

Decision required under the Overseas  
Investment Act 2005: Craigmore Permanent Crop Limited  
Partnership

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<b>Date</b>	9 August 2017
<b>Security Level</b>	Commercial: In Confidence
<b>Priority</b>	High
<b>Case Number</b>	201710102
<b>Consent Required By</b>	11 August 2017

Contact for Telephone Discussion

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## Annexures:

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

## Instructions:

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3. The regulator must grant consent to this overseas investment if it is satisfied that all of the criteria in section 16 of the Overseas Investment Act 2005 ("**the Act**") are met. It must decline to grant consent if it is not satisfied that all of the criteria in section 16 are met. The regulator 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**").
4. In the attached Report the Overseas Investment Office identifies each of the criteria and factors under sections 16 and 17, and regulation 28 that the regulator is required to consider in this case.

### "Benefit to New Zealand criteria"

5. In this case, section 16 requires the regulator to decide, among other things, whether it is 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)).
6. The application of the benefit to New Zealand criteria involves the exercise of judgement and is a high-level decision with significant policy content. This is 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.
7. In applying the benefit to New Zealand criteria, the regulator is 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 the regulator<sup>1</sup>. 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 the regulator, in carrying out its overall evaluation, to decide what weight to give to each factor.
8. 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.

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<sup>1</sup> In this case, the Regulator is not required to treat the factors identified in paragraph 8 of the 8 December 2010 Directive Letter as being of high relative importance, as the overseas investment does not involve large areas of farm land.

### Justice Miller’s “with and without test”

#### *Economic factors*

9. 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, the regulator 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*

10. 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 suggested<sup>2</sup> that there could be a benefit in respect of the non-economic factors even if the same benefit would be achieved in the absence of the investment. But as the Court noted<sup>3</sup>, 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 the regulator 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*

11. With regard to the factors in regulation 28 of the Overseas Investment Regulations 2005, Miller J noted that:

The criteria listed in reg 28 deal, for the most part, with benefits that only an overseas buyer could provide or what may be loosely described as strategic considerations, so they do not require a counterfactual analysis.<sup>4</sup>
12. 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

13. Conditions may be imposed on any consent that is granted, under section 25. The attached Report recommends some conditions that you may wish to consider imposing in this case.

#### Decision

14. 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.

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<sup>2</sup> *Tiroa E* at [36].

<sup>3</sup> *Tiroa E* at [38].

<sup>4</sup> *Tiroa E* at [36].

## Decision:

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15. I have determined that:

- (a) the 'relevant overseas person' is (collectively):
- Craigmores Permanent Crop Limited Partnership (the Applicant);
  - Craigmores Permanent Crop GP Limited (the General Partner);
  - [ s 9(2)(b)(ii) ] (the Investment Manager); and
  - CPCP - Kiwifruit Limited (100% subsidiary of the Applicant that will acquire the Investment); and
- (b) the 'individuals with control of the relevant overseas person' are:
- Forbes Herbert Elworthy [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] and member of Investment Committee);
  - Mark William Cox (director of CPCP – Kiwifruit Limited and Craigmores Permanent Crop GP Limited, and member of the Investment Committee of the Investment Manager);
  - Leslie Che ("**Che**") Charteris (director of CPCP – Kiwifruit Limited and Craigmores Permanent Crop GP Limited, and member of the Investment Committee of the Investment Manager); and
  - William Robert Nicholas ("**Nick**") Tapp [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ] and member of Investment Committee).

16. I am satisfied that the criteria for consent in section 16 have been met:

- (a) the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment; and
- (b) the relevant overseas person has demonstrated financial commitment to the overseas investment; and
- (c) all the individuals with control of the relevant overseas person are of good character; and
- (d) 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
- (e) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders) ; and
- (f) the benefit will be, or is likely to be, substantial and identifiable; and
- (g) the farm land or the securities to which the overseas investment relates have been offered for acquisition on the open market to persons who are not overseas persons in accordance with the procedure set out in regulations or that the overseas investment is exempt under section 20 of the Act.

17. Consent is granted to the Investment as defined in Appendix 1 and subject to the conditions in Appendix 1 of the Report.

[ s 9(2)(a) ]

Lizzie Barone - Manager Applications

Date 9 August 2017

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Report of the Overseas Investment Office  
on the application for consent by  
Craigmore Permanent Crop Limited Partnership  
Case: 201710102

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## Summary of Key Information

<b>Applicant</b>	<b>Craigmore Permanent Crop Limited Partnership</b> (Germany 30.4664%, Hong Kong (SAR) 24.45%, Switzerland 15.6631%, United Kingdom 13.8878%, Finland 9.14%, United States of America 3.96%, New Zealand 2.3116%, Various 0.1046%, Ireland 0.0165%)
<b>Vendor</b>	<b>Shaye Le Prou, Cole Shane Le Prou, and Cuvier Trustees Limited as trustees of the Cuvier Trust</b> (New Zealand 100%)
<b>Consideration</b>	\$6,630,000 plus GST (if any)
<b>Recommendation</b>	Grant Consent

## Application

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1. For consent for the Applicant to acquire approximately 13.2845 hectares of land situated at 60 and 74 Orchard Road, Edgecumbe, Whakatane ("**the Land**"), through its wholly-owned subsidiary CPCP – Kiwifruit Limited, and [ s 9(2)(b)(ii) ] as detailed in condition 2 in Appendix 1 ("**the Investment**").

## Applicant

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### Who the Applicant is

2. The Applicant is a limited partnership established as a horticulture investment vehicle, and is part of the wider Craigmores Farming Group.
3. The Applicant is a limited partnership registered in New Zealand under the Limited Partnerships Act 2008. The majority of the limited partnership interests (96.95%) are owned by overseas persons.
4. A limited partnership is a form of partnership involving a general partner (who is liable for the management and administration and all the debts and liabilities of the partnership) and limited partners (who are liable to the extent of their capital contribution to the partnership).
5. The general partner of the Applicant is Craigmores Permanent Crop GP Limited ("**the General Partner**"). The role of the General Partner in relation to the Investment is discussed further below in paragraphs 15-20.

### *Craigmores Farming Group*

6. The Applicant has been recently registered (20 June 2016) as a new investment vehicle by the Craigmores Farming Group.
7. The Craigmores Farming Group was founded in 2008 by New Zealand citizen Forbes Elworthy. An earlier limited partnership that is part of the Craigmores Farming Group, Craigmores Farming NZ Limited Partnership ("**Craigmores I**") was formed in 2011 to carry out farming activities in New Zealand. That limited partnership has made 17 applications for consent under the Overseas Investment Act 2005 ("**Act**"), which were all granted consent.
8. The investment period for Craigmores I has now closed. The Craigmores Farming Group has therefore established the Applicant to continue to pursue investment opportunities in New Zealand's horticultural sector.
9. Other members of the Craigmores Farming Group include:
  - (a) [ s 9(2)(b)(ii) ]
  - (b) Craigmores Sustainables NZ Limited [ s 9(2)(b)(ii) ]
  - (c) [ s 9(2)(b)(ii) ] ("**the Investment Manager**" to the Applicant, Craigmores I, [ s 9(2)(b)(ii) ]); and
  - (d) Craigmores Sustainables Group [ s 9(2)(b)(ii) ]

### *CPCP – Kiwifruit Limited*

10. CPCP – Kiwifruit Limited is a wholly-owned subsidiary of the Applicant. The Applicant has applied for consent for the Investment to be acquired by its subsidiary, as this forms part of the Applicant's business strategy.

11.

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

12.

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

Who owns the Applicant

13. A simplified diagram setting out the Applicant's ownership and control structure is set out below. The ownership structure of the Applicant is outlined in Appendix 3 including a more detailed diagram setting out the Applicant's ownership and control structure.

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

14. The limited partners' ownership shares in the Applicant are set out in Appendix 3. The shares are widely held, with the largest shareholdings being 30.46% (Germany), 21.33% (Hong Kong), 15.23% (Switzerland), and 10.66% (United Kingdom). All of the remaining shareholdings are less than 10%. [ s 9(2)(b)(ii) ]

Who controls the Applicant

15. The Applicant advises that under its structure the investors are passive and that control of the Investment rests with the General Partner (structural control) and Investment Manager (management control). The Applicant's submissions on this point are summarised below.



*Role of General Partner and Investment Manager*

16. The General Partner manages and controls the Applicant [ s 9(2)(b)(ii) ]  
[ s 9(2)(b)(ii) ]  
However, the General Partner is obliged to [ s 9(2)(b)(ii) ]  
[ s 9(2)(b)(ii) ]
17. The limited partners contribute capital but do not take part in any management or control decisions, including decisions relating to acquisition or divestment of farms.
18. The General Partner has [ s 9(2)(b)(ii) ]  
[ s 9(2)(b)(ii) ] The ownership of the Investment Manager is detailed in Appendix 3. The Investment Manager makes decisions regarding investments and assets on behalf of the Applicant through an Investment Committee comprised of:
- (a) Forbes Elworthy;
  - (b) Mark Cox;
  - (c) Che Charteris; and
  - (d) Nick Tapp.
19. [ s 9(2)(b)(ii) ]  
(the Investment is intended to be one of the Applicant's first investments) [ s 9(2)(b)(ii) ]  
[ s 9(2)(b)(ii) ]  
[ s 9(2)(b)(ii) ]. The ownership of the Farm Asset Manager is detailed in Appendix 3.
20. [ s 9(2)(b)(ii) ]

*Relevant overseas person and individuals with control*

21. We are satisfied that the investors are passive for the Investment and have determined that the:
- (a) **"relevant overseas person"** is (collectively):
    - (i) the Applicant;
    - (ii) the General Partner;
    - (iii) the Investment Manager; and
    - (iv) CPCP – Kiwifruit Limited; and
  - (b) **"individuals with control of the relevant overseas person"** are:
    - (i) Forbes Herbert Elworthy ([ s 9(2)(b)(ii) ] and member of Investment Committee of the Investment Manager);
    - (ii) Mark William Cox (director of CPCP – Kiwifruit Limited and Craigmore Permanent Crop GP Limited, and member of the Investment Committee of the Investment Manager);
    - (iii) Leslie Che Charteris (director of CPCP – Kiwifruit Limited and Craigmore Permanent Crop GP Limited, and member of the Investment Committee of the Investment Manager); and

- (iv) Nick Tapp ([ s 9(2)(b)(ii) ] and member of Investment Committee of the Investment Manager).

#### *Business activities of the Applicant*

22. The Applicant was created as a horticultural investment vehicle to pursue investment opportunities in New Zealand's horticultural sector, primarily focusing on wine grapes, kiwifruit, and apples. [ s 9(2)(b)(ii) ]
23. The Investment is intended to be one of the Applicant's first investments. While the Applicant has not made any previous farming or horticultural acquisitions, Craigmere Farming NZ Limited Partnership (part of the Craigmere Farming Group) has made a number of farming and horticultural acquisitions (including two kiwifruit orchards, being Cases 201410087 and 201510067). The Applicant has also made a separate application for consent relating to the acquisition of a kiwifruit orchard in Te Puke (Case 201710087).

## Background to the Investment

### Land being acquired

24. The Land is approximately 13.2845 hectares of non-urban land situated at 60 and 74 Orchard Road, Edgecumbe, Whakatane.



### What is currently occurring on the land

25. The Land is currently being operated as a kiwifruit orchard, growing a combination of G3 and Hayward varieties of kiwifruit over 9.63 canopy hectares.

### Owners

26. The Land is contained in two certificates of title owned by Shaye Le Prou, Cole Shane Le Prou, and Cuvier Trustees Limited as trustees of the Cuvier Trust.
27. The two certificates of title each have a 1/5<sup>th</sup> share (along with three other neighbouring properties) in a narrow parcel of land (being Orchard Road, a private road) used to access the Land from Western Drain Road.

### Reason for Sale

28. The owners of the Land are looking to sell the Land in order to invest in other farming opportunities. The owners have put up some netting and have completed some grafting to G3 kiwifruit over the past two years. [ s 9(2)(b)(ii) ]

## Outline of the Investment

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### Transaction

29. The Applicant has signed an agreement for sale and purchase dated 3 February 2017 to purchase the Land (as contained certificates of title SA68C/245 and SA68C/246) owned by Shaye Le Prou, Cole Shane Le Prou, and Cuvier Trustees Limited for \$6,630,000 plus GST (if any). This agreement is conditional on obtaining Overseas Investment Office consent to the purchase.

### Consent required

30. The Land is sensitive because it is more than 5 hectares of non-urban land.

### Investment Plan

31. The Investment Plan sets out the details of the Investment, being the acquisition of the Land and development of the kiwifruit orchard. Financial details of the Investment are contained in the table below.

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	2016-17	2017-18	2018-19	2019-20	2020-21
<b>APPLICANT CHANGES</b>	<b>Exiting Ownership</b>	[ s 9(2)(b)(ii) ]			
<b>FORECAST</b>					
Development (NZD)	[ s 9(2)(b)(ii) ]				
Production (trays)	[ s 9(2)(b)(ii) ]				
Exports <sup>1</sup> (NZD)	[ s 9(2)(b)(ii) ]				
Direct FTEs <sup>2</sup>	6.7	7.1	7.3	7.7	8.0
Indirect FTEs <sup>3</sup>	2.7	2.8	3.3	3.7	3.9
<b>COUNTERFACTUAL</b>					
Capex	[ s 9(2)(b)(ii) ]				
Production	[ s 9(2)(b)(ii) ]				
Exports	[ s 9(2)(b)(ii) ]				
Direct FTEs		6.6	6.8	7.0	7.0
Indirect FTEs		2.8	3.0	3.3	3.5

<sup>1</sup> Prices are: Hayward [ s 9(2)(b)(ii) ]; G3 [ s 9(2)(b)(ii) ]; Organic G3 [ s 9(2)(b)(ii) ]

<sup>2</sup> Direct full time equivalents calculated with the assumption [ s 9(2)(b)(ii) ]

<sup>3</sup> Indirect full time equivalents estimated by assuming [ s 9(2)(b)(ii) ]

32. The Applicant intends to improve orchard production and export returns by grafting 1.55 ha existing Hayward vines to G3, planting 0.7 hectares of additional G3 kiwifruit, converting the orchard to organic G3 production, and investing additional capital into the property to improve the existing infrastructure.
33. The Applicant has estimated an increase in production from approximately [ s 9(2)(b)(ii) ] trays in 2016/2017 (under the existing ownership) to approximately [ s 9(2)(b)(ii) ] trays in 2020-2021 after the proposed 1.55 hectares of grafting to G3, additional 0.7 hectares of G3 planting, and conversion to organic production has been completed. The increased production would result in approximately [ s 9(2)(b)(ii) ] in export receipts by 2020-2021.
34. The Applicant has estimated that it would create 1.0 direct FTE and 0.4 indirect FTE over the counterfactual scenario.

35. The Applicant has [ s 9(2)(b)(ii) ] . The estimated cost of obtaining the G3 [ s 9(2)(b)(ii) ] \$ .
36. As part of the conversion to G3, the Applicant will convert the orchard to organic production. The estimated cost of converting to organic production is [ s 9(2)(b)(ii) ] , based on converting [ s 9(2)(b)(ii) ] of G3 kiwifruit at [ s 9(2)(b)(ii) ] per hectare. The process of conversion to organic production takes three years, and will require approval and regular audit by a certified third party, such as BioGro.
37. The existing irrigation and frost control system requires improvements to [ s 9(2)(b)(ii) ] .

## Rationale for the Investment

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### Why is the Applicant acquiring the Investment

38. The Applicant wishes to acquire and develop horticultural land.

### Sensitive Land

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39. The Applicant is acquiring sensitive land. See Appendix 2.

## Assessment Process

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40. 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.
41. We did not consider it necessary to seek input from third parties in order to verify the information or evidence gathered.
42. As a result of this transaction the relevant overseas person will not own or control farm land that is more than ten times the average farm size for the principal farming activity (kiwifruit growing) that is proposed to be carried out. Therefore, in accordance with directions from Ministers, we have **not** treated the following factors as being of high relative importance:<sup>5</sup>
- (a) sections 17(2)(a)(i) to 17(2)(a)(vi), the "economic benefit" factors;
  - (b) regulation 28(i), the "economic interests" factor; and
  - (c) regulation 28(j), the "oversight and participation by New Zealanders" or "mitigating" factor.

## Counterfactual Analysis

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43. 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".<sup>6</sup> 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".<sup>7</sup>

<sup>5</sup> Ministerial Directive letter date 8 December 2010, paras 4-12.

<sup>6</sup> *Tiroa E* at [37].

<sup>7</sup> *Tiroa E* at [42].

44. To establish the appropriate counterfactual scenario in this case, the Overseas Investment Office (“**OIO**”) has considered what the likely state of affairs would be without the Investment.

#### Applicant submissions

45. The Applicant claims that if the Investment is not made the most likely counterfactual scenario is that the Land would be sold to an alternative New Zealand purchaser (“**ANZP**”) being a kiwifruit grower. The Applicant claims the ANZP would convert the existing 1.55 hectares of Hayward vines to G3 kiwifruit (to make the orchard completely G3 kiwifruit) but would not plant an additional 0.7 hectares of G3 kiwifruit vines, nor convert the orchard to organic production, nor upgrade the frost and irrigation control systems, if the Investment is not made.
46. The Land has been advertised in accordance with the minimum requirements under the Regulations (local newspaper advertisements for at least 20 working days), but did not receive any offers.
47. The Applicant claims that the ANZP would convert the existing 1.55 hectares of Hayward vines to G3 (at a cost of [ s 9(2)(b)(ii) ]) primarily because the majority of the orchard has already been converted to G3 kiwifruit, and because G3 kiwifruit can produce more fruit per hectare than the existing Hayward varieties and sells for around \$7 extra per tray.
48. The Applicant claims that the ANZP would not plant the additional 0.7 hectares of kiwifruit vines (at a cost of [ s 9(2)(b)(ii) ]) as the remaining bare land has a high water table and is unfavourable for kiwifruit growing. The Applicant claims that if this planting was viable the vendor would have already done so. The Applicant claims that the additional income from converting to organic production would be sufficient additional incentive to plant the additional 0.7 hectares ([ s 9(2)(b)(ii) ] removed).
49. The Applicant claims that the ANZP would not convert the orchard to organic G3 production (at an estimated cost of [ s 9(2)(b)(ii) ]), as there are few conversions in the kiwifruit sector due to the cost and the risks involved. The management of organic orchards involves higher risks (including only being able to use organic pesticides) with only a smaller extra sale price. Less than 5% of New Zealand’s exported kiwifruit is currently organic.
50. The Applicant claims that the ANZP would not upgrade the existing frost and irrigation control systems (at a cost of [ s 9(2)(b)(ii) ]) as the upgrade would only be needed for organic production (due to the need to encourage healthier plant growth as chemical sprays and fertilisers are prohibited).
51. The Applicant claims that the ANZP would increase the current production level to approximately [ s 9(2)(b)(ii) ] trays, creating 0.3 direct FTE jobs and 0.8 indirect FTE jobs as well as approximately [ s 9(2)(b)(ii) ] in export receipts by 2021.

OIO Assessment*Who is likely to own the Land without the Investment?*

52. The Land has been offered for sale in accordance with the Regulations at an advertised price lower than the Applicant's offer and did not receive any offers. However, the vendors have made the decision to sell and will remarket the Land if this Investment does not proceed. Therefore the Land is likely to eventually sell to an ANZP whether at the asking price or less.
53. As this is an operational kiwifruit orchard the ANZP is likely to be a kiwifruit grower. In the absence of evidence to the contrary, we consider that the kiwifruit grower is likely to be competent and adequately funded.

*What is the ANZP likely to do with the Land?*

54. The ANZP is likely to convert the existing 1.55 hectares of Hayward vines to G3 because the rest of the orchard is G3 kiwifruit and the extra sale price involved (\$7 extra per tray). The vendor has advised that their future plans for the orchard were to graft the remaining 1.55 hectares of Hayward kiwifruit to G3 kiwifruit.
55. We consider it unlikely that the ANZP would convert the orchard to organic production given that less than 5% of New Zealand's exported kiwifruit is organic.
56. While possible, there is no evidence to suggest that an ANZP is likely to plant the additional 0.7 hectares of kiwifruit vines because of the unfavourable kiwifruit growing conditions, without the compensatory benefit of higher G3 organic prices.
57. As the existing frost and irrigation control systems are satisfactory for current G3 production, and an upgrade would only be needed for the proposed conversion to organic production (to encourage healthier plant growth and address leaf curling of the vines), the ANZP is unlikely to carry out an upgrade of these systems.
58. We are satisfied that the ANZP would produce a noticeably lower amount of fruit, export receipts, FTE jobs, and additional development investment.
59. From the information provided, the OIO considers that the most likely state of affairs without the Investment is that the Land would be sold to an ANZP being a kiwifruit grower, who would convert the existing 1.55 hectares of Hayward vines to G3 kiwifruit (to make the orchard completely G3) but would not plant an additional 0.7 hectares of kiwifruit vines, nor convert the orchard to organic production, nor upgrade the frost and irrigation control systems.

## Criteria set out in section 16

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

<b>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?</b>	✓
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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 acquiring the Land to develop the kiwifruit orchard.

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

- (a) Forbes Elworthy has experience in farming having run the family farm Craigmore Station, and is educated in farming and agriculture having studied Agricultural Economics at Lincoln University. He was also a Rhodes Scholar and has obtained a Harvard MBA. He has investment experience working for Goldman Sachs as a research analyst and for Merrill Lynch as a convertibles trader, as well as experience with farming funds (Craigmore Farming Co Limited).
- (b) Mark Cox has experience in farming having been raised on a sheep and beef farm, and is educated in agriculture having studied Agriculture at Massey University. He has experience with Fletcher Challenge and Wrightsons, and Cadenco Foods Limited as Fresh Crops Manager. He has investment experience having formed Coxco Holdings Limited in 1996 to supply vegetables to the Asian Market.
- (c) Che Charteris has experience in forestry and regulatory environments having worked for Forestry NZ Limited as well as working as a senior advisor at the Ministry of Agriculture and Fisheries and in other government departments dealing with regulations. He also has extensive personal experience of pastoral farming in New Zealand.
- (d) Nick Tapp has experience in farming having worked for 25 years for St Nicholas Court Farms, farming cereals and vegetables. He is educated in farming and agriculture, being a Nuffield Farming Scholar and a Fellow of the Royal Agricultural Societies. He has experience in agribusiness management and consultancy at Bidwells, has served on farming and vegetable boards, being chairman of Grain Harvesters Limited, and farming director of Magyar Farming and Potato Council.

The Farm Asset Manager [ s 9(2)(b)(ii) ]  
and will also carry out some of [ s 9(2)(b)(ii) ]

As noted in paragraph 12 the Applicant also intends to [ s 9(2)(b)(ii) ]  
[ s 9(2)(b)(ii) ] is a New Zealand  
registered company and is not an overseas person. [ s 9(2)(b)(ii) ]



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.

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

<b>Has the relevant overseas person demonstrated financial commitment to the overseas investment?</b>	✓
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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:

- entering into an agreement for sale and purchase of the Land;
- paying the deposit required by the agreement for sale and purchase (\$663,000); and
- engaging professional advisers.

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

<b>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?</b>	✓
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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 individuals with control of the relevant overseas person have each provided a statutory declaration stating that they 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 that Forbes Elworthy's name appears on the International Consortium of Investigative Journalists (ICIJ) offshore leaks database. For the reasons discussed below we do not consider that this matter is relevant to this criterion and did not seek comment from the Applicant in relation to it.

In May 2016, stuff.co.nz published an article relating to Mr Elworthy's appearance in the ICIJ database as the beneficiary of a trust registered in Singapore, the ROTJ Trust. The information was on the ICIJ database in 2013 well prior to the Panama Papers leak in 2016, so it is incorrect to associate the trust with the Panama Papers. In that article, Mr Elworthy's sister commented that she understood this was a family trust registered in Singapore because the fees were much less.

Forbes owns Craigmere Farming Co Limited (a New Zealand farming company) in his personal name and not through any family trust. The Elworthy family have international investments but these are not held via New Zealand trusts. The Elworthy family appear to have no connection with Mossack Fonseca or the Panama Papers.

The ICIJ database notes that there are legitimate uses for offshore companies and trusts. Appearance in the database should not be taken to imply that any persons, companies or other entities in the database have broken the law or otherwise acted improperly. We consider that, taking into account his sister's explanation to the media, this matter is unlikely to reflect adversely on the character of Mr Elworthy.

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

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

<b>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?</b>	✓
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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 individuals with control of the relevant overseas person have each provided a statutory declaration stating that none of them 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.

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

<b>Will the overseas investment benefit, or is it likely to benefit, New Zealand (or any part of it or group of New Zealanders)?</b>	✓
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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) – Added market competition/productivity  
 17(2)(a)(v) – Additional investment for development purposes

**Overseas Investment Regulations 2005**

- 28(j) – Oversight and participation by New Zealanders

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

<b>Will the benefit be, or is the benefit likely to be, substantial and identifiable?</b>	✓
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The Investment will, or is likely to, benefit New Zealand (in particular the Whakatane region). The benefit will be, or is likely to be, substantial and identifiable. Over the next four years or so the Investment will likely result in the creation, over the ANZP, of:

- (a) 1.0 direct FTE jobs over four years in relation to the additional labour required to prune, thin, pick the additional volume of fruit;
- (b) 0.4 indirect FTE jobs in relation to packing, logistics, and marketing the additional volume of fruit;
- (c) [ s 9(2)(b)(i) ] in increased export receipts;
- (d) [ s 9(2)(b)(i) ] extra trays of fruit produced as a result of greater efficiency and productivity; and
- (e) [ s 9(2)(b)(ii) ] of additional capital for planting additional 0.7 hectares of G3 kiwifruit, converting the orchard to organic G3 production, and upgrading the [ s 9(2)(b)(ii) ] .

While there is low level of New Zealand ownership in the Applicant, there will be a high degree of New Zealand control of both the Investment and the relevant overseas person. While the Investment is intended to be one of the Applicant's first investments, Craigmore Farming NZ Limited Partnership has a number of other investments in New Zealand, as noted in paragraph 23.

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

<b>Has the farm land, or have the farm land securities, been offered for acquisition on the open market to persons who are not overseas persons, in accordance with the Overseas Investment Regulations 2005?</b>	✓
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The Land is currently an operational kiwifruit orchard and is therefore farm land.

The Regulations require farm land or farm land securities to be offered for acquisition on the open market to non-overseas persons for at least 20 working days (or longer if the advertisement states or implies that that offers will be accepted for that longer period). The purpose of such advertising is to ensure non-overseas persons have reasonable notice that they are available for acquisition. The Regulations do not require that the vendor accept any alternative offer made by a non-overseas person.

We have reviewed the advertising of the relevant land and are satisfied that it complies with the advertising procedure set out in the Regulations.

## Factors Set Out in section 17

### 67. s17(2)(a)(i) Overseas Investment Act 2005

<b>Will the overseas investment result in, or is it likely to result in, the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost?</b>	✓
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The increased production of the orchard resulting from the Investment will require additional workers. The Applicant claims the Investment is likely to require 8.0 direct FTE jobs and 3.9 indirect FTE jobs by 2021.

The direct FTE jobs are required to prune, thin, and pick the additional volume of fruit. The indirect FTE jobs are required for packing, logistics, and marketing the additional volume of fruit.

The Investment is also claimed to retain employment within the [ s 9(2)(b)(ii) ]

#### Without the Investment

The counterfactual scenario (as detailed in paragraph 59) is estimated to require 7.0 direct FTE jobs and 3.5 indirect FTE jobs by 2021.

The counterfactual scenario would create fewer jobs as its production would be lower, by not planting an additional 0.7 hectares of kiwifruit vines, nor upgrading [ s 9(2)(b)(ii) ]

#### OIO Assessment

The Investment is likely to create the stated number of jobs in terms of labour for pruning and picking, and labour for packing and marketing. The Applicant has not provided any evidence to substantiate the claim that any management jobs within the [ s 9(2)(b)(ii) ] would otherwise be lost without the Investment.

The additional 1.0 direct and 0.4 indirect FTE jobs would be new jobs at the orchard. **This factor should be given medium weight** in the overall assessment of the Application. We are satisfied that **this factor is met**.

### 68. s17(2)(a)(ii) Overseas Investment Act 2005

<b>Will the overseas investment result in, or is it likely to result in, the introduction into New Zealand of new technology or business skills?</b>	<b>Not Relevant</b>
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This factor is not relevant as there will not be any new technology being introduced into New Zealand as a direct result of the Investment.

69. s17(2)(a)(iii) Overseas Investment Act 2005

<b>Will the overseas investment result in, or is it likely to result in, increased export receipts for New Zealand exporters?</b>	✓
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The Applicant claims its development of the kiwifruit orchard is likely to create [s 9(2)(b)(i)] in export receipts by 2021.

Without the Investment

By 2021, it is estimated that the counterfactual scenario would produce approximately 116,000 trays of G3 kiwifruit, which would create approximately \$2 million in exports.

OIO Assessment:

If the Applicant plants an additional 0.7 hectares of G3 kiwifruit, upgrades the [s 9(2)(b)(i)] [s 9(2)(b)(ii)], and converts the orchard to organic G3 kiwifruit production (which sells for around \$3 per tray more than G3), then the export receipts would increase by around [s 9(2)(b)(ii)] per year over and above the counterfactual scenario. **This factor should be given medium weight** in the overall assessment of the Application. We are satisfied that **this factor is met**.

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

<b>Will the overseas investment result in, or is it likely to result in, added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand?</b>	✓
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The Applicant claims its increased efficiency will increase production [s 9(2)(b)(i)] per year by 2021 (an approximate [s 9(2)(b)(i)] increase over 4 years).

The Applicant claims it will increase production of the orchard through the additional planting of 0.7 hectares of G3 kiwifruit and additional capital to upgrade infrastructure.

Without the Investment

By 2021, the counterfactual scenario is expected to produce approximately 116,000 trays of G3 kiwifruit by converting the existing 1.55 hectares of Hayward kiwifruit to G3 to create an entirely 9.63 hectare G3 kiwifruit orchard. The counterfactual scenario production would be lower than the Applicant due to not planting an additional 0.7 hectares of G3 kiwifruit nor investing additional capital to improve infrastructure.

OIO Assessment:

The Applicant's increase in kiwifruit production of approximately [s 9(2)(b)(i)] trays per year by 2021 over the ANZP is a noticeable increase (an approximately [s 9(2)(b)(i)] increase over the ANZP over 4 years). The ANZP is unlikely to get this amount of [s 9(2)(b)(ii)] [s 9(2)(b)(ii)]. **This factor should be given medium weight** in the overall assessment of the Application. We are satisfied that **this factor is met**.

## 71. s17(2)(a)(v) Overseas Investment Act 2005

<b>Will the overseas investment result in, or is it likely to result in, the introduction into New Zealand of additional investment for development purposes?</b>	✓
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The Applicant has claimed that it intends to carry out substantial development:

- converting the existing [ s 9(2)(b)(ii) ] hectares of Hayward kiwifruit to G3 kiwifruit (at a cost of [ s 9(2)(b)(ii) ] );
- planting an additional 0.7 hectares of G3 kiwifruit (at a cost of [ s 9(2)(b)(ii) ] );
- converting the orchard to organic production (at a cost of approximately [ s 9(2)(b)(ii) ] based on converting [ s 9(2)(b)(ii) ] hectares of G3 kiwifruit to organic production at [ s 9(2)(b)(ii) ] per hectare); and
- upgrading the [ s 9(2)(b)(ii) ] ).

#### Without the Investment

As noted in paragraphs 54-59, under the counterfactual scenario the ANZP is likely to convert the existing 1.55 hectares of Hayward kiwifruit to G3 kiwifruit but is unlikely to plant an additional 0.7 hectares of kiwifruit vines, nor convert the orchard to organic production, nor upgrade the [ s 9(2)(b)(ii) ] .

#### OIO Assessment:

The capital investment involved in planting an additional 0.7 hectares of G3 kiwifruit, and converting the orchard to organic kiwifruit production would involve additional investment for development purposes under this factor.

The Applicant is 96.95% overseas owned. [ s 9(2)(b)(ii) ] , so this would satisfy the introduction to New Zealand of additional development capital. We are satisfied that **this factor is met.**

#### Recommended Condition

We recommend including a condition requiring the Applicant to invest at least [ s 9(2)(b)(ii) ] for converting 1.55 hectares of existing Hayward vines to G3 kiwifruit, planting an additional 0.7 hectares of G3 kiwifruit, and converting the orchard to organic G3 production.

## 72. s17(2)(a)(vi) Overseas Investment Act 2005

<b>Will the overseas investment result in, or is it likely to result in, increased processing in New Zealand of New Zealand's primary products?</b>	✗
---	---

The Applicant claims increased kiwifruit production and additional FTE jobs created over the ANZP involved increased processing of primary products.

OIO Assessment:

While the proposed increase in kiwifruit production would be production of a primary product (kiwifruit – horticulture), this would not actually create an increase in “processing” of a product, being the changing or improving of the initial product.

OIO guidance refers to processing as “the transformation of a primary product into a different product or the use of a primary product to make another product. Processing of a primary product will generally add value to the product.” We are satisfied that **this factor is not met.**

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

<b>Are there, or will there be, adequate mechanisms in place for protecting or enhancing existing areas of significant indigenous vegetation and significant habitats of indigenous fauna?</b>	<b>Not Relevant</b>
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This factor is not relevant as there is no indigenous flora or fauna on the Land.

74. s17(2)(c) Overseas Investment Act 2005

<b>Are there, or will there be, adequate mechanisms in place for protecting or enhancing existing areas of significant habitats of trout, salmon, protected wildlife and game, and providing, protecting or improving walking access to those habitats?</b>	<b>Not Relevant</b>
---	---------------------

This factor is not relevant as the Land does not include any significant habitat of trout, salmon, or other protected wildlife.

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

<b>Are there, or will there be, adequate mechanisms in place for protecting or enhancing historic heritage within the relevant land?</b>	<b>Not Relevant</b>
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This factor is not relevant as there is no historic heritage on the Land. The Grayson Neal land certificate confirms this.

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

<b>Are there, or will there be, adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land, or a relevant part of that land, by the public or any section of the public?</b>	<b>x</b>
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There is currently no public walking access over the Land. The Applicant does not propose any new public walking access mechanisms because it considers it needs to have control over access to the Land in order to ensure that all requirements for organic certification are met and continue to be satisfied.

The Applicant does not propose any new public walking access mechanisms over the Land so **this factor is not met.**

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

<b>Has any foreshore, seabed, riverbed, or lakebed been offered to the Crown?</b>	<b>Not Relevant</b>
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This factor is not relevant as there is no special land included in the Land.

78. r28(a) Overseas Investment Regulations 2005

<b>Will the overseas investment result in, or is it likely to result in, other consequential benefits to New Zealand (whether tangible or intangible benefits (such as, for example, additional investments in New Zealand or sponsorship of community projects))?</b>	<b>x</b>
--	----------

The Applicant has claimed that the investment supports [ s 9(2)(b)(ii) ]

The benefits claimed advantage the Applicant and its investors rather than New Zealand, as these relate to increased profitability and furtherance of the Applicant's investment plans.

The Applicant has not provided any evidence to substantiate the consequential benefits claim, so there is insufficient information to support this claim. We are satisfied that **this factor is not met.**

79. r28(b) Overseas Investment Regulations 2005

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

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

<b>Will granting the application for consent result in, or is it likely to result in, the owner of the relevant land undertaking other significant investment in New Zealand?</b>	<b>Not Relevant</b>
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The owners of the Land intend to use the sale proceeds in order to invest in other farming opportunities. From the limited information provided, it is unclear how significant this further investment would be and, in any event, would also occur under the counterfactual scