jobs that would or might otherwise be lost*

The Overseas Investment Office considers that it has insufficient information to assess whether the Investment is likely to result in the retention of existing jobs in New Zealand that would or might otherwise be lost. The receivers have not advised, and the Applicant understands that the receivers are not aware of, the number of persons currently engaged by the farm operators. It is not known whether any of the existing jobs are at risk of being lost.

Without this information, the Overseas Investment Office is unable to consider whether, with or without the Investment, existing jobs are likely to be retained that would or might otherwise be lost.

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

<b>Will the overseas investment result in, or is it likely to result in, the introduction into New Zealand of new technology or business skills?</b>	<b>X</b>
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**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 Applicant'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. The Applicant 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 the Investment will result in, or is likely to result in, the introduction of 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

<b>Will the overseas investment result in, or is it likely to result in, increased export receipts for New Zealand exporters?</b>	<b>Unknown</b>
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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 ■■■ million kgMS and the estimated production in the 2010/11 season is ■■■ million kgMS. These figures are below the average production in the relevant geographical areas. The Applicant's target production, without any dairy conversion, is ■■■ million kgMS in the 2012/13 season, increasing to ■■■ million kgMS in 2013/14 and ■■■ 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 does not know whether or not the Investment will result in, or is likely to result in, increased export receipts for New Zealand exporters.

The Overseas Investment Office considers that any increase in production will likely result in increased export receipts for New Zealand exporters through the increased production of milk products.

The Overseas Investment Office considers that without the Investment, an Alternative New Zealand Purchaser would likely increase production on the farms, due to the current run down state of the farms. Therefore, without the Investment, increased export receipts will likely still result.

The Overseas Investment Office does not know whether the increased export receipts with the Investment will likely be greater than the increased export receipts without the Investment.

The Applicant has not yet entered into partnership-type arrangements with dairy processors, 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

<b>Will the overseas investment result in, or is it likely to result in, added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand?</b>	✓
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**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 ■ million kgMS and the estimated production in the 2010/11 season is ■ million kgMS. These figures are below the average production in the relevant geographical areas. The Applicant's target production, without any dairy conversion, is ■ million kgMS in the 2012/13 season, increasing to ■ million kgMS in 2013/14 and ■ 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 claims that MS/cow in 2010/11 in the Landcorp herd was [REDACTED] greater than the average cow nationally. In 2009/10, the MS/cow in the Landcorp herd was [REDACTED] greater than the average cow nationally. Prior to 2009/10, the MS/cow in the Landcorp herd [REDACTED] the average cow nationally.

In 2010/11, farms in the Landcorp portfolio produced fractionally less MS/ha than the average farm nationally ([REDACTED] MS/ha compared to 923 MS/ha), with a stocking rate [REDACTED] below the national average.

Landcorp explains the improvement by saying that the increase in MS/cow can be attributed to the introduction of the MilkHub dairy management system ("MilkHub"), which is based on individual cow management. [REDACTED]

Landcorp have calculated the internal rate of return from MilkHub to be over [REDACTED]%. The Applicant and Landcorp propose to spend NZD \$[REDACTED] k introducing MilkHub to the Crafar Farms.

The Applicant claims that the arrangement with Landcorp will result in greater efficiencies for the following reasons:

- Collective group of farms: Efficiency will come from the farms being managed together with Landcorp's other North Island dairy and dry stock farms. Landcorp is uniquely placed to achieve the benefits of operating a group of farms which collectively are more economically effective. For example, in years of drought in some areas, and excessive pasture growth in other areas, Landcorp may use other properties to assist the Crafar Farms in optimising their performance.

An example of the benefits from this integrated approach was when drought ravaged much of the North Island half way through the 2008/09 milking season. Landcorp was able to transfer 450 dairy cows to its irrigated Canterbury properties from its Kaitaia farming enterprise.

- Machinery syndicates: Landcorp has developed machinery syndicates servicing a number of farms. Bigger but fewer tractors are run more efficiently, completing all seasonal work. The financial target is an [REDACTED]% return on machinery and vehicles deployed within the syndicate.
- Reduction in price of farm inputs: Landcorp obtains competitive commercial purchasing advantages for many of its material inputs and agricultural services. Landcorp's purchasing power is a function of operating 122 farms, including 44 dairy units. In 2010, the benefits were in the order of [REDACTED]% of the relevant inputs (which excluded staff costs).

The Applicant also claims the Investment will add competition to dairy exports by its collateral activities, especially value added consumer dairy products exported to China and East Asia markets.

The Applicant claims that it will enhance domestic services by establishing an on-farm training facility, at a cost of NZD \$[REDACTED]m. The aim of the on-farm training facility is to produce job-ready farming graduates who will have the skills to manage a progressive dairy farm in New Zealand. They will be financially literate, skilled in the use of a range of technologies, and able to implement farm business plans. The Applicant claims that there are no other dairy programmes within New Zealand that will produce a job ready graduate at the level (herd manager) envisaged for the on-farm training facility.

#### OIO Assessment:

The Overseas Investment Office considers that this factor is satisfied by reference to the greater efficiency or productivity that will likely result from the Applicant's arrangement with Landcorp.

#### *Added market competition*

The Overseas Investment Office is not satisfied that the Investment is likely to result in added market competition in New Zealand, as the Applicant did not provide any evidence that the Investment will, or is likely to, result in added market competition, other than simply stating that the Applicant would add competition to dairy exports by its collateral activities, especially value-added consumer dairy products exported to China and East Asia markets.

*Greater efficiency or productivity*

The Overseas Investment Office is satisfied that the Investment is likely to result in greater efficiency or productivity in New Zealand, though we consider the matter to be finely balanced, and that the increase in efficiency/productivity relative to an Alternative New Zealand Purchaser is limited in extent.

The Overseas Investment Office considers that without the Investment, an Alternative New Zealand Purchaser would likely increase efficiency by improving upon the current run down state of the farms. However, the Overseas Investment Office is satisfied that the efficiencies will likely be greater with the Investment than without. This is due to the efficiencies arising from managing the farms together with Landcorp's existing farms and likely reduced farm input costs.<sup>30</sup>

The Overseas Investment Office considers that the claimed increased productivity is largely a function of the MilkHub technology, capital investment, and the greater efficiencies identified above. The Overseas Investment Office considers that an Alternative New Zealand Purchaser will likely not use the MilkHub technology, as Landcorp claims it is used by less than 1% of the dairy industry.<sup>31</sup>

Despite the likely greater productivity (measured by MS/cow), the Overseas Investment Office cannot say that the farms will likely produce more MS/ha with the Investment than without the Investment. This is because farms in the Landcorp portfolio in 2010/11 had a lower stocking rate than the national average, and produced fractionally less MS/ha.<sup>32</sup> However, the Overseas Investment Office notes that "productivity" is not limited to simply how much is produced, it is also a measure relating to the quantity or quality of output to the inputs required to produce it.


The Overseas Investment Office considers that without the Investment, an Alternative New Zealand Purchaser would likely increase productivity on the farms, due to the current run down state of the farms. However, the Overseas Investment Office is satisfied that the productivity is likely to be greater with the Investment than without due to the efficiencies identified above.

The Overseas Investment Office's conclusion in relation to this factor is based on its finding that with the Investment there would be greater efficiency or productivity. If the conclusion was that there was no greater efficiency or productivity with the Investment, then that would not alter the overall recommendation.

*Enhanced domestic services*

The Overseas Investment Office considers that it is more appropriate to consider any benefits relating to the on-farm training facility under r 28(a) of the Regulations regarding consequential benefits.

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

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

Applicant's Claims:

The Applicant intends to invest NZD \$18.7m before December 2017 (plus over NZD \$█m for additional Fonterra shares) in the land and farms. This includes NZD \$15.5m before December 2015. These funds will be introduced into New Zealand, and 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.

<sup>30</sup> Supporting material, volume A, tab 3, pp A-84, A-87, 88.

<sup>31</sup> Supporting material, volume A, tab 3, pp A-88, 89.

<sup>32</sup> Supporting material, volume A, tab 3, p A-85.



The Applicant claims it will spend NZD \$18.7m and submits that the average New Zealand farmer may spend \$6.2m, as set out in the table below:

Development	Applicant's proposed spend	Average farmer spend	Variance	Applicant's comments
New housing and house improvements	████	████	████	The average NZ farmer may not build new houses or improve houses to the level Landcorp would, as it has 'Farmpride' standards which ensures a high standard for housing.
On-farm training facility	████	\$0	████	No dedicated on-farm training facility would be provided by a NZ farmer.
Regrassing	████	████	████	The average NZ farmer may allow for some re-grassing, but may largely do this in operating expenditure. Landcorp plan 10% allowance per annum in operating expenditure which is a maintenance regrassing plan in addition to the capital expenditure noted.
Water supply	████	████	████	The average NZ farmer may not add second troughs in paddocks and may not upgrade the water systems to the specifications Landcorp will. However, any purchaser would need to address the iron-water issue at Collins Road farm.
Provision for DOC	\$800k	\$0	\$800k	The average NZ farmer would have no requirement to undertake the walkway access, conservation fencing and protection of pa sites.
Soil fertility	████	████	\$0	The average NZ farmer would likely allow similar amounts of capital to improve soil nutrient levels.
Plant upgrades	████	████	████	The average NZ farmer is not likely to build new sheds and is likely to spend the minimal amount required on shed and plant upgrades. The average NZ farmer is unlikely to invest in a new dairy shed at Reporoa (NZD █████) capable of milking 3000 cows, and NZD \$████ on MilkHub technology.
Race, culverts, bridges	████	████	████	The average NZ farmer may not allow similar amounts of capital for race and track developments.
Contingency	████	████	████	The average NZ farmer is unlikely to budget contingency clean up spending to improve the appearance and compliance of the properties to Landcorp's high 'Farmpride' standard.
Planting and riparian	████	\$0	████	The average NZ farmer is unlikely to undertake spending at Taharua farm on waterways and riparian planting.
Other buildings	████	\$0	████	Landcorp farms have quality offices placed at the dairy shed, unlike the average farmer who would tend to use a room in the family dwelling. Landcorp offices have high quality internet connections enabling advanced technology for optimising farm systems and also provide kitchens and bathrooms for staff.

Development	Applicant's proposed spend	Average farmer spend	Variance	Applicant's comments
Effluent	█	█	█	The average NZ farmer may only upgrade effluent systems to current minimum Regional Council standards. They may not invest for future requirements for storage and/or land application systems to the level of Landcorp.
Fencing	█	█	█	The average NZ farmer may not fence to the 'Farmpride' standard.
<b>TOTAL</b>	<b>\$18.7m</b>	<b>\$6.2m</b>	<b>\$12.5m</b>	

The Applicant has also agreed to up to NZD \$2.7m (plus GST) of the investment above being undertaken by the receivers, prior to the Applicant acquiring the farms, in order to protect the farm quality and environment. The Applicant has agreed to add the cost of this additional investment to the purchase price.

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 will be approximately NZD \$█m.

The Applicant notes Miller J's comment that<sup>33</sup> "[w]hat can be said is that investment capital introduced into New Zealand counts as an economic benefit in itself under s 17(2)(a)(v)".

#### OIO Assessment:

The Overseas Investment Office considers that there is a tension in *Tiroa E* concerning how to interpret this factor.

- At paragraph [44] of *Tiroa E*, Miller J made it clear that the Ministers must assess the economic factors in s 17(2)(a), of which this factor is one, by assessing what would happen 'with and without' the overseas investment, which suggests that the appropriate counterfactual analysis considers whether an alternative New Zealand purchaser would also undertake additional investment for development purposes.
- However, at paragraph [41], Miller J appears to accept that the introduction into New Zealand of additional investment for development purposes is an economic benefit in itself, which suggests that a counterfactual analysis considers whether an alternative New Zealand purchaser would introduce capital for development purposes into New Zealand.

The Overseas Investment Office considers that there are strong arguments in favour of both approaches. However, on balance, the Overseas Investment Office prefers the first approach.

In any event, the Overseas Investment Office considers that using either of the approaches identified above, the Applicant will introduce into New Zealand a significant amount of additional investment for development purposes.

#### *Preferred approach*

This approach involves asking two questions:

- Will there be additional investment for development purposes (compared with an Alternative New Zealand Purchaser)?
- Will the additional investment be introduced into New Zealand?

<sup>33</sup> *Tiroa E* at [41].

The Overseas Investment Office considers that the Applicant will likely introduce into New Zealand NZD \$18.7m of additional investment. The Applicant's detailed analysis of the proposed investment for development purposes can be found in supporting material, volume C, pages C-19-C-22. 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.

Some of the Applicant's claimed investment for development purposes should be discounted. For example, it is unclear the extent to which the claimed additional investment is in fact the maintenance or repair of existing assets and the extent to which it represents new or upgraded assets. To the extent that the investment is for the maintenance or repair of existing assets, then the Overseas Investment Office considers that it is not for development purposes and should be discounted.

The Overseas Investment Office considers that the majority of the estimated NZD \$2.7m urgent capital expenditure undertaken by the receivers is likely to be for maintenance and repairs in order to keep the farms operational.

However, the Overseas Investment Office considers that the remainder of the developments outlined above (totalling NZD \$16m, having discounted the \$2.7m) will predominantly comprise additional investment for development purposes.

The Applicant considers that the "average New Zealand farmer" would likely spend approximately \$6.2m in relation to these farms, for the reasons set out in the table above. One of these reasons is that under the Applicant's ownership, the farms will be managed to Landcorp's "Farmpride" standard, which the Overseas Investment Office accepts an Alternative New Zealand Purchaser is unlikely to do. The Overseas Investment Office therefore considers it likely that an Alternative New Zealand Purchaser would spend less than the Applicant on new and upgraded housing; regrassing; water supply; plant upgrades; contingency; riparian planting; offices; effluent; and fencing.

The Overseas Investment Office notes that the "average New Zealand farmer" is not the counterfactual comparator identified in this case. However, in light of the counterfactual identified at paragraph 13 of the Memorandum, the Overseas Investment Office considers that the "Average farmer spend" is consistent what an Alternative New Zealand Purchaser is likely to spend. Further, the Overseas Investment Office considers that it reasonable to rely on the "Average farmer spend" in the table above as the information has been supplied to the Applicant by Landcorp, which is a state owned enterprise and is a reputable and highly regarded corporate farmer.

The Overseas Investment Office accepts Landcorp's claim that an average New Zealand farmer (or an Alternative New Zealand Purchaser) is unlikely to create an on-farm training facility or make provision for the initiatives categorised as 'Provision for DOC'.

The Overseas Investment Office considers that some of the NZD \$6.2m that an Alternative New Zealand Purchaser would spend, would not be for development purposes. For example, the \$2.7m of urgent capital expenditure is likely to be for maintenance and repairs (and not for development purposes), and is also likely to be undertaken by an Alternative New Zealand Purchaser. Therefore of the NZD \$6.2m, approximately NZD \$3.5m will be for development purposes.

Accordingly, the Overseas Investment Office considers that, with the Investment, an additional investment for development purposes of approximately NZD \$12.5m is likely to be made.

The Overseas Investment Office is satisfied that the additional investment will be introduced into New Zealand.

The Overseas Investment Office recommends that you impose conditions of consent requiring the Applicant to give effect to the capital expenditure plan outlined above, and requiring that the 'additional investment' be 'introduced into New Zealand'.

*Alternative approach:*

The alternative approach to this factor is to ask first whether additional investment will be introduced into New Zealand. And second whether it is for development purposes. If the counterfactual analysis suggests that, without the investment, it is likely that additional investment would not be introduced into New Zealand, the full amount of additional investment can be counted under this factor, so long as the additional investment is for development purposes.

Using this approach, the Overseas Investment Office considers that an Alternative New Zealand Purchaser would be unlikely to introduce additional investment into New Zealand. Therefore, \$16m of additional investment for development purposes is likely to be introduced into New Zealand.

The Overseas Investment Office's recommendation has been made on the basis of the preferred approach described above. If the alternative approach to this factor were to be adopted, then that would not alter the recommendation. Rather, it would provide further support for that view.

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

<b>Will the overseas investment result in, or is it likely to result in, increased processing in New Zealand of New Zealand's primary products?</b>	Unknown
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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 does not know whether the Investment will result in, or is likely to result in, increased processing in New Zealand of New Zealand's primary products.

