

Triage Report

201610121 – NZ Binxi (Oamaru) Foods Ltd

Key information

Incident date	08/11/2017
Triage date	17/11/2017
Incident officer	Amy Jarratt
Source of referral	OIO Monitoring team
Confidentiality requested?	N/A

Brief summary of Incident as alleged

1. The theory of the case is that NZ Binxi (Oamaru) Foods Limited (**NZ Binxi**) has not complied with condition 3 of consent, which requires:

Within 6 months from the date of consent, the Consent Holder must apply for resource consent to change the zoning of the Target Land to allow the development of staff accommodation and a dwelling to take place in accordance with the Business Plan.

2. Consent was granted on 10 November 2016 and condition 3 was therefore due to be complied with by 10 May 2017.
3. The first annual report provided on 6 November 2017 confirms that the resource consent has not yet been applied for. NZ Binxi has noted that this is due to the delayed settlement date of 16 June 2017. They are currently preparing the applications and expect to have it ready by the end of December 2017.

Asset concerned

4. The consent relates to the acquisition of a freehold interest in 5.3806 hectares of land at 10 Shortland Road, Oamaru North.

Person/s concerned

5. The consent holder is NZ Binxi (Oamaru) Foods Limited, a NZ registered company that is a 100% subsidiary of Heilongjiang Binxi Cattle Industry Co Limited, a company incorporated in China.

Brief summary of information reviewed/inquiries made

6. Reviewed conditions of consent and noted:
 - The consent does not contain a disposal condition;
 - Conditions 5 to 8 require other actions from the consent holder that are linked to the date that the resource consent is obtained (e.g. begin (within 1 year of resource consent being granted) and complete (within 4 years of resource consent being granted) redevelopment of the dwelling on the land into staff accommodation in accordance with its Business Plan).

Information in and attached to this report may be legally privileged

7. Reviewed 2017 annual reporting and noted:

- Application for resource consent expected to be completed by end of December 2017;
- De-Geest Consulting has been engaged to assist with the application for rezoning; and
- Several meetings have been held with Waitaki District Council planning staff to ensure they are on track with their application.

Assessment

8. On the basis of the information currently available:

Question	Y/N	Basis for answer
Does the Incident appear to fall within the OIO's regulatory remit?	Y	The incident relates to a breach of a condition of consent (condition 3 of consent 201610121).
Does there appear to have been a breach of the Rules? eg does the conduct alleged show a prima facie: breach of a condition of consent? acquisition of a sensitive asset without consent? disguise by an overseas person of his or her ownership of a sensitive asset using a deceptive mechanism?	Y	There appears to have been a breach of condition 3 of consent, as NZ Binxi has not applied for resource consent by 10 May 2017. <i>At the moment, not material breach. Not significant priority</i>
Is the Incident within the limitation period?	Y	Condition was breached on 10 May 2017.
Does the Incident fall within the OIO's Enforcement Priorities	Y	Breaches of conditions of consent are considered enforcement priorities.
Is there another regulatory or disciplinary body that has more appropriate jurisdiction or powers than the OIO?	N	The incident relates primarily to a breach of a condition of consent.

Recommendation

9. Based on my review of the information, I recommend:

Recommendation	Tick	Basis for answer
The Incident progress to Assessment phase.		
No further action be taken and the Incident be closed	✓	Due to delayed settlement, this condition has proved difficult to comply with. The annual report provided by NZ Binxi has indicated that they should be ready to apply for resource consent by the end of December. Recommend that we write to them, advising that they need to apply for consent by end of December and that a further update on compliance is due by end of January 2018. We may want to raise with them that they should consider applying for

Information in and attached to this report may be legally privileged

Recommendation	Tick	Basis for answer
		a variation under s27 of the Act, if they are unable to comply with this deadline.
An Enforcement Tool be deployed [link to Enforcement Approach] and then the Incident be closed		

s9(2)(a)

Pedro-Morgan *Andrew Morris*
Principal Advisor ~~Enforcement~~
Applications

Agree:
Disagree:
Amend as marked:

Date:

s9(2)(a)

Kirsty Pinnard
Manager Enforcement

Agree: *→ but note (8)*
Disagree:
Amend as marked:

Date:

Notes for Assessment Team

Questions	Notes
Assessment team member(s)	
Date to report back to Screening Group (20 working days)	
Comments or guidance on areas to review	

Our Ref: 201610121

28 November 2017

NZ Binxi (Oamaru) Foods Limited
C/- Richard Thorp

BY EMAIL: Section 9(2)(a)

Dear Richard,

NZ Binxi (Oamaru) Foods Limited – compliance reporting for Shortlands Road – consent 201610121

1. We are writing in response to the 2017 annual report that you provided on behalf of NZ Binxi (Oamaru) Foods Limited (**NZ Binxi**) in relation to the Shortlands Road consent (**the consent**).
2. From our review of the annual report, we understand that NZ Binxi has not yet complied with condition 3 of the consent.
3. Condition 3 states:

Within 6 months from the date of consent, the Consent Holder must apply for resource consent to change the zoning of the Target Land to allow the development of staff accommodation and a dwelling to take place in accordance with the Business Plan.
4. The consent was granted to NZ Binxi on 10 November 2016. Accordingly, compliance with condition 3 is now overdue.
5. We understand that NZ Binxi has taken steps towards complying with condition 3, including engaging the services of De-Geest construction to assist with the application and holding meetings with the Waitaki District Council.
6. The annual report also stated that NZ Binxi expects that it will have applied for the necessary resource consent by the end of December 2017.
7. Given the stated commitment to soon meet the condition, we do not propose to take any action in relation to this breach of its consent conditions at this time. However, NZ Binxi must still comply with condition 3 and to that end we require you to provide us with an update confirming compliance, no later than **28 February 2018**.
8. If NZ Binxi is unable to comply with condition 3 by this date, it should consider applying for a variation to the conditions of consent under s27 of the Overseas Investment Act 2005.

Yours sincerely

s9(2)(a)

Amy Jarratt
Investigator
Overseas Investment Office
DDI: +64 4 831 1690
Email: ajarratt@linz.govt.nz

Copy to:

Duncan Cotterill
c/- Phoebe Davies

Section 9(2)(a)

Released under the Official Information Act 1982

Triage Report

201610121 – NZ Binxi (Oamaru) Foods Ltd

Key information

Incident date	02/10/2018
Triage date	09/10/2018
Incident officer	Amy Florkowski
Source of referral	OIO Monitoring team
Confidentiality requested?	N/A

Brief summary of Incident as alleged

1. The theory of the case is that NZ Binxi (Oamaru) Foods Limited (**NZ Binxi**) has not complied with condition 3 of consent, which requires:

Within 6 months from the date of consent, the Consent Holder must apply for resource consent to change the zoning of the Target Land to allow the development of staff accommodation and a dwelling to take place in accordance with the Business Plan.

2. Consent was granted on 10 November 2016 and condition 3 was therefore due to be complied with by 10 May 2017.
3. The first annual report provided on 6 November 2017 confirmed that the resource consent has not yet been applied for. NZ Binxi noted that this was due to the delayed settlement date of 16 June 2017. They advised they were preparing the applications and expected to have them ready by the end of December 2017.
4. We triaged this in November 2017 and asked NZ Binxi to confirm compliance by 28 February 2018, or consider applying for a variation to the conditions of consent.
5. In April 2018, NZ Binxi indicated resource consent may not be required and confirmed that they would be seeking a variation to the conditions of consent.
6. On 25 September 2018, the OIO conducted a site inspection at the property, and another adjoining property. At the inspection, Richard Thorp of NZ Binxi indicated that progress on the staff accommodation had stalled.
7. A variation is yet to be submitted.

Asset concerned

8. The consent relates to the acquisition of a freehold interest in 5.3806 hectares of land at 10 Shortland Road, Oamaru North.
9. The land is sensitive as it is non urban with an area greater than 5 hectares and adjoins the foreshore.

Information in and attached to this report may be legally privileged

Person/s concerned

10. The consent holder is NZ Binxi (Oamaru) Foods Limited, a NZ registered company that is a 100% subsidiary of Heilongjiang Binxi Cattle Industry Co Limited, a company incorporated in China.

Brief summary of information reviewed/inquiries made

- Reviewed site inspection report
- Reviewed conditions of consent (attached at **APPENDIX A**)
- Reviewed previous investigation file

Assessment

11. On the basis of the information currently available:

Question	Y/N	Basis for answer
Does the Incident appear to fall within the OIO's regulatory remit?	Y	The incident relates to a breach of a condition of consent (condition 3 of consent 201610121).
Does there appear to have been a breach of the Rules? eg does the conduct alleged show a prima facie: breach of a condition of consent? acquisition of a sensitive asset without consent? disguise by an overseas person of his or her ownership of a sensitive asset using a deceptive mechanism?	Y	There appears to have been a breach of condition 3 of consent, as NZ Binxi has not applied for resource consent by 10 May 2017.
Is the Incident within the limitation period?	Y	Condition was breached on 10 May 2017.
Does the Incident fall within the OIO's Enforcement Priorities	Y	Material breaches of conditions of consent are considered enforcement priorities. I consider this breach is now an enforcement priority as: <ul style="list-style-type: none">- this condition has a flow on effect to the other substantive conditions (this breach holds up compliance with the other conditions); and- the breach has not been resolved in the last 12 months.
Is there another regulatory or disciplinary body that has more appropriate jurisdiction or powers than the OIO?	N	The incident relates primarily to a breach of a condition of consent.

