

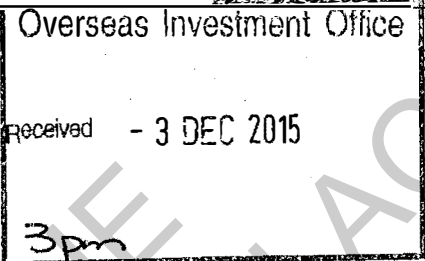
ORIGINAL



**Land Information
New Zealand**
Toitū te whenua

Decision required under the Overseas Investment Act 2005: NZ Binxi (Oamaru) Foods Limited

Date	10 November 2015
Security Level	Commercial: In Confidence
Priority	High
Report/Case Number	1285 / 201520010
Consent Required By	30 November 2015



Instructions

	Action Sought	Suggested Deadline
Minister for Land Information	<ol style="list-style-type: none">1. Sign the attached memorandum2. Forward the memorandum and annexure to the Associate Minister of Finance	17 November 2015
Associate Minister of Finance	<ol style="list-style-type: none">1. Sign the attached memorandum2. Forward the memorandum and annexure to the Overseas Investment Office	24 November 2015

Contact for Telephone Discussion

Name	Position	Telephone (wk)	Cellphone	First Contact
Samantha Naidoo	Team Manager	04 460 2795	027 403 2265	✓
Anneke Cockerell	Senior Solicitor	04 830 2513		

Executive Summary:

Applicant

1. The applicant is NZ Binxi (Oamaru) Foods Limited ("**Applicant**"), a limited liability company incorporated in New Zealand.
2. The Applicant is a 100% subsidiary of Heilongjiang Binxi Cattle Industry Co Limited ("**Parent**"), a company incorporated in the People's Republic of China ("**China**").
3. The shareholders of the Parent are:
 - (a) He Zhiyun (57.65%);
 - (b) Zhang Qiaogang (24.70%);
 - (c) Suzhou Industrial Park Kunwumin'an Jiuding Investment Center (5.85%);
 - (d) Suzhou Industrial Park Kunwumin'he Jiuding Investment Center (6.33%); and
 - (e) Suzhou Industrial Park Kunwumin'le Jiuding Investment Center (5.47%).
4. He Zhiyun and Zhang Qiaogang are Chinese citizens and are husband and wife.
5. 
6. The Applicant was incorporated for the purpose of holding the Parent's investment in Lean Meats Oamaru Limited ("**Target**"). The Applicant currently holds a 24.92% shareholding in the Target.

Investment


7. The Applicant, Target and Lean Meats Limited have entered into an Acquisition Agreement dated 16 July 2015, pursuant to which the Applicant will acquire a further 75.08% interest in the shares of the Target, subject to obtaining Overseas Investment Office consent (the "**Agreement**").
8. The Agreement provides that the Applicant will acquire an additional 75.08% interest in the Target through subscribing for additional issued share capital and acquiring Lean Meats Limited's interest, taking its total shareholding in the Target to 100%.
9. The Target is a registered company incorporated in New Zealand. The Applicant requires consent to the Investment pursuant to section 10(1)(a) of the Overseas Investment Act 2005 (the "**Act**") being an overseas investment in sensitive land under section 12(b) of the Act.
10. The Target owns approximately 6.994 hectares of land situated at 7 Redcastle Road, Oamaru (the "**Land**"). The Land is used by the Target as the site of its processing factory. It is situated outside of Oamaru next to the beach and includes a cliff leading down to the foreshore.
11. The Land is sensitive for the following reasons:
 - (a) The Land is non-urban land greater than 5 hectares;
 - (b) The Land includes the foreshore;

- (c) The Land adjoins a road which adjoins the sea; and
- (d) The Land adjoins the foreshore.

Vendor

- 12. The current shareholders of the Target are:
 - (a) Lean Meats Limited (75.08%); and
 - (b) the Applicant (24.92%).
- 13. Lean Meats Limited is a small farmer majority owned company that focuses on providing top quality chilled lamb and meat products. Prior to opening its factory in Oamaru in 2006, Lean Meats Limited operated solely as a processor in Hastings, Hawkes Bay.
- 14. Lean Meats Limited is not an overseas person and the Target did not require consent to acquire the Land.

Investment Plan

- 15. The Applicant's investment plan is to:
 - (a) 
 - (b) increase processing of beef at the plant; and
 - (c) increase exports to China through the Parent's supply networks.

Benefit to New Zealand

- 16. The proposed overseas investment will, or is likely to, benefit New Zealand having regard to the following factors:
 - (a) creation of new job opportunities (section 17(2)(a)(i));
 - (b) increased export receipts (section 17(2)(a)(iii));
 - (c) greater productivity and efficiency (section 17(2)(a)(iv));
 - (d) additional investment for development purposes (section 17(2)(a)(v));
 - (e) increased processing of primary products (section 17(2)(a)(vi));
 - (f) offer to sell foreshore to the Crown (section 17(2)(f)); and
 - (g) advance significant Government policy or strategy (regulation 28(f)).
- 17. We have reviewed the significance of the above benefits and consider that, collectively, they are likely to be substantial and identifiable.
- 18. In particular the Applicant intends to increase job opportunities on the Land by 90 FTEs over the next five years, invest \$6,450,000 of additional investment for development purposes to upgrade the plant on the Land and significantly increase processing at the plant.

Annexures:

- 19. Report of the Overseas Investment Office on the proposed overseas investment ("**Report**").
- 20. Application for consent with supporting material ("**Application**").

Instructions:

21. Ministers must grant consent to this overseas investment if they are satisfied that all of the criteria in section 16 of the Act are met. They must decline to grant consent if they are not satisfied that all of the criteria in section 16 are met. Ministers must not take into account any criteria or factors other than those identified in sections 16 and 17, and regulation 28 of the Overseas Investment Regulations 2005 (the "**Regulations**").
22. In the attached Report the Overseas Investment Office identifies each of the criteria and factors under sections 16 and 17, and regulation 28 that Ministers are required to consider in this case.

"Benefit to New Zealand criteria"

23. In this case, section 16 requires Ministers to decide, among other things, whether they are satisfied in relation to the following "benefit to New Zealand" criteria:
 - (a) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined under section 17 (section 16(1)(e)(ii)); and
 - (b) that benefit will be, or is likely to be, substantial and identifiable (section 16(1)(e)(iii)).
24. The application of the benefit to New Zealand criteria involves the exercise of Ministerial judgement. The fact that responsibility for making this decision has been conferred on Ministers confirms that this is a high-level decision with significant policy content. That is also apparent from the language and content of the factors that must be considered, many of which require a high degree of evaluative judgement, and are not capable of quantification or calculation.
25. In applying the benefit to New Zealand criteria, Ministers are required to consider each of the factors in section 17(2), determine which of the factors are relevant to the investment, and have regard to the relevant section 17(2) factors. The relative importance to be given to each factor is a matter to be determined by Ministers. In particular, the Act does not require economic factors to be given more weight than non-economic factors, or vice versa. It is a matter for you, in carrying out your overall evaluation, to decide what weight to give to each factor.
26. The decision concerning whether the benefit to New Zealand, or any part of it or group of New Zealanders, is substantial and identifiable under section 16(1)(e)(iii), involves a collective assessment of the relevant factors.

Justice Miller's "with and without test"

Economic factors

27. The High Court in *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147 ("**Tiroa E**") requires the "economic benefit" factors in section 17(2)(a) to be assessed on the basis of a "counterfactual test". That is, Ministers must consider with respect to each section 17(2)(a) factor whether the overseas investment is likely to result in a benefit to New Zealand over and above any benefit that will or is likely to result even if the investment does not proceed. It is only the additional benefit from the overseas investment that is relevant when applying the "benefit to New Zealand" criteria.

