



To: Sarah Scott, Principal Advisor Enforcement, Overseas Investment Office
From: Jatin Mistry, Senior Investigator

ASSESSMENT REPORT: NZ Binxi (Oamaru) Foods Limited

Date	25 October 2022	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	201610121	Deadline	14 October 2022

A. Proposal to vary consent conditions

Purpose

- In November 2016, Ministers gave NZ Binxi (Oamaru) Foods Limited (“**Applicant**”) consent (**the Original Consent**) to acquire 5.3806 hectares of sensitive land at 10 Shortland Road, Oamaru North (“**Land**”).
- We now seek your decision on the Applicant’s application to vary two timeframes:
 - Special Condition 6 (to develop staff accommodation by 28 November 2022) and
 - Special Condition 8 (to develop office premises by 28 February 2023).
- This decision has been delegated to the OIO.¹

The Applicant

- The Applicant is NZ Binxi (Oamaru) Foods Limited, a limited liability company incorporated in New Zealand.
- The Applicant is an overseas person as it is majority owned (97%) by Heilongjiang Binxi Cattle Industry Co Limited (“**Parent**”), a company incorporated in the People’s Republic of China (“China”). The remaining ownership held by the NZ based persons – 1% each by Richard Thorp, Arnon Hoyle and Gerard Brier. Originally, the Parent owned 100% of shares in the Applicant, and therefore, this is a minor change in shareholding since the Original Consent.
- The Applicant holds Parent’s investment in Lean Meats Oamaru Limited (“**Trading Subsidiary**”) which is a meat processing business. In 2015, Ministers granted consent for the Application to acquire the Trading Subsidiary.
- In April 2017, the Ministers also granted consent to the Applicant to acquire up to 100% of the shares of Blue Sky Meats (N.Z.) Limited which owns beef and deer processing plants in New Zealand.

Original Consent

- The Original Consent Report concluded the proposed investment was likely to result in the following substantial and identifiable benefits:
 - the creation of new jobs involved in the construction and development of office premises and staff accommodation;
 - additional investment involved in the development;

¹ All variation decisions are delegated to the OIO pursuant to Table A (G) of the Designation and Delegation letter dated 24 November 2021.

- c) greater productivity, efficiency and enhance the viability of other investments;
 - d) previous beneficial investments; and
 - e) advance significant Government policy or strategy.
9. The Special Conditions with marked up proposed timeframes for Special Conditions 6 and 8 are attached as **Attachment 1**.

Variation Application

- 10. The Applicant is seeking additional time to complete Special Condition 6 (by 28 November 2022) and Special Condition 8 (by 28 February 2023).
- 11. Apart from the requested variation to the Timeframe, the scope and all other original conditions of the Original Consent remain unchanged and continue to apply to the investment to the extent that they have not already been complied with.
- 12. The Applicant has submitted that there have been significant delays due to COVID-19 pandemic and Trading Subsidiary operating as an essential business during the pandemic.
- 13. The Applicant has been finding it difficult to get tradespeople and commit extra resources to comply with Special Conditions during the COVID-19 pandemic period. The Applicant intended to comply with the Special Conditions alongside or shortly after the main factory development (development of cold storage, blast freezing and load-out facilities at the Oamaru Meats Plant which related to consent number 201520010). However, the delay in completing their main factory development also contributed to delay in Special Conditions 6 and 8.
- 14. The potential delays were communicated to us in April 2020. We initially deferred taking any enforcement action until November 2021. The Applicant continued to experience delays due to COVID-19 and we concluded that non-compliance with Special Conditions 6 and 8 should be addressed by a time extension variation.
- 15. Since July 2021, the consent holder has taken active steps to commence development of staff accommodation and office premises.

B. How to approach the decision

- 16. Section 27 of the Overseas Investment Act 2005 provides that conditions of consent may be:
 - a) varied with the agreement of the Consent Holder, or
 - b) revoked.
- 17. Conditions which the Act required to be imposed (for example in relation to residential outcomes) may be varied but may not be revoked.
- 18. The Act does not spell out what the decision-maker must take into account in considering whether to vary a consent. Applying general principles of administrative law, the discretionary power should be exercised reasonably, and consistently with the purpose of the Act:

3 Purpose

- (1) The purpose of this Act is to acknowledge that it is a privilege for overseas persons to own or control sensitive New Zealand assets by—
 - (a) requiring overseas investments in those assets, before being made, to meet criteria for consent; and
 - (b) imposing conditions on those overseas investments.

- (2) This Act also has the purpose of managing certain risks, such as national security and public order risks, associated with transactions by overseas persons.

C. Our assessment

19. We accept the Applicant's reasons for the need for a variation and consider the variation to be reasonable in the circumstances:
- a) The variation applied for appears reasonable and is consistent with the purpose of the Act.
 - b) The variation request relates to delays resulting from the impact of COVID-19, particularly delays involving third parties.
 - c) The Applicant has taken some steps to comply with the Timeframe of Special Conditions 6 and 8 while balancing other interests including operating as an essential business during COVID-19 pandemic.
 - d) The variation would permit the Applicant to comply with Special Conditions 6 and 8.
 - e) The variation would not affect the criteria considered under the Original Consent and should not affect the satisfaction of the remaining condition dates and the overall timeframe for the development.
20. We consider this variation will not impact the substantial and identifiable benefit threshold for the investment, as the same level of benefit is still expected and the overall timeframe for the completion of the development will be unaffected.
21. The Applicant will also be required to satisfy all of the remaining conditions in the Original Consent.

D. Recommendation

22. We recommend that the conditions of consent be varied as set out in **Attachment 1**.

Decision

23. I agree to vary the conditions of the Consent as set out in **Attachment 1**.

Agree

[s 9(2)(a)]

Sarah Scott

Principal Advisor Enforcement

Date: 25 / 10 / 2022

Attachment 1 - Proposed Varied Notice of Decision (changes are in red)



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:

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

the members of the governing body of the Consent Holder or a Parent of the Consent Holder; and

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. **By 28 November 2022** ~~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. **By 28 February 2023** ~~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;
 1. 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