Recommendation

12. Based on my review of the information, I recommend:

Information in and attached to this report may be legally privileged

Recommendation	Tick	Basis for answer
The Incident progress to Assessment Surveillance phase.	✓	I recommend that we write to NZ Binxi indicating that we may take enforcement action if a variation is not applied for within the next few months. We should put the file to surveillance until a variation or response is received from NZ Binxi.
No further action be taken and the Incident be closed		
An Enforcement Tool be deployed [link to Enforcement Approach] and then the Incident be closed		

s9(2)(a)

Sarah Scott
Acting Principal Advisor Enforcement

Agree:
Disagree:
Amend as marked:

Date: 9/10/18

s9(2)(a)

Kirsty Millard
Manager Enforcement

Agree:
Disagree:
Amend as marked:

Date: 9/10/18

Notes for Assessment Team

Questions	Notes
Assessment team member(s)	
Date to report back to Screening Group (20 working days)	

Information in and attached to this report may be legally privileged

Questions	Notes
Comments or guidance on areas to review	

Released under the Official Information Act 1982

Information in and attached to this report may be legally privileged

APPENDIX A: Conditions of consent

Released under the Official Information Act 1982

Decision Date

10 November 2016

Decision

Consent has been granted for NZ Binxi (Oamaru) Foods Limited (or Lean Meats Oamaru Limited or Oamaru Meats Limited) to give effect to an overseas investment in sensitive land, being the acquisition of a freehold interest in approximately 5.3806 hectares of land at 10 Shortland Road, Oamaru North.

Only the named consents holder(s) may give effect to the investment, not a subsidiary of the consent holder, a trust, or other entity.

Consent is granted subject to the following conditions:

Statutory Conditions of Consent

Section 28 of the Overseas Investment Act 2005 ("the Act") provides that it is a condition of every consent, whether or not it is stated in the consent, that:

- (a) the information provided by each applicant to the Overseas Investment Office or the relevant Ministers in connection with the application was correct at the time it was provided; and
- (b) each consent holder must comply with the representations and plans made or submitted in support of the application and notified by the Overseas Investment Office as having been taken into account when the consent was granted, unless compliance should reasonably be excused.

For the purposes of section 28(1)(b), the representations and plans made or submitted in support of the application and taken into account when consent was granted are those contained in the correspondence listed in the statutory declaration of Richard James Thorp dated 10 October 2016 and in all attachments annexed to that correspondence.

Special Conditions

Interpretation

Any term or expression that is defined in the Overseas Investment Act 2005 and used, but not defined, in this consent has the same meaning as in the Overseas Investment Act 2005.

Act means the Overseas Investment Act 2005.

Application Letter means the application letter dated 24 June 2016.

Business Plan means the business plan set out in Appendix 8 of the Application Letter.

Consent Holder means NZ Binxi (Oamaru) Foods Limited (or Lean Meats Oamaru Limited or Oamaru Meats Limited).

Individuals with Control means:

- (a) the individuals who have, directly or indirectly, a 25% or more ownership or control interest in the Consent Holder or a Parent of the Consent Holder; and

- (b) the members of the governing body of the Consent Holder or a Parent of the Consent Holder; and
- (c) includes, for the avoidance of doubt, the members of the governing body of NZ Binxi (Oamaru) Foods Limited, Heilongjiang Binxi Cattle Industry Co Limited and Zhiyun He.

Inspector means a person appointed by the Regulator to undertake an Inspection on the Regulator's behalf.

Inspection means a visit to a property by an Inspector for the purpose of monitoring these conditions.

Investment means the Land.

Land means approximately 5.3806 hectares of land at 10 Shortland Road, Oamaru North being all of the land contained in Certificate of Title 440536.

OIO means the Overseas Investment Office.

Parent of Consent Holder means a person that has, directly or indirectly, a 25% or more ownership or control interest in the Consent Holder, and includes a person that has, directly or indirectly, a 25% or more ownership or control interest in any Parent of the Consent Holder.

Regulations means the Overseas Investment Regulations 2005.

Settlement Date means the date the acquisition of the Investment took place.

Special Conditions

When the transaction must be given effect to

1. The consent will lapse if the Investment has not been acquired by and transferred to the Consent Holder within 12 months of the date of consent.

Good character

2. The Individuals with Control must:
 - (a) continue to be of good character; and
 - (b) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.

Resource consents

3. Within 6 months from the date of consent, the Consent Holder must apply for resource consent (**Resource Consent**) to change the zoning of the Target Land to allow the development of staff accommodation and a dwelling to take place in accordance with the Business Plan.
4. The Consent Holder must use all reasonable commercial endeavours to obtain the resource consent.

Requirement to develop staff accommodation

5. Within 1 year from the date that Resource Consent is granted, the Consent Holder must have begun to redevelop the dwelling on the Target Land into staff accommodation in accordance with its Business Plan.
6. Within 4 years from the date that Resource Consent is granted, the Consent Holder must have completed the redevelopment of the dwelling on the Target Land into staff accommodation in accordance with its Business Plan.

Requirement to develop office premises

7. Within 2 years from the date that Resource Consent is granted, the Consent Holder must have begun to develop office premises on the Target Land in accordance with its Business Plan.
8. Within 4 years from the date that Resource Consent is granted, the Consent Holder must have completed the development of office premises in accordance with its Business Plan.

Requirement to create 1 FTE position

9. Within 4 years from the date that Resource Consent is granted, the Consent Holder must have created, and filled, at least one additional full-time equivalent position on a permanent basis in connection with the operation of the staff accommodation. This position must be employed to work on the Target Land and to assist in operating the staff accommodation.

Reporting to the OIO

10. The Consent Holder must notify the OIO in writing as soon as practicable, and no later than twelve months from the date of consent, whether settlement of the acquisition of the Investment took place. If settlement of the acquisition of the Investment did take place, the notice must include:

- (a) the Settlement Date;
- (b) final consideration paid (plus GST, if any);
- (c) the structure by which the acquisition was made, and who acquired the Investment;
- (d) where applicable, copies of transfer documents and settlement statements; and
- (e) any other information that would aid the OIO in its function to monitor conditions of consent.

11. The Consent Holder must report in writing annually to the OIO detailing progress of its Business Plan ("Annual Report"), including the Consent Holder's compliance with conditions 3, 4, 5, 6 and 7;

The first Annual Report is due on 30 October 2017 and the final report is due on 30 October 2021 (or such other date as advised by the OIO in writing).

12. The Consent Holder must notify the OIO in writing within 20 working days if:

- (a) the Consent Holder, any Individual with Control, or any person in which the Consent Holder or any Individual with Control 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); or
- (b) any Individual with Control:
 - (i) ceases to be of good character; or
 - (ii) commits an offence or contravenes the law (whether convicted or not); or
 - (iii) becomes aware of any other matter that reflects adversely on an Individual with Control's fitness to have the Investment; or
 - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
- (c) the Consent Holder:

- (i) ceases to be an overseas person; or
 - (ii) disposes of the Investment.
13. If requested in writing by the OIO, the Consent Holder must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
- (a) the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent was granted; or
 - (b) the conditions of this consent.

Inspection for the purposes of monitoring these conditions

14. The Consent Holder must allow an Inspector to conduct an Inspection, provided that the Consent Holder has been given at least two working days' notice of the Inspection.
15. For the purpose of conducting the Inspection, the Consent Holder must allow an Inspector to:
- (a) gather information and provide that information to the OIO;
 - (b) enter any building on the Land other than a dwelling;
 - (c) remain for as long as is reasonably required to conduct the Inspection;
 - (d) conduct surveys, inquiries, tests, and measurements;
 - (e) take photographs and video recordings; and
 - (f) do all other things that are reasonably necessary to enable an Inspector to carry out an Inspection.
16. The Consent Holder must take all reasonable steps to facilitate an Inspection, including:
- (a) directing its employees or agents to permit an Inspector to conduct an Inspection; and
 - (b) being available, or requiring its agents or employees to be available at all reasonable times during an Inspection to facilitate access by an Inspector onto and across the Land, including providing transport across the Land if reasonably required.
17. For the avoidance of doubt:
- (a) an Inspector will not inspect, copy or take documents during an Inspection, unless the Consent Holder or an employee or agent of the Consent Holder agrees to the document being inspected, copied or taken;
 - (b) the Consent Holder, its employees, and agents are not required to answer an Inspector's questions, but may do so if they wish.

