

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

Date	28 June 2019
Security Level	Commercial: In Confidence
Priority	High
Case Number	201520010
Decision Required By	As soon as possible

Contact for Telephone Discussion

Name	Position	Telephone (wk)	Cellphone	First Contact
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Executive Summary:

1. NZ Binxi (Oamaru) Foods Limited (**Consent Holder**) seeks to vary the conditions of a consent granted to it on 1 December 2015 to acquire up to 100% of the shares in Lean Meats Oamaru Limited (Investment) which owned a freehold interest in approximately 6.9940 hectares of land at 7 Redcastle Road, Oamaru.
2. The Investment relates to a meat processing facility. The Consent Holder's investment plan was to continue to operate the Investment as a meat processing facility and develop it further through:
 - (a) Increasing its processing of beef;
 - (b) Developing a dedicated beef processing room and associated capital expenditure;
 - (c) Increasing job numbers by 90 full time equivalent employees; and
 - (d) Increasing exports of both sheep and beef.

3. [Redacted]

Variation requested

4. The Consent Holder now seeks a variation to conditions 3, 4, 5 and 6 to better align with the commercial situation it is facing: extending the timeframes for constructing proposed beef processing facilities, adjusting predicted stock numbers being processed and decreasing the expected new job numbers.
5. We also recommend that condition 7, the Consent Holder's special land condition, be varied to better align with our current special land process and enable the Consent Holder to fulfil their commitments.
6. We consider that it is reasonable to grant a variation to conditions 3, 4, 5 and 6 (and vary condition 7) because, amongst other considerations in this Report, the extensions of time being sought are reasonable given the current market situation, other benefits have arisen and there is a continued commitment to achieve the original benefits in the Investment.

Instructions

7. Please see **Appendix 2** for instructions on how to make a decision and guidance on the relevant factors and criteria for consent.

Decision:

8. The consent is varied as set out in Appendix 1 of the Report.

[s 9(2)(a)]

Tyne Schofield – Acting Manager Applications

Date 28/6/2019

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

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What is the Investment?

Applicant	NZ Binxi (Oamaru) Foods Limited (China, People's Republic of 100%)
Recommendation	Grant Variation

Consent Holder and description of the Investment

1. NZ Binxi (Oamaru) Foods Limited (**Consent Holder**) seeks to vary the conditions of a consent granted to it on 1 December 2015 (**consent**) to acquire up to 100% of the shares (Investment) in Lean Meats Oamaru Limited (**Target**). .
2. Lean Meats Oamaru Limited owns a freehold interest in approximately 6.9940 hectares of land at 7 Redcastle Road, Oamaru (**Land**) for the purposes of a meat processing facility (**Facility**).
3. The Land is sensitive land. See **Appendix 3**.
4. Since the granting of the consent, there have been no changes to the Consent Holder including no changes to the ownership of the Consent Holder, or to the relevant overseas person or the individuals with control.

Background to the Variation

Proposed increased beef processing

5. Prior to the acquisition of the shares in the Target by the Consent Holder, the Facility focussed on sheep processing. While the Facility processed beef, the Target had not put resources into its export beef production or fully utilised the Facility.
6. The Consent Holder's investment plan largely relied on its intention to increase the beef processing capacity at the Facility, by specifically:
 - (a) [s 9(2)(b)(ii)]
 - (b) increasing beef processing stock numbers; and
 - (c) increasing exports to China through the Parent's supply networks.
7. The Consent Holder's investment plan noted that it would also install a larger coal fired boiler to increase the water generation at the Facility. The capital expenditure together with proposed changes to shift work, the Consent Holder advised, would result in additional job opportunities.
8. The consent noted that without the Investment it was considered that the Target would continue to operate while continuing to look for an appropriate alternative investor to subscribe for its shares. Given the then current financial state of the Target, it was noted that the Target was unlikely to continue without additional investment in the longer term.
9. In order to ensure that the benefits occurred under the Investment, the consent accordingly included the conditions noted below:

Condition 3 – Employment condition

"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."