Non- economic factors

28. Although the position is not free from doubt, the better view is that the same question – will this benefit be achieved even if the overseas investment does not occur – should be asked in relation to the other “non-economic” factors listed in section 17(2)(b)-(e). The High Court judgment suggested¹ that there could be a benefit in respect of the non-economic factors even if the same benefit would be achieved in the absence of the investment. But as the Court noted², it is not easy to see how a benefit that will happen anyway could be regarded as substantial for the purposes of section 16(1)(e)(iii). We consider that Ministers should not treat benefits that are likely to be achieved in any event as contributing to the “substantial and identifiable benefit” criterion.

Regulation 28 factors

29. With regard to the factors in regulation 28 of the Regulations, Miller J noted that:

The criteria listed in reg 28 deal, for the most part, with benefits that only an overseas buyer could provide or what may be loosely described as strategic considerations, so they do not require a counterfactual analysis.³

30. Many of the factors in regulation 28 are incapable of having a counterfactual analysis applied to them. However, as recognised by Miller J, there are some factors that may require a counterfactual analysis. The Overseas Investment Office has applied a counterfactual analysis where appropriate.

Conditions

31. Conditions may be imposed on any consent that is granted, under section 25. The attached Report recommends some conditions that Ministers may wish to consider imposing in this case.
32. If you wish to make any changes to the conditions of consent, those changes should be discussed with the Overseas Investment Office, and the other Minister, before being finalised.

Decision

33. The decision that you are required to make should be based on information available to you that you consider is sufficiently reliable for that purpose. The information that the Overseas Investment Office has taken into account in making its recommendation is summarised in the attached Report.
34. If you propose to disagree with the decision of the other Minister, you should discuss your proposed decision with the Overseas Investment Office and the other Minister.
35. If required, staff from the Overseas Investment Office are available to brief you on the Office’s recommendations.

¹ *Tiroa E* at [36].

² *Tiroa E* at [38].

³ *Tiroa E* at [36].

Recommendations:

36. I recommend that you:

(a) determine that:

- (i) the 'relevant overseas person' is (collectively)
 - NZ Binxi (Oamaru) Foods Limited;
 - Heilongjiang Binxi Cattle Industry Co Limited;
 - Zhiyun He; and
 - Qiaogang Zhang; and
 - (ii) the 'individuals with control of the relevant overseas person' are:
 - Zhiyun He;
 - Qiaogang Zhang; and
 - Richard James Thorp; and
 - (iii) the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment; and
 - (iv) the relevant overseas person has demonstrated financial commitment to the overseas investment; and
 - (v) all the individuals with control of the relevant overseas person are of good character; and
 - (vi) each individual with control of the relevant overseas person is not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009; and
 - (vii) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
 - (viii) the benefit will be, or is likely to be, substantial and identifiable;
- (b) and accordingly you are satisfied that the criteria for consent in section 16 have been met; and

Associate Minister of Finance:

Satisfied

Not Satisfied

✓

Minister for Land Information:

Satisfied

Not Satisfied

✓

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

Associate Minister of Finance:

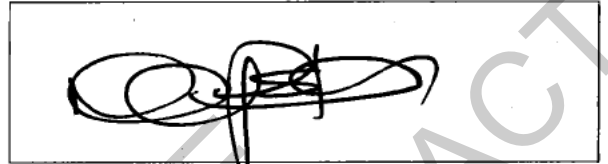
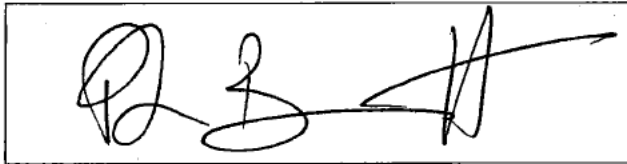
Minister for Land Information:

Consent Granted

Consent Granted

Consent Declined

Consent Declined



Associate Minister of Finance

Minister for Land Information

Date 1/12/2015

Date 16/11/15



Samantha Naidoo – Team Manager
Overseas Investment Office

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Report of the Overseas Investment Office
on the application for consent by
NZ Binxi (Oamaru) Foods Limited
Case: 201520010

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Summary of Key Information

Applicant	NZ Binxi (Oamaru) Foods Limited (China, People's Republic of 100%)
Vendor	Lean Meats Limited (New Zealand 100%)
Consideration	\$5,000,000
Recommendation	Grant Consent

Application

1. For consent for the Applicant to give effect to an overseas investment in sensitive land, being the Applicant's acquisition of rights or interests in up to 100% of the issued share capital of Lean Meats Oamaru Limited which owns or controls a freehold interest in approximately 6.9940 hectares of land at 7 Redcastle Road, Oamaru (the "**Investment**").

Applicant

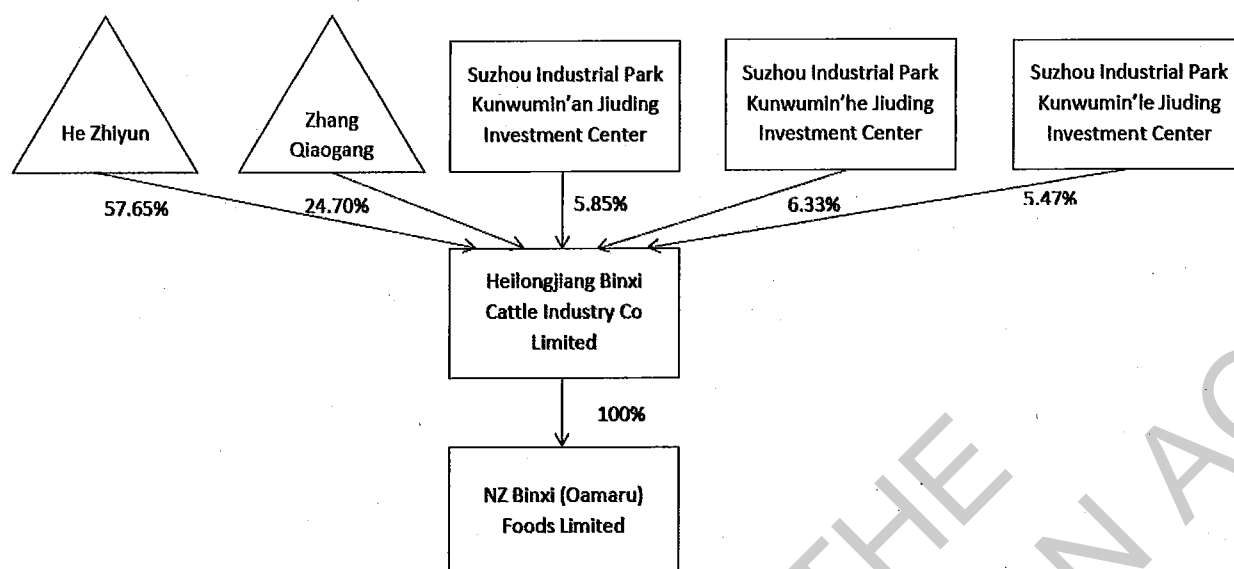
2. The applicant is NZ Binxi (Oamaru) Foods Limited ("**Applicant**"), a limited liability company incorporated in New Zealand.
3. The Applicant is a 100% subsidiary of Heilongjiang Binxi Cattle Industry Co Limited ("**Parent**"), a company incorporated in the People's Republic of China ("**China**").

Shareholders

4. The shareholders of the Parent are:
 - (a) He Zhiyun (57.65%);
 - (b) Zhang Qiaogang (24.70%);
 - (c) Suzhou Industrial Park Kunwumin'an Jiuding Investment Center (5.85%);
 - (d) Suzhou Industrial Park Kunwumin'he Jiuding Investment Center (6.33%); and
 - (e) Suzhou Industrial Park Kunwumin'le Jiuding Investment Center (5.47%).
5. He Zhiyun and Zhang Qiaogang are Chinese citizens. Zhang Qiaogang is He Zhiyun's wife.

6.

7. A structure diagram of the Applicant is set out below.



Directors and management

8. The directors of the Applicant are Mr He and Richard James Thorp. Mr Thorp is also the Chief Operating Officer of the Applicant and responsible for its management and administration.
9. Mr He is the sole director of the Parent.

Previous Applications

10. The Applicant has not made any previous applications for consent.

Business Activities

11. The Applicant was incorporated for the purpose of holding the Parent's investment in Lean Meats Oamaru Limited ("**Target**"). The Applicant currently holds a 24.92% interest in the Target.
12. The Parent operates a modern meat processing enterprise which integrates beef fattening, slaughter processing, delicatessen processing, bioengineering, feed processing and organic fertilizer production and is one of the biggest private enterprises in China.
13. The Applicant has advised that it is a leader in agricultural industrialisation in the Heilongjiang province and is located in the Binxi economic development zone. The Applicant has advised that it has been identified as a key company that will lead the development of modernisation across the Chinese agricultural sector, with an emphasis on the beef and pork industries.
14. The Applicant has advised that it has won many local awards from the government and companies because it is viewed as a leading enterprise that is involved with the following industrialisation and development projects:
 - (a) The development of local farm bases to secure supply and improve food safety while increasing the income of rural farmers / communities.
 - (b) Upgrading plant assets and facilities and developing further processing capability.
 - (c) Accelerating technology and innovation to modernise the agricultural industry.
 - (d) Developing meat industry branding projects through the retail store strategy.

- (e) Establishing raw material assured supply systems through feedlot development in the Binxi economic zone and through international strategic alliance relationships such as with the Target.
15. The annual value of production of the Parent's group is 1.5 billion RMB. The Parent has the ability to slaughter over 200,000 head of cattle per year and produces more than 160 chilled beef products. The manufacturing workshop is built to the European Union Health standards and produces products that are exported to the European Union.
16. The Parent simultaneously supplies more than 12,000 million kilograms of s 9(2)(b)(ii) beef patties per year together with many other high quality products which met the HACCP and ISO9001-2000 Food Safety System Certification.

Background to the Investment

17. The Applicant currently holds a 24.92% interest in the Target. This 24.92% interest was acquired on 25 November 2014, through the issue of new shares by the Target to the Applicant, pursuant to a subscription agreement.
18. The Applicant previously entered into an agreement to subscribe to the Tranche B Securities (an additional 25.08% of the Target) dated 14 October 2014, conditional on Overseas Investment Office ("OIO") approval ("**Tranche B Subscription Agreement**"). The Tranche B Subscription Agreement provided for the Applicant to acquire up to 50% of the Target.
19. After entering into the Tranche B Subscription Agreement the Applicant became concerned about the Target's profitability and its failure to meet profit and budget forecasts. The Applicant decided to negotiate an alternative investment arrangement rather than seeking to cancel the Tranche B Subscription Agreement.
20. Accordingly, the Applicant, the Target and Lean Meats Limited entered into an Acquisition Agreement dated 16 July 2015, pursuant to which the Applicant will acquire a further 75.08% interest in the issued share capital of the Target, subject to obtaining OIO consent (the "**Agreement**").
21. This Agreement replaces the Tranche B Subscription Agreement.

Proposed Investment

22. The Agreement provides that the Applicant will take its total shareholding in the Target to 100%.
23. The Target is a registered company incorporated in New Zealand. The Applicant requires consent to the Investment pursuant to section 10(1)(a) of the Overseas Investment Act 2005 (the "**Act**") being an overseas investment in sensitive land under section 12(b) of the Act.

Sensitive Land

24. The Target owns approximately 6.994 hectares of land situated at 7 Redcastle Road, Oamaru (the "**Land**"). The Land is used by the Target as the site of its processing factory. It is situated near Oamaru beside the beach and includes a beach side cliff.
25. The Land is sensitive for the following reasons:
- (a) The Land is non-urban land greater than 5 hectares;
 - (b) The Land includes the foreshore;
 - (c) The Land adjoins a road which adjoins the sea; and
 - (d) The Land adjoins the foreshore.

Target

26. The current shareholders of the Target are:
 - (a) Lean Meats Limited (75.08%); and
 - (b) the Applicant (24.92%).
27. Lean Meats Limited is a small farmer majority owned company that focuses on providing top quality chilled lamb and meat products. Prior to opening its factory in Oamaru in 2006, Lean Meats Limited operated solely as a processor in Hastings; Hawkes Bay.
28. Lean Meats Limited is not an overseas person under the Act and the Target did not require consent to acquire the Land.

Target's business activities

29. The Target was incorporated in 2006 to own and operate the new Lean Meats meat processing facility in Oamaru.
30. The Target is a subsidiary of Lean Meats Limited. Lean Meats Limited procures high-quality, antibiotic free, 100% grass-fed lambs and processes the lamb into a finished product that is supplied and exported into supermarkets and high end retail stores and restaurant chains in North America, China and Europe.
31. The Target also processes beef and has a modern beef slaughter operation. With Lean Meats Limited being a lamb specialist, to date the Target has not put resources into its export beef production or fully utilised the plant as best it could.

Outline of the Investment

Transaction details

32. The Applicant, the Target and Lean Meats Limited entered into the Agreement dated 16 July 2015. Under the Agreement the Applicant's acquisition of the issued share capital in the Target will be undertaken in the following steps. The Applicant will:
 - (a) subscribe for NZD 3 million of Tranche B shares such that immediately after acquisition the Applicant will hold 50% of the issued share capital in the Target;
 - (b) acquire for NZD 2 million Lean Meats Limited's remaining shares in the Target being the remaining 50% of the issued share capital in the Target; and
 - (c) make a shareholder advance to the Target of NZD 2 million no later than 17 July 2015 in accordance with the Terms of the Interim Funding Agreement dated 16 July 2015.
33. If OIO consent is not obtained to the Investment, the Target will repay NZD 2 million to the Applicant being the shareholder advance paid in accordance with the Interim Funding Agreement.

Applicant's investment plan

34. The Applicant intends to improve revenues and profitability immediately at the Target by increasing the beef processing and export part of its business to meet the Parent's demands for beef products. The Applicant intends to employ more staff and invest a significant amount in new equipment to enable the Target to implement the increased processing.

Plant development

Year 1: 2016

35. The Applicant intends to use 2016 to plan the necessary developments. During this year the Applicant plans to exhaust current factory capacity by increasing working shifts throughout the week and increasing daily numbers with the already established infrastructure.

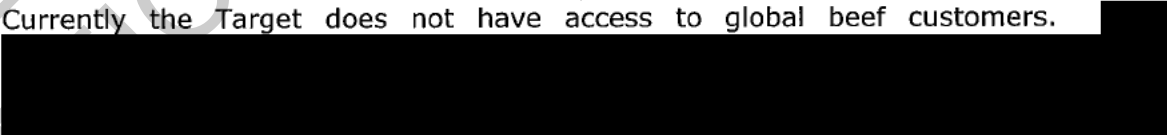
Year 2: 2017

36. The Applicant intends to make capital improvements during 2017 including a dedicated beef processing room and cold storage, blast freezing and load-out facilities.
37. The Applicant intends to build and fit out a dedicated further processing room for beef. Currently the beef is boned through a further processing room that is shared by the lamb and sheep processing, reducing the amount of volume that can be processed over a 24 hour day. A dedicated beef further processing facility will allow for increased processing hours for beef and similarly increased processing hours for sheep and lamb.
38. The Applicant also intends to build new cold storage, blast freezing and load-out facilities. Currently all product from the plant that is required to be frozen is trucked to service providers in Timaru for blast freezing and storage. The intention is to build facilities at Oamaru so that products can be frozen and shipped into export containers on site.
39. The Applicant expects that China regulations are likely to change to require that products must be frozen on-site before being shipped, not sent to third parties for freezing. This development will ensure that the Applicant can comply with such a requirement if it is enacted.