Monitoring Conditions of Consent

For the purpose of monitoring conditions of consent, the Overseas Investment Office may, under section 38 of the Act, require the consent holder to provide information or documents, or both, that are specified in the notice. Under section 40 of the Act, the Overseas Investment Office may also require a consent holder to provide a statutory declaration verifying the extent to which the consent holder has complied with the conditions of consent, and, if the consent holder is in breach of a condition or conditions, the reasons for the breach and the steps the consent holder intends to take to remedy the breach.

Sanctions

The Act provides for civil and criminal sanctions for breaching the Act, failing to comply with the conditions of consent and failing to provide information required by the Overseas Investment Office. The Overseas Investment Office has an obligation to investigate and act upon alleged and suspected breaches of the Act.

General

A reference to the "Overseas Investment Office" in this Notice includes a reference to the regulator (as defined by the Act). A reference to the Applicant includes a reference to the consent holder.

Released under the Official Information Act 1982

Overseas Investment Office

Radio New Zealand House
155 The Terrace
PO Box 5501
Wellington 6145
New Zealand
+64 4 460 0110
www.linz.govt.nz

Our Ref: 201610121

17 October 2018

NZ Binxi (Oamaru) Foods Limited
C/- Richard Thorp

BY EMAIL: Section 9(2)(a)

Dear Richard,

NZ Binxi (Oamaru) Foods Limited – compliance reporting for Shortland Road – consent 201610121

1. Following our recent site inspection to NZ Binxi (Oamaru) Foods Limited's (**NZ Binxi**) properties in Oamaru, we are writing to follow up on its progress towards compliance with condition 3 of the Shortland Road consent (**the consent**).
2. Condition 3 states:

Within 6 months from the date of consent, the Consent Holder must apply for resource consent to change the zoning of the Target Land to allow the development of staff accommodation and a dwelling to take place in accordance with the Business Plan.
3. The consent was granted to NZ Binxi on 10 November 2016. Accordingly, compliance with condition 3 was due on 10 May 2017.
4. Your email of 6 April 2018 advised that NZ Binxi planned to submit an application to vary the conditions of consent. However, our records show that we have not yet received such an application.
5. We take breaches of consent conditions seriously and are concerned about NZ Binxi's failure to comply with condition 3 of the consent. The importance of consent conditions is demonstrated in section 45 of the Overseas Investment Act 2005 (**the Act**), which provides that it is an offence to fail to comply with a notice, requirement or condition imposed under the Act. Failure to comply with a condition of consent can result in enforcement action, including a fine of up to \$100,000, or a court order to dispose of the property.
6. If NZ Binxi still intends to submit an application to vary condition 3 of the consent, we require this to be submitted to us no later than **Friday 15th February 2019**.
7. If an application is not received by this date, we will consider what enforcement action, if any, is appropriate in the circumstances.

Yours sincerely

s9(2)(a)

Amy Florkowski
Senior Investigator
Overseas Investment Office
DDI: +64 4 831 1690
Email: aflorkowski@linz.govt.nz

A3415318

Triage Report

201610121 – NZ Binxi (Oamaru) Foods Ltd – Shortland St consent

Key information

Incident date	07/01/2019
Triage date	08/01/2019
Incident officer	Amy Florkowski
Source of referral	OIO Monitoring & Intelligence team
Confidentiality requested?	n/a

Brief summary of Incident as alleged

1. NZ Binxi failed to provide their annual report by the due date of 30th October 2018, in accordance with condition 11 of their consent.
2. A reminder letter was not sent until 19th November 2018.
3. Two extensions were granted by OIO Monitoring in late 2018 to 3rd December and 18th December 2018. The report is still yet to be received and the consent holder advised on 7th January 2019 that the report would be in no later than Friday 11th January 2019. (Refer Appendix A for email chain).
4. This case has been triaged due to compliance issues twice previously:
 - 17 November 2017 – failure to comply with condition 3 by due date of 10 May 2017. At the time of triage, the consent holder advised they were intending to apply for the relevant resource consent by the end of December 2017. Accordingly, we requested an update by the end of February 2018. We were advised in April 2018 that resource consent may not be required and NZ Binxi would be applying for a variation to the conditions (as conditions 5-8 are linked to the date that resource consent is obtained).
 - 9 October 2018 – a site inspection was conducted at NZ Binxi's Oamaru properties on September 2018. As the variation remained outstanding, the matter was re-triaged. We wrote to NZ Binxi on 17 October 2018 advising that if a variation is not submitted by 15 February 2019, we would consider what other enforcement action, if any, is appropriate in the circumstances.
5. Additionally, NZ Binxi has experienced difficulty complying with conditions of consent 201520010 and we are currently processing an application to vary conditions for this consent.

Asset concerned

6. The consent relates to the acquisition of a freehold interest in 5.3806 hectares of land at 10 Shortland Road, Oamaru North.
7. The land is sensitive as it is non urban with an area greater than 5 hectares and adjoins the foreshore.

Information in and attached to this report may be legally privileged

8. The land was acquired for the purpose of developing staff accommodation to house NZ Binxi staff working at the neighbouring factory.

Person/s concerned

9. NZ Binxi is a NZ registered company that is a 100% subsidiary of Heilongjiang Binxi Cattle Industry Co Limited, a company incorporated in China.

Brief summary of information reviewed/inquiries made

10. Reviewed conditions of consent – attached at **APPENDIX A**.
11. Reviewed monitoring correspondence – attached at **APPENDIX B**.

Assessment

12. Following a review of the information above, I consider that we should issue an administrative penalty for late filing in accordance with section 52 of the Act.
13. This is on the basis that:
- Reminder letters are a courtesy and consent holders are expected to have their own compliance systems in place;
 - Although the reminder letter was sent after the due date, NZ Binxi has been given two extensions since and has failed to meet these deadlines; and
 - We are aware that NZ Binxi has experienced difficulties meeting conditions of its consents generally in the past.
14. On the basis of the information currently available:

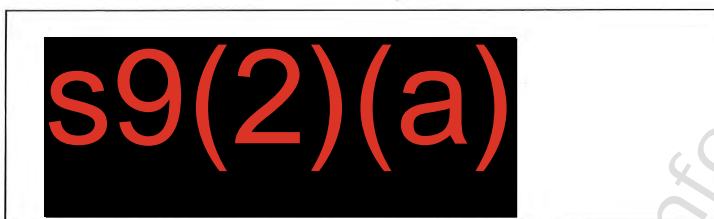
Question	Y/N	Basis for answer
Does the Incident appear to fall within the OIO's regulatory remit?	Y	The incident relates to a failure to provide an annual report by the due date (condition 11)
Does there appear to have been a breach of the Rules? eg does the conduct alleged show a prima facie: breach of a condition of consent? acquisition of a sensitive asset without consent? disguise by an overseas person of his or her ownership of a sensitive asset using a deceptive mechanism?	Y	The annual report was not received by the date specified in condition 11 and is not over two months overdue.
Is the Incident within the limitation period?	Y	The breach of the condition occurred on 30 October 2018 – within limitation period.
Does the Incident fall within the OIO's Enforcement Priorities	Y	I consider that this is a priority for enforcement action, due to NZ Binxi's failure to meet its commitments generally and the length of time that the report has been overdue for.
Is there another regulatory or disciplinary body that has more appropriate jurisdiction or powers than the OIO?	N	This matter relates to a breach of conditions of an OIO consent.

Information in and attached to this report may be legally privileged

Recommendation

15. Based on my review of the information, I recommend:

Recommendation	Tick	Basis for answer
The Incident progress to Assessment phase.		
No further action be taken and the Incident be closed		
An Enforcement Tool be deployed and then the Incident be closed	✓	Based on the analysis at para 13, I consider it is appropriate for us to issue an administrative penalty for late filing of the annual report (s52 of the Act).

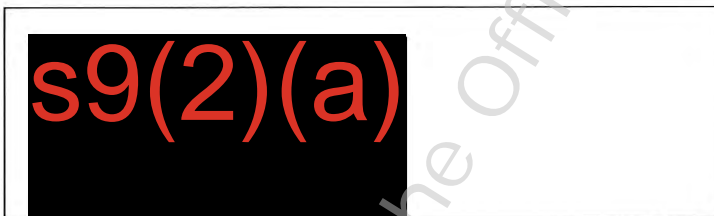


Sarah Scott
Principal Advisor Enforcement

Agree:
Disagree:
Amend as marked:

Date:

8/1/19



Kirsty Millard
Manager Enforcement

Agree:
Disagree:
Amend as marked:

Date:

8/1/19

Notes for Assessment Team

Questions	Notes
Assessment team member(s)	
Date to report back to Screening Group (20 working days)	

Information in and attached to this report may be legally privileged

Questions	Notes
Comments or guidance on areas to review	

Released under the Official Information Act 1982

Information in and attached to this report may be legally privileged

APPENDIX A: Conditions of consent

Released under the Official Information Act 1982

Information in and attached to this report may be legally privileged

Released under the Official Information Act 1982



Decision Date

10 November 2016

Decision

Consent has been granted for NZ Binxi (Oamaru) Foods Limited (or Lean Meats Oamaru Limited or Oamaru Meats Limited) to give effect to an overseas investment in sensitive land, being the acquisition of a freehold interest in approximately 5.3806 hectares of land at 10 Shortland Road, Oamaru North.