The Overseas Investment Office considers that any increase in production will likely result in increased processing in New Zealand of New Zealand's primary products as the extra milk produced cannot practically be sold in an unprocessed state.

The Overseas Investment Office considers that without the Investment, an Alternative New Zealand Purchaser would likely increase production on the farms, due to the current run down state of the farms. Therefore, without the Investment, increased processing will likely still result.

The Overseas Investment Office does not know whether the increased processing with the Investment will likely be greater than the increased processing without the Investment.

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

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

Applicant's Claims:

The Applicant is committed to adopting each of the recommendations made in five reports by Wildland Consultants Limited ("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 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 on Taharua, Ferry View, Tiwhaiti, Plateau, Pineview, Cirencester, Rawhiti, Benneydale 1 and Benneydale 2.

The Applicant has budgeted NZD \$800k for the works associated with these factors, and with the factors in s 17(2)(d) (historic heritage) and 17(2)(e) (walking access). The Applicant has also budgeted NZD \$ [REDACTED] for riparian planting and fencing, much of which will be used for the works associated with these factors.

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.

The Overseas Investment Office recommends that you impose conditions of consent requiring the Applicant to implement all measures agreed to with DOC (which has considered and commented on the various Wildland Consultants reports).

### *Taharua*

Taharua adjoins the Kaimanawa Forest Park. The Applicant has agreed to protect a 30 metre riparian buffer along the Taharua River<sup>34</sup> through stock proof fencing, additional indigenous tree planting<sup>35</sup>, removal of willow stands,<sup>36</sup> retirement/fencing of rougher hill country and possum and feral deer control. In relation to the retirement/fencing of rougher hill country, the Applicant has agreed to consult with DOC and implement DOC's preferred option from options outlined in the Wildland Consultants report 2618a. We note that one of the options is to formally retire and protect (eg through a QEII covenant), approximately 329 hectares of indigenous forest, scrub and associated rough hill country in the south western part of the property. Another option is to retain a grazing regime over this area, but fence stream headwaters (this option would require substantial new fencing at a cost of \$ [REDACTED] to \$ [REDACTED] )

The Overseas Investment Office recommends that Ministers impose consent conditions requiring the Applicant to implement the recommendations in the Wildland Consultants report 2618a and consult with DOC before implementing those recommendations.

The Overseas Investment Office considers that without the Investment it is likely that an Alternative New Zealand Purchaser would undertake fencing in accordance with the Dairying and Clean Stream Accord. However, the Overseas Investment Office considers that an Alternative New Zealand Purchaser is unlikely to undertake the following initiatives due to the fencing costs involved and opportunity costs of retiring any grazing/cropping areas:

- removal of willow stands;
- retirement, fencing or formal protection of 329 hectares of indigenous forest, scrub and associated rough hill country;
- fencing of the 30m riparian buffer along the Taharua River at a length of at least approximately 8.5km (the Overseas Investment Office considers it is unlikely that an average New Zealand farmer would undertake this fencing because there would be no financial benefit).

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<sup>34</sup> This would involve fencing off approximately 8.5km of the river (and in some places both sides), supporting material, volume D, tab 2, page D-9.

<sup>35</sup> Indicative re-vegetation costs could be \$ [REDACTED] to \$ [REDACTED] per hectare, supporting material, volume D, tab 2, page D-18.

<sup>36</sup> Indicative costs could be \$ [REDACTED] to \$ [REDACTED] per km of infestation, supporting material, volume D, tab 2, page D-19.

### *Ferry View*

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 wetland and duneland areas<sup>37</sup> and researching a possible whitebait spawning habitat. Two wetland areas are habitat for Australasian Bittern (a Threatened Species) and meet two of the national priorities for protection of biodiversity on private land (page 11 of Wildland report 2618c).

The Overseas Investment Office recommends that Ministers impose consent conditions requiring the Applicant to implement the recommendations in the Wildland Consultants report 2618c.

The Overseas Investment Office considers that without the Investment it is likely that an Alternative New Zealand Purchaser would undertake stock exclusion fencing.

However, the Overseas Investment Office considers that without the Investment, or without conditions, there will likely not be the restoration of wetland and duneland areas and research of a possible whitebait spawning habitat.

### *Tiwhaiti*

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. These include willow control and fencing off a buffer around the raupo wetland. This wetland provides a locally important habitat for the North Island fernbird which is classified as At Risk of Declining.

In addition to those recommendations the Applicant is committed to adopting the additional measures suggested by DOC which include fencing, surveying mudfish numbers and weed and pest control. The Overseas Investment Office recommends that Ministers impose consent conditions requiring the Applicant to implement the recommendations in the Wildland Consultants report 2618d and undertake a survey of mudfish in the rivers on Tiwhaiti.

The Overseas Investment Office considers that without the Investment it is likely that an Alternative New Zealand Purchaser would undertake weed and pest control, and some fencing. However, the Overseas Investment Office considers that an Alternative New Zealand Purchaser would not likely fence off a buffer around the raupo wetland as it is currently used for water supply. Also, an Alternative New Zealand Purchaser is unlikely to control willows at an indicative cost of \$[REDACTED] to \$[REDACTED] and undertake fish surveys.

### *Plateau, Pineview, Cirencester and, Rawhiti*

A further Wildland Consultants report was prepared for these 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 Consultants made in the context of the Natural Dairy application and is prepared to commit to also adopting the Wildland Consultants recommendations made in respect of those farms. DOC has previously indicated that it supports these recommendations. The Wildland Consultants recommendations include the retiring of the gully containing manuka scrub on Cirencester, poisoning of wilding pines and formalising protection of the gully (eg with the QEII National Trust). The Overseas Investment Office recommends that Ministers impose consent conditions requiring the Applicant to implement the recommendations in the Wildland Consultants report 2441e.

The Overseas Investment Office considers that without the Investment, or without conditions, an Alternative New Zealand Purchaser is unlikely to retire and formally protect the gully on Cirencester, or undertake poisoning of wilding pines at cost of \$[REDACTED] to \$[REDACTED]

### *Benneydale 1 and Benneydale 2*

Benneydale farms are located within the Pureora Ecological District and adjoin the Waipapa Ecological Area, which is regarded as one of the most ecologically valuable mainland forest areas within the public conservation estate. The Waipapa Ecological Area now contains the largest remaining mainland populations of North Island kaka and North Island kokako.

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<sup>37</sup> Potentially \$[REDACTED] per hectare for up to seven hectares of duneland areas, supporting material, volume D, tab 4, page D-86.

The Wildland Consultants report 2618b has recommended that the Applicant consider formally protecting (e.g. with the QEII National Trust) several natural areas for their contributions to local biodiversity protection, and catchment and landscape values. These include:

- the contiguous area of harakeke wetland, tawa-podocarp forest and treeland and manuka scrub on the northern boundary (approximately 23.3 ha in total) where fernbird and spotless crane were detected;
- the large indigenous forest block north and west of SH30 and Waitaramoa Road;
- the mosaic of forest, treeland and riparian scrub in the headwaters of the Mangatahae Stream.

The Applicant has agreed to the formal protection of those areas. It is therefore recommended that the Ministers impose a consent condition requiring the Applicant to formally protect those areas identified in Wildland Consultants report 2618b.

In addition, Wildland Consultants report 2618b recommends:

- Controlling the willow infestation in the harakeke wetland and the retention of existing indigenous vegetation;
- Fencing of riparian margins in the Waimiha Stream system (which drains Benneydale 1 farm), which has sports fishery values downstream. This fencing would include the fencing and retirement of the two dams in the north-western corner of the properties. Indicative costs could be \$ [REDACTED] to \$ [REDACTED] subject to length and specification of fence line actually required;
- Eradicating feral goats in the Waitaramoa Road forest and controlling possums.

The Overseas Investment Office recommends that Ministers impose consent conditions requiring the Applicant to implement the recommendations in Wildland Consultants report 2618b and consult with DOC before implementing those recommendations.

The Overseas Investment Office considers that without the Investment it is likely that an Alternative New Zealand Purchaser would undertake riparian fencing (in accordance with the Dairying and Clean Stream Accord) and pest control. However, the Overseas Investment Office considers that without the Investment, or without conditions, an Alternative New Zealand Purchaser is unlikely to formally protect the harakeke wetland, the large indigenous forest block and the headwaters of the Mangatahae Stream identified above due to the costs involved (including the opportunity costs of retiring any grazing/cropping areas as a result). The Overseas Investment Office also considers it is unlikely that an Alternative New Zealand Purchaser would control the grey willow infestation in the harakeke wetland due to the significant costs involved.

#### *Relative importance*

The Overseas Investment Office considers that this factor is of high relative importance because of the proximity of certain farms to ecologically valuable areas, the presence of threatened and at-risk species on certain farms, and the diverse range of habitats on the farms.

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

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

The following historic heritage features have been identified:

- **Benneydale 1:** Benneydale 1 contains the Nga Herenga pa site located on the corner of the property and closely adjacent to a public road. 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 has agreed to transfer the pa site to the Crown (OTS) for no consideration, and provide reasonable access to the Nga Herenga pa site following the transfer. 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:** Tiwhaiti contains an archaeological pa site (Te Ruaki) numbered Q21.5 in the New Zealand Archaeological Association site record. HPT 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 Overseas Investment Office is satisfied that there will be adequate mechanisms in place for protecting or enhancing historic heritage within the relevant land.

The Overseas Investment Office considers that the Nga Herenga pa (on Benneydale 1) and the Te Ruaki pa (on Tiwhaiti) require protection, and recommends that you impose conditions requiring the Applicant to protect them.

There are also likely to be other historic heritage sites within the relevant land. The Overseas Investment Office recommends that you require the Applicant to conduct an archaeological survey on Benneydale 1, Benneydale 2, Taharua and Tiwhaiti.

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

*Protection of Nga Herenga pa and Te Ruaki pa*

The Nga Herenga pa is important to the descendants of Rereahu. Nga Herenga is the place where Rereahu, an 11<sup>th</sup> generation direct descendent of Hoturoa, captain of the Tainui Waka, passed away and passed his Mana to his son, Maniapoto. Nga Herenga and other areas were lost to the Iwi during the 1880s through native land laws.

The Applicant has offered to transfer the Nga Herenga pa site to the Crown for nil consideration. OTS has indicated that it would likely recommend that the site be transferred to the descendants of the original owners of the Maraeroa A and B Blocks<sup>38</sup>. The Overseas Investment Office considers that transferring the Nga Herenga pa site to the Crown is appropriate, and represents an adequate mechanism for protecting and enhancing historic heritage on Benneydale 1.

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<sup>38</sup> On 12 March 2011, the Crown settled a number of historical claims with the descendants of the original owners of the Maraeroa A and B Blocks. Benneydale 1 was originally part of these blocks.



The Te Ruaki pa, on Tiwhaiti, is important to Ngati Ruanui, but has previously been damaged by farming activities. The Applicant has offered to execute a heritage covenant (in a form proposed by HPT) in respect of the Te Ruaki pa site. The covenant focuses on maintaining vegetation cover and minimising erosion, and provides for reduced stocking during wet weather in order to prevent further damage. HPT has told the Overseas Investment Office that they would consider there to be adequate mechanisms in place to “protect significant historic and cultural heritage” if the Applicant executes a heritage covenant, and provides a letter of support for wahi tapu registration for Te Ruaki pa. The Overseas Investment Office considers that registering a heritage covenant, and supporting wahi tapu registration, in respect of the Te Ruaki pa site are adequate mechanisms for protecting and enhancing historic heritage on Tiwhaiti.

The Overseas Investment Office recommends that you impose conditions requiring the Applicant to transfer the Nga Herenga pa site to the Crown, and execute a heritage covenant, and support wahi tapu registration, in respect of the Te Ruaki pa site.

The Overseas Investment Office considers that without the Investment it is unlikely that an Alternative New Zealand Purchaser would transfer the Nga Herenga pa site to the Crown, or execute a heritage covenant in respect of the Te Ruaki pa site.

*Identification and protection of other historic heritage:*

Although the Overseas Investment Office has not been provided details of other possible historic heritage sites, there have been claims that other sites may exist on Benneydale 1 and 2 and Taharua. The Overseas Investment Office is aware that Te Punawai a Waipapa is on Benneydale 2. Te Punawai a Waipapa is a sacred spring/lagoon where the Waipapa River commences and which is sacred to both Rereahu and Raukawa. The Overseas Investment Office considers that an archaeological survey should be undertaken on Benneydale 1, Benneydale 2, Taharua and Tiwhaiti in consultation with local Iwi.

Provided an archaeological survey is completed, the Overseas Investment Office considers that the existing legal mechanisms (including the Historic Places Act 1993, and district plans) are adequate to protect historic heritage on the relevant land.

The Overseas Investment Office recommends that you impose conditions requiring the Applicant to undertake an archaeological survey.

The Overseas Investment Office considers that without the Investment it is unlikely that an Alternative New Zealand Purchaser would undertake such an archaeological survey.

*Access to historic heritage:*

The Overseas Investment Office recommends that you impose conditions requiring the Applicant to provide access to Maori to wahi tapu.

The Overseas Investment Office is unsure whether, without the Investment, an Alternative New Zealand Purchaser would grant access to Maori to wahi tapu within the relevant land.

*Relative importance*

The Overseas Investment Office considers that this factor is of high relative importance because of the presence of a historically significant pa site on Benneydale 1, the Nga Herenga pa.

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

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

The Applicant is prepared to commit to work together with DOC and WAC to provide public walking access in respect of Benneydale 1 (access from Maraeroa Road to the Pureora Forest Park), Benneydale 2 (access from SH30 to the Waipapa Ecological Area) and Taharua (access along with Taharua River and to the Te Rere Falls).

OIO Assessment:

The Overseas Investment Office is satisfied that there will 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, provided consent conditions are imposed.

The Overseas Investment Office considers that without the Investment, or without conditions, there will likely not be adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land. The Overseas Investment Office considers it unlikely that an Alternative New Zealand Purchaser would establish the walking access arrangements in respect of Benneydale 1, Benneydale 2, and Taharua, due to the cost involved, and lack of an economic return from such an investment.

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

*Benneydale 1*

Benneydale 1 adjoins part of the Pureora Forest Park (to the east), and the route of the Te Araroa Trail (to the west). The adjoining route of the Te Araroa Trail follows public roads, and roads managed by DOC, before entering the Pureora Forest Park (near DOC's Pureora field base). DOC notes that these gravel roads carry a large volume of logging traffic and are not entirely suitable for walking access.

At the western end of Benneydale 1, marginal strips allow public access along the river bed. This access terminates mid-farm but is only separated from a public road by 100m and from the Pureora Forest Park by 200m. DOC has told the Overseas Investment Office that completing this link would improve public access to the Pureora Forest Park.

The Applicant has agreed to provide such an access route. A map showing the proposed walking access, can be found attached to the recommended consent conditions, at page 48.

The Overseas Investment Office recommends that you impose conditions of consent requiring the Applicant to provide permanent public walking access between Maraeroa Road and the Waipapa Ecological Area.

*Benneydale 2*

Benneydale 2 adjoins the unlogged podocarp forests of the Waipapa Ecological Area (to the north), and at the north-eastern end of the property, the Waipapa Ecological Area lies only 250m across farmland from SH30.

According to DOC, the Waipapa Ecological Area has one of the most diverse concentrations of native bird species in the North Island, and is home to the New Zealand's largest Kaka population (more than 800 birds) and New Zealand's second largest population of kokako (77 pairs).

DOC has told the Overseas Investment Office that an access route from the highway to this forest would be very beneficial. Such an access route would not isolate any of the farm land and would allow a unique opportunity for public access from a highway to one of the best examples of unlogged forests in the country.

The Applicant has agreed to provide such an access route. A map showing the proposed walking access, can be found attached to the recommended consent conditions, at page 48.

WAC has told the Overseas Investment Office that the access route 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.

The Overseas Investment Office recommends that you impose conditions of consent requiring the Applicant to provide permanent public walking access between SH30 and the Waipapa Ecological Area.

#### *Taharua*

While the Taharua River runs through Taharua, primary access to the brown trout sport fishery is downstream<sup>39</sup> from Taharua. The Te Rere Falls is also within Taharua.