Year 3: 2018

40. Development in 2018 is expected involve completing the freezing capacity for all the Target's frozen bulk products. This will require an expansion of the infrastructure expected to be built in 2017.
41. The Applicant also intends to replace the coal fired boiler to increase its size therefore increasing hot water generation.

Increasing exports

42. The partnership between the Parent and the Target will give the Target more confidence to trade with China, due to the Parent being a specialist beef processor in China. Beef has been a segment of the Target's business that has not been fully utilised because of the complex sales and market arrangements.
43. Currently the Target does not have access to global beef customers. 
44. The Investment will also strengthen the relationship between the Target and the Parent and will assist the Target to address the complexities that arise in trading between New Zealand and China as well as providing security around future growth into the Chinese export market. The Target will have a stronger financial position to overcome short term and long term industry challenges.
45. The Applicant considers that the Investment will allow it to implement its beef business model in New Zealand which will increase the Target's trading with China. This increase is expected to result from increased market access, reduced brand risk for the Target, increased confidence of the Parent in the Target and improved competitiveness for the Target's products in the export markets.

Increase in beef processing

46. The Applicant intends to increase processing of beef at the Oamaru plant as the demand from the Parent and the capacity of the plant increases. [REDACTED]
[REDACTED]
[REDACTED]

Security of supply

47. [REDACTED]
[REDACTED] It also intends to secure supply from other farmers in the South Island region.

Affect on New Zealand

48. The Applicant submits that its increased processing is unlikely to result in a decrease in processing for other meat processing plants in New Zealand by directing stock from these plants for the following reasons:
- (a) The number of cows going to New Zealand processing plants is increasing.
 - (b) The Investment will increase the Target's market returns, which coupled with more effective use of processing capacity will enable the Applicant to pay farmers sufficient premiums. Farmers are then incentivised to adjust farm management practices and supply patterns in response to economic incentives provided by the Applicant.
 - (c) The Investment will have a positive impact on the farm gate prices paid to New Zealand farmers in both the medium and long term pricing.
 - (d) The Investment will enable the Applicant to deliver value added strategies including branding and marketing platforms.
49. The Applicant believes that economic incentives for farmers are also likely to arise from other processors as it will be imperative for them to introduce similar measures in order to keep up with the new market standard being set by the Applicant.

Rationale for the Investment

Target's rationale for the Investment

50. The Target has a fundamental lack of capital and operates in a capital intensive/high cost industry. The Target has had to use shareholders equity as a way of funding improvements which have resulted in low returns on the equity.
51. In order to increase its sales and efficiencies the Target is looking to further expand and optimize the plant assets for increased production. With high levels of shareholder debt and lack of available capital to fund the expansion, outside investment is required to achieve these developments.
52. The Parent and Lean Meats Limited have been working together for two years, introduced to each by other participants in the New Zealand meat industry. The Parent wished to form a strategic partnership with an export company in New Zealand. The Target wishes to strengthen its existing supply relationship with the Applicant.
53. The Target considers that the Investment would enable it to further its progress towards reaching its expansion and efficiency goals in a way that investment by other investors could not.

Applicant's rationale for the Investment

54. The Parent is the leading processor of cattle in China. It has over 50 retail stores in Northern China [REDACTED]
55. With the increasing numbers of beef and dairy cattle in the South Island, the Parent sees an opportunity to import high quality New Zealand product. This would reduce exposure to imported volumes from South America and support the reducing domestic volume in China.
56. The Parent wishes to strengthen its supply chain to ensure a consistent level of volume for the coming years.

Sensitive Land

57. The target company has interests in sensitive land. See Appendix 2.

Assessment Process

58. We have sought sufficient information from the Applicant for us to be assured about the accuracy of the information supplied and have sought sufficient evidence from the Applicant for us to be able to judge whether the criteria and factors that apply are met.
59. We did not consider it necessary to seek input from third parties in order to verify the information or evidence gathered.
60. We have determined that the:
- (a) **'relevant overseas person'** is (collectively):
 - (i) NZ Binxi (Oamaru) Foods Limited (Applicant);
 - (ii) Heilongjiang Binxi Cattle Industry Co Limited (Parent);
 - (iii) Zhiyun He (shareholder and director); and
 - (iv) Qiaogang Zhang (shareholder); and
 - (b) **'individuals with control of the relevant overseas person'** are
 - (i) Zhiyun He (shareholder and director);
 - (ii) Qiaogang Zhang (shareholder); and
 - (iii) Richard James Thorp (director).

Counterfactual Analysis

61. In *Tiroa E*, the Court made specific reference to the counterfactual assessment to be made. Miller J recognised that the statute's perspective is forward looking and that, "if it is to isolate the economic benefits attributable to the overseas investment, the counterfactual must similarly be forward looking, requiring that the OIO ask what will happen if the investment is not made".⁴ Miller J also suggested that the "status quo may serve as the counterfactual under s 17(2)(a) only if Ministers think it likely that in the hands of another owner or owners, the farms will remain in their present state".⁵

⁴ *Tiroa E* at [37].

⁵ *Tiroa E* at [42].

62. To establish the appropriate counterfactual in this case, we have considered what the likely state of affairs would be without the Investment. The Applicant considers that without the Investment the most likely state of affairs is that:
- (a) an alternative New Zealand investor subscribes for issued share capital in the Target; or
 - (b) the status quo is preserved with the Applicant continuing to hold a minority interest in the Target of 24.92%.
63. If an alternative New Zealand investor could not be found it is unlikely the current shareholders would allow the Target to carry on in business in the long term as their return on investment is unlikely to be satisfactory.
64. Lean Meats Limited has also advised that it is likely to look overseas for an investor who has good market connections. It considers that New Zealand meat processing investors are scarce due to the fact that they need to be able to invest in production facilities as well as being able to access a market for products so that the plant is able to be fully utilised.
65. From the information provided, we consider that the most likely state of affairs without the Investment is that **the Target will continue to operate as it does currently while Lean Meat Limited continues to look for an appropriate alternative New Zealand investor to subscribe for the Target's issued share capital.** Given the current financial state of the Target we consider that it is unlikely to continue without additional investment in the longer term.

Target's Current Operation

66. The Applicant currently has a 24.92% interest in the Target; therefore the Target has access to the Applicant's technology. However, the Target's access to export markets and the ability to increase processing cannot be achieved by access to the Applicant's technology alone.
67. The Applicant has advised that its business plan to increase the exporting of beef from New Zealand to the Chinese markets is very complex and difficult to execute. Even with the Applicant's existing 24.92% shareholding, the Target currently has an inability to convert its access to the Applicant's technology into a tangible increase in processing and exports, for the following reasons:
- (a) Lean Meats Limited are not prepared to invest in the Land at the level and speed required by the Applicant in order to execute its business plan;
 - (b) the Target has a severe lack of capital to invest and support the growth specified in the Applicant's business plan;
 - (c) the Target's current management (appointed by Lean Meats Limited) do not have the necessary experience or desire to execute an expansion into Chinese export markets to level required by the Applicant;
 - (d) the Target's beef plant is under utilised and underperforming, and its management are not sufficiently experienced to facilitate the development and operations required to successfully execute the processing of beef carcasses and the exportation of beef products;
 - (e) the Target's employees are not appropriately trained; and
 - (f) the Target has an unreliable supply of livestock.
68. The Applicant has also advised that the Investment is required (in addition to the Applicant's existing 24.92% shareholding), to increase exports and processing for the following reasons:

- (a) the Investment will introduce capital to the Target, reduce debt and improve the Target's financial position to support the necessary development and expansion;
- (b) the Applicant's control of the board will result in the Target having the necessary expertise, ability and flexibility to manage multiple cutting lines and specifications. It will also mean the Target has a management team focused on extracting maximum value from the export market of focus: [REDACTED]
- (c) the Investment will result in the Target having the necessary expertise and experience to implement and convert the knowledge and technology into actions and business outcomes as detailed in the Applicant's business plan by focusing on a few single outcomes in a few key markets;
- (d) the Investment will provide necessary resources to invest in training employees as the Target develops and grows the business; and
- (e) the Target's board will be able to utilise the Applicant's management experience and expertise as a specialist beef processor and the number one processor of cattle in China.