Only the named consents holder(s) may give effect to the investment, not a subsidiary of the consent holder, a trust, or other entity.

Consent is granted subject to the following conditions:

Statutory Conditions of Consent

Section 28 of the Overseas Investment Act 2005 ("the Act") provides that it is a condition of every consent, whether or not it is stated in the consent, that:

- (a) the information provided by each applicant to the Overseas Investment Office or the relevant Ministers in connection with the application was correct at the time it was provided; and
- (b) each consent holder must comply with the representations and plans made or submitted in support of the application and notified by the Overseas Investment Office as having been taken into account when the consent was granted, unless compliance should reasonably be excused.

For the purposes of section 28(1)(b), the representations and plans made or submitted in support of the application and taken into account when consent was granted are those contained in the correspondence listed in the statutory declaration of Richard James Thorp dated 10 October 2016 and in all attachments annexed to that correspondence.

Special Conditions

Interpretation

Any term or expression that is defined in the Overseas Investment Act 2005 and used, but not defined, in this consent has the same meaning as in the Overseas Investment Act 2005.

Act means the Overseas Investment Act 2005.

Application Letter means the application letter dated 24 June 2016.

Business Plan means the business plan set out in Appendix 8 of the Application Letter.

Consent Holder means NZ Binxi (Oamaru) Foods Limited (or Lean Meats Oamaru Limited or Oamaru Meats Limited).

Individuals with Control means:

- (a) the individuals who have, directly or indirectly, a 25% or more ownership or control interest in the Consent Holder or a Parent of the Consent Holder; and

- (b) the members of the governing body of the Consent Holder or a Parent of the Consent Holder; and
- (c) includes, for the avoidance of doubt, the members of the governing body of NZ Binxi (Oamaru) Foods Limited, Heilongjiang Binxi Cattle Industry Co Limited and Zhiyun He.

Inspector means a person appointed by the Regulator to undertake an Inspection on the Regulator's behalf.

Inspection means a visit to a property by an Inspector for the purpose of monitoring these conditions.

Investment means the Land.

Land means approximately 5.3806 hectares of land at 10 Shortland Road, Oamaru North being all of the land contained in Certificate of Title 440536.

OIO means the Overseas Investment Office.

Parent of Consent Holder means a person that has, directly or indirectly, a 25% or more ownership or control interest in the Consent Holder, and includes a person that has, directly or indirectly, a 25% or more ownership or control interest in any Parent of the Consent Holder.

Regulations means the Overseas Investment Regulations 2005.

Settlement Date means the date the acquisition of the Investment took place.

Special Conditions

When the transaction must be given effect to

1. The consent will lapse if the Investment has not been acquired by and transferred to the Consent Holder within 12 months of the date of consent.

Good character

2. The Individuals with Control must:
 - (a) continue to be of good character; and
 - (b) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.

Resource consents

3. Within 6 months from the date of consent, the Consent Holder must apply for resource consent (**Resource Consent**) to change the zoning of the Target Land to allow the development of staff accommodation and a dwelling to take place in accordance with the Business Plan.
4. The Consent Holder must use all reasonable commercial endeavours to obtain the resource consent.

Requirement to develop staff accommodation

5. Within 1 year from the date that Resource Consent is granted, the Consent Holder must have begun to redevelop the dwelling on the Target Land into staff accommodation in accordance with its Business Plan.
6. Within 4 years from the date that Resource Consent is granted, the Consent Holder must have completed the redevelopment of the dwelling on the Target Land into staff accommodation in accordance with its Business Plan.

Requirement to develop office premises

7. Within 2 years from the date that Resource Consent is granted, the Consent Holder must have begun to develop office premises on the Target Land in accordance with its Business Plan.
8. Within 4 years from the date that Resource Consent is granted, the Consent Holder must have completed the development of office premises in accordance with its Business Plan.

Requirement to create 1 FTE position

9. Within 4 years from the date that Resource Consent is granted, the Consent Holder must have created, and filled, at least one additional full-time equivalent position on a permanent basis in connection with the operation of the staff accommodation. This position must be employed to work on the Target Land and to assist in operating the staff accommodation.

Reporting to the OIO

10. The Consent Holder must notify the OIO in writing as soon as practicable, and no later than twelve months from the date of consent, whether settlement of the acquisition of the Investment took place. If settlement of the acquisition of the Investment did take place, the notice must include:

- (a) the Settlement Date;
- (b) final consideration paid (plus GST, if any);
- (c) the structure by which the acquisition was made, and who acquired the Investment;
- (d) where applicable, copies of transfer documents and settlement statements; and
- (e) any other information that would aid the OIO in its function to monitor conditions of consent.

11. The Consent Holder must report in writing annually to the OIO detailing progress of its Business Plan ("Annual Report"), including the Consent Holder's compliance with conditions 3, 4, 5, 6 and 7;

The first Annual Report is due on 30 October 2017 and the final report is due on 30 October 2021 (or such other date as advised by the OIO in writing).

12. The Consent Holder must notify the OIO in writing within 20 working days if:

- (a) the Consent Holder, any Individual with Control, or any person in which the Consent Holder or any Individual with Control 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); or

- (b) any Individual with Control:

- (i) ceases to be of good character; or
- (ii) commits an offence or contravenes the law (whether convicted or not);
or
- (iii) becomes aware of any other matter that reflects adversely on an Individual with Control's fitness to have the Investment; or

- (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;

- (c) the Consent Holder:

- (i) ceases to be an overseas person; or
 - (ii) disposes of the Investment.
13. If requested in writing by the OIO, the Consent Holder must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
- (a) the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent was granted; or
 - (b) the conditions of this consent.

Inspection for the purposes of monitoring these conditions

14. The Consent Holder must allow an Inspector to conduct an Inspection, provided that the Consent Holder has been given at least two working days' notice of the Inspection.
15. For the purpose of conducting the Inspection, the Consent Holder must allow an Inspector to:
- (a) gather information and provide that information to the OIO;
 - (b) enter any building on the Land other than a dwelling;
 - (c) remain for as long as is reasonably required to conduct the Inspection;
 - (d) conduct surveys, inquiries, tests, and measurements;
 - (e) take photographs and video recordings; and
 - (f) do all other things that are reasonably necessary to enable an Inspector to carry out an Inspection.
16. The Consent Holder must take all reasonable steps to facilitate an Inspection, including:
- (a) directing its employees or agents to permit an Inspector to conduct an Inspection; and
 - (b) being available, or requiring its agents or employees to be available at all reasonable times during an Inspection to facilitate access by an Inspector onto and across the Land, including providing transport across the Land if reasonably required.
17. For the avoidance of doubt:
- (a) an Inspector will not inspect, copy or take documents during an Inspection, unless the Consent Holder or an employee or agent of the Consent Holder agrees to the document being inspected, copied or taken;
 - (b) the Consent Holder, its employees, and agents are not required to answer an Inspector's questions, but may do so if they wish.

Monitoring Conditions of Consent

For the purpose of monitoring conditions of consent, the Overseas Investment Office may, under section 38 of the Act, require the consent holder to provide information or documents, or both, that are specified in the notice. Under section 40 of the Act, the Overseas Investment Office may also require a consent holder to provide a statutory declaration verifying the extent to which the consent holder has complied with the conditions of consent, and, if the consent holder is in breach of a condition or conditions, the reasons for the breach and the steps the consent holder intends to take to remedy the breach.

Sanctions

The Act provides for civil and criminal sanctions for breaching the Act, failing to comply with the conditions of consent and failing to provide information required by the Overseas Investment Office. The Overseas Investment Office has an obligation to investigate and act upon alleged and suspected breaches of the Act.

General

A reference to the "Overseas Investment Office" in this Notice includes a reference to the regulator (as defined by the Act). A reference to the Applicant includes a reference to the consent holder.

Released under the Official Information Act 1982

Information in and attached to this report may be legally privileged

APPENDIX B: Monitoring correspondence

Released under the Official Information Act 1982

Amy Florkowski

From: Danielle Stephens
Sent: Monday, 7 January 2019 2:34 p.m.
To: Amy Florkowski
Subject: FW: ANNUAL REPORT 2018 NZ BINXI (OAMARU) FOODS LTD 201610121

Objective: -1

As requested – will save a copy to IMS today.

Danielle Stephens
Monitoring Analyst
Overseas Investment Office

E dstephens@linz.govt.nz | DDI +64 4 474 1036

Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace
PO Box 5501, Wellington 6145, New Zealand | T 04 462 4490
W www.linz.govt.nz | data.linz.govt.nz

OVERSEAS INVESTMENT OFFICE  Land Information
New Zealand
1000 to whareroa

From: Section 9(2)(a)
Sent: Monday, 7 January 2019 11:31 a.m.
To: Danielle Stephens
Subject: RE: ANNUAL REPORT 2018 NZ BINXI (OAMARU) FOODS LTD 201610121

Hi Danielle

I'm very sorry for the lateness, just with the approach to xmas and we operating our factory through the break it was a manic.