WAC has asked that an esplanade strip be created along the entire length of the Taharua River as it passes through Taharua (approximately 8.5km).

The Applicant has agreed to work with WAC to provide walking access (including agreement to a walking easement in gross) along the Taharua River and to the Te Rere Falls. The Applicant has also agreed to provide vehicle access for maintenance work along the easement area, and for those with mobility problems, along the formed road which runs south along the eastern side of the Taharua River.

The Overseas Investment Office recommends that you impose conditions of consent requiring the Applicant to provide permanent public walking access along the Taharua River.

#### *Relative importance*

The Overseas Investment Office considers that this factor is of high relative importance because of the ability to link with the Te Araroa Trail, and the opportunities for public walking access to, and between, the Waipapa Ecological Area and DOC's Pureora field base, and along the Taharua River (which could link to other walking access opportunities secured under an earlier Overseas Investment Office consent application<sup>40</sup>).

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

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

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

- Benneydale 1: the Waimiha Stream<sup>41</sup> and the Te Kakaho Stream<sup>42</sup>;
- Tiwhaiti: the Mangemange Stream<sup>43</sup>;
- Taharua: the Taharua River<sup>44</sup>.

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<sup>39</sup> Access to downstream parts of the Taharua River was secured when an adjoining land area when the Overseas Investment Office consent was granted to Westervelt Sporting Lodges (NZ) Limited's acquisition of Poronui Station in 2006 (case 200620062).

<sup>40</sup> See above.

<sup>41</sup> The Waimiha Stream is shown on the map at pages B-224 to B-226 and B-228 in supporting material, volume B, tab 7.

<sup>42</sup> The Te Kakaho Stream is shown on the map at page B-226 to B-228 in supporting material, volume B, tab 7. In this map, the Te Kakaho Stream is referred to as the 'Kakaho Stream'. Different sources give the stream different names, and the Overseas Investment Office considers that 'Te Kakaho Stream' is the name which best describes this waterway.

<sup>43</sup> The Mangemange Stream is shown on the map at page B-237 and B-239 in supporting material, volume B, tab 7. Note that the Mangemange Stream is sometimes referred to as the 'Mangimangi Stream'. What is described as the Mangemange Stream includes what is sometimes referred to as the Kiwitahi Stream.

<sup>44</sup> The Taharua River is shown on the map at pages B-240 to B-244 in supporting material, volume B, tab 7.

### OIO Assessment:

The relevant land includes riverbed which has been offered to the Crown for nil consideration in accordance with the Regulations.

A copy of the vendor's offer documents can be found in supporting material, volume B, tab 7. Diagrams showing the riverbeds that have been offered to the Crown can be found in supporting material, volume B, tab 7, pages B-217 to B-258.

Generally, the process of offering riverbed to the Crown is, in practice, a two step process:

- First, the vendor of the relevant land offers the riverbed to the Crown.
- Second, the Crown determines whether or not it wishes to acquire the riverbed, and if it does, acquires the riverbed.

Only the first step needs to be completed prior to a consent decision being made, as this is all that is required by s 17(2)(f). In order to preserve the Crown's right to acquire the river bed, the Overseas Investment Office usually recommends that the relevant Ministers impose conditions requiring applicants to honour the offer made to the Crown, and honour any arrangements made with the vendor. Later, the Overseas Investment Office sends a separate report which addresses the second step, whether the Crown should accept the offer.

### *Benneydale 1*

The Waimiha Stream and part of the Te Kakaho Stream appear to already be Crown-owned, as survey records show that marginal strips were reserved from sale under s 58 of the Land Act 1958. Under the doctrine of *ad medium filum aquae* (to the middle line of the water) there is a presumption that the Crown owns the riverbed between the marginal strips.

However, there are parts of the Te Kakaho Stream that are within the Benneydale 1 titles, and are capable of being offered by the vendor to the Crown:

- Small parts of the riverbed (particularly in the Waimiha Stream) may extend beyond the marginal strips, and therefore be within the Benneydale 1 titles.
- A short stretch of the Te Kakaho Stream, at the south-eastern end of Benneydale 1, does not appear to have had marginal strips reserved from sale and this part of the stream is therefore within the Benneydale 1 titles.

The Overseas Investment Office considers that it is unlikely that an Alternative New Zealand Purchaser would encourage the vendor to offer the riverbed on Benneydale 1 to the Crown, as there is no requirement for them to do so.<sup>45</sup>

### *Taharua*

The riverbed on Taharua does not appear to be Crown-owned, and is therefore capable of being offered to the Crown. The riverbed in question is approximately 8.5km and runs alongside, and through, Taharua. The riverbed adjoins riverbed on Poronui Station (to the South) that was offered to the Crown in 2006 when Westervelt Sporting Lodges (NZ) Limited applied to acquire Poronui Station.

The Overseas Investment Office considers that it is unlikely that an Alternative New Zealand Purchaser would encourage the vendor to offer the riverbed on Taharua to the Crown, as there is no requirement for them to do so.

### *Tiwhaiti*

The riverbed on Tiwhaiti does not appear to be Crown-owned, and is therefore capable of being offered to the Crown.

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<sup>45</sup> As Justice Miller explained at paragraph 36 of *Tiroa E*:

Subsection (f), dealing with whether riverbeds and the like have been offered to the Crown in accordance with regulations, assumes that a New Zealand buyer would not provide the same benefit for the good reason that only an overseas investor must by regulation offer such property to the Crown.

The Overseas Investment Office considers that it is unlikely that an Alternative New Zealand Purchaser would encourage the vendor to offer the riverbeds on Tiwhaiti to the Crown, as there is no requirement for them to do so.

*Relative importance*

For the following reasons, the Overseas Investment Office considers that this factor is of high relative importance:

- The recreational and ecological significance of the Taharua River. The Taharua River is recognised as a brown trout sport fishery, and is of ecological importance in its downstream contribution to the water quality of the Mohaka River, a nationally significant river system and a nationally and internationally regarded trout fishery).
- The ability to link with the existing Crown owned riverbed adjoining the Taharua River and Te Kakaho Stream.


**Factors set out in r 28 of the Overseas Investment Regulations 2005**

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60. The Overseas Investment Office has not applied a counterfactual analysis to any of the factors in r 28 of the Regulations. Miller J noted that:

The criteria listed in reg 28 deal, for the most part, with benefits that only an overseas buyer could provide or what may be loosely described as strategic considerations, so they do not require a counterfactual analysis.<sup>46</sup>

61. r28(a) Overseas Investment Regulations 2005

<b>Will the overseas investment result in, or is it likely to result in, other consequential benefits to New Zealand (whether tangible or intangible benefits (such as, for example, additional investments in New Zealand or sponsorship of community projects))?</b>	
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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 September 2011 General Agreement between Landcorp and the Applicant<sup>47</sup> 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. Each year, two students will be given NZD \$5k scholarships to attend universities. The Applicant claims that the aim of the on-farm training facility is to produce job-ready farming graduates who will have the skills to manage a progressive dairy farm in New Zealand. They will be financially literate, skilled in the use of a range of technologies, and able to implement farm business plans. The Applicant claims that there are no other dairy programmes within New Zealand that will produce a job ready graduate at the level (herd manager) envisaged for the on-farm training facility.
- Landcorp to assist the Applicant to develop its sheep farming business in China with genetic technology.

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<sup>46</sup> *Tiroa E* at [36].

<sup>47</sup> A copy of the September 2011 General Agreement can be found at in supporting material, volume B, tab 4, page B-167C.

- The Applicant to use its own ability and connections in China to help Landcorp extend its business and market its products in China. This involves extending Landcorp’s farm consultancy services (particularly in animal genetics and land development) in the development of SPGL’s existing and proposed sheep farming. Successful performance of this work could open up other opportunities for Landcorp in China. The food and animal products include the processing of sheep and beef meat produced on Landcorp farms in New Zealand with SPGL’s branding and packaging and marketing the meat through SPGL’s connections in the supermarket trade in China.

As a result of his interest in the Crafar Farms acquisition, Mr Jiang has committed to [REDACTED] [REDACTED] which can also be considered a consequential benefit to New Zealand. This investment is the acquisition of development land at [REDACTED] by a joint venture in which Mr Jiang has a [REDACTED]% interest (case 20111088).

OIO Assessment:

The Overseas Investment Office is satisfied that the overseas investment is likely to result in consequential benefits to New Zealand.

The Overseas Investment Office considers that the development of a specialised on-farm training facility is a tangible benefit for New Zealand that is likely to produce high-calibre job-ready graduates. The Overseas Investment Office considers that this training facility is distinct and additional to the on-the-job training that would ordinarily be provided to new dairy farmers. The Overseas Investment Office considers that the two NZD \$5k scholarships is also a tangible benefit.

The Overseas Investment Office considers that Landcorp’s assistance with the Applicant’s sheep farming business is not a consequential benefit to New Zealand. However, the Applicant’s help in extending Landcorp’s consultancy services (particularly in animal genetics and land development) and marketing of Landcorp’s products is likely to result in a consequential benefit for 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 \$5k scholarships annually; and
- assist Landcorp to extend its business to, and market its products in, China.

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

*Relative importance*

The Overseas Investment Office considers that this factor is of high relative importance because the Investment will create an additional, specialised education facility for young dairy farmers.

62. r28(b) Overseas Investment Regulations 2005

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

The Applicant’s parent company (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 ("FTA") between New Zealand and China came into force on 1 October 2008. MFAT's NZ Inc China Strategy, published in February 2012, reflects China's importance to New Zealand both bilaterally and regionally as an economic and trading partner. A copy of the NZ Inc China Strategy can be found in supporting material, volume B, tab 6.

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

63. r28(c) Overseas Investment Regulations 2005

<b>Will refusal adversely affect, or likely adversely affect, New Zealand's image overseas or its trade or international relations, or result in New Zealand breaching any of its international obligations?</b>	<b>Unknown</b>
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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 an 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 the 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.

The Applicant claims that there is a perception of anti-Chinese bias following the outcome of the judicial review proceedings. There has been widespread coverage both nationally and internationally of the setting aside of the Ministers’ decision. A number of news media have reported on this apparent anti-Chinese bias.

Given this context, the Applicant submits that a refusal of the reconsidered or recalibrated Overseas Investment Office application is likely to adversely affect New Zealand’s image overseas or its trade or international relations with China, and the Ministers are entitled to, and should, take this into account under r 28(c).

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 Office does not know whether or not refusal will adversely affect, or likely adversely affect, New Zealand's image overseas or its trade or international relations. However, the Overseas Investment Office considers that a refusal would not likely result in New Zealand breaching any of its international obligations.

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 adverse 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 or its trade or international relations.

64. r28(d) Overseas Investment Regulations 2005

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

<b>Has the relevant overseas person previously undertaken investments that have been, or are, of benefit to New Zealand?</b>	<b>Not Relevant</b>
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<b>Will the overseas investment give effect to or advance, or is it likely to give effect to or advance, a significant Government policy or strategy?</b>	✓
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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 ("MAF") 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.

The Applicant understands that 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.<sup>48</sup>

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 the Ministry for the Environment'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 significant Government policies or strategies.

*NZ Inc China Strategy*

MFAT have advised that the NZ Inc China Strategy (published February 2012) is the second in a series (after India) of NZ Inc country strategies that are part of the government's 120-point economic development action plan. The strategies set priorities for New Zealand's operations in our key markets, with the aim of strengthening our economic, political and security relationships with countries and regions, encourage people to people links, and two-way investment.

The China Strategy identifies five strategic goals for furthering New Zealand's relationship with China, one of which is to increase bilateral investment to levels that reflect the growing commercial relationship with China. New Zealand would benefit from increased Foreign Direct Investment from China, and Outward Direct Investment into China. Current levels are low with total Chinese investment stock in New Zealand at \$1.87 billion, compared to \$100 billion from Australia. Sectors of demonstrated or possible interest include food and beverage, natural resources, agri-tech, cleantech, high-value manufacturing, IT, and infrastructure projects. A copy of the NZ Inc China Strategy can be found in supporting material, volume B, tab 6.

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<sup>48</sup> The Applicant's claim was made prior to the publication of the Government's NZ Inc China Strategy statement in February 2012.

### *Economic Growth Agenda*

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.

### *Dairying and Clean Streams Accord*

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.

### *Relative importance*

The Overseas Investment Office considers that this factor is of high relative importance because the Investment will assist to increase bilateral investment to levels that reflect the growing commercial relationship with China. In particular, the NZ Inc China Strategy has identified that New Zealand will benefit from increased Foreign Direct Investment from China. Further, the Overseas Investment Office has been advised by MFAT that officials are currently working on a detailed policy framework to assist in targeting, attracting and utilising Foreign Direct Investment.

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

<b>Will the overseas investment enhance, or is it likely to enhance the ongoing viability of other overseas investments undertaken by the relevant overseas person?</b>	<b>Not Relevant</b>
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#### 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.

#### 68. r28(h) Overseas Investment Regulations 2005

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

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

<b>Will New Zealand's economic interests be adequately promoted by the overseas investment?</b>	
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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:

The Overseas Investment Office considers that the Applicant's proposed Investment will adequately promote New Zealand's economic interests, as the Investment will likely result in greater productivity that is likely to result in New Zealand becoming a more reliable supplier of dairy products and is likely to improve New Zealand's key economic capacity. However, given the scale and structure of the dairy industry, any net increase in reliability or key economic capacity will be small relative to the scale of the Investment and the industry.

While we consider that this factor has been met, the Overseas Investment Office considers that this benefit should not be given significant weight and does not materially impact the benefit to New Zealand criteria. Also, the Overseas Investment Office notes that some of the benefits identified under this factor are consequential to a part factor under s 17(2)(a)(iv), and therefore care is required to ensure that the benefits attributable to this factor are not overstated.

As the Overseas Investment Office has not treated this factor as material, and considers it has largely been taken into account under other factors, the Office's recommendation would not be different even if there were no benefit under this factor.

Regulation 28(i) sets out a list of four matters for the Overseas Investment Office to consider:

- (a) As discussed under s 17(2)(a)(iv) above, the Overseas Investment Office considers that it is likely that productivity will increase and this may result in New Zealand becoming a more reliable supplier of primary products in the future.
- (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) As discussed under s 17(2)(a)(iv) above, the Overseas Investment Office considers that there is likely to be an increase in productivity, and this may improve New Zealand's key economic capacity.

The Overseas Investment Office has also had regard to the Minister of Finance's directive letter of 8 December 2010 (issued under s 34 of the Act). The directive letter raises specific concerns about the Government's general policy approach to overseas investments in the land based primary sector.

### *Vertical Integration and aggregation of farmland*

The first concern relates 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 has the potential to 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.

Vertical integration: This involves a single firm owning or controlling some or all of the stages involved in the production, distribution and sale of a product. The concern with vertically integrated firms is that an overseas person could control a supply chain from production through to export. It is possible that a large vertically-integrated firm may be able to use market power to restrict competition. There is also the potential degree of control over upstream and downstream production processes with vertical integration.

The concerns about vertical integration are more likely to arise where the integration occurs in a firm that owns all of the production chain.

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. If consent is granted, the Applicant would have the potential to become a vertically integrated firm if it constructed or owned a milk processing plant or plants.

The Applicant says that it intends to establish joint ventures with existing processors to process products for export, rather than to construct or own milk processing plants. If the Applicant's needs cannot be satisfied by existing plant capacity, the Applicant claims it may invest with its joint venture partners in expanding that capacity.


Given the scale and structure of the New Zealand dairy industry, the Overseas Investment Office considers that it is unlikely that the Investment will result in any vertical integration concerns. However, in order to put this beyond any doubt, we recommend 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.

The Overseas Investment Office considers that this consent condition will adequately promote New Zealand's economic interests by ensuring that the Applicant is unable to become a vertically integrated firm as, although it may involve the production and distribution of dairy products, it could not have the controlling interest or more than 50% ownership in a milk processing facility.

Aggregation of farmland: The Overseas Investment Office acknowledges that this Investment is a "large farm" as defined in the Minister of Finance's directive letter. However, given the scale of New Zealand's dairy industry, the Investment is unlikely to significantly impact on the New Zealand's ability to supply primary products to the global economy.

As noted above, there do not appear to be any strategic and security interests involved in the Investment.