69. The Applicant has advised that the Investment secures the Parent's commitment to acquiring product from the Target which makes its business viable. Without the Applicant's investment in the Target, the Target is at risk of not being able to obtain further investment and its future is less viable. Further, without the security of supply to the Parent that comes with the Applicant's investment, there is likely to be trading issues in the future for the Target.

Alternative New Zealand Purchaser

- 70. An alternative New Zealand purchaser is unlikely to have the Applicant's connections in the export market enabling it to increase exports to China.
- 71. We also consider that it is unlikely that an alternative New Zealand investor would invest additional capital in the Target to increase its capacity. The Red Meat Industry *Pathways to Long-term Sustainability* (March 2015) report indicates that there are some issues in New Zealand with overcapacity and undersupply in the New Zealand meat processing industry⁶. Without its own contacts in an export market giving the investor security of demand for the Target's products, it is unlikely that an alternative New Zealand investor would invest in increasing capacity, staff and production at the Target as proposed by the Applicant.
- 72. Without investment into the development of the plant and equipment the Target is unlikely to be able to meet the demand of the Parent. Therefore, with no investor or an alternative New Zealand investor, we consider that the Parent is unlikely to enter into the proposed supply contracts with the Target. The Applicant has also advised that while a progressively structured growth plan might be possible, [REDACTED]

⁶ http://www.meatindustryexcellence.co.nz/downloads/report-march-2015/MIE_Report_March_2015.pdf

Criteria set out in section 16

73. s16(1)(a) Overseas Investment Act 2005

Does the relevant overseas person, or (if that person is not an individual) do the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to that overseas investment?	✓
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The Court of Appeal has confirmed that the wording of this criterion allows considerable flexibility in determining what business experience and acumen is relevant to a proposed investment. More or less specific expertise may be required depending on the nature of the investment. Business experience and acumen that contributes to an investment's success may be treated as relevant even though the investor may have to supplement its experience and acumen by utilising the experience and acumen of others to ensure the investment succeeds.

In this case, the Investment can be described as operating a meat processing plant.

We have reviewed the biographical information provided by the Applicant for each of the individuals with control and note:

- (a) Mr Ye has owned and operated the Parent since 2005. The Parent conducts the largest meat packing operation in Heilongjiang, China.
- (b) Mr Thorp was the CEO of Lean Meats Limited for the period between 2010-2014, therefore he has extensive experience in the industry.
- (c) Mr Thorp also has management experience with other food processing entities.

Having regard to the above, we are satisfied that the individuals with control of the relevant overseas persons collectively have business experience and acumen relevant to the overseas investment.

74. s16(1)(b) Overseas Investment Act 2005

Has the relevant overseas person demonstrated financial commitment to the overseas investment?	✓
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The 'financial commitment' criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the Investment (intentions are not sufficient).

In this case, we are satisfied that the relevant overseas person has demonstrated financial commitment by:

- (a) entering into an agreement for sale and purchase to acquire the relevant assets;
- (b) entering an interim funding agreement to pay the Target an amount of NZD\$2,000,000; and
- (c) engaging professional advisers.

75. s16(1)(c) Overseas Investment Act 2005

Is the relevant overseas person, or (if that person is not an individual) are all the individuals with control of the relevant overseas person, of good character?	✓
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The decision maker must be satisfied that the individuals with control are of good character. Section 19 of the Act specifies that the decision-maker must take the following factors into account (without limitation) in assessing whether a person is of good character:

- (a) offences or contraventions of the law by the person, or by any person in which the person has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not); and
- (b) any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

The Applicant has provided statutory declarations stating that the individuals with control are of good character, have not committed an offence or contravened the law as described above and know of no other matter that reflects adversely on their fitness to have the Investment. We are satisfied that the statutory declarations can be relied on as they comply with the requirements of the Oaths and Declarations Act 1957. We have also conducted open source background checks on the individuals with control and found nothing relevant to this criterion.

Therefore, we are satisfied that the individuals with control are of good character.

76. s16(1)(d) Overseas Investment Act 2005

Is the relevant overseas person, or (if that person is not an individual) is each individual with control of the relevant overseas person, not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009?	✓
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Section 15 of the Immigration Act specifies that certain convicted or deported persons are not eligible for a visa or permission to enter or be in New Zealand. Section 16 provides a power to deny a visa or permission to enter New Zealand for other specified reasons, such as if the individual is likely to be a threat or risk to security or public order.

The Applicant has provided statutory declarations stating that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009. We are satisfied that the statutory declarations can be relied on as they comply with the requirements of the Oaths and Declarations Act 1957. We have also conducted open source background checks on those individuals and found nothing relevant to this criterion.

Therefore, we are satisfied that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.

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

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

Overseas Investment Act 2005

17(2)(a)(i) – Jobs

17(2)(a)(iii) – Increased export receipts

17(2)(a)(iv) – Greater productivity and efficiency

17(2)(a)(v) – Additional investment for development purposes

17(2)(a)(vi) – Increased processing of primary products

17(2)(f) – Offer to sell foreshore to the Crown

Overseas Investment Regulations 2005

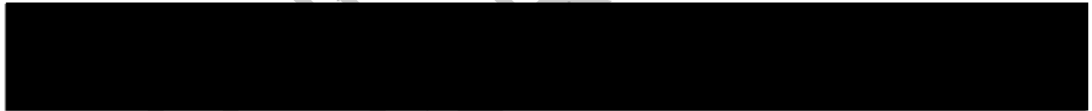
28(f) – Advance significant Government policy or strategy

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

Will the benefit be, or is the benefit likely to be, substantial and identifiable?	✓
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The benefits set out above flow from the Applicant's plans to:

(a)



(b) increase processing of beef at the plant; and

(c) increase exports to China through the Applicant's supply networks.

As noted above we are satisfied that the Investment will be of benefit to New Zealand. In particular the Applicant intends to increase job opportunities on the Land by 90 FTEs over the next five years, invest \$6,450,000 of additional investment for development purposes to upgrade the factory on the Land and significantly increase processing at the factory.

We have reviewed the significance of the above benefits and consider that collectively they are likely to be substantial and identifiable.

Factors Set Out in section 17

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

Will the overseas investment result in, or is it likely to result in, the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost?	✓
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We consider that the Investment is likely to result in the creation of new job opportunities in New Zealand being approximately 90 new full time equivalent roles in the plant along with temporary work developing the factory.

New job opportunities – plant

The Applicant has advised that the plant currently employs 180 staff all year round on the basis of at least 30 hours per week.

[REDACTED] These new job opportunities are expected to require a mix of skill levels from highly technical down to labouring roles. The Applicant estimated that the average hourly earnings will be in the range of \$25.00 per hour.

The Applicant has estimated that over the five year period following the acquisition of the Investment, the employment of the additional 90 employees for 30 hours per week (over 44 weeks) at \$25 an hour is likely to result in additional employee remuneration payments of approximately \$14,850,000.

The Applicant has also advised that with the increase of plant capacity and capital expenditure there will be additional contract service personnel maintaining the plant. The Target's annual repairs and maintenance costs are expected to increase by approximately \$900,000 to a total annual cost of \$1,500,000.

We consider that is likely that 90 new job opportunities will be created as a result of this Investment. It is possible that the increase in processing may result in a corresponding decrease in processing at other plants in New Zealand due to supply shortages. However we consider that the Applicant's proposed measures to ensure that any decrease at other processing plants in New Zealand is minor will be effective.

Without the Investment, we consider that it is unlikely that an alternative New Zealand purchaser or the Target would increase production for the reasons set out in the Counterfactual Analysis above and therefore increase the number of staff at the plant. Therefore we consider that it is likely that new job opportunities will be created in New Zealand as a result of the Investment.