I will complete this week for sure, it will be with you on Friday

Again my apologies

Regards

RICHARD THORP | BX FOODS LTD

Section 9(2)(a) A Oamaru, New Zealand
W www.bxfoods.co.nz | Section 9(2)(a)



From: Danielle Stephens <DStephens@linz.govt.nz>
Sent: Wednesday, 19 December 2018 4:47 PM

To: Richard Thorp **Section 9(2)(a)**
Subject: RE: ANNUAL REPORT 2018 NZ BINXI (OAMARU) FOODS LTD 201610121

Afternoon Richard,

I can grant an extension for you to submit the 2018 annual report no later than **21 December 2018**.

If the report is not received by **Friday 21 December 2018**, I am required to pass on this matter to our Enforcement Team.

Kind regards,
Danielle

Danielle Stephens
Monitoring Analyst
Overseas Investment Office

E dstephens@linz.govt.nz | DDI +64 4 474 1036

Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace
PO Box 5501, Wellington 6145, New Zealand | T 04 462 4490
W www.linz.govt.nz | data.linz.govt.nz

OVERSEAS INVESTMENT OFFICE  Land Information
New Zealand
For more information

From: Richard Thorp **Section 9(2)(a)**
Sent: Wednesday, 19 December 2018 5:47 a.m.
To: Danielle Stephens
Cc: **Section 9(2)(a)**
Subject: RE: ANNUAL REPORT 2018 NZ BINXI (OAMARU) FOODS LTD 201610121

Morning Danielle

Thank you for your patience, the report will be with you end of business Friday 21 December 2018

Regards

RICHARD THORP | BX FOODS LTD

s9(2)(a) A Oamaru, New Zealand
W www.bxfoods.co.nz | E **Section 9(2)(a)**



From: Richard Thorp
Sent: Friday, 7 December 2018 6:28 PM
To: Danielle Stephens <DStephens@linz.govt.nz>
Cc: **Section 9(2)(a)**
Subject: RE: ANNUAL REPORT 2018 NZ BINXI (OAMARU) FOODS LTD 201610121

Hi Danielle

Apologies but we have missed the date of the 3rd December for completion, can we please request an extension with reporting forwarded no later than 18th December 2018

Regards

RICHARD THORP | BX FOODS LTD

s9(2)(a) A Oamaru, New Zealand
W www.bxfoods.co.nz | E **Section 9(2)(a)**



From: Danielle Stephens <DStephens@linz.govt.nz>
Sent: Monday, 19 November 2018 5:10 PM
To: **Section 9(2)(a)**
Cc: Richard Thorp <richard@bxfoods.co.nz>
Subject: ANNUAL REPORT 2018 NZ BINXI (OAMARU) FOODS LTD 201610121

Good afternoon Phoebe,

Please find attached documentation relating to the 2018 annual reporting requirements, including Condition 11, for consent 201610121.

The report was due on 30 October 2018. Although a variation for consent was submitted to the Overseas Investment Office, the consent holder is still required to submit an Annual Report. Could you please submit a report within **10 working days**.

All compliance reporting should be forwarded to OIOMonitoring@linz.govt.nz no later than **3 December 2018**.

Kind regards,
Danielle

Danielle Stephens
Monitoring Analyst
Overseas Investment Office

E dstephens@linz.govt.nz | DDI +64 4 474 1036

Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace
PO Box 5501, Wellington 6145, New Zealand | T 04 462 4490
W www.linz.govt.nz | data.linz.govt.nz

OVERSEAS INVESTMENT OFFICE Land Information
New Zealand
Te Pūtake Whakaiti

This message contains information, which may be in confidence and may be subject to legal privilege. If you are not the intended recipient, you must not peruse, use, disseminate, distribute or copy this message. If you have received this message in error, please notify us immediately (Phone 0800 665 463 or info@linz.govt.nz) and destroy the original message. LINZ accepts no responsibility for changes to this email, or for any attachments, after its transmission from LINZ. Thank You.

This e-mail message has been scanned for Viruses and Content and cleared by **MailMarshal**

This e-mail message has been scanned for Viruses and Content and cleared by **MailMarshal**

Released under the Official Information Act 1982

Overseas Investment Office

Radio New Zealand House
155 The Terrace
PO Box 5501
Wellington 6145
New Zealand
+64 4 460 0110
www.linz.govt.nz

Our Ref: 201610121

9 January 2019

NZ Binxi (Oamaru) Foods Limited

BY EMAIL: Section 9(2)(a) ; Section 9(2)(a)

Attention: Richard Thorp

Dear Richard

NZ Binxi (Oamaru) Foods Limited – Shortland Road consent - 201610121

1. We refer to our letter dated 19 November 2018 and our emails dated 13 and 19 December 2018, in which you were reminded of your obligation, as consent holder, to provide a written report detailing progress towards the business plan and compliance with the conditions of consent (**annual report**).
2. The annual report was originally due to be provided by no later than 30 October 2018.
3. Despite our reminders to you, we have still not received the annual report.
4. In accordance with s 52(1) of the Overseas Investment Act 2005 (**the Act**) we require you to pay \$500, being an administrative penalty for the late filing of the annual report.
5. Payment of the \$500 administrative penalty is to be made into the following bank account: Section 9(2)(ba) (see deposit slip attached), by no later than Thursday 24th January 2019. Please use: OIO, NZ Binxi, 201610121, as your reference when making payment.
6. We remind you of the continued need to supply us with the annual report. Although please note that in accordance with s 52(2) the Act, we may not accept the annual report for filing until payment of the \$500 administrative penalty has been paid.
7. We take this opportunity to remind you that a failure to comply with any requirement or obligation imposed under the Act, including any condition of consent, amounts to an offence under s 45 of the Act and could also affect your track record of compliance and good conduct for any applications you make to the Overseas Investment Office in the future.

8. We look forward to payment of the \$500 administrative penalty shortly, and no later than **Thursday 24th January 2019**, so that any further enforcement action will not be necessary.

Yours sincerely

s9(2)(a)

Kirsty Millard
Manager Enforcement
Overseas Investment Office

DDI: +64 4 460 2769
Email: kmillard@linz.govt.nz

Released under the Official Information Act 1982

GST Number: 017-022-895
Telephone: 0800-ONLINE or (0800 665 463)
Fax: 64-4 498 3532
Email: receivables@linz.govt.nz

Invoice No: ID208573
Date: 10/01/2019
Customer Code: B21430
Due Date: 20/01/2019
NaPALIS ID:
Page: 1 of 1

NZ Binxi (Oamaru) Foods Limited
Richard Thorp
s9(2)(a)

Description	Exclusive GST	GST	Amount
OIO Case Number: 201610121	500.00	0.00	500.00
Admin Penalty & Late Filing Penalty			
Total Amount Due:	\$500.00	\$0.00	\$500.00

Remittance Advice

Customer Name: NZ Binxi (Oamaru) Foods Limited
Customer Code: B21430
Invoice No: ID208573
NaPALIS ID
Exclusive GST: \$500.00
GST: \$0.00
Total Amount \$500.00

Triage Report

201610121 – NZ Binxi (Oamaru) Foods Ltd 26/2/2019

Key information

Incident date	18/02/2019
Triage date	26/02/2019
Incident officer	Gary Bailey
Source of referral	Gary Bailey
Confidentiality requested?	N/A

Brief summary of Incident as alleged

1. The theory of the case is that NZ Binxi (Oamaru) Foods Limited (**NZ Binxi**) has not complied with condition 3 of consent, which requires:

Within 6 months from the date of consent, the Consent Holder must apply for resource consent to change the zoning of the Target Land to allow the development of staff accommodation and a dwelling to take place in accordance with the Business Plan.

2. Consent was granted on 10 November 2016 and condition 3 was therefore due to be complied with by 10 May 2017. See **Appendix 1** for Consent [Decision](#).
3. On 18 February 2019 NZ Binxi submitted its 2018 Annual [Report](#). The Annual Report was due 30 October 2018¹. A review of NZ Binxi's 2018 annual report shows that it has failed to meet condition 3 and to date the resource consent has not been sought and the Target Land has not been re-zoned.
4. The failure to meet condition 3 has knock on effects for the following conditions which also have not been complied with:

Requirement to develop staff accommodation

(5) Within 1 year from the date that Resource Consent is granted, the Consent Holder must have begun to redevelop the dwelling on the Target Land into staff accommodation in accordance with its Business Plan.

(6) Within 4 years from the date that Resource Consent is granted, the Consent Holder must have completed the redevelopment of the dwelling on the Target Land into staff accommodation in accordance with its Business Plan.

Requirement to develop office premises

(7) Within 2 years from the date that Resource Consent is granted, the Consent Holder must have begun to develop office premises on the Target Land in accordance with its Business Plan.

¹ On 19 January 2019 a \$500 Admin Penalty was imposed for failing to file an annual report which was paid on 25 January 2019. However NZ Binxi then filed a 2018 Annual Report for NZ Binxi (Oamaru) Foods Limited confusing consent decision 201520010 with 201610121. A phone call with Richard Thorp on 5 February 2019 confirmed this confusion and led to the submission of the 2018 Annual Report for 2018.