Condition 4 – Additional investment condition

"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

Condition 5 – Increased processing condition

"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

Condition 6 – Increased exports condition

"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

Reason for the Variation

10. The Consent Holder states that it has been unable to fulfil the conditions largely due to the following factors:
 - (a) A downturn in market conditions;
 - (b) The outbreak of Mycoplasma Bovis; and
 - (c) The economic outlook of the business.

Downturn in market conditions

11. The Consent Holder notes that a large part of its decision not to increase its production of beef was due to a weak New Zealand beef export market.
12. The Consent Holder submits that this has particularly been the case over the past 18 months.
13. The Consent Holder submits that the United States beef market currently is at its highest numbers since 2006 which has in turn reduced the value of beef internationally. It is also noted that global political instability has added to market volatilities.
14. The Consent Holder does not anticipate that the beef market will improve in the short to medium term and therefore the business has been reluctant to concentrate on its beef processing.

The outbreak of Mycoplasma Bovis

15. Many cattle in New Zealand have been affected with Mycoplasma Bovis which has lead to a cull of infected cattle.
16. The Consent Holder has been involved in assisting the Ministry of Primary Industries (**MPI**) with the cull and has been working on a de-population programme with local MPI staff however the infected cattle largely cannot be exported and is instead used for domestic consumption. It is noted that a large increase from 2017 to 2018 was largely due to the Consent Holder's participation in the cull cattle infected with Mycoplasma Bovis. The increased production for this reason is unlikely to be sustained going forward.

[s 9(2)(b)(ii)]

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Capital expenditure

19. The Consent Holder remains committed to carrying out the capital expenditure proposed in the original investment plan, but seeks to vary the timeframes for completing this work:
 - (a) the boiler replacement (now estimated to be a cost of \$350,000) to be completed in 2019;
 - (b) the cold storage, blast freezing and load out facilities (now estimated to be a cost of \$5.5 million to \$6 million) to be completed in 2020;
 - (c) the dedicated beef processing room to be completed in 2025.

20. In particular, the Consent Holder submits that the extension of time for the construction of the dedicated beef processing room will:
- allow the Consent Holder to continue to review its business plan on an annual basis including consideration as to the room's viability having regard to market conditions and availability of employees for increased production,
 - but also provide certainty as to a defined date for completion.
21. The Consent Holder advises it has undertaken a total of approximately \$615,000 of investment in other areas of the meat processing facility (and in planning for development) including:
- Approximately \$28,000 on a final lamb hide puller;
 - Approximately \$26,000 on an omassum wash machine; and
 - Approximately \$10,000 on a band saw.

Employment

22. The Consent Holder notes that as it has not progressed its expansion plan, the additional job opportunities have not materialised. However, the Consent Holder submits that it is finding it very difficult to locate staff and that there have been a number of times during the most recent processing year where production has been affected due to being unable to secure suitable staff.
23. The Consent Holder advises that it:
- has exhausted all suitable staff from its local WINZ office (including from the ranks of the long term unemployed);
 - had approval from Immigration New Zealand (**INZ**) to bring in 12 Chinese workers;
 - will continue with its extensive advertising strategy and to work with INZ on work visas where it is unable to employ directly from the New Zealand labour market.
24. The Consent Holder remains confident that it can obtain the four additional staff required for the operation of the new proposed blast freezer.
25. In determining the capacity to operate the dedicated beef processing room, the Consent Holder submits it must (commercially) have regard to the availability of staff (as well as market conditions etc). As sufficient staff may not be available for full capacity, the Consent Holder requests that the number of job opportunities for full time equivalent employees (**FTEs**) be set at 30, rather than 90.
26. The Consent Holder also argues that without its investment, the Facility may well have closed with the loss of all 200 jobs.

Processing and Exports

27. Although the beef processing and exports have not met the required level in conditions 5 and 6 of the consent, the Consent Holder submits that it has increased sheep numbers through the business and increased export receipts from the Target's traditional baseline as per the table below:

Year	Export receipts	Annual increase
2015 (pre-acquisition)	\$18,069,130	N/A
2016	\$27,722,413	53.42%
2017	\$45,068,102	62.57%
2018 (forecast to 31 December)	\$83,000,000	84.17%

28. The Consent Holder notes that, with the benefit of hindsight, the business proposition around lamb is much stronger than beef, and if the application for consent to the Investment was being made now, the Consent Holder's business plan would have focussed on the strengths of the Target in sheep and lamb. The Consent Holder's view is that as a business, however, the Facility does ultimately require a strong beef presence as it complements the sheep activities.
29. The Consent Holder accordingly seeks to vary condition 5 to consider increased stock units (where lamb = 1 stock unit and beef = 8 stock units) as follows:

Year	Number of stock units processed
2018	391,000
2019	410,000
2020	425,000

30. The Consent Holder proposes that condition 6 provide that the Consent Holder must maintain the total export receipts at or above the pre-acquisition level.

Our Assessment

Failure to comply with conditions

31. It is evident that the Consent Holder has fallen well short of undertaking the proposals submitted as part of their original consent application.
32. The difficulties that have arisen should reasonably have been contemplated by the Consent Holder at the time of its application for consent. The commitments were closely questioned by us but, at the time, the Consent Holder remained firm in its commitments. The Consent Holder was asked to provide additional information in relation to their projections prior to consent being granted. It is likely that the Consent Holder was aware of a downturn in market condition prior to acquiring the Investment.
33. The Consent Holder owned approximately 24.9% of the Target at the time it applied for consent and would have had information regarding the business that should have assisted it in foreseeing the particular difficulties associated with its investment plan.
34. Although the Consent Holder arguably should have anticipated the difficulties in the market, the Consent Holder is still committing itself to the original proposals for capital investment albeit with an extended timeframe. Given the current commercial situation, the timing changes generally do not seem to be unreasonable as further discussed in the Recommended Variation sections below.

Benefits to date arising from the Investment

35. While the Consent Holder has failed to meet several of its conditions, the Investment has resulted in benefit including the following:
- Spending approximately \$400,000 on additional investment for development purposes in respect of its sheep processing lines which was not covered by the conditions of the original consent;
 - Assisting MPI in the cull of Mycoplasma Bovis infected cattle; and
 - Increasing export receipts arising from lamb and mutton exports from the Target's traditional baseline.
36. We are therefore of the view that the Investment is still likely to remain of substantial and identifiable benefit to New Zealand should the variation be granted.

What would likely occur to the Investment without the variation

37. The Consent Holder submits that it is unlikely that an alternative New Zealand purchaser would be found to acquire the Investment.
38. The Consent Holder and its managing director Richard Thorp submit that had the original Investment not been undertaken it is likely that Lean Meats Oamaru Limited would have closed and the 200 FTE jobs at the Facility would have been lost. We agreed with this counterfactual scenario in our original assessment of the application for consent.
39. Should this application for variation be declined, it is unclear whether an alternative New Zealand purchaser could be found to invest in the Facility. However based on the export and processing numbers provided, it is likely that an alternative New Zealand purchaser may be difficult to find in the short term due to the profitability of the Facility.
40. It is also noted that several other facilities of this nature throughout New Zealand have faced similar issues.

Other considerations relevant to the variation application

41. We consider that the Consent Holder is likely to be able to comply with the revised proposed conditions outlined below. The Consent Holder's statements about the capital expenditure about the beef processing plant, and the resulting job opportunities which will occur, suggest that some uncertainty exists. However, the Consent Holder remains interested in expanding beef processing, has reconfirmed its commitment to the conditions, and the addition of the Disposal Condition as noted in paragraph 66 should assist with the likelihood of compliance. .
42. The Consent Holder was reactive in its dealings with the Overseas Investment Office in regards to the potential breaches of the conditions in the consent and in seeking the variation. It is also noted that the Consent Holder's compliance record with its overseas investment obligations needs improvement as there were late submissions of annual reports for this consent and an investigation in respect of non-compliance with a condition in consent 201610121. On balance, however, this conduct can be dealt without further sanction being necessary via the variation consent process.

Specific assessments for each condition variation

43. The considerations specific to each condition variation are discussed further below.

Recommended Variation Condition 3 - Employment condition

44. The Consent Holder is committed to developing its cold storage facility which will result in the requirement of an additional four FTE roles to operate the proposed area by 30 December 2020.
45. Although it is a significant reduction from the Consent Holder's initial commitments, we are of the view that the four roles proposed by 30 December 2020, and a further 30 roles proposed by 30 December 2025 are likely to be in addition to what would occur without the Investment.
46. We also note that the Consent Holder has retained approximately 200 FTEs as part of the Investment which would likely have been lost without the Investment.
47. For practicality and to enable the Consent Holder to realistically comply with their conditions of consent, we recommend that condition 3 be varied as follows:

"Employment condition

The Consent Holder must increase the number of job opportunities at the ~~Target on-the-Land Facility~~ by:

- (a) ~~4~~ 4 full time equivalent employees ~~substantially in accordance with section 6 of the Business Plan~~ by 31 December 2020; and

(b) **by a further 30 full time equivalent employees by 31 December 2025.**"

Recommended Variation Condition 4 - Additional investment condition

48. To date the Consent Holder has not undertaken any of the additional investment proposed under the original investment plan.
49. The Consent Holder has instead focused on upgrading its sheep production lines.
50. Going forward, the Consent Holder is willing to commit to undertake the additional investment under an extended timeline.
51. We are of the view that it is appropriate to vary condition 4 to ensure that the benefit associated with the increased development is undertaken by the Consent Holder, with the extended timeframes. We propose that condition 4 is varied as follows:-

"Additional Investment condition

The Consent Holder must introduce additional investment of at least **\$6,450,000 \$7,050,000** 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 by the dates in the table below:"**

Scheduled Year Date by which Development must occur	Development	Estimated Cost
2017 30 December 2025	Dedicated Beef Processing Room	\$1,200,000
2017-2018 30 December 2020	Cold Storage, Blast Freezing and Load-Out Facilities	\$5,000,000 \$5,500,000 - \$6,000,000
2018 30 December 2020	Boiler Replacement	\$250,000 \$350,000
Total Expenditure		\$6,450,000 \$7,050,000 - \$7,550,000

Recommended Variation Condition 5 – Increased processing condition

52. The Consent Holder has failed to meet both of its conditioned targets for sheep and beef at the Facility over the past three years. However it appears to be making an effort to increase the numbers of sheep processed at the Facility.
53. The Consent Holder has provided us with a break down of the expected stock units to be processed for the coming seasons as follows:

Breakdown of number of stock units expected to be processed – 2018 – 2020 Seasons

2018 Season							
Speci	Beef	Bobby	Ram	Goat	Lamb	Mutton	Totals
Head	16,692	24,148	3,200	718	261,486	21,179	472,493
Avg weight	185	17	32	15.4	19.7	28.5	
2019 Season							
Speci	Beef	Bobby	Ram	Goat	Lamb	Mutton	Totals
Head	10,500	25,000	4,500	4,500	235,000	32,000	410,575
Avg weight	185	17	32	15.4	19.7	28.5	
2020 Season							
Speci	Beef	Bobby	Ram	Goat	Lamb	Mutton	Totals
Head	12,500	32,000	4,500	4,500	235,000	32,000	437,325
Avg weight	220	17	32	15.4	19.7	28.5	

54. While the Consent Holder has not met the original proposed processing targets it is likely to achieve increased processing numbers in the coming seasons and therefore is likely to realise the initially proposed benefit over an elongated period of time.
55. As the Consent Holder is making a genuine effort to comply with its processing condition we are of the view that the variation to the condition is reasonable.
56. We are also of the view that it is prudent for the Consent Holder to be conditioned on their number of sheep processed to counteract the decreased level of beef processing.
57. We recommend that the condition is varied in accordance with the above projections as follows:-

"Increased processing condition"

The Consent Holder must increase the number of cattle and sheep processed at the ~~plant on the Land Facility~~ for each of the calendar years ~~2016, 2017 and 2018~~ 2019 and 2020 substantially as set out in the table below:

Year	Number of Cattle-Beef Processed	Number of Sheep (including ram, lamb and mutton) Processed
2019	8,000	250,000
2020	10,000	250,000

Recommended Variation Condition 6 – Increased exports condition

58. As the Consent Holder has failed to meet the projected number of sheep and beef to be processed at the Facility, it has also in turn failed to meet the projected levels of exports.
59. As noted above in respect of the discussion relating to condition 5, while the Consent Holder has failed to meet the projections it does appear to have made an effort to increase the number of exports and appears to be continuing to strengthen in this area.
60. Due to the set backs faced by the Consent Holder, in particular its inability to increase beef processing at the Facility, we are of the view that it is reasonable to revise its increased exports condition in light of the commercial situation it faces.
61. As the Consent Holder will be conditioned to process stock under condition 5, we are of the view that the exports condition is not required as the information will be largely reported under Condition 5.

62. We therefore recommend that this condition is removed entirely.

Recommended Variation - Condition 7 – Special Land

63. As part of the original application, the Consent Holder provided a notice of intention to offer back the special land within the Land being the area of foreshore and seabed contained within record of title 222052.

64. We recommend that this condition is amended to align with our current special land process and enable the Consent Holder to comply with its commitments.

65. We recommend that condition 7 is varied to the following:-

"Special Land condition

The Consent Holder must, upon acquiring the Investment 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.

The Consent Holder must procure Lean Meats Oamaru Limited, within 10 working days of being requested to do so by the Crown:

- (a) enter into a deed of covenant with the Crown to be bound;
- (b) deal with the Crown in accordance with the requirements of the Act in respect of the initial offer of the Special Land to the Crown;
- (c) enter into negotiations in good faith to ensure the Special Land is transferred to the Crown on terms acceptable to the Crown and in accordance with Regulations; and/or
- (d) agree to an encumbrance or covenant in gross being registered to protect the Crown's interest upon the Crown's request.

The Crown reserves the right to caveat the Land until an encumbrance or covenant has been registered.

The Consent Holder and Lean Meats Oamaru Limited will be responsible for all of its own costs incurred as a result of the transfer of the Special Land."

Recommended Variation - Additional Disposal Condition

66. In accordance with our current practices and to augment how seriously we take compliance by the Consent Holder with conditions 3, 4 and 5 (as varied), we recommend that the standard disposal condition be added and linked to compliance with conditions 3, 4 and 5.

Recommended variations

67. We recommend condition 3, 4, 5 and 7 be varied and condition 6 is removed as set out in **Appendix 1**.

Third Party Submissions

68. No third party submissions were received.

Appendices

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Released under the Official Information Act 1982

Appendix 1 - Varied Conditions of Consent

Decision Date

1 December 2015

Varied on

28 June 2019

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, as amended by the Application to Vary Conditions of Consent dated [x].

Consent Holder means NZ Binxi (Oamaru) Foods Limited.

Facility means the meat processing facility located upon the Land.

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).

Special Land means the qualifying foreshore and seabed located within record of title 222052.

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.

Variation means the variation to consent conditions granted on [DATE] in relation to the Applicant's Application to Vary Conditions of Consent dated [17 June 2019].

Special Conditions

Consent is granted subject to the following 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 Facility~~ by:
 - (a) ~~4 full time equivalent employees substantially in accordance with section 6 of the Business Plan~~ by 31 December 2020; and
 - (b) ~~by a further 30 full time equivalent employees by 31 December 2025.~~

Additional investment condition

4. The Consent Holder must introduce additional investment of at least ~~\$6,450,000~~ ~~\$7,050,000~~ 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~~ by the dates in the table below:

Scheduled Year Date by which Development must occur	Development	Estimated Cost
2017 30 December 2025	Dedicated Beef Processing Room	\$1,200,000
2017-2018 30 December 2020	Cold Storage, Blast Freezing and Load-Out Facilities	\$5,000,000 \$5,500,000 - \$6,000,000
2018 30 December 2020	Boiler Replacement	\$250,000 \$350,000
Total Expenditure		\$6,450,000

	\$7,050,000 - \$7,550,000
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Increased processing condition

5. The Consent Holder must increase the number of cattle and sheep processed at the ~~plant on the Land Facility~~ for each of the calendar years ~~2016, 2017 and 2018~~ 2019 and 2020 substantially as set out in the table below:

Year	Number of Cattle-Beef Processed	Number of Sheep (including ram, lamb and mutton) Processed
2019	8,000	250,000
2020	10,000	250,000

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.~~

- 7A. The Consent Holder must, upon acquiring the Investment 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.

- 7B. The Consent Holder must procure Lean Meats Oamaru Limited, within 10 working days of being requested to do so by the Crown:

- (a) enter into a deed of covenant with the Crown to be bound;

- (b) deal with the Crown in accordance with the requirements of the Act in respect of the initial offer of the Special Land to the Crown;
 - (c) enter into negotiations in good faith to ensure the Special Land is transferred to the Crown on terms acceptable to the Crown and in accordance with Regulations; and/or
 - (d) agree to an encumbrance or covenant in gross being registered to protect the Crown's interest upon the Crown's request.
- 7C. The Crown reserves the right to caveat the Land until an encumbrance or covenant has been registered.
- 7D. The Consent Holder and Lean Meats Oamaru Limited will be responsible for all of its own costs incurred as a result of the transfer of the Special Land.

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, and 5;
 - (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 after the Variation and further Annual Reports are required on 28 February of each year with ~~and~~ the final report is due on ~~30 November 2019~~ 28 February 2026.

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.

Disposal Process

13. If in the opinion of the OIO condition 3, 4, or 5 is not complied with ("Non-Compliance"), the Consent Holder must dispose of the Investment as follows:
- (a) The Consent Holder must, within six weeks of receiving notice from the OIO that in its opinion there has been Non-Compliance (the "Notice Date"):
 - (i) procure from an independent New Zealand registered valuer, and provide to the OIO, a written market valuation of the Investment; and
 - (ii) appoint licensed real estate agents to actively market and appropriately advertise the investment for sale on the open market; and
 - (b) The Consent Holder must dispose of the Investment within twelve months of the Notice Date to a third party who must not be an associate of the Consent Holder. If the Consent Holder has not disposed of the Investment at the expiry of the twelve month period, the Consent Holder must offer the Investment for sale by auction or tender within a further three months (with no reserve price or minimum bid set for the auction or tender) and dispose of the Investment.
 - (c) The Consent Holder must provide a written report to the OIO quarterly (by the last day of March, June, September and December) about the marketing activities undertaken and offers received for the Investment. The Consent Holder must also report at any other time if required by the OIO.
 - (d) The Consent Holder must provide a written report to the OIO within two months of the Investment being disposed of, providing evidence that:
 - (i) the Consent Holder has disposed of the Investment (including copies of any sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor); and
 - (ii) the purchaser is not an associate of the Consent Holder.

Appendix 2 - Instructions

1. 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.
2. The information that the OIO has taken into account in making its recommendation is summarised in the attached Report.
3. Section 27 of the Act provides that conditions of consent may be varied or added to with the agreement of the consent holder, or revoked.
4. The Act does not spell out what you need to take into account in considering an application for variation of consent. The Act does not give specific guidance as to the circumstances in which consents may be varied, but confers a wide discretionary power on the decision-maker to vary a consent or its conditions so long as the consent holder agrees.
5. This discretionary power should be exercised consistently with the purpose of the Act.

Released under the Official Information Act 1982

Appendix 3 - Sensitive Land

7 Redcastle Road, Oamaru

Land Interest	Freehold Interest (approximately 6.9940 hectares)
RoTs	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)

Released under the Official Information Act 1982