New job opportunities – development

The Applicant has advised that there are a number of job opportunities relating to the development that are likely to be completed by service providers in the North Otago community. These will include (but not be limited to):

- (a) project management;
- (b) construction;

- (c) plumbing and electrical services; and
- (d) concrete and finished floor preparation.

There are also some specialist tasks likely to be completed outside of Oamaru around building design and technical expertise on refrigeration.

The Applicant will undergo a tender process to ensure value for money but it believes that it is likely that the North Otago community will provide a number of the contractors for the development projects.

We consider that the contract worker hours arising from the development proposed by the Applicant are new job opportunities that are likely to result from the Investment. Without the Investment we consider that it is likely that the development would not be undertaken. Therefore these job opportunities are new job opportunities that are also likely to result from the Investment.

It is recommended that a consent condition be imposed requiring the Applicant to create the additional job opportunities as described in its Application and to provide the OIO with a written annual report setting out the details of any new job opportunities that have been created.

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

Will the overseas investment result in, or is it likely to result in, the introduction into New Zealand of new technology or business skills?	Not Relevant
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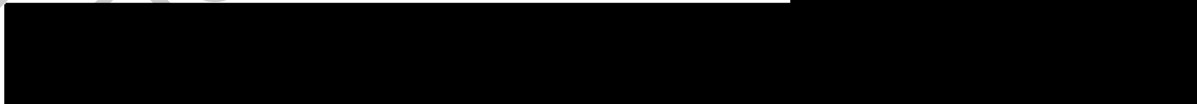
81. s17(2)(a)(iii) Overseas Investment Act 2005

Will the overseas investment result in, or is it likely to result in, increased export receipts for New Zealand exporters?	✓
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We consider that the Investment is likely to result in increased export receipts for New Zealand exporters.

The Applicant has stated that it intends to increase the Target’s output capacity and its ability to service large scale customers. The intended increased processing of primary products by the Target as a result of the Investment will result in the Applicant having increased product available for export.

The Applicant has advised that the Parent is the number one processor of cattle in China. It has over 50 retail stores in Northern China



The Applicant sees an opportunity to import high quality New Zealand product to China. This will give the Parent less exposure to other imported volume from South America and also support the reducing domestic volume in China (expected decrease in beef numbers over the next 10 years).

The Applicant has advised that the Oamaru plant has been working with the Parent to commence supply of beef over the month of December 2015. It is forecasted that over that period there will be trial shipments of up to 500 cattle processed. In January 2016 it will increase numbers to meet the early demand required by the Parent, these beef numbers are expected to rise to 600 cattle per week. These weekly numbers are expected to produce approximately 25,000 cattle for the first year. [REDACTED]

Further, the introduction of increased output capacity at the plant will increase the Target’s ability to service large scale customers and increase New Zealand export receipts over the longer term. [REDACTED] and the Parent are both very large companies and accordingly sufficient scale is required at the plant to meet such customer needs.

We consider that the Investment is likely to result in increased export receipts for New Zealand exporters for the following reasons:

- (a) The Applicant intends to increase processing at the plant;
- (b) [REDACTED]
- (c) The Applicant also has its own distribution networks in China through which it can sell the additional products produced.

Without the Investment we consider that it is unlikely that the Target will increase export receipts to the extent proposed by the Applicant for the reasons set out in the Counterfactual Analysis above.

We recommend that a condition of consent is imposed which requires the Applicant to increase exports of beef products to China as described in the Application and to report on this annually to the OIO. With this condition imposed, we are satisfied that this factor is met.

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

Will the overseas investment result in, or is it likely to result in, added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand?	✓
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We consider that the Investment is likely to result in greater productivity or efficiency in New Zealand.

Greater efficiency is the improvement of use of an existing resource or asset (i.e. improving the input/output ratio). Greater productivity is increasing the amount of goods or services produced. Increases in productivity typically result from increased efficiency and the introduction of new technology or business skills or the introduction of capital to expand the existing operations.

Productivity

The Applicant has advised that the Investment and the resulting additional development will enable greater productivity at the plant. This will arise from building and fitting out of a purpose built beef boning facility in order to allow the factory to double shift its beef operation and increase processing numbers with the goal of processing 50,000 cattle per year after three years.

We consider that increased productivity will result from the increased processing of primary products at the plant. This increase in processing has been considered under the factor in section 17(2)(a)(vi) below. There is a risk that the benefit arising from the increase in processing will be overstated if it is also considered under this factor. Therefore we consider that the increase in productivity should be given low relative importance.

Efficiency

The Applicant also believes that the Investment and additional development will enable the Target to achieve greater efficiency due to the increased size, output, and scale of operation, as the cost per unit of output will decrease with the increasing scale. This is achievable as the fixed costs involved with complex sales and market arrangements required for a beef carcass to be broken down into many cuts are spread out over more units of output.

We consider that it is likely that the Investment will result in greater efficiency at the plant. This is due to the measures proposed by the Applicant to develop the factory and increase its operations. We consider that this increase in efficiency is unlikely to occur without the Investment. However this increase in efficiency has not been quantified. Therefore we consider that this factor has been met but should be given low relative importance.

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

Will the overseas investment result in, or is it likely to result in, the introduction into New Zealand of additional investment for development purposes?	✓
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In order to meet the requirements of this factor the additional investment must be 'additional investment', 'introduced into New Zealand' and be for 'development purposes'. More particularly, the additional investment must:

- (a) occur after the initial acquisition and be additional to the purchase price;
- (b) be funded in the form of foreign direct investment (including retained earnings that would otherwise be remitted overseas); and
- (c) have the effect of increasing the productive capacity of the assets being acquired.

The Applicant has stated that it intends to invest in the plant including undertaking the following developments:

- (a) [REDACTED]
- (b) building and fitting out of a purpose built beef boning facility;
- (c) building of blast freezers, storage freezers and load out facilities; and
- (d) installing a larger coal fired boiler to increasing hot water generation.

The additional investment for development of the Land and processing operations will cost approximately NZD\$6,450,000.00 as set out in the table below.

Scheduled Year	Development	Estimated Cost
2017	Dedicated Beef Processing Room	\$1,200,000
2017 - 2018	Cold Storage, Blast Freezing and Load-Out Facilities	\$5,000,000
2018	Boiler Replacement	\$250,000
Total Expenditure		\$6,450,000

The Applicant has advised that the Target has a fundamental lack of capital. The Applicant's investment will allow the Target to reduce debt, improve its overall finance base and to carry out development on the Land.

We consider that without the Investment it is unlikely that the Target or an alternative New Zealand purchaser would invest in development of the plant for the reasons set out in the Counterfactual Analysis above. Therefore we consider that the Investment is likely to result in additional investment for development purposes.

We consider that this factor should be given high relative importance. The value of the development is substantial and is greater than the purchase price that the Applicant will pay for the Target. Therefore we consider this investment to be significant.

We recommend that a condition of consent be imposed requiring that the Applicant implement the additional investment to for development and to report on this annually to the OIO. With this condition imposed, we are satisfied that this factor is met.

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

Will the overseas investment result in, or is it likely to result in, increased processing in New Zealand of New Zealand's primary products?	✓
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The Investment and the additional development proposed by the Applicant will enable the Target to increase processing of primary products, being beef cattle. The Applicant estimates that it will process 50,000 more cattle per year within three years.

The Applicant has also advised that the Investment will allow greater value added processing of beef carcass to occur in New Zealand before being exported directly to customers in China. The specifications and technology to complete such value added processing are proprietary to the Applicant. While the Target currently has access to this knowledge by virtue of the Applicant's current shareholding in the Target, without the Investment it is unlikely to implement the necessary capital to invest in implementing the technology for the reasons set out in the Counterfactual Analysis above.

Without the Investment, the Applicant considers that it is unlikely that the Target would have the ability to access Applicant's multinational customers directly in China and add value to the exported product.

We consider that the Investment is likely to result in increased processing in New Zealand of New Zealand's primary products. The Target currently processes approximately 22,000 cattle per year. We consider that it is unlikely that the Target will increase its processing of cattle to the extent proposed by the Applicant without the Investment.

We have also considered whether the increase in processing of cattle by the Target will result in a decrease in processing at other meat processors in New Zealand. We consider that the Target's increased demand is likely to result in an increased supply of cattle in New Zealand and the measures proposed by the Applicant such as incentivising farmers to increase supply through value added strategies is likely to ensure that any decrease at other processing plants will be minimal. Therefore we consider that this factor has been met. Given the size of the increase in processing, we consider that this factor should be given high relative importance.

We recommend that a condition of consent be imposed requiring that the Applicant implement the increased processing of cattle proposed. With this condition imposed, we are satisfied that this factor is met.

85. s17(2)(b) Overseas Investment Act 2005

Are there, or will there be, adequate mechanisms in place for protecting or enhancing existing areas of significant indigenous vegetation and significant habitats of indigenous fauna?	Not Relevant
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86. s17(2)(c) Overseas Investment Act 2005

Are there, or will there be, adequate mechanisms in place for protecting or enhancing existing areas of significant habitats of trout, salmon, protected wildlife and game, and providing, protecting or improving walking access to those habitats?	Not Relevant
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87. s17(2)(d) Overseas Investment Act 2005

Are there, or will there be, adequate mechanisms in place for protecting or enhancing historic heritage within the relevant land?	Not Relevant
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88. s17(2)(e) Overseas Investment Act 2005

Are there, or will there be, adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land, or a relevant part of that land, by the public or any section of the public?	Not Relevant
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We consider that walking access is not relevant to this Application. While the Land includes foreshore, the foreshore cannot be accessed from the Land due to the existence of a 20 metre cliff. There appears to be sufficient access to the beach from the nearby roads. The part of the Land that includes the foreshore is also presently open to the public through access from the beach.

The Land is small in size and used to operate a factory. There is unlikely to be any benefit to the public obtaining walking access across the Land and this may be hazardous due to the presence of the factory.

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

Has any foreshore, seabed, riverbed, or lakebed been offered to the Crown?	✓
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The Land includes special land in the form of the foreshore. This special land has been offered to the Crown for nil consideration.

As the Applicant is acquiring the issued share capital of the Target, the owner of the special land (being the Target) will not change. However, the Target has chosen to offer this foreshore to the Crown and the Applicant will own 100% of the issued share capital in the Target as a result of the Investment so will therefore be in a position to compel the Target to complete the offer.

It is unlikely that the special land would be offered to the Crown without the Investment as there would be no requirement to do so. Therefore we consider that this factor has been met.

The process of offering special land to the Crown generally involves a two step process. Firstly, the vendor offers the land to the Crown. The Crown then determines whether or not it wishes to acquire the land, and if it does, makes the acquisition.

We note that only the first step needs to be completed before an application for consent is determined (section 17(2)(f) of the Act relates to the offer of the special land rather than its acquisition by the Crown). We will forward a separate report in due course regarding whether the Crown should acquire the special land. In the interim, we recommend that a consent condition be imposed requiring the Applicant to deal with the Crown in accordance with the Regulations, including requiring the Applicant to be bound by any arrangement that the Target entered into with the Crown in relation to the special land (preserving the Crown's position). The proposed consent conditions are set out in Appendix 1.

90. r28(a) Overseas Investment Regulations 2005

Will the overseas investment result in, or is it likely to result in, other consequential benefits to New Zealand (whether tangible or intangible benefits (such as, for example, additional investments in New Zealand or sponsorship of community projects))?	Not Relevant
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91. r28(b) Overseas Investment Regulations 2005

Is the relevant overseas person a key person in a key industry of a country with which New Zealand will, or is likely to, benefit from having improved relations?	Not Relevant
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92. r28(c) Overseas Investment Regulations 2005

Will refusal adversely affect, or likely adversely affect, New Zealand's image overseas or its trade or international relations, or result in New Zealand breaching any of its international obligations?	Not Relevant
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93. r28(d) Overseas Investment Regulations 2005

Will granting the application for consent result in, or is it likely to result in, the owner of the relevant land undertaking other significant investment in New Zealand?	x
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This factor is relevant where the owner of the Land (usually the vendor) is likely to undertake other significant investment in New Zealand as a result of the investment.

The Applicant has stated that in the context of this Investment, the owner of the Land is the Target, and the Investment is likely to result in the Target undertaking significant investment on the Land.

We consider that this factor should be given less importance where the owner of the relevant land is the entity being acquired rather than the vendor.

The additional investment referred to by the Applicant has already been considered under the factor in section 17(2)(v) and the benefit is likely to be overstated if this investment is also considered under this factor.

As the Applicant is not proposing any additional investment to that considered under section 17(2)(v) we consider that this factor has not been met.

94. r28(e) Overseas Investment Regulations 2005

Has the relevant overseas person previously undertaken investments that have been, or are, of benefit to New Zealand?	x
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This factor is relevant where the relevant overseas person has previously undertaken investments that have been, or are, of benefit to New Zealand. The previous investments are not restricted to overseas investments which required consent under the Act.

The Application has stated that it has previously invested in 24.92% of the Target's issued share capital which enable the Target to repay debt and strengthen its balance sheet so that it was in a position to seek additional investment for development of the plant and equipment on the Land.

We consider that this factor has not been met because the Applicant has not explained how its previous investment has been of benefit to New Zealand.

95. r28(f) Overseas Investment Regulations 2005

Will the overseas investment give effect to or advance, or is it likely to give effect to or advance, a significant Government policy or strategy?	✓
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This factor is relevant where the proposed investment will or is likely to give effect to, or materially advance, a significant Government policy or strategy. In order to meet the requirements of this factor an Applicant must:

- (a) *specifically identify* a Central or Local Government policy or strategy;
- (b) demonstrate the policy or strategy is *significant* to New Zealand (or any part of it or group of New Zealanders); and

- (c) explain *how* the investment will or is likely to give effect to or materially advance that policy or strategy.

The Applicant has stated that:

- (a) The Investment will support the Government's NZ Inc China strategy. The NZ Inc China Strategy identifies five strategic goals for furthering New Zealand's relationship with China.
- (b) The following two strategic goals under the NZ Inc China strategy will be advanced by the Investment:
- (i) reaching \$20 billion in two-way goods trade by 2015. This target was reached in the second quarter of 2014. In March 2013 John Key and the Chinese President then revised the trade target up to \$30 billion by 2020; and
- (ii) increase bilateral investment to levels that reflect the growing commercial relationship with China.

The Applicant also believes that the Investment will advance the strategy directly as follows:

- (a) MFAT has recognised the need to grow the volume of New Zealand companies ready for the China market in order to achieve its two-way goods trade target of \$30 billion by 2020. The Investment will allow the Target to develop the plant and equipment on the Land to a standard that it will be ready to export to the Parent in China.
- (b) As a result of the Investment, the Parent and the Applicant are in the process of negotiating supply contracts with the Target that the Applicant forecasts will result in up to US\$51,000,000 in export revenue over 3 years for the Target from goods trade with China.
- (c) The Investment is a direct inward capital investment in a New Zealand business.

The requirements of this factor have been met because it is likely that the Investment will result in increased exports to China. As set out in paragraph 81 above, we consider that the proposed increased exports to China are unlikely to occur without the Investment. Therefore we consider that this factor has been met.

96. r28(g) Overseas Investment Regulations 2005

Will the overseas investment enhance, or is it likely to enhance, the ongoing viability of other overseas investments undertaken by the relevant overseas person?	Not Relevant
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97. r28(h) Overseas Investment Regulations 2005

Will the overseas investment assist, or is it likely to assist, New Zealand to maintain New Zealand control of strategically important infrastructure on sensitive land?	Not Relevant
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98. r28(i) Overseas Investment Regulations 2005

Will New Zealand's economic interests be adequately promoted by the overseas investment?	x
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The 'Economic Interests' factor is relevant to all overseas investments in sensitive land. The factor has a broader focus than the economic factors already discussed and concerns the effect of the overseas investment on the wider New Zealand economy.

In assessing this factor, we have considered the four matters referred to in regulation 28(i). These four matters are examples that can be taken into account in assessing whether New Zealand's economic interests are adequately promoted by the overseas investment.

Our overall assessment of this factor is that the overseas investment is unlikely to have any material effect on New Zealand's economic interests. Therefore, we are not satisfied that the requirements of this factor have been met.

Matters in regulation 28(i)(i)-(iv)

Whether New Zealand will become a more reliable supplier of primary products in the future

The Investment is unlikely to result in New Zealand becoming a more reliable supplier of primary products in the future as the Investment is unlikely to significantly increase the quantity of primary products produced in New Zealand.

Whether New Zealand's ability to supply the global economy with a product that forms an important part of New Zealand's export earnings will be less likely to be controlled by a single overseas person or its associates

While sheep and beef products may form an important part of New Zealand's export earnings, we consider that the Investment is unlikely to have any material impact on the makeup of meat processing industry. As such, the Investment is unlikely to increase the diversity of ownership within the meat processing industry or reduce the likelihood of sheep and beef exports being controlled by a single overseas person or its associates.

Whether New Zealand's strategic and security interests are or will be enhanced

The Investment is unlikely to have any effect on New Zealand's strategic and security interests.

Whether New Zealand's key economic capacity is or will be improved

The Investment is unlikely to have any affect New Zealand's key economic capacity.

99. r28(j) Overseas Investment Regulations 2005

To what extent will New Zealanders be, or are likely to be, able to oversee or participate in the overseas investment and any relevant overseas person?	x
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The 'Oversight and Participation by New Zealanders' factor is relevant to all overseas investments in sensitive land. The factor applies to oversight and participation in the overseas investment or relevant overseas person at an ownership or control level.

In assessing this factor, we have considered the six matters referred to in regulation 28(j). These six matters are examples that can be taken into account in assessing this factor.

In this case, ownership and control of both the Investment and the relevant overseas person reside with overseas persons. Overall, we consider that New Zealanders are unlikely to have any meaningful ownership or participation in the Investment or relevant overseas person.

Matters in regulation 28(j)(i)-(vi)

Whether there is or will be any requirement that 1 or more New Zealanders must be part of a relevant overseas person's governing body

The Applicant will have one New Zealand director; however the Applicant has not advised us of any requirement that one or more New Zealanders be part of the relevant overseas person's governing bodies.

Whether a relevant overseas person is or will be incorporated in New Zealand

The Applicant is incorporated in New Zealand. However, the balance of the entities which comprise of the relevant overseas persons are not incorporated in New Zealand.

Whether a relevant overseas person has or will have its head office or principal place of business in New Zealand

The Applicant (forming part of the relevant overseas person) will have a business presence in New Zealand through its ownership of the meat processing facility. However, none of the other entities that form the relevant overseas person have their principal place of business or head offices in New Zealand.

Whether a relevant overseas person is or will be a party to a listing agreement with NZX Limited or any other registered exchange that operates a securities market in New Zealand

The entities making up the relevant overseas person are privately held.

The extent to which New Zealanders have or will have any partial ownership or controlling stake in the overseas investment or relevant overseas person

The Applicant and the relevant overseas person are Chinese owned.

The extent to which ownership or control of the overseas investment or of a relevant overseas person is or will be dispersed amongst a number of non-associated overseas persons

Mr Ye and his wife Ms Zhang together hold more than 80% of the issued share capital in the Parent. While the balance of the issued share capital in the Parent is widely held, New Zealanders are unlikely to have any opportunity to participate in the Investment.

Third Party Submissions

100. No third party submissions were received.

Appendix 1 – Conditions of Consent

Consent is granted subject to the following 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 15 July 2015.

Business Plan means the business plan set out in Appendix 12 of the Application Letter.

Consent Holder means NZ Binxi (Oamaru) Foods 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 and Heilongjiang Binxi Cattle Industry Co Limited.

Investment means the Consent Holder's acquisition of rights or interests in up to 100% of the issued share capital in Lean Meats Oamaru Limited which owns or controls a freehold interest in the Land.

Land means the land contained in certificates of title 222052, 440537 and 46609 (Otago Registry).

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 another 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 given effect

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

Employment condition

3. The Consent Holder must increase the number of job opportunities at the Target on the Land by 90 full time equivalent employees substantially in accordance with section 6 of the Business Plan by 31 December 2018.

Additional investment condition

4. The Consent Holder must introduce additional investment of at least \$6,450,000 into New Zealand for development purposes and use this investment to implement the developments described in section 5 of the Business Plan (and summarised below) substantially in accordance with the Business Plan by 31 December 2018.

Scheduled Year	Development	Estimated Cost
2017	Dedicated Beef Processing Room	\$1,200,000
2017 - 2018	Cold Storage, Blast Freezing and Load-Out Facilities	\$5,000,000
2018	Boiler Replacement	\$250,000
Total Expenditure		\$6,450,000

Increased processing condition

5. The Consent Holder must increase the number of cattle processed at the plant on the Land for each of the calendar years 2016, 2017 and 2018 substantially as set out in the table below.

Year	Number of Cattle Processed
2016	30,000
2017	40,000
2018	50,000

Increased exports condition

6. The Consent Holder must increase export receipts for New Zealand exporters as described in the Business Plan and the letter from Michael Beck to the Overseas Investment Office dated 19 August 2015 (including the attachments) substantially in accordance with the timeframes set out therein and as set out in the table below.

Year	Number of Cattle Exported	Number of Sheep Exported
2016	30,000	300,000
2017	40,000	330,000
2018	50,000	380,000

Special land condition

7. The Consent Holder must, upon acquiring the Investment:

- (a) Ensure that Lean Meats Oamaru Limited continues to be bound by any offer, arrangement or agreement that it has made, reached or entered into with the Crown in relation to the special land that forms part of the Land;
- (b) If so required by the Crown, procure Lean Meats Oamaru Limited to enter into a deed of covenant with the Crown to be so bound; and
- (c) Procure Lean Meats Oamaru Limited to deal with the Crown in accordance with the requirements of the Act as the party making the initial offer of the special land to the Crown.

Reporting to the OIO

8. 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.

9. The Consent Holder must report in writing annually to the Overseas Investment Office detailing progress of its Business Plan ("**Annual Report**"), including the following:

- (a) the Consent Holder's compliance with conditions 3, 4, 5 and 6;
- (b) the number (in full time equivalent units) and type of any new job opportunities created in New Zealand as a result of the Investment including the value of these jobs (being the annual salary or wages paid); and
- (c) any increased export receipts for New Zealand exporters, including the number of sheep and beef exported, the average price per animal exported and the country the animal was exported to.

The first Annual Report is due on 30 November 2016 and the final report is due on 30 November 2019.

10. 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.
11. 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.

General Condition

12. The OIO will reasonably consider a request for a variation to the Business Plan that arises due to changes in economic and/or environmental conditions outside the Applicant's control, or from any circumstances outside the Consent Holder's control that were reasonably unforeseen at the date of the Application.

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Appendix 2 – Sensitive Land

1. 7 Redcastle Road, Oamaru

Land Interest	Freehold Interest (approximately 6.9940 hectares)
CTs	222052, 440537, 46609 (Otago)
Sensitivity	Is more than 5 hectares of non-urban land
	Includes the foreshore or seabed or riverbed
	Adjoins the foreshore
	Adjoins land that is over 0.4 hectares that adjoins the sea or a lake and is a road (as defined in s315(1) of the Local Government Act 1974)

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