Information in and attached to this report may be legally privileged

(8) Within 4 years from the date that Resource Consent is granted, the Consent Holder must have completed the development of office premises in accordance with its Business Plan.

5. NZ Binxi has another consent under the name NZ Binxi (Oamaru) Foods Limited decision 201520010 – this relates to the meat processing plant. A variation for this consent is under consideration by the Applications Team as NZ Binxi is struggling to meet the commitments it made in relation to the meat processing plant.

Asset concerned

6. The consent relates to the acquisition of a freehold interest in 5.3806 hectares of land at 10 Shortland Road, Oamaru North. Depicted as A on the map at **Appendix 2**
7. The land is sensitive as it is non urban with an area greater than 5 hectares and adjoins the foreshore.

Person/s concerned

8. The consent holder is NZ Binxi (Oamaru) Foods Limited, a NZ registered company that is a 100% subsidiary of Heilongjiang Binxi Cattle Industry Co Limited, a company incorporated in China.

Brief summary of information reviewed/inquiries made

9. The first annual report for Decision 201610121 was dated 6 November 2017 and it confirmed that the resource consent had not yet been applied for. NZ Binxi noted that this was due to the delayed settlement date of 16 June 2017. They advised they were preparing the applications and expected to have them ready by the end of December 2017.
10. We triaged this as an incident November 2017 and asked NZ Binxi to confirm compliance by 28 February 2018, or consider applying for a variation to the conditions of consent.
11. In April 2018, NZ Binxi indicated resource consent may not be required and confirmed that they would be seeking a variation to the conditions of consent.
12. On 25 September 2018, the OIO conducted a site inspection at the property, and another adjoining property. At the inspection, Richard Thorp of NZ Binxi indicated that progress on the staff accommodation had stalled. A variation still had not been made at this time.
13. On [17 October 2018](#) we wrote to NZ Binxi advising that any variation needed to be submitted by 15 February 2019 or enforcement action would be considered.
14. NZ Binxi failed to file its Annual Report by 30 October 2018. On 19 January 2019 a \$500 Admin Penalty was imposed for failing to file an annual report which was paid on 25 January 2019.
15. However NZ Binxi then filed a 2018 Annual Report for NZ Binxi (Oamaru) Foods Limited confusing consent decision 201520010 with 201610121. A phone call with Richard Thorp on 5 February 2019 confirmed this confusion and led to the submission of the 2018 Annual Report for 2018.
16. A variation for this consent has yet to be submitted despite saying it would since April 2018. In the email accompanying the 2018 Annual Report Richard Thorp states: *"its clear from our summary we will need to apply for a variation to the consent for Shortlands Road, we will await your comments or questions from this report, before we proceed with our lawyers to request that variation."*

Information in and attached to this report may be legally privileged

17. On 20 February 2019 I spoke with Llinos and Elspeth from the Apps for their views on the prospect of a variation. While not wanting to prejudice any variation application with out seeing it both said it was difficult to see how it could be accepted as NZ Binxi has not taken any meaningful steps to get resource consent for the land to be rezoned. Also compliance with some of the key conditions on the meat processing plant had not been met and they had recently gone back to Richard Thorp to seek clarity on their variation proposal.

Assessment

18. On the basis of the information currently available:

Question	Y/N	Basis for answer
Does the Incident appear to fall within the OIO's regulatory remit?	Y	The incident relates to a breach of a condition of consent (condition 3 of consent 201610121).
Does there appear to have been a breach of the Rules? eg does the conduct alleged show a prima facie: breach of a condition of consent? acquisition of a sensitive asset without consent? disguise by an overseas person of his or her ownership of a sensitive asset using a deceptive mechanism?	Y	There appears to have been a breach of condition 3 of consent, as NZ Binxi has not applied for resource consent by 10 May 2017. NZ Binxi has still not applied for a variation despite raising the need for this as a prospect in April 2018.
Is the Incident within the limitation period?	Y	The condition was first breached on 10 May 2017.
Does the Incident fall within the OIO's Enforcement Priorities	Y	We consider that material breaches of conditions of consent as enforcement priorities. I consider this breach is now an enforcement priority as: <ul style="list-style-type: none"> - this condition has a flow on effect to the other substantive conditions (this breach holds up compliance with the other conditions); and - the initial breach has not been resolved in the last 18 months nor has a variation consent been received in this time.
Is there another regulatory or disciplinary body that has more appropriate jurisdiction or powers than the OIO?	N	The incident relates primarily to a breach of a condition of consent.

Recommendation

19. Based on my review of the information, I recommend:

Recommendation	Tick	Basis for answer
The Incident progress to Assessment phase.		
No further action be taken and the Incident be closed		

Information in and attached to this report may be legally privileged

Recommendation	Tick	Basis for answer
An Enforcement Tool be deployed [link to Enforcement Approach] and then the Incident be closed	✓	The resource consent condition is central to the start and completion of other conditions which now have also not been complied with. The Apps Team have expressed some doubt that a variation would be accepted if filed so that avenue may no longer be available to NZ Binxi. There is no specific disposal clause relating to non-performance of condition 3 – seeking the resource consent. Regardless of this I recommend that we seek disposal of the property under section 41F of the Act.

s9(2)(a)

Sarah Scott *Pedro Morgan*
Acting Principal Advisor Enforcement

Agree:
Disagree:
Amend as marked:

Date: *26/2/19*

s9(2)(a)

Kirsty Millard
Manager Enforcement

Agree:
Disagree:
Amend as marked:

Date: *26/2/19*

*Disposal
→ see if
still
is a
possibility
or need to
go directly
to court*

Notes for Assessment Team

Questions	Notes
<i>Implementation</i> Assessment team member(s)	<i>Rachel Buxell with assistance of Gery Buley</i>
Date to report back to Screening Group (20 working days)	

Information in and attached to this report may be legally privileged

Questions	Notes
Comments or guidance on areas to review	

Released under the Official Information Act 1982

APPENDIX 1: Conditions of consent



Notice of Decision
Case: 201610121

Decision Date

10 November 2016

Decision

Consent has been granted for NZ Binxi (Oamaru) Foods Limited (or Lean Meats Oamaru Limited or Oamaru Meats Limited) to give effect to an overseas investment in sensitive land, being the acquisition of a freehold interest in approximately 5.3806 hectares of land at 10 Shortland Road, Oamaru North.

Only the named consents holder(s) may give effect to the investment, not a subsidiary of the consent holder, a trust, or other entity.

Consent is granted subject to the following conditions:

Statutory Conditions of Consent

Section 28 of the Overseas Investment Act 2005 ("the Act") provides that it is a condition of every consent, whether or not it is stated in the consent, that:

- (a) the information provided by each applicant to the Overseas Investment Office or the relevant Ministers in connection with the application was correct at the time it was provided; and
- (b) each consent holder must comply with the representations and plans made or submitted in support of the application and notified by the Overseas Investment Office as having been taken into account when the consent was granted, unless compliance should reasonably be excused.

For the purposes of section 28(1)(b), the representations and plans made or submitted in support of the application and taken into account when consent was granted are those contained in the correspondence listed in the statutory declaration of Richard James Thorp dated 10 October 2016 and in all attachments annexed to that correspondence.

Special Conditions

Interpretation

Any term or expression that is defined in the Overseas Investment Act 2005 and used, but not defined, in this consent has the same meaning as in the Overseas Investment Act 2005.

Act means the Overseas Investment Act 2005.

Application Letter means the application letter dated 24 June 2016.

Business Plan means the business plan set out in Appendix 8 of the Application Letter.

Consent Holder means NZ Binxi (Oamaru) Foods Limited (or Lean Meats Oamaru Limited or Oamaru Meats Limited).

Individuals with Control means:

- (a) the individuals who have, directly or indirectly, a 25% or more ownership or control interest in the Consent Holder or a Parent of the Consent Holder; and
- (b) the members of the governing body of the Consent Holder or a Parent of the Consent Holder; and

Information in and attached to this report may be legally privileged

(c) includes, for the avoidance of doubt, the members of the governing body of NZ Binxi (Oamaru) Foods Limited, Heilongjiang Binxi Cattle Industry Co Limited and Zhiyun He.

Inspector means a person appointed by the Regulator to undertake an Inspection on the Regulator's behalf.

Inspection means a visit to a property by an Inspector for the purpose of monitoring these conditions.

Investment means the Land.

Land means approximately 5.3806 hectares of land at 10 Shortland Road, Oamaru North being all of the land contained in Certificate of Title 440536.

OIO means the Overseas Investment Office.

Parent of Consent Holder means a person that has, directly or indirectly, a 25% or more ownership or control interest in the Consent Holder, and includes a person that has, directly or indirectly, a 25% or more ownership or control interest in any Parent of the Consent Holder.

Regulations means the Overseas Investment Regulations 2005.

Settlement Date means the date the acquisition of the Investment took place.

Special Conditions

When the transaction must be given effect to

1. The consent will lapse if the Investment has not been acquired by and transferred to the Consent Holder within 12 months of the date of consent.

Good character

2. The Individuals with Control must:
 - (a) continue to be of good character; and
 - (b) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.

Resource consents

3. Within 6 months from the date of consent, the Consent Holder must apply for resource consent (**Resource Consent**) to change the zoning of the Target Land to allow the development of staff accommodation and a dwelling to take place in accordance with the Business Plan.
4. The Consent Holder must use all reasonable commercial endeavours to obtain the resource consent.

Requirement to develop staff accommodation

5. Within 1 year from the date that Resource Consent is granted, the Consent Holder must have begun to redevelop the dwelling on the Target Land into staff accommodation in accordance with its Business Plan.
6. Within 4 years from the date that Resource Consent is granted, the Consent Holder must have completed the redevelopment of the dwelling on the Target Land into staff accommodation in accordance with its Business Plan.

Requirement to develop office premises

7. Within 2 years from the date that Resource Consent is granted, the Consent Holder must have begun to develop office premises on the Target Land in accordance with its Business Plan.

Information in and attached to this report may be legally privileged

8. Within 4 years from the date that Resource Consent is granted, the Consent Holder must have completed the development of office premises in accordance with its Business Plan.

Requirement to create 1 FTE position

9. Within 4 years from the date that Resource Consent is granted, the Consent Holder must have created, and filled, at least one additional full-time equivalent position on a permanent basis in connection with the operation of the staff accommodation. This position must be employed to work on the Target Land and to assist in operating the staff accommodation.

Reporting to the OIO

10. The Consent Holder must notify the OIO in writing as soon as practicable, and no later than twelve months from the date of consent, whether settlement of the acquisition of the Investment took place. If settlement of the acquisition of the Investment did take place, the notice must include:

- (a) the Settlement Date;
- (b) final consideration paid (plus GST, if any);
- (c) the structure by which the acquisition was made, and who acquired the Investment;
- (d) where applicable, copies of transfer documents and settlement statements; and
- (e) any other information that would aid the OIO in its function to monitor conditions of consent.

11. The Consent Holder must report in writing annually to the OIO detailing progress of its Business Plan ("Annual Report"), including the Consent Holder's compliance with conditions 3, 4, 5, 6 and 7;

The first Annual Report is due on 30 October 2017 and the final report is due on 30 October 2021 (or such other date as advised by the OIO in writing).

12. The Consent Holder must notify the OIO in writing within 20 working days if:

- (a) the Consent Holder, any Individual with Control, or any person in which the Consent Holder or any Individual with Control 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); or
- (b) any Individual with Control:
 - (i) ceases to be of good character; or
 - (ii) commits an offence or contravenes the law (whether convicted or not); or
 - (iii) becomes aware of any other matter that reflects adversely on an Individual with Control's fitness to have the Investment; or
 - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
- (c) the Consent Holder:
 - (i) ceases to be an overseas person; or
 - (ii) disposes of the Investment.

13. If requested in writing by the OIO, the Consent Holder must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:

- (a) the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent was granted; or
- (b) the conditions of this consent.

Inspection for the purposes of monitoring these conditions

Information in and attached to this report may be legally privileged

14. The Consent Holder must allow an Inspector to conduct an Inspection, provided that the Consent Holder has been given at least two working days' notice of the Inspection.
15. For the purpose of conducting the Inspection, the Consent Holder must allow an Inspector to:
 - (a) gather information and provide that information to the OIO;
 - (b) enter any building on the Land other than a dwelling;
 - (c) remain for as long as is reasonably required to conduct the Inspection;
 - (d) conduct surveys, inquiries, tests, and measurements;
 - (e) take photographs and video recordings; and
 - (f) do all other things that are reasonably necessary to enable an Inspector to carry out an Inspection.
16. The Consent Holder must take all reasonable steps to facilitate an Inspection, including:
 - (a) directing its employees or agents to permit an Inspector to conduct an Inspection; and
 - (b) being available, or requiring its agents or employees to be available at all reasonable times during an Inspection to facilitate access by an Inspector onto and across the Land, including providing transport across the Land if reasonably required.
17. For the avoidance of doubt:
 - (a) an Inspector will not inspect, copy or take documents during an Inspection, unless the Consent Holder or an employee or agent of the Consent Holder agrees to the document being inspected, copied or taken;
 - (b) the Consent Holder, its employees, and agents are not required to answer an Inspector's questions, but may do so if they wish.

Monitoring Conditions of Consent

For the purpose of monitoring conditions of consent, the Overseas Investment Office may, under section 38 of the Act, require the consent holder to provide information or documents, or both, that are specified in the notice. Under section 40 of the Act, the Overseas Investment Office may also require a consent holder to provide a statutory declaration verifying the extent to which the consent holder has complied with the conditions of consent, and, if the consent holder is in breach of a condition or conditions, the reasons for the breach and the steps the consent holder intends to take to remedy the breach.

Sanctions

The Act provides for civil and criminal sanctions for breaching the Act, failing to comply with the conditions of consent and failing to provide information required by the Overseas Investment Office. The Overseas Investment Office has an obligation to investigate and act upon alleged and suspected breaches of the Act.

General

A reference to the "Overseas Investment Office" in this Notice includes a reference to the regulator (as defined by the Act). A reference to the Applicant includes a reference to the consent holder.

Appendix 2 – Land Map



Overseas Investment Office
Radio New Zealand House
155 The Terrace
PO Box 5501
Wellington 6145
New Zealand
+64 4 460 0110
www.linz.govt.nz

Our Ref: 201610121

06 March 2019

NZ Binxi (Oamaru) Foods Limited

BY EMAIL: Richard@bxfoods.co.nz

Dear Richard,

**NZ Binxi (Oamaru) Foods Limited – compliance reporting for Shortland Road
– Consent 201610121**

1. Thank you for submitting NZ Binxi (Oamaru) Foods Limited's (**NZ Binxi**) 2018 Annual Report (**Annual Report**) for the Shortland Road consent.
2. We have reviewed the Annual Report and note that NZ Binxi has not complied with Condition 3 of its consent that states:
"Within 6 months from the date of consent, the Consent Holder must apply for resource consent to change the zoning of the Target Land to allow the development of staff accommodation and a dwelling to take place in accordance with the Business Plan."
3. The consent was granted to NZ Binxi on 10 November 2016 and compliance with Condition 3 was due on 10 May 2017. To date the resource consent has not been sought. As a consequence the conditions relating to the redevelopment of the staff accommodation and the development of the office building have also not been complied with.
4. We view NZ Binxi's on-going failure to comply with the conditions of its consent seriously. It is an offence to fail to comply with a notice, requirement or condition imposed on a consent holder (section 45 of the Overseas Investment Act 2005 (**the Act**)). Civil penalties may also be ordered (s 48 of the Act).
5. As NZ Binxi has failed to comply with the conditions of its consent we consider that the land should be disposed of and we would like to explore with you how this could be achieved. An option is for NZ Binxi to enter into a voluntary settlement agreement with the OIO. Otherwise, it remains open for the OIO to seek a disposal order for the property from a court.
6. We appreciate that you may wish to seek legal advice regarding the disposal options. However, as NZ Binxi has now been in breach of Condition 3 for sometime, we ask that you come back to us promptly so that we can progress with the land disposal.

Yours sincerely

s9(2)(a)

Gary Bailey
Senior Investigator
Overseas Investment Office
DDI: +64 4 831 1666
Email: gbailey@linz.govt.nz

29 March 2019

Overseas Investment Office
PO Box 5501
Wellington 6145

By email: gbailey@linz.govt.nz

Attention: Gary Bailey

Dear Sir

NZ Binxi (Oamaru) Foods Limited - compliance reporting for Shortland Road - Consent 201610121

- 1 We refer to your letter to NZ Binxi (Oamaru) Foods Ltd (**NZ Binxi**) dated 6 March 2019, expressing concerns regarding NZ Binxi's compliance with Condition 3 of OIO consent 201610121.
- 2 Condition 3 requires that:

"Within 6 months from the date of consent, the Consent Holder must apply for resource consent to change the zoning of the Target Land to allow the development of staff accommodation and a dwelling to take place in accordance with the Business Plan."
- 3 Condition 3 was inserted after NZ Binxi advised the OIO of its understanding that the Resource Consent was required for the accommodation developments.
- 4 Although labour market issues have resulted in some delays in NZ Binxi commencing the process of the housing development, NZ Binxi has been in touch with the Council to clarify the position regarding the need for a Resource Consent.
- 5 On 20 March 2018, a senior planner from the Waitaki District Council confirmed by way of email that the housing redevelopment should in fact be deemed a permitted activity (no resource consent required) as it falls within the definition of "Residential Activity" and "Residential Unit" under the Waitaki District Plan. Attached to this letter are:
 - 5.1 A copy of the email from the Senior Planner at the Waitaki District Council; and
 - 5.2 A planning map confirming the "Rural General" zoning of the Land.
- 6 Accordingly, no resource consent / zoning change is in fact required for the proposed accommodation activities on the Land, so the requirement for Condition 3 has effectively fallen away.
- 7 With the requirement for a Resource Consent falling away, the key development conditions of OIO consent 201610121 are:

Requirement to develop staff accommodation

5. *Within 1 year from the date that Resource Consent is granted, the Consent Holder must have begun to redevelop the dwelling on the Target Land into staff accommodation in accordance with its Business Plan.*
6. *Within 4 years from the date that Resource Consent is granted, the Consent Holder must have completed the redevelopment of the dwelling on the Target Land into staff accommodation in accordance with its Business Plan.*

Requirement to develop office premises

7. *Within 2 years from the date that Resource Consent is granted, the Consent Holder must have begun to develop office premises on the Target Land in accordance with its Business Plan.*
8. *Within 4 years from the date that Resource Consent is granted, the Consent Holder must have completed the development of office premises on the Target Land in accordance with its Business Plan*

- 8 It is submitted that the key timeframe for the realisation of the benefits claimed in NZ Binxi's OIO application is the completion of the staff accommodation and office premises within 4 years. The purpose of Condition 3 (and also conditions 5 and 7) was to ensure that the various stages of the proposed development works were progressed within prescribed timeframes, so that the OIO could be confident that the developments were likely to be **completed** within the timeframes set out in the OIO Application and reflected in the remaining Consent conditions.
- 9 Although physical construction works for the staff accommodation have not yet commenced (due to market labour shortage issues), NZ Binxi has confirmed that it remains confident that the construction works will be completed within the original timeframes contemplated by the Consent Conditions, i.e. by mid-2021, resulting in the benefits stated in the OIO application, including:
 - 9.1 The investment of additional capital for development purposes; and
 - 9.2 The creation of 1 long term full time equivalent employment position associated with the operation and management of the staff accommodation; and
 - 9.3 The creation of additional indirect FTE roles associated with the construction/development works.
- 10 NZ Binxi is now in the process of compiling some detailed information as to the timing of various stages of the two development projects (being the staff accommodation and the office), and the associated costs. We suggest that once that information has been compiled, a meeting between NZ Binxi and the OIO be arranged to discuss the development plans in detail.

s9(2)(a)

Christina Lefever
Special Counsel

d +64 3 372 6420
m +64 21 878 942
christina.lefever@duncancotterill.com

Christina Lefever

From: Brian de Geest s9(2)(a)
Sent: Wednesday, 6 March 2019 6:22 PM
To: Richard Thorp
Subject: FW: Shotland Road Staff Accomodation Conversion - Oamaru
Attachments: image001.jpg; image004.jpg

Communication re accommodation saying no RC required
B

From: Richard Thorp <richard@bxfoods.co.nz>
Sent: Friday, 6 April 2018 9:23 AM
To: Brian de Geest s9(2)(a)
Subject: Re: Shotland Road Staff Accomodation Conversion - Oamaru

Thanks Mate

All forwarded to OIO

Sent from my iPhone
s9(2)(a)

On 6/04/2018, at 8:54 AM, Brian de Geest s9(2)(a) wrote:

Dear Mr Thorpe

As discussed I have met with the Senior Planner at the Waitaki District Council regarding the staff accommodation development planned for your Shortland Road site.

As per the email below he has confirmed that a Resource Consent is not necessary as it is deemed a Permitted Activity.

All that is required to proceed is an application for a Building Consent.

Kind Regards

Brian de Geest

Brian de Geest

s9(2)(a)

de Geest

Future builders building futures

www.degeest.com

From: Mike Searle <msearle@waitaki.govt.nz>
Sent: Tuesday, 20 March 2018 1:50 PM
To: De Geest Construction **Section 9(2)(a)**
Subject: 9 bedrooms

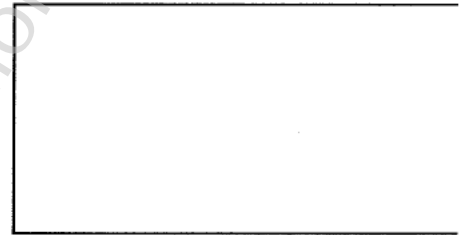
Hiya- discussed your plan this morning and we see no reason why it should not be deemed a permitted activity (no resource consent required) as it falls within the definitions of **Residential Activity** and **Residential Unit** under the Waitaki District Plan.

Yours.

Mike Searle
Senior Planner

Email: msearle@waitaki.govt.nz
Web: www.waitaki.govt.nz
Mobile: +64 27 267 2451
Tel: +64 3 433 0300

Waitaki District Council
20 Thames Street
Private Bag 50058
Oamaru
Waitaki District
Otago 9444
New Zealand



The information transmitted, including attachments, is intended only for the person(s) or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this in error please contact the sender and destroy any copies of this information.

This e-mail message has been scanned for Viruses and Content and cleared by **MailMarshal**

49	23
50	51
54	55

51

FERNBROOK - Oamaru



Waitaki
DISTRICT COUNCIL
TE KAUNIHERA Ā ROHE O WAITAKI



COPYRIGHT
Copyright for these District Plan maps is owned by the Waitaki District Council. Any unauthorised copying or adaptation of the whole or a substantial part of the whole work in two or three dimensions is an infringement of copyright.

Notation

- Heritage Item
- Archaeological Item
- Sites of Natural Significance
- Areas of Flooding Risk
- High Class Soils

This information is made available in good faith but its accuracy is not guaranteed. Waitaki District Council accepts no liability for any error. Cadastral information derived from LINZ CRS Crown Copyright 2010



Zone

Notation & Zone Maps have been reduced in size to compile onto a single sheet. Refer to originals for the correct scale

- Outstanding Natural Feature
- Outstanding Natural Landscape
- Significant Coastal Landscape
- Significant Natural Feature
- Rural General
- Rural Scenic
- Oamaru Airfield B
- Oamaru Airfield A
- Township
- Rural Residential
- Residential 1
- Residential
- Business H
- Business 1
- Business 1A
- Business 2
- Business 3
- Business 3A
- Business 4
- Business 5
- Business 6
- Oamaru Airport
- Macraes Mining
- Cement Policy
- Designation Area or Site

- Noise Control Boundaries
- Conical or Horizontal Surface Boundaries
- Approach & Site Surface Guidelines
- Flight Protection Area
- Railway
- High Voltage Power Line
- Waterways
- Coast
- Parcel
- WDC Boundary
- Local Authority
- Other Roads
- WDC Roads

The Oamaru Flight Protection Area is not shown on Maps below 1:50000

Overseas Investment Office

Radio New Zealand House

155 The Terrace

PO Box 5501

Wellington 6145

New Zealand

+64 4 460 0110

www.linz.govt.nz

Our Ref: 201610121

14 June 2019

NZ Binxi (Oamaru) Foods Limited

BY EMAIL:Richard@bxfoods.co.nz;CC - [Christina Lefever <christina.lefever@duncancotterill.com>](mailto:christina.lefever@duncancotterill.com)

Dear Richard

NZ Binxi (Oamaru) Foods Limited – compliance reporting for 10 Shortland Road, Oamaru (the Land) – Consent Decision 201610121

1. As you know, we have been investigating whether NZ Binxi (Oamaru) Foods Limited (**NZ Binxi**) has met the conditions of its Shortland Road consent (Decision 201610121) to establish whether it had contravened the Overseas Investment Act 2005 (**the Act**).
2. On 6 March 2019 we wrote to NZ Binxi requesting that it commence disposal of the property as based on the information we had at the time it seemed to us that it had not complied with, and was in breach of, Condition 3 of its consent:
"Within 6 months from the date of consent, the Consent Holder must apply for resource consent to change the zoning of the Target Land to allow the development of staff accommodation and a dwelling to take place in accordance with the Business Plan."
3. We have now considered the information provided in your letter dated 29 March 2019 and write to inform you that we will be taking no further action regarding the Land at this time other than issuing this compliance letter.
4. Obtaining resource consent was made a condition of the Shortland Road consent as NZ Binxi told us that resource consent was required to change the zoning to allow for the staff accommodation and office development (together called **the development**)¹. We understand from your letter that NZ Binxi received email confirmation from the Waitaki District Council that resource consent for the development was not required on 20 March 2018.
5. You also submit that Conditions 5 and 7 were inserted so that the Overseas Investment Office (**OIO**) had some comfort that the development was being progressed towards the key completion timeframe of mid 2021.
6. As noted in our letter of 6 March 2019 consent was granted to NZ Binxi on 10 November 2016 and compliance with Condition 3 was due on 10 May 2017. On 20 March 2018 NZ Binxi knew that resource consent was not required yet the development has not yet begun. This is unsatisfactory as to date NZ Binxi has not made any physical progress to meet its consent commitments.

¹ See email from Christina Lefever to Tyrone Barugh dated 30 September 2016 that said: "In response to paragraph 9(b) of your letter our client advises that it will require a resource consent to change the zoning of the land to allow the development to take place. The Applicant has spoken with the local Council and the Council has indicated that there should not be any difficulties in obtaining the rezoning. However, we would appreciate if the Consent Conditions could be amended to reflect this."