70. r28(j) Overseas Investment Regulations 2005

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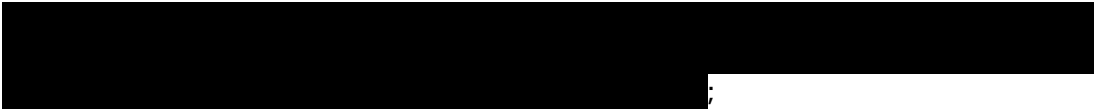
**This factor is of high relative importance**

#### 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 underutilised in producing high value consumer products for export to China.

The Landcorp Agreements summarise the mutual agreement for the future management and operation of the farms that are the subject of the application. 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 Landcorp Agreements represent a significant opportunity for a New Zealand corporate to participate in the operation, management and revenues from the farms. The Landcorp Agreements provide 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;
- the place of business for Milk New Zealand Holding Limited will be New Zealand. Milk New Zealand Holding Limited's major assets and core business will be the farms in New Zealand, run through the joint venture with Landcorp.

#### OIO Assessment:

The Overseas Investment Office considers that there are two competing interpretations in relation to r 28(j) concerning the ability of New Zealanders to oversee or participate in the "overseas investment and any relevant overseas person":

- The first is that the reference to "oversee or participate in the overseas investment" includes the ongoing operation/management of the relevant assets by New Zealanders.
- The second is that the oversight or participation in the overseas investment or relevant overseas person is at an *ownership or control* level.

The Overseas Investment Office considers that there are strong arguments in favour of both approaches. It is a question of degree in each case as to how much effective control over the acquired assets and its management will reside in the hands of New Zealanders, going forward.

On balance, the Overseas Investment Office prefers the first approach. The Landcorp Agreements provide a measure of participation in the overseas investment as the operation and management of the farms will be determined by New Zealanders.<sup>49</sup> However, the Overseas Investment Office acknowledges that this participation is limited and that full ownership and control of the Investment remains with the overseas person, therefore this benefit should not be given significant weight and does not materially impact the benefit to New Zealand criteria.

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<sup>49</sup> Supporting material, volume B, pp B-103 – B-167.

If the Overseas Investment Office were to adopt the second interpretation, it would rate this factor as “unknown” because New Zealanders would have little opportunity to oversee or participate in the Investment and relevant overseas person. In addition, while one of the relevant overseas persons (the Applicant) will have its principal place of business in New Zealand, the other persons identified as relevant overseas persons will continue to have their place of business outside of New Zealand. Having said that, adopting the second interpretation would not affect the Overseas Investment Office’s overall recommendation.

In assessing this factor, the Overseas Investment Office has also considered the six matters referred to in r 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, SPGL, 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 processors. However, the Applicant’s ultimate business objective is to sell New Zealand milk products in China and elsewhere in Asia. Milk New Zealand Holding Limited’s principal place of business will be in 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.

### Third party submissions

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- 71. Third party submissions were received from a number of parties. 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 submissions from the Crafar Farms Independent Purchaser Group are set out in Appendices 5-6.
- 74. A summary of correspondence received from the Te Hape B Trust, the Tiroa E Trust and the Pahautea Trust is set out in Appendix 10.
- 75. A summary of the submission from KordaMentha is set out in Appendix 7.

## Appendix 1 – Conditions of consent

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

### When the Investment may be acquired

1. 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 “Property Management Agreement” and “Farm Operation Agreement” (together “the Agreements”) entered into with Landcorp Farming Limited (“Landcorp”) are terminated or materially changed prior to the Investment being acquired by the Applicant.

### Good character

2. 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 ss 15 or 16 of the Immigration Act 2009.
3. 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 ss 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 28.

### Special conditions

4. The Applicant must introduce into New Zealand NZD \$16m of additional investment for development purposes.
  - (a) For the avoidance of doubt, the NZD \$16m excludes the cost of acquiring shares in Fonterra Co-operative Group Limited; and the cost of any other work that is not for development purposes.
  - (b) If the additional investment for development purposes has not been introduced into New Zealand, or the work arising from the additional investment for development purposes has not been completed by 31 May 2017, the Applicant must dispose of the Investment in accordance with condition 28.
5. The Applicant must establish an on-farm training facility for dairy farm workers in accordance with clause 5(c) of the Property Management Agreement.
  - (a) The Applicant must contribute a minimum of NZD \$█m towards the capital cost of establishing this facility.
  - (b) The Applicant must apply for any consents required to establish the facility by 31 August 2013, and subject to those consents being available, the facility must be established by 31 December 2014.
  - (c) The Applicant must dispose of the Investment in accordance with condition 28 if the on-farm training facility has not been established by 31 December 2014, 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.
6. 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 August 2015.
7. The Applicant must use reasonable endeavours to assist Landcorp to extend Landcorp’s farm consultancy services in China, and to market Landcorp’s food and animal products in China.



8. 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 28 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.
9. The Applicant and their associates must not acquire an ownership or control interest in a milk processing facility in New Zealand unless a 50% or more ownership or control interest in that facility is held by non-overseas persons. If the Applicant or its associates acquire an ownership or control interest in a milk processing facility in New Zealand in breach of this condition, the Applicant must dispose of the Investment in accordance with condition 28.
10. 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.

#### Walking access

11. The Applicant must provide public walking access over Benneydale 1, Benneydale 2 and Taharua Station, in consultation with the Department of Conservation ("DOC") and New Zealand Walking Access Commission ("WAC").
  - (a) Required access:
    - (i) The Applicant must provide public walking access at the southern end of Benneydale 1, from Maraeroa Road to the Pureora Forest Park.
    - (ii) The Applicant must provide public walking access at the north-eastern end of Benneydale 2, between State Highway 30 (Scott Road) and the Waipapa Ecological Area.
    - (iii) The Applicant must provide public walking access along or adjacent to the Taharua River and to the Te Rere Falls. The Applicant must also provide reasonable vehicle access for maintenance and for those with limited mobility, if required by DOC or WAC.
  - (b) Access routes:
    - (i) The required walking access routes in respect of conditions 11(a)(i) and (ii) are shown in the maps attached to these conditions. Nothing in condition 11(b)(i) prevents the Applicant and DOC (in the case of Benneydale 1 and Benneydale 2) agreeing an alternative means of satisfying condition 11(a)(i) and (ii).
    - (ii) The walking and vehicle access routes in respect of condition 11(a)(iii) are to be agreed between the Applicant and WAC.
  - (c) Public walking access to Benneydale 1, Benneydale 2 and Taharua Station is to be available by 31 May 2014.
  - (d) Consultation with DOC and WAC must commence by 31 May 2013.
  - (e) If required by DOC or WAC, the Applicant must register an easement, or other suitable instrument, to secure the access required by condition 11(a). The Applicant must meet the cost of registering the instrument, including the cost of any survey required to support the instrument. The Applicant must register the relevant instrument within two years of being required to do so by DOC or WAC.
  - (f) The Applicant must meet the cost of forming and maintaining walking tracks, if reasonably required by DOC or WAC.

(g) Dispute resolution:

- (i) Any dispute, difference or claim between the Applicant and DOC or WAC will be referred to and finally resolved by arbitration (unless otherwise agreed by the Applicant and DOC or WAC). 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. The Applicant will share the cost of any such arbitration equally with the other parties to the arbitration.
- (ii) The Applicant must provide a copy of any award made by an arbitrator, or evidence of the outcome of any other dispute resolution process, to the Overseas Investment Office within 14 days of the dispute being resolved.

Environmental protection and enhancement

- 12. The Applicant must implement the recommendations in Wildland Consultants Limited reports 2618a-2618d (dated February and March 2011), and 2441e (dated June 2010) (together the "Wildland Reports") by 31 May 2017.
- 13. The Applicant must consult with DOC before implementing the recommendations in the Wildland Reports. Consultation with DOC must begin by 31 May 2013.
- 14. If DOC considers that formal protection is required for any of the areas identified in the Wildland Reports, the Applicant must formally protect those areas (for example with the QEII National Trust or via a land management agreement with the relevant Council).
- 15. Of the conservation management options set out on page 11 of Wildland report 2618a, the Applicant must implement the option preferred by DOC.
- 16. The Applicant must undertake a survey of mudfish in the Mangemange Stream by 31 May 2015.
- 17. The dispute resolution procedure in condition 11(g) (excluding references to WAC) shall apply to any dispute, difference or claim between the Applicant and DOC.

Protection or enhancement of historic heritage

- 18. The Applicant must undertake an archaeological survey, in consultation with local Iwi, on Benneydale 1, Benneydale 2, Taharua and Tiwhaiti, by 31 May 2014.
- 19. The Applicant must register a heritage covenant, in the form appearing in appendix S of the application for consent, in respect of the Te Ruaki pa site on computer register TNC1/383 by 31 May 2014.
- 20. The Applicant must, if requested by the New Zealand Historic Places Trust, write a letter supporting the registration of the Te Ruaki pa site as a wahi tapu under the Historic Places Act 1993.
- 21. If required by the Office of Treaty Settlements ("OTS"), the Applicant must transfer the Nga Herenga pa site (approximately 1.6ha located on Benneydale 1) to the Crown for nil consideration.
  - (a) The transfer must be completed within 12 months 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 ensure that adequate fencing is in place to protect the site.
  - (d) The dispute resolution procedure in condition 11(g) (replacing references to DOC and WAC with references to OTS) shall apply to any dispute between the Applicant and OTS.
- 22. The Applicant must allow access to wahi tapu to those with a legitimate interest in the relevant wahi tapu.
  - (a) The right of access may be exercised by foot over any reasonably convenient routes specified by the Applicant.
  - (b) The Applicant may require a person intending to exercise the right of access to give the Applicant reasonable notice in writing of his or her intention to exercise that right.

- (c) The Applicant may limit the right of access to reasonable times and during daylight hours.
- (d) The Applicant may require a person exercising the right of access to observe reasonable conditions relating to the time, location, or manner of access as are reasonably required:
  - (i) for the safety of people; or
  - (ii) for operational reasons; or
  - (iii) for the protection of land, improvements, flora and fauna, plant and equipment, or livestock.
- (e) In consultation with local iwi, the Applicant must register an easement, or other suitable instrument to make the access under conditions 21(a)-(d) permanent in respect of the Nga Herenga pa site. 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 by 31 May 2014. The dispute resolution procedure in condition 11(g) (replacing references to DOC and WAC with references to local iwi) shall apply to any dispute between the Applicant and local iwi.

#### Reporting to the Overseas Investment Office

23. 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) where applicable, copies of transfer documents and settlement statements; and
  - (d) any other information that would aid the Overseas Investment Office in its function to monitor conditions of consent.
24. 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.
25. 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.
26. 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 the introduction into New Zealand of additional investment for development purposes, must include evidence that the additional investment was introduced into New Zealand, and must detail any developments started, completed or in progress, including:
      - a description of the developments;
      - the cost of the developments; and
      - (where appropriate) photographs of the developments;

- (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;
  - 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 7-10;
- (vi) detail the extent to which the Applicant has provided public walking access over Benneydale 1, Benneydale 2 and Taharua, including:
  - copies of any agreements entered into with DOC, WAC, OTS, local iwi or others;
  - copies of any documents registered on the titles of Benneydale 1, Benneydale 2 and Taharua;
  - whether any dispute resolution process has been used, and copies of any documents used in that process;
- (vii) detail the extent to which the Applicant has implemented the recommendations in the Wildland Reports, including:
  - copies of any documents registered on the titles of the properties;
  - whether any dispute resolution process has been used, and copies of any documents used in that process;
- (viii) detail the extent to which the Applicant has complied with the conditions 18-22, including:
  - a summary of the progress towards completion of the archaeological survey;
  - if the archaeological survey is complete, a copy of the archaeological survey report;
  - whether OTS has required the Nga Herenga pa site to be transferred to the Crown, and copies of any agreements entered into with OTS;
  - details of the walking access arrangements made in respect of the Nga Herenga pa;
  - copies of any documents registered on the titles of Benneydale 1, Benneydale 2, Taharua or Tiwhaiti;
  - whether any dispute resolution process has been used, and copies of any documents used in that process;
- (ix) provide evidence of compliance with condition 2 (good character); and
- (x) 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.

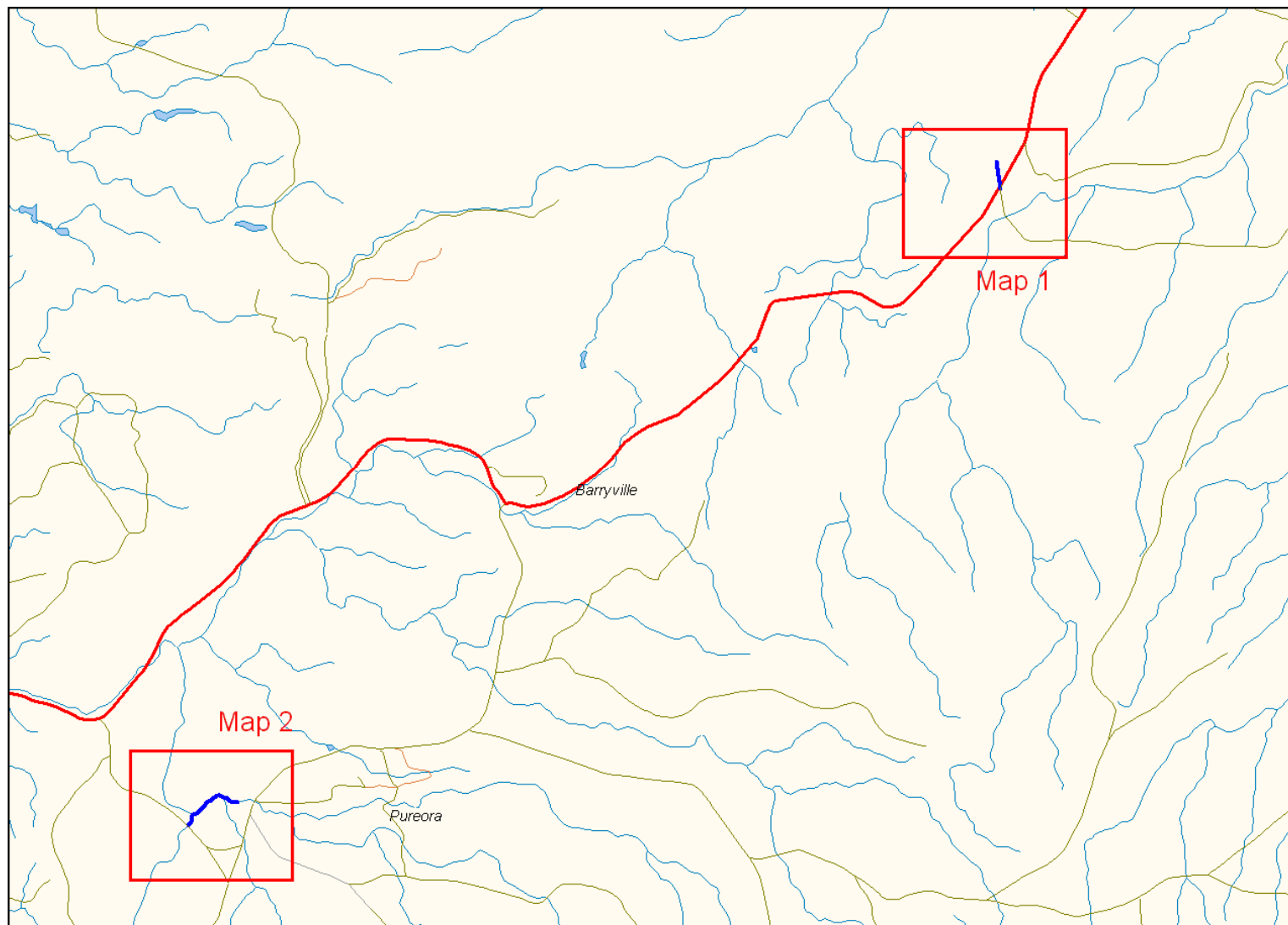
- (b) The Applicant must report:
  - (i) by 28 February 2013, for the period ended 31 December 2012; and
  - (ii) annually thereafter until advised by the Overseas Investment Office that no further reports are required (it is anticipated that a *minimum* of five annual reports will be required); and
  - (iii) at such other times as required by the Overseas Investment Office.

#### Disposal of the Investment

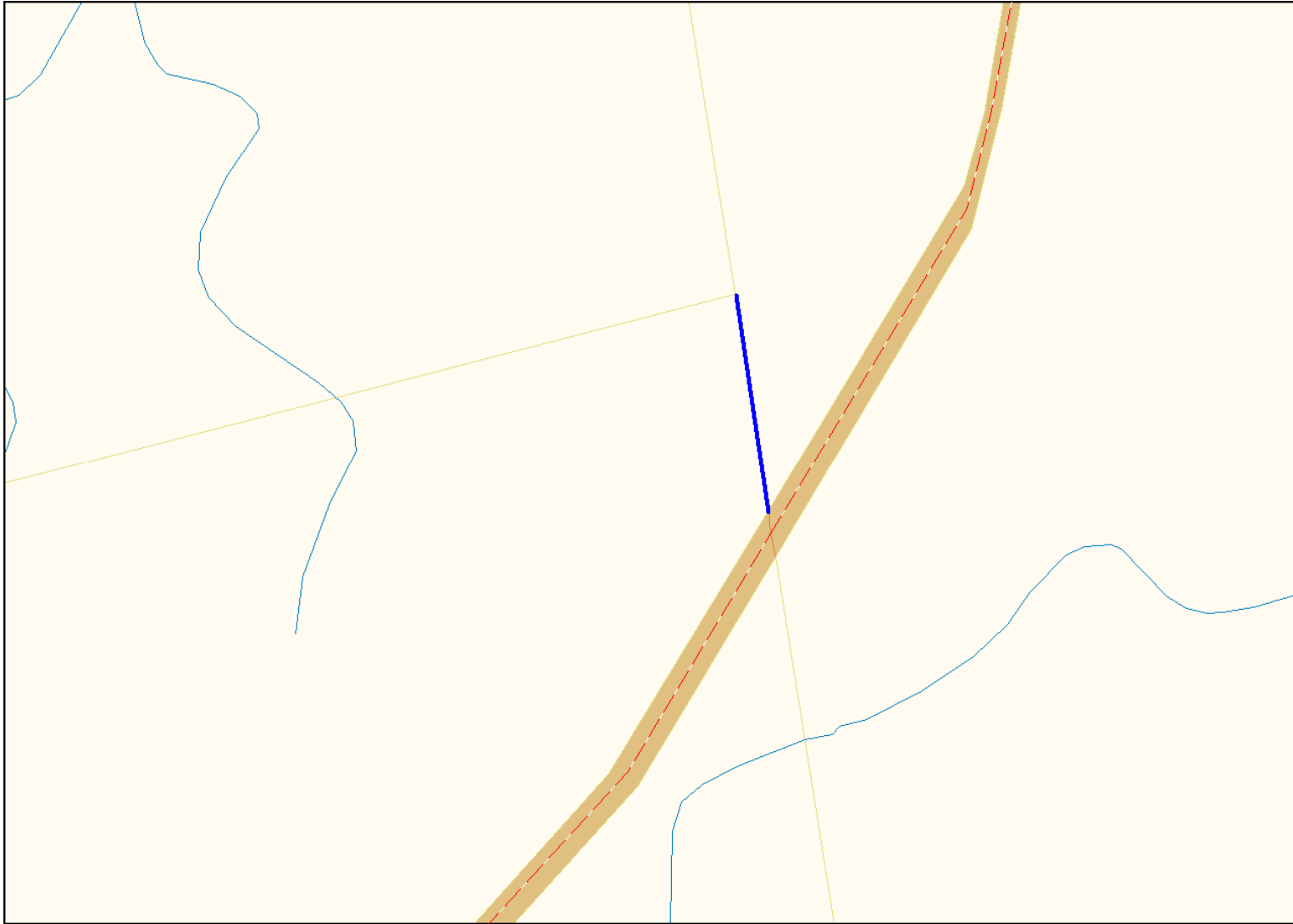
- 27. The Applicant must not dispose of any part of the Investment (whether under condition 28 or otherwise) unless:
  - (a) it has complied with conditions 10, 11, 18-21, and 22(e) to the extent that conditions 10, 11, 18-21, and 22(e) apply to the part of the investment being disposed of; and
  - (b) it has completed any riparian fencing work identified in the Wildland Reports, to the extent that riparian fencing work applies to the part of the investment being disposed of.
- 28. 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) The Applicant must dispose of the Investment within two years. 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.

Maps referred to in condition 11(b)

*Overview map*

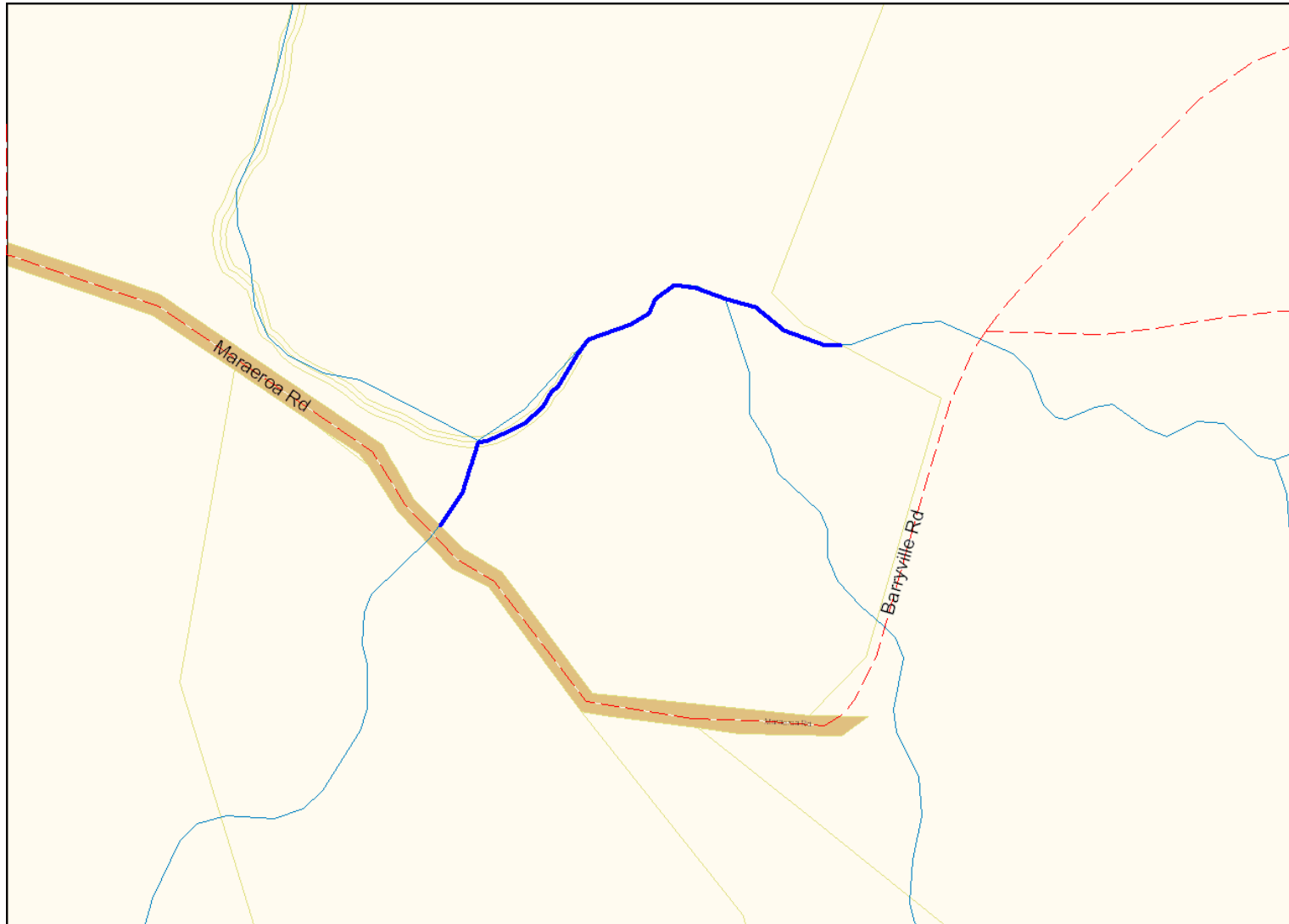


*Map 1 – Benneydale 2 – Conditions 11(a)(ii) and 11(b)(i)*



The required access route for public walking access between State Highway 30 (Scott Road) and the Waipapa Ecological Area is along the north-eastern boundary of Benneydale 2, as shown in blue on map 1.

Map 2 – Benneydale 1 - Conditions 11(a)(i) and 11(b)(i)



The required access route for public walking access between Maraeroa Road and the Pureora Forest Park is along or adjacent to the Te Kakaho Stream, and along the existing marginal strips, shown in blue on map 2.



## Appendix 2 – Sensitive land

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(e) “Plateau Road” – Reporoa

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

(f) “Rawhiti” - Reporoa

Land Interest	<b>Freehold Interest</b> (129 hectares)
Computer registers	SA11B/326 (South Auckland)
Sensitivity	Is more than 5 hectares of non-urban land

(g) “Pine View” – Reporoa

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

(h) “Cirenester” - Reporoa

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

(i) “Broadlands” - Reporoa

Land Interest	<b>Freehold Interest</b> (405 hectares)
CTs	SA23B/1334, SA23B/1335, SA23B/1336, SA23B/1337 (South Auckland)
Sensitivity	Is more than 5 hectares of non-urban land

(j) “Lake View” - Atiamuri

Land Interest	<b>Freehold Interest</b> (206 hectares)
Computer registers	SA40B/653, SA46B/822, SA62A/326 (South Auckland)
Sensitivity	Is more than 5 hectares of non-urban land
	Adjoins the bed of a lake

(k) "Forest Park" - Bulls

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

(l) "Glyn Park" - Maxwell

Land Interest	<b>Freehold Interest</b> (647 hectares)
Computer registers	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

(m) "Waverley" - Waverley

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

(n) "Karangahape Road" - Turangi

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

(o) "Benneydale 1" - South Waikato

Land Interest	<b>Freehold Interest</b> (896 hectares)
Computer registers	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

(p) "Benneydale 2" - South Waikato

Land Interest	<b>Freehold Interest</b> (792 hectares)
Computer register	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

(q) "Collins Road" - Hamilton

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

(r) "Tiwhaiti" - Hawera

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

(s) "Taharua" - Rangaitaiki

Land Interest	<b>Freehold Interest</b> (1751 hectares)
Computer registers	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

(t) "Ferry View" - Bulls

Land Interest	<b>Freehold Interest</b> (379 hectares)
Computer registers	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

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1. The Overseas Investment Office has received submissions from 27 third parties in relation to the application.

### 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. Two submitters argued that allowing overseas companies to buy New Zealand farmland means there is less opportunity for New Zealanders to buy such farm land 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. In the case of farm land that is larger than 5 hectares, that benefit to New Zealand must be substantial and identifiable.
7. Refer to paragraphs 47-48, and 50-70 of the Report for an analysis of the relevant benefits.

### Submission: concern re Shanghai Pengxin Group's character

8. One submitter alleged that SPGL (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.
9. Another submitter claims to have found fraud in the accounting materials of SPGL. This submitter refers to the SPGL's registered capital, annual sales and taxes paid.

### *Response*

10. 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.
11. 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

12. Four submitters expressed concern at the sale of land to a Chinese company. One submitter suggested that if Chinese people want to buy New Zealand assets, they ought to become New Zealand citizens. That submitter also expressed a general concern about Chinese investors, citing an article in The Economist that suggests some Chinese firms have significant accounting deficiencies.
13. A further submitter is concerned that China is seeking to acquire resources in other countries and that it is short-sighted for our Government to allow China to buy our resources.

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. A further submitter claimed that the sale of the Crafar Farm could not be for the long term economic benefit for New Zealand. The earning power of the farms will be lost forever. Another submitter claimed that the initial Landcorp offer was in the best economic and social interests of New Zealand and having Landcorp as the sharemilker to run the farms makes us tenants in our own land.
19. 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*

20. The Overseas Investment Act tests 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.
21. The Overseas Investment Office understands [REDACTED]
22. 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

23. HPT is concerned with the protection of Te Ruaki pa, a significant archaeological and cultural site, located the Tiwhaiti Farm in Hawera.
24. 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.
25. 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*

26. A condition of consent will require the Applicant to register a heritage covenant in respect of the Te Ruaki pa.

27. The Overseas Investment Office considers that the 'advice note' is unnecessary as the 'advice note' simply repeats the Applicant's existing legal obligations.

Submission: vertical integration concern

28. One submitter raised the issue of vertical integration. They are concerned that a large portion of New Zealand's production is to be owned by Chinese interests, supplying Chinese owned dairy companies and competing against New Zealand owned companies and not contributing to New Zealand's GDP.

*Response*

29. The Overseas Investment Office discusses vertical integration at paragraph 69 of the Report.

Submission: complaints re receivers' process

30. 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.
31. 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.
32. A further submitter claims that the system of allowing KordaMentha to make decisions on who should or should not be allowed to buy our strategic agricultural land should be changed.

*Response*

33. The 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.
34. The receivers complied with the requirements of the Regulations in relation to the 16 farms covered by the application.
35. One submitter's claim that the farms have been sold to her was rejected by the High Court (Allen J) on 12 September 2011.

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

Submission No.	Submitter	Content of submission	Information on which based
AT-6-11	Unknown	<ul style="list-style-type: none"> <li>• Large farms are not more efficient</li> <li>• More profit goes offshore</li> </ul>	Personal view and refers to a letter to the editor
AT-6-12	Unknown	<ul style="list-style-type: none"> <li>• Recommends the Overseas Investment Office reads the book "The Coming Fathom" written by Julian Cribbs</li> <li>• By 2050 world food demand will double and there will be mass migration</li> <li>• New Zealand couldn't feed the world</li> <li>• Don't sell or lease our land to overseas populations</li> </ul>	Personal view and refers to the book "The Coming Fathom" written by Julian Cribbs
AT-6-13	████████	<ul style="list-style-type: none"> <li>• Do not let us become like some African countries where their economies do not gain from Chinese land purchase</li> <li>• 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</li> </ul>	Personal view and refers to various internet news websites and other organisations
AT-6-14	████████████████	<ul style="list-style-type: none"> <li>• Refers to Rarotonga where the people lease land for commercial uses but do not sell the land</li> <li>• New Zealand's oil is its productive land and it will be as valuable as oil one day</li> <li>• Fine to lease to approved overseas financial investors, but not to sell</li> </ul>	Personal view
AT-6-15	████████	<ul style="list-style-type: none"> <li>• The Crafar properties have already been sold</li> <li>• 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</li> </ul>	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"> <li>• See appendices 5-8 for a comprehensive analysis and response to this submission.</li> </ul>	
AT-6-17	████████████████	<ul style="list-style-type: none"> <li>• Alleges to have found fraud in the accounting materials of SPGL</li> <li>• SPGL does not seem to be a credible company</li> </ul>	Personal view and refers to SPGL's registered capital, assets, annual sales and paid taxes.
AT-6-18	████████████████	<ul style="list-style-type: none"> <li>• Concerned at the potential sales of the Crafar and Synlait Farms to Chinese owned corporations</li> <li>• Raised vertical integration issues – concerned that a large portion of New Zealand's production is to be owned by Chinese interests, supplying Chinese owned dairy companies and competing against New Zealand owned companies and not contributing to New Zealand's GDP</li> <li>• Requests Overseas Investment Office/Crown to not take into consideration the fact that the Chinese purchaser has offered \$40m more than the next highest offer</li> </ul>	Personal view and experience in selling farms in New Zealand
AT-6-19	████████	<ul style="list-style-type: none"> <li>• Alleges that China has become greedy by wanting to buy up other countries' resources</li> <li>• It is shortsighted for our Government to allow China to buy our resources</li> </ul>	Personal view and experience working in China



Submission No.	Submitter	Content of submission	Information on which based
AT-6-20	[REDACTED]	<ul style="list-style-type: none"> <li>Totally against the sale of the Crafar Farms</li> <li>Requests the Overseas Investment Office to acknowledge the results of the High Court decision and stop being a mouthpiece for John Key's intransigence</li> </ul>	Personal view
AT-6-21	[REDACTED]	<ul style="list-style-type: none"> <li>Sale of Crafar and other farms could not possibly be for the long term economic benefit for New Zealand</li> <li>Selling our farms and thus permanently losing a part of the means of paying off debt is madness</li> <li>The earning power of the farms will be lost forever</li> </ul>	Personal view
AT-6-22	[REDACTED]	<ul style="list-style-type: none"> <li>The sale of the Crafar Farms is against the interests of every Kiwi</li> </ul>	Personal view
AT-6-23	[REDACTED]	<ul style="list-style-type: none"> <li>Totally opposed to the sale of the Crafar Farms to the Chinese</li> </ul>	Personal view
AT-6-24	[REDACTED]	<ul style="list-style-type: none"> <li>The Government should take whatever action is needed to protect our land from overseas ownership</li> </ul>	Personal view
AT-6-25	[REDACTED]	<ul style="list-style-type: none"> <li>The time taken to make a decision seems to be gross incompetence</li> </ul>	Personal view
AT-6-26	[REDACTED]	<ul style="list-style-type: none"> <li>82% of New Zealanders do not want the farms to be sold to the Chinese</li> <li>Experience of working for a profitable company owned by an overseas entrepreneur is that the profits go into the entrepreneur's pocket and is not injected back into the economy</li> <li>Shortsighted to sell more of our companies and land to a group who has no experience in the sector</li> </ul>	Personal view
AT-6-27	[REDACTED]	<ul style="list-style-type: none"> <li>The initial Landcorp offer was in the best economic and social interests of New Zealand</li> <li>Having Landcorp being employed as sharemilker to run the farms makes us a tenant in our own land</li> <li>The farms should not be sold to foreigners just because they have more money than New Zealand buyers</li> <li>Approving foreign ownership sales means farm prices rise beyond what New Zealanders can afford</li> <li>The overseas investment law needs to change and so does the system of allowing KordaMentha from making decisions on who should or should not be allowed to buy our strategic agricultural land</li> </ul>	Personal view
AT-6-28	KordaMentha	<ul style="list-style-type: none"> <li>See Appendix 7 for an analysis of this submission.</li> </ul>	KordaMentha are the receivers of the vendors (the Crafar companies)
AT-6-29	[REDACTED]	<ul style="list-style-type: none"> <li>Thinks that New Zealanders should vote on this issue and that the results determine whether or not to sell Crafar farmland to the Chinese. Favours keeping New Zealand New Zealand owned.</li> </ul>	Personal view

Submission No.	Submitter	Content of submission	Information on which based
AT-6-30	<div style="background-color: black; width: 100px; height: 20px; margin: 0 auto;"></div>	<ul style="list-style-type: none"> <li>• Would like to see a tightening up of the rules surrounding our farmland to foreign control as it must benefit New Zealand and Feels this offer is not in the best interests of New Zealand.</li> <li>• There is no benefit to New Zealand at all if these farms are sold to foreign conglomerates.</li> <li>• Would like to see the Fay, Richwhite consortium become owners of these farms or other farmers if the farms can be sold individually.</li> <li>• Favours the retention of the profit from New Zealand land. Says that we need the commerce from the farms to help build our economy, instead of giving it away for foreign profit where only a few workers will be required and the bulk of the profit goes offshore.</li> <li>• No guarantee that the milking cows on all the Crafar farms will be properly looked after as we know Pengxin have absolutely no experience in that field.</li> </ul> <p><i>(also see Appendix 4, submission AT-3-4)</i></p>	Personal view

## Appendix 4 – Third party submissions and responses relating to an application by UBNZ and Natural Dairy to acquire the Crafar Farms

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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. In the case of farmland that is larger than 5 hectares, that benefit must also be substantial and identifiable.

### Submission: concern re sale of land, related to China

10. 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*

11. 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

12. 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*

13. The criteria against which the Overseas Investment Office assesses applications for consent to invest in sensitive land in New Zealand includes 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.
14. 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

15. 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*

16. 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

17. 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*

18. 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

19. 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*

20. 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

21. 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*

22. The Regulations set out requirements with which owners of farm 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.
23. The receivers complied with the requirements of the Regulations in relation to the 16 farms covered by the principal application.

#### Submission: miscellaneous

24. One submitter said the purchaser should do something positive to show the purchase is for the national benefit (eg. retire Taharua Station from farming).
25. 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.
26. 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*

27. The Overseas Investment Office does not consider it appropriate to impose a condition requiring the Applicant to retire Taharua Station from farming.
28. 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.
29. 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*

<b>Submission No.</b>	<b>Submitter</b>	<b>Content of submission</b>	<b>Information on which based</b>
AT-2-22	██████████	<ul style="list-style-type: none"> <li>• 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</li> <li>• If sell land are selling forever the tools we need to pay NZ's debts</li> </ul>	Personal view
AT-4-9	██████████	<ul style="list-style-type: none"> <li>• Free market will be distorted by foreign investment; pushes up farm prices; rural market needs to correct self</li> <li>• Foreign investment should lead to wealth created in New Zealand staying in New Zealand and being taxed here</li> </ul>	Personal view
AT-4-19	██████████	<ul style="list-style-type: none"> <li>• 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</li> </ul>	Personal view
AT-4-25	██████████	<ul style="list-style-type: none"> <li>• Trend overseas for Chinese to buy up land to secure food production</li> </ul>	Personal view
AT-4-28	██████████	<ul style="list-style-type: none"> <li>• To have vertically integrated fully Chinese owned competitor operating in NZ's favourable climate is not in NZ's best interests</li> </ul>	Personal view
AT-5-5	██████████	<ul style="list-style-type: none"> <li>• Letting foreign companies make mass land purchases and build factories processing high value products only will destroy the New Zealand dairy industry</li> </ul>	Personal view
AT-5-7	██████████	<ul style="list-style-type: none"> <li>• The accumulation of farmland by the Crafars should never have been allowed for social, industrial, political and business reasons.</li> <li>• 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</li> <li>• When ownership of wealth-producing industry and charging services is elsewhere, economy doesn't perform as well as other economies suggest it might</li> </ul>	Personal view
AT-5-10	██████████	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Likely foreign vertically integrated companies will take processing of raw products to their own countries so NZ will lose that value too</li> </ul>	Personal view
AT-5-22	██████████	<ul style="list-style-type: none"> <li>• 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</li> <li>• Opposes investments that exploit this country</li> </ul>	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"> <li>Fonterra's dominant position shouldn't be put at risk so we end up with similar problems to the sheep industry</li> </ul>	Personal view
AT-2-26	██████████	<ul style="list-style-type: none"> <li>Will be threat to Fonterra</li> </ul>	Personal view
AT-3-3	██████████	<ul style="list-style-type: none"> <li>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</li> </ul>	Personal view
AT-3-4	██████████	<ul style="list-style-type: none"> <li>Chinese interests will undermine Fonterra's position <i>(also see Appendix 3, submission AT-6-30)</i></li> </ul>	Quoting Andrew Saunders, a Te Kauwhata farmer
AT-3-9	██████████	<ul style="list-style-type: none"> <li>Deal should be that the produce must enter the Fonterra system and all farms bought must have Fonterra shares</li> </ul>	Personal view
AT-3-11	██████████	<ul style="list-style-type: none"> <li>Company may lower prices sufficiently to put competitors such as Fonterra out of business</li> </ul>	Personal view
AT-3-15	██████████	<ul style="list-style-type: none"> <li>This may snowball and be the demise of Fonterra</li> </ul>	Personal view
AT-3-18	██████████	<ul style="list-style-type: none"> <li>Based on other Chinese purchases internationally, non-Chinese do not benefit</li> <li>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?</li> </ul>	Personal view
AT-3-27	██████████	<ul style="list-style-type: none"> <li>Worried dairy industry will become fragmented and destroy all the great work of the Dairy Board and Fonterra to build the dairy industry</li> <li>There are enough new dairy companies starting up</li> </ul>	Personal view (is Fonterra supplier)
AT-4-6	██████████	<ul style="list-style-type: none"> <li>Concern that will result in competition for Fonterra</li> </ul>	Personal view
AT-4-13	██████████	<ul style="list-style-type: none"> <li>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</li> </ul>	Personal view
AT-4-18	██████████	<ul style="list-style-type: none"> <li>Concern re "opposition" to Fonterra</li> </ul>	Personal view
AT-5-1	██████████	<ul style="list-style-type: none"> <li>Height of folly for government to allow a competitor to buy land to undercut Fonterra's products</li> </ul>	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"> <li>Younger people can't afford to buy land</li> </ul>	Personal view
AT-3-27	██████████	<ul style="list-style-type: none"> <li>Will drive up land prices</li> </ul>	Personal view

Submission No.	Submitter	Content of submission	Information on which based
AT-4-2	[REDACTED]	<ul style="list-style-type: none"> <li>Overseas investors make farms unaffordable for New Zealanders</li> </ul>	Personal view
AT-4-13	[REDACTED]	<ul style="list-style-type: none"> <li>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</li> </ul>	Personal view
AT-4-25	[REDACTED]	<ul style="list-style-type: none"> <li>Young New Zealand investors shouldn't have to compete with foreign entities</li> </ul>	Personal view
AT-5-7	[REDACTED]	<ul style="list-style-type: none"> <li>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</li> </ul>	Personal view
AT-5-8	[REDACTED]	<ul style="list-style-type: none"> <li>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</li> </ul>	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"> <li>Overseas buyers want pure NZ</li> </ul>	Personal view
AT-2-19	[REDACTED]	<ul style="list-style-type: none"> <li>Will introduce their own labour and flout environmental laws</li> </ul>	Personal view
AT-3-1	[REDACTED]	<ul style="list-style-type: none"> <li>Will not care about the welfare of animals or environmental concerns</li> </ul>	Personal view
AT-3-2	[REDACTED]	<ul style="list-style-type: none"> <li>New Internationalist article "China in Charge" NZ 423, portrays Chinese disregard for the environment</li> </ul>	Personal view, plus New Internationalist article
AT-3-4	[REDACTED]	<ul style="list-style-type: none"> <li>Concerned re how livestock will be looked after under foreign ownership <i>(also see Appendix 3, submission AT-6-30)</i></li> </ul>	Personal view
AT-3-23	[REDACTED]	<ul style="list-style-type: none"> <li>NZ will lose quality control and possible will bring our clean green image into question</li> </ul>	Personal view
AT-3-30	[REDACTED]	<ul style="list-style-type: none"> <li>We'll end up with Chinese farms polluting our beautiful waterways. Look at Sanlu.</li> </ul>	Personal view
AT-4-16	[REDACTED]	<ul style="list-style-type: none"> <li>Grave concerns re tainting of dairy industry (eg. milk quality contamination with a NZ logo)</li> </ul>	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"> <li>Doesn't want foreign asset sales</li> </ul>	Personal view



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

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

Submission No.	Submitter	Content of submission	Information on which based
AT-5-6	[REDACTED]	<ul style="list-style-type: none"> <li>• 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</li> <li>• Climate change, food production and population issues suggest land should be regarded as a strategic asset that NZ does not lightly sell off</li> </ul>	Personal view
AT-5-8	[REDACTED]	<ul style="list-style-type: none"> <li>• Widespread feeling of unease in the community about a significant area of our productive farmland being transferred to overseas ownership and control</li> <li>• 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</li> </ul>	Personal view
AT-5-12	[REDACTED]	<ul style="list-style-type: none"> <li>• 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</li> </ul>	Personal view
AT-5-13	[REDACTED]	<ul style="list-style-type: none"> <li>• 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</li> </ul>	Personal view
AT-5-14	[REDACTED]	<ul style="list-style-type: none"> <li>• 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</li> <li>• Some foreign ownership is beneficial, but are certain strategically important assets which must remain in national ownership – eg. security of food, water and energy</li> <li>• Different if foreigners move here compared with foreign corporations purchasing land solely to make a profit</li> </ul>	Personal view
AT-5-15	[REDACTED]	<ul style="list-style-type: none"> <li>• NZ land should stay in New Zealand ownership</li> <li>• Sending the means of production, and profits, off shore, is like a carpenter selling off his tools because he needs the money</li> </ul>	Personal view
AT-5-17	[REDACTED]	<ul style="list-style-type: none"> <li>• 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</li> </ul>	Personal view
AT-5-18	[REDACTED]	<ul style="list-style-type: none"> <li>• 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</li> <li>• 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</li> </ul>	Personal view
AT-5-21	[REDACTED]	<ul style="list-style-type: none"> <li>• 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.</li> </ul>	Personal view

Submission No.	Submitter	Content of submission	Information on which based
AT-5-24	[REDACTED]	<ul style="list-style-type: none"> <li>Sell meat, wool, milk etc, but not NZ land. Once sold NZ will never get it back</li> <li>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</li> <li>Corporate farmers are ruining NZ's animal welfare image</li> </ul>	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"> <li>Concerned re 100s of Chinese workers coming in</li> </ul>	Personal view
AT-2-11	[REDACTED]	<ul style="list-style-type: none"> <li>Come from culture where bribes are taken</li> </ul>	Personal view
AT-2-17	[REDACTED]	<ul style="list-style-type: none"> <li>Need to stop Chinese dairy and land ownership</li> </ul>	Personal view
AT-2-21	[REDACTED]	<ul style="list-style-type: none"> <li>Concern re business ethics of Chinese</li> <li>They generally only employ their fellow nationalities. Will not employ New Zealanders</li> </ul>	Personal view
AT-2-24	[REDACTED]	<ul style="list-style-type: none"> <li>We have country that is envy of the world. China has history New Zealanders may find questionable.</li> </ul>	Personal view
AT-2-26	[REDACTED]	<ul style="list-style-type: none"> <li>Concern will bring in cheap labour</li> </ul>	Personal view
AT-2-28	[REDACTED]	<ul style="list-style-type: none"> <li>Farms will probably be run by Chinese not New Zealanders</li> </ul>	Personal view
AT-2-31	[REDACTED]	<ul style="list-style-type: none"> <li>General concern re sale</li> </ul>	Personal view
AT-3-2	[REDACTED]	<ul style="list-style-type: none"> <li>Will all be for China's benefit not for NZ's</li> </ul>	Personal view, plus New Internationalist article
AT-3-4	[REDACTED]	<ul style="list-style-type: none"> <li>Chinese are law unto themselves. Look at Tibet</li> <li>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</li> </ul> <p><i>(also see Appendix 3, submission AT-6-30)</i></p>	Personal view
AT-3-8	[REDACTED]	<ul style="list-style-type: none"> <li>China is taking over the world</li> </ul>	Personal view
AT-3-10	[REDACTED]	<ul style="list-style-type: none"> <li>Chinese are not part of the Western world</li> </ul>	Personal view

Submission No.	Submitter	Content of submission	Information on which based
AT-3-11 AT-3-16	██████████	<ul style="list-style-type: none"> <li>Part of Chinese infiltration and undermining of Western democracies</li> <li>Totalitarian country with history of oppression of its own people should not be allowed to own areas in NZ</li> <li>Sent News Weekly and National Observer articles about Chinese investment</li> </ul>	Personal views, Chinese friends, and News Weekly and National Observer articles
AT-3-18	██████████	<ul style="list-style-type: none"> <li>Non-Chinese do not benefit from these purchases and local economy ends up as loser</li> </ul>	Personal view
AT-3-24	██████████	<ul style="list-style-type: none"> <li>Chinese are money orientated and don't have New Zealand values</li> </ul>	Personal view
AT-3-21	██████████	<ul style="list-style-type: none"> <li>Agrees with ██████████</li> </ul>	Personal view
AT-3-25	██████████	<ul style="list-style-type: none"> <li>Chinese are out for themselves</li> </ul>	Personal view
AT-3-28	██████████	<ul style="list-style-type: none"> <li>Transaction represents threat to our economy and New Zealand way of life</li> </ul>	Personal view
AT-4-1	██████████	<ul style="list-style-type: none"> <li>Concerned re any sales of land, but particularly to China</li> </ul>	Personal view
AT-4-7	██████████	<ul style="list-style-type: none"> <li>As above</li> </ul>	Personal view
AT-4-13	██████████	<ul style="list-style-type: none"> <li>As above. There is nothing in this deal for NZ</li> </ul>	Personal view
AT-5-9	██████████	<ul style="list-style-type: none"> <li>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</li> <li>NZers can farm the land and sell the milk products to the Asians</li> <li>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.</li> </ul>	Personal view
AT-5-19	██████████	<ul style="list-style-type: none"> <li>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.</li> </ul>	Personal view
AT-5-26	██████████	<ul style="list-style-type: none"> <li>Selling vital Kiwi Assets such as farm land, mining sites, fisheries, etc. to Asians should be stopped.</li> </ul>	

*Particularly because China not reciprocal*

Submission No.	Submitter	Content of submission	Information on which based
AT-2-2	██████████	<ul style="list-style-type: none"> <li>Why does NZ let people buy land here when NZers can't buy in their country?</li> </ul>	Personal view
AT-3-3	██████████	<ul style="list-style-type: none"> <li>Only ones to benefit will be foreign owned banks</li> </ul>	Personal view
AT-3-12	██████████	<ul style="list-style-type: none"> <li>Doing New Zealand a disservice by selling</li> </ul>	Personal view
AT-3-29	██████████	<ul style="list-style-type: none"> <li>Full consideration should be given to ownership policies in purchasing countries</li> </ul>	Personal view
AT-4-4	██████████	<ul style="list-style-type: none"> <li>NZ is naïve – other countries don't allow New Zealand to buy up huge tracts of strategic land there</li> </ul>	Personal view

Submission No.	Submitter	Content of submission	Information on which based
AT-4-7	[REDACTED]	<ul style="list-style-type: none"> <li>China has strong protection of its property</li> </ul>	Personal view
AT-4-16	[REDACTED]	<ul style="list-style-type: none"> <li>Does China allow NZers to own freehold land there?</li> </ul>	Personal view
AT-4-18	[REDACTED]	<ul style="list-style-type: none"> <li>NZers cannot buy large scale land in China or any other country</li> </ul>	Personal view
AT-4-25	[REDACTED]	<ul style="list-style-type: none"> <li>Chinese probably think NZers are stupid to allow land sales</li> </ul>	Personal view
AT-4-31	[REDACTED]	<ul style="list-style-type: none"> <li>NZers need to protect NZs valuable agricultural sector from being sold off to a nation protecting their food chain. Requests a level playing field</li> </ul>	Personal view
AT-5-1	[REDACTED]	<ul style="list-style-type: none"> <li>If China and other countries don't let NZers buy their land, NZ shouldn't let them buy its</li> </ul>	Personal view
AT-5-20	[REDACTED]	<ul style="list-style-type: none"> <li>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</li> </ul>	Personal view

*Should give lease instead*

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

*Government should buy land*

Submission No.	Submitter	Content of submission	Information on which based
AT-2-9	[REDACTED]	<ul style="list-style-type: none"> <li>Government should step in, buy our valuable New Zealand dairying land and business and give jobs to New Zealanders</li> </ul>	Personal view
AT-2-10	[REDACTED]	<ul style="list-style-type: none"> <li>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</li> <li>Or should be opportunity for Kiwisaver</li> </ul>	Personal view
AT-2-20	[REDACTED]	<ul style="list-style-type: none"> <li>Represents opportunity for Government to purchase and secure a large income producing property portfolio, and use farms as valuable tool to assist troubled youths</li> </ul>	Personal view
AT-2-25	[REDACTED]	<ul style="list-style-type: none"> <li>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</li> </ul>	Personal view

Submission No.	Submitter	Content of submission	Information on which based
AT-2-28	██████████	<ul style="list-style-type: none"> <li>NZ people should be given the chance to buy them in smaller blocks, perhaps with Govt assistance (Rural Bank) like NZ used to give young farmers</li> </ul>	Personal view
AT-3-17	██████████	<ul style="list-style-type: none"> <li>Farms should be sold individually to New Zealanders with children in the same way as the returned servicemen got their farms 50 yrs ago</li> </ul>	Personal view
AT-3-20	██████████	<ul style="list-style-type: none"> <li>Government should purchase properties and place them in control of Lincoln &amp; Massey universities to be used for scientific and training purposes and to generate income</li> <li>Crafars could work the land</li> </ul>	Personal view
AT-3-25	██████████	<ul style="list-style-type: none"> <li>Government should buy farms and at some future date return them to private ownership</li> </ul>	Personal view
AT-4-4	██████████	<ul style="list-style-type: none"> <li>Tracts should be sold off separately or in small agglomerations to New Zealanders</li> </ul>	Personal view
AT-4-20	██████████	<ul style="list-style-type: none"> <li>Give Landcorp the green light to buy farms</li> </ul>	Personal view
AT-4-28	██████████	<ul style="list-style-type: none"> <li>Happy if Landcorp become purchasers</li> </ul>	Personal view
AT-5-2	██████████	<ul style="list-style-type: none"> <li>Landcorp is a good choice re farms</li> </ul>	Personal view
AT-5-9	██████	<ul style="list-style-type: none"> <li>Should let Landcorp buy the farms</li> </ul>	Personal view
AT-5-20	██████████	<ul style="list-style-type: none"> <li>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</li> </ul>	Personal view
AT-5-24	██████████	<ul style="list-style-type: none"> <li>Let Landcorp buy the Crafar farms and keep them in New Zealand ownership</li> </ul>	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"> <li>Inflated price – Plateau Farms value far too high</li> <li>Not really trying to sell to anyone else – titles bundled together</li> <li>Pushing out other farmers – sold with sharemilkers in place</li> <li>Not clear what included in sale</li> <li>One farm has herd house without consent and no consent to track to another farm</li> </ul>	Personal involvement
AT-4-16	██████████	<ul style="list-style-type: none"> <li>Not clear what included in sale eg. Fonterra shares</li> <li>Were told marketing was a charade</li> </ul>	Personal involvement

Submission No.	Submitter	Content of submission	Information on which based
AT-4-22	[REDACTED]	<ul style="list-style-type: none"> <li>Alleges breach of procedure around sale process, including failure to provide relevant title history to blocks</li> </ul>	Personal involvement
AT-4-25	[REDACTED]	<ul style="list-style-type: none"> <li>Told already sold</li> </ul>	Personal involvement

*Miscellaneous*

Submission No.	Submitter	Content of submission	Information on which based
AT-2-16	[REDACTED]	<ul style="list-style-type: none"> <li>Purchaser should do something positive to show the purchase is for the national benefit (eg. retire the Taupo Crafar farm)</li> </ul>	Personal view
AT-3-14	Geoff Davidson, NZ Native Forests Restoration Trust	<ul style="list-style-type: none"> <li>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</li> <li>Keen to discuss purchase of property</li> <li>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</li> </ul>	Personal involvement of Trust
AT-4-15	[REDACTED]	<ul style="list-style-type: none"> <li>A massive tax should be put on sales to foreigners</li> </ul>	Personal view
AT-4-23	[REDACTED]	<ul style="list-style-type: none"> <li>NZ should not let foreigners buy NZ dairy farms until NZ has better environmental laws in place</li> </ul>	Personal view
AT-5-8	[REDACTED]	<ul style="list-style-type: none"> <li>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</li> <li>Suggests a sale for a finite period eg. over 35 years may be an alternative</li> </ul>	Personal view
AT-5-16	[REDACTED]	<ul style="list-style-type: none"> <li>Agrees opposition to sale of farms to Chinese interests is racist. Those who don't admit we need Chinese investment are deluding themselves economically</li> </ul>	Personal view



## Appendix 5 – Third party submission from Crafar Farms Independent Purchaser Group

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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. A copy of CFIPG’s submission can be found in supporting material, volume A, tab 7, while a copy of the Applicant’s response to CFIPG’s submission can be found in supporting material, volume A, tab 8.
3. 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
4. In a further submission, Chen Palmer (on behalf of the CFIPG) supplied copies of reports prepared by Jiesheng-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 SPGL was in a ‘vulnerable financial position’.

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

5. 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.
6. CFIPG submits that the Applicant’s lack of experience is reflected in its business case. CFIPG argues that while SPGL 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*

7. The Applicant argues that its parent, SPGL, is an experienced investor in international agri-business including sheep breeding and wheat, soy and maize production in China and South America.
8. 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*

9. 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: s 16(1)(c) - character of individuals in control of investment

10. 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 SPGL;
  - (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 SPGL.

### *Applicant's response*

11. The Applicant denies any connection between SPGL and the UBNZ entities, May Wang or Jack Chen.
12. The Applicant says that its parent, SPGL 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).
13. 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*

14. The Overseas Investment Office had previously asked the Applicant about possible connections between SPGL and Natural Dairy, the UBNZ entities, May Wang or Jack Chen.
15. The Overseas Investment Office is satisfied that the Applicant's Perrin Ag report is not tainted by 'fraud and misconduct' [REDACTED]<sup>50</sup>.
16. 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

17. 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, SPGL'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.
18. Having regard to this purchase price, SPGL 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.
19. The only plausible explanation is that SPGL intends to use the dairy farms as part of a vertically integrated dairy processing business.

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<sup>50</sup> [REDACTED]

*Applicant's response*

20. The purchase price for the farms is NZD \$■■■■m, plus payment for the stock, estimated to be NZD \$■■■■m. The Applicant is willing to pay this price because:
- (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.
21. The submission that a 1 million kg increase in production is planned or required is pure speculation and completely incorrect. A ■■■% increase or ■■■■■kg to a total of ■■■ million kg is planned in the 2013/2014 year stabilizing at around ■■■ 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 ■■■■■ kg per annum) from the estimated ■■■ million kg under the receivers in 2012/2013.

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

22. 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*

23. 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 Herenga 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.
24. 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*

25. 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

26. 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*

27. 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*

28. 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

29. 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.
30. 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.
31. 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 SPGL's inevitable eventual exit from the investment. There will be no long-term improvement in New Zealand's economic capacity.

#### *Applicant's response*

32. 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: s 16(1)(f) - farm and advertisement

33. 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 SPGL. CFIPG argues that the farms should have been advertised for sale again before the receivers accepted the offer from SPGL. 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*

34. 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 the Regulations and the submissions to the contrary are rejected.
35. 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*

36. 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 SPGL. The regulations which prescribe the advertising procedure do not require the properties to be re-advertised as CFIPG submits.
37. The Overseas Investment Office is satisfied that the farms have been advertised in accordance with the Regulations. Refer to paragraph 49 and Appendix 9 of the main report for the Overseas Investment Office's analysis of the advertising.

### Submission: vulnerable financial position

38. CFIPG refers to two reports which (according to CFIPG) confirms that SPGL 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".
39. 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*

40. The "credit report" is based only on the financial statements of the holding company of SPGL, in which [REDACTED] subsidiaries aren't consolidated. Therefore, the report doesn't show the overall liability-to-asset ratio of SPGL which is consistent to other large China based real estate development entities.
41. The consolidated liability-to-asset ratio of the group is circa [REDACTED]%, slightly below the average level of Chinese real estate companies.
42. 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.
43. Pengxin Group is 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.
44. 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.
45. 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.
46. 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.
47. 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

48. 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.
49. If SPGL 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.

50. To ensure that SPGL 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.
51. 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, SPGL 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*

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

*Overseas Investment Office's Position*

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

## Appendix 6 – Further third party submission from Crafar Farms Independent Purchaser Group

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1. Following the recent High Court judicial review proceedings, CFIPG made a further submission in relation to the Overseas Investment Office's reconsideration of the application by Milk New Zealand Holding Limited ("Milk New Zealand") for consent to acquire the Crafar Farms.
2. A copy of CFIPG's submission can be found in supporting material, volume A, tab 9, while a copy of the Applicant's response to CFIPG's submission can be found in supporting material, volume A, tab 10.
3. CFIPG's submission raised the following issues:
  - (a) The correct legal approach to counterfactual analysis;
  - (b) The relevant counterfactual in this case; and
  - (c) An analysis of the benefits of this transaction, in light of their suggested counterfactual.

### Submission: The correct legal approach to counterfactual analysis

4. CFIPG submits that the Act requires an assessment which compares the benefits arising from the proposed overseas investment with the position which is likely to arise if the farms are acquired by some other person.
5. CFIPG submits that identifying the relevant counterfactual requires a fact-based assessment of what is likely to happen absent the acquisition so as to permit a comparison and thus identify those benefits which are truly caused by the overseas investment. This analysis is routinely conducted by the Commerce Commission and the courts in Commerce Act cases and those authorities therefore establish the correct approach to be applied to a benefits analysis under the Act.
6. CFIPG submits that it is not sufficient to simply identify a counterfactual at some aggregate level (for example, a New Zealand purchaser) and then proceed based on intuition as to what might happen in that counterfactual. Rather, the Overseas Investment Office must assess the evidence available to it and look at each of the particular benefits claimed and inquire as to whether that benefit would arise absent the overseas investment.

### *Applicant's response*

7. The Applicant disagrees with CFIPG's analysis. The Applicant submits that this isn't a Commerce Act case, that there are different practical and policy issues in play here, and that CFIPG's comments misrepresent Miller J's judgment.
8. The factors and considerations which inform competition law analysis and regulatory deliberations cannot be just transposed into the Overseas Investment Act 2005 consent and conditions regime. The Applicant claims that Miller J was clear about that. At [39] of the judgment His Honour referred to the Commerce Commission's M&A Guidelines but recorded that he did "not accept that so disciplined an analysis is demanded here [in the Overseas Investment Act 2005 context]". Miller J explained that the:

"[Overseas Investment Act] does not require that benefits be quantified, however, only that the Ministers be satisfied, for farmland, that substantial and identifiable benefits are likely to flow from the overseas investment. It is a matter of enquiring, for each claimed economic benefit, whether it is likely to happen absent the overseas investment and is substantial and identifiable. The weighting of economic benefits among themselves and against non-economic benefits requires not calculation but Ministerial judgement".

### *Overseas Investment Office's position*

9. Refer to page 2 of the Overseas Investment Office's recommendation for an analysis of the appropriate counterfactual for this application.

#### Submission: The relevant counterfactual in this case

10. CFIPG submits that the relevant comparison in this case involves an acquisition of the farms by the CFIPG, or by some equivalent New Zealand purchaser. CFIPG submits that as far as they are aware, their offer to acquire the Crafar Farms is the highest offer made by any New Zealand buyer.
11. At paragraph 3 of CFIPG's submission, CFIPG describes the intended management and operation of the farms if CFIPG acquires the properties. Matters discussed include the budgeted capital expenditure, employment levels, forecast increased productivity and performance, and CFIPG's commitment to environmentally responsible sustainable farming. CFIPG submits that this provides the basis for the relevant counterfactual. They also note that substantially the same position is likely to arise under a sale to any other likely New Zealand purchasers.

#### *Applicant's response*

12. The Applicant argues that the assessment does not and cannot involve the Ministers weighing an accepted bid with enforceable Overseas Investment Act 2005 conditions against an unaccepted (and potentially unacceptable) offer with no enforceable conditions. It would be wrong for the Overseas Investment Office to consider an *actual* offer for the asset in question because the Overseas Investment Office has no power to enforce that offer.
13. The most the Overseas Investment Office can do under Miller J's "with and without" analysis is ask itself what a notional alternative rational domestic investor would do with the asset. That is a "counterfactual" question. And, with respect, that must have been the analysis Miller J had in mind when he set aside the consent.
14. The Applicant's solicitors submit that it is wrong for CFIPG's solicitors to present this application as if it has now somehow become a contested s58 Commerce Act authorisation decision. It might suit CFIPG to present the matter in those terms, but that is not the framework Miller J endorsed for the determination of Overseas Investment Office consent applications.
15. It would be an error of law for the Overseas Investment Office and the Ministers to quantify and evaluate the putative benefits of actual offers in the way contended for in the CFIPG submission.
16. The Applicant's argue that all Miller J did in his judgment was explain that it was wrong for the Overseas Investment Office to engage in a "before and after" assessment of the s17(2) factors when, instead, the Ministers should exercise their judgement in light of whether or not the Overseas Investment Act 2005 believes that additional benefits would accrue if the land was acquired by New Zealand interests.
17. The Applicant submits that if the Overseas Investment Office adopted CFIPG's proposed framework for the assessment of Milk NZ's consent application that would set a dangerous precedent. It would mean that, for instance, any "New Zealand" investor could game the Overseas Investment Office consent process to destabilise the auction of sensitive land and hence lower the value of that land.
18. On CFIPG's approach it would be easy enough for an unsuccessful or unrealistic bidder to block a successful overseas bid without itself presenting the vendor with an acceptable offer for the assets in question. The risk of that outcome and the attendant uncertainty will undermine New Zealand's attractiveness as a destination for foreign capital. And that in turn must be a relevant and important factor in the exercise of the Ministers' discretion.

#### *Overseas Investment Office's position*

19. Refer to page 2 of the Overseas Investment Office's recommendation for an analysis of the appropriate counterfactual for this application.

#### Submission: Analysis of benefits

20. Paragraph 4 of CFIPG's submission provides a counterfactual analysis of each of the relevant factors for which the Overseas Investment Office identified a benefit to New Zealand in its January Report.



21. CFIPG submits that available evidence demonstrates that the Applicant's proposed overseas investment of the Crafar Farms will bring no benefit to New Zealand. CFIPG submits that the thrust of the Applicant's submissions to the Overseas Investment Office was that it would increase production beyond receivership levels and that this provided the requisite benefit. CFIPG claims that that argument cannot survive a counterfactual analysis and so the economic aspects of the benefit test – which are the majority of those factors which the Overseas Investment Office is directed to treat as matters of high relative importance - are not met.
22. Equally the non-economic benefits claimed by the Applicant (including ecological, heritage and walking access) will arise to the same extent, or more likely to a greater extent, under New Zealand ownership, and in particular, by the likely acquisition of the relevant farms by iwi interests.
23. CFIPG therefore argues that the Overseas Investment Office is required to recommend to the Ministers that the overseas investment does not satisfy the test in s 16(1)(e) of the Act and that consent should be declined.

*Applicant's response*

24. As discussed above, the Applicant submits that it would be an error in law for the Overseas Investment Office and the Ministers to quantify and evaluate the putative benefits of actual offers in the way contended for in the CFIPG submission.
25. The Applicant also claims there are significant factual errors in the CFIPG submission regarding CFIPG members forecasting of increased productivity and performance (refer supporting material, volume A, tab 10, page A-231).

*Overseas Investment Office's position*

26. Refer to paragraph 13 of the Overseas Investment Office's memorandum for an analysis of the appropriate counterfactual for this application.
27. Refer to paragraphs 47-48, and 50-70 of the Report for an analysis of the relevant benefits.

## Appendix 7 – Third party submission from Receivers of Plateau Farms Limited (in receivership and in liquidation)

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1. Following the judicial review proceedings, KordaMentha, the receivers of Plateau Farms Limited, Hillside Limited, Ferry View Farms Limited and Taharua Limited (all in receivership and in liquidation) (“the Receivers”) made a submission in response to CFIPG’s further submission. A copy of the Receivers submission can be found in supporting material, volume A, tab 11.

### Submission: The sale process:

2. The Receivers state that an extensive marketing campaign was undertaken in May and June 2011 during which the farms colloquially known as the Crafar Farms, were advertised for sale. This was both as individual farm lots and as a farming portfolio.
3. A number of offers/tenders were received at the conclusion of the marketing campaign. No offer was made by CFIPG or Sir Michael Fay.
4. The total price offered by the Applicant was substantially higher than any other offer received. The sum total of the best prices offered for individual farms was substantially less than any of the portfolio offers.
5. After extensive negotiations, the Receivers entered into an agreement with the Applicant on 19 November 2010.
6. On 16 June 2011, the Receivers were approached and advised that the Tuwharetoa Settlement Trust and Sir Michael Fay wished to purchase 9 of the 16 farms that make up the Crafar Farms portfolio for an aggregate offer price, excluding GST, of \$105.5 million, subject to 60 day due diligence period. The terms being proposed were of no interest to the Receivers and they advised accordingly.
7. On 20 September 2011, the Receivers were approached by Baytown Investments Limited (“Baytown”) and other unnamed entities collectively interested in the matter. The Receivers were advised that this group wished to enter into a contract for the purchase as going concerns of all the Crafar Farms for an aggregate price, including stock and machinery, of \$171.5 million. Once again, the terms being proposed were that 60 day due diligence period was required. The Receivers were advised that Baytown held “from reputable entities domiciled in New Zealand, formal confirmations of intent to purchase covering all of the Farms” but did not otherwise disclose the identities of the proposed purchasers.
8. The proposal outlined by what is now known as the CFIPG, was not acceptable to the Receivers and did not amount to a formal offer to purchase the Crafar Farms. It was not acceptable to the Receivers in terms of price, conditions and the complete lack of relevant information regarding the contracting parties.
9. If the Applicant’s application for consent under the Overseas Investment Act 2005 is unsuccessful, it is the Receivers’ intention to market the Crafar Farms on the open market again.

### *Overseas Investment Office’s Position*

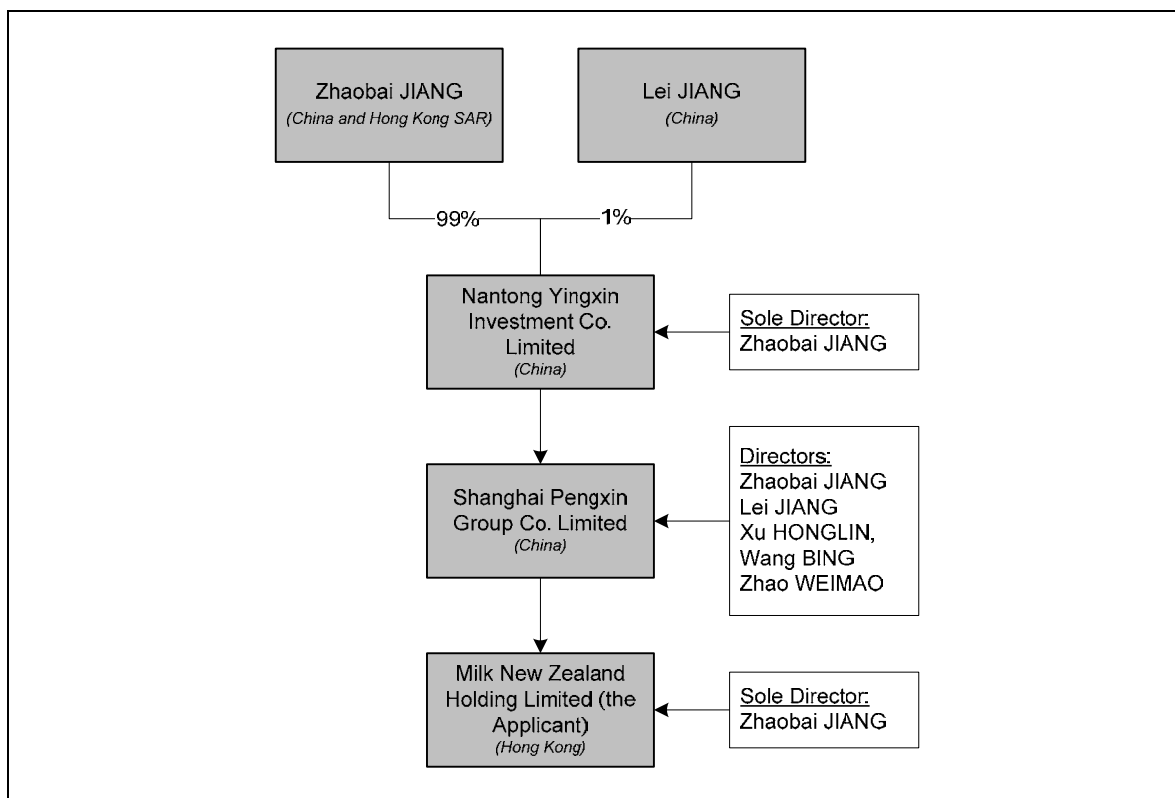
10. The Overseas Investment Office has noted the Receivers’ submission.

## Appendix 8 – Good character & Immigration Act 2009 matters

1. Evidence supporting the Overseas Investment Office’s recommendation that the individuals with control of the relevant overseas person are of good character, and are not individuals of a kind referred to in ss 15 or 16 of the Immigration Act 2009, can be found in supporting material, volume A, tab 5.

### Relevant Overseas Person and Individuals with Control

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



3. The Overseas Investment Office recommends that you determine that:
  - (a) the relevant overseas persons are Milk New Zealand Holding Limited, SPGL Group Co. Limited, Nantong Yingxin Investment Co. Limited and Zhaobai JIANG; and
  - (b) the individuals with control of the relevant overseas persons are Zhaobai JIANG and Lei JIANG, and the other directors of SPGL, Xu HONGLIN, Wang BING, and Zhao WEIMAO.
4. 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 SPGL (the Applicant’s parent company).

### Section 16(1)(c) - Good Character

5. 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*

6. 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].
7. The Overseas Investment Office has no reason to suspect that Zhaobai Jiang is not of good character:

- (a) 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 SPGL.
- (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 [sic] 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 SPGL.
  - (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 SPGL. SPGL 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 SPGL. Subsequently, Mr Xiao on-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 onsale of the property and for the assault.

#### *Lei Jiang*

8. Lei Jiang is a Chinese citizen. He is the younger brother of Zhaobai Jiang, and is the President of SPGL. Lei Jiang indirectly controls 1% of the shares in the Applicant and SPGL (the Applicant's parent company), and directly controls 1% of the shares Nantong Yingxin Investment Co. Limited (SPGL's parent company).
9. 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*

10. Xu Honglin is the Vice-President of SPGL, Wang Bing is the Chief Financial Officer of SPGL and Zhao Weimao is the President of SPGL's real estate group.
11. The Overseas Investment Office has no reason to suspect that the other directors of SPGL are not of good character:
  - (a) We have searched for information about the other directors of SPGL, 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

12. 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 ss 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 ss 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 ss 15 or 16 of the Immigration Act 2009.

## Appendix 9 – Farm land advertising requirements

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1. Evidence supporting the Overseas Investment Office's recommendation that the 'farmland advertising criterion has been satisfied, including representative examples of advertisements, can be found in supporting material, volume A, tab 12.
2. 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 Regulations.

### Requirements of s 16(1)(f) and r 4-11

3. 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 s 20).
4. Regulations 4-11 of the Regulations set out the procedure for advertising farm land.
  - (a) Regulation 4 provides that the purpose of r 5 to 10 is to:
    - (i) prescribe, for the purposes of the criterion in s 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 s 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 r 6 to 8; and
    - (ii) available on the open market for the minimum period required by r 9; and
    - (iii) advertised within the period required by r 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 r 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 r 6 must be published—
    - (i) in any medium that is:
      - in the list set out in Schedule 1 of the Regulations (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 of the Regulations 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 r 6; or
    - (ii) for a longer period, if the advertisement under r 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 r 9(1) from a person who is not an overseas person.
- (h) Regulation 10 provides that the advertisement under r 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, rr 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

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

- (a) Regulation 5 is satisfied as the farm land was:
  - (i) offered for acquisition on the open market, to persons who are not overseas persons, in accordance with rr 6 to 8; and
  - (ii) available on the open market for the minimum period required by r 9; and
  - (iii) advertised within the period required by r 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 used, in accordance with the general practice for advertising land (nearly NZD \$█ 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 owner's agent).
- (d) Regulation 8 is satisfied as the advertisements under r 6 were published:
  - (i) in media that are in the list set out in Schedule 1 of the Regulations 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 Regulations for that particular medium (or, if another medium is or 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 r 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.

## Appendix 10 – Third party submission from Tiroa E and Te Hape B Trusts and Tauhara Whenua Trusts

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1. Following the High Court judicial review proceeding, the Tiroa E & Te Hape B Trusts and the Tauhara Whenua Trust have made a further submission. The trusts are part of the Crafar Farm Independent Purchaser Group.
2. On 7 March 2012 solicitors acting for “Tiroa E & Te Hape B Trusts (Ngati Rereahu) and Tauhara Whenua Trust/s (Pahautea Trust)” claiming to represent “mana whenua interests for Ngati Rereahu and Tuwharetoa” wrote to the Overseas Investment Office. In the letter the solicitors stated that consultation had not yet with mana whenua interests through the submission process. The letter stated that the trusts claimed ownership in the Taharua River, the Waimiha Stream and the Te Kakaho Stream and considered those waterways to be wahi tapu.
3. The Crown Law Office responded by letter on 13 March 2012 to advise that consultation had already occurred with the trusts and that the Overseas Investment Act 2005 did not require there to be any further consultation. Even so, the Crown Law Office invited the trusts to provide information by 16 March 2012 as to the trusts’ relationship to the waterways, why they claimed ownership and why they considered the waterways to be wahi tapu.
4. The trusts responded through different solicitors on 16 March 2012. The trusts stated they still considered the OIO needed to consult with mana whenua interests. The trusts did not provide the information sought in Crown Law’s letter of 13 March 2012. Instead, the trusts offered to meet kanohi ki te kanohi (face to face) with the OIO. The trusts stated that an urgent claim to the Waitangi Tribunal was being filed.
5. The Crown Law Office responded to this letter on 22 March 2012. Crown Law stated that:
  - (a) the Waimiha Stream was owned by the Crown and so was not subject to the application<sup>51</sup>;
  - (b) most of the Te Kakaho Stream was also owned by the Crown and also not part of the application;
  - (c) two small sections of the Te Kakaho Stream were subject to the application and would, through the regulations, be offered to the Crown<sup>52</sup>;
  - (d) the ownership status of the Taharua River depended on whether or not it is “navigable” – if it was, it was owned by the Crown and not subject to the application – if it was not navigable, it would also be offered to the Crown through the regulations;
  - (e) from a Treaty of Waitangi perspective the application was not prejudicial to Maori interests;
  - (f) as above, the application process required two sections of the Te Kakaho Stream and the Taharua River to be offered to the Crown;
  - (g) but for the application, there would be nothing that required those waterways to be offered to the Crown.
6. The Overseas Investment Office and the Crown Law Office have not received any application for an urgent Waitangi Tribunal hearing into any claim concerning this application process.

### Submission: s 17(2)(d) Protection of historic heritage

7. The fundamental issues raised by the trusts appear to be their claims that:
  - (a) the trusts and/or mana whenua own the three waterways;
  - (b) the three waterways are wahi tapu; and
  - (c) there must be a process of consultation with mana whenua over and above the submission process.

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<sup>51</sup> Subsequent investigations have revealed that several parts of the Waimiha Stream extend beyond the marginal strips and are therefore likely to be within the titles of Benneydale 1. To the extent that this is the case, the bed of the Waimiha Stream has been offered to the Crown under the Regulations.

<sup>52</sup> Subsequent investigations have revealed that the smaller of the two sections of the Te Kakaho Stream is not riverbed for the purposes of the Act.



*Overseas Investment Office's position*

8. The Overseas Investment Office understands that the Crown owns the Waimiha Stream<sup>53</sup> and most of the Te Kakaho Stream. This means that these waterways are not subject to the purchase and application process.
9. The Overseas Investment Office understands that one<sup>54</sup> section of the Te Kakaho Stream is subject to the purchase and application. As above, the regulations will require this section of the Te Kakaho stream to be offered to the Crown.
10. The Overseas Investment Office understands it is likely that the Taharua River is non-navigable. This means it will be offered to the Crown. If the river is navigable, the Crown already owns it.
11. The Overseas Investment Office does not understand there to be a basis on which the three waterways are wahi tapu. The trusts have not stated how the waterways are considered to be wahi tapu.
12. In the submission of the Crafar Farms Independent Purchaser Group of November 2011, which was made on behalf of the trusts, the chairman of the Tiroa E and Te Hape B Trusts raised issues concerning wahi tapu, but did not mention claims that the Taharua River, the Waimiha Stream and Te Kakaho Stream were wahi tapu.
13. Even if the waterways are wahi tapu, the Crown either already owns the waterways or will be offered the waterways through the regulations. This improves the position for the trusts because it means the Crown has greater control to protect the waterways and/or to offer the waterways back to Maori through the Treaty settlements process.
14. The Overseas Investment Office does not understand that it has any further obligation to consult with mana whenua in respect of the application.

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<sup>53</sup> See footnote 51 above.

<sup>54</sup> See footnote 52 above. Originally it was thought that two sections of the Te Kakaho Stream would be offered to the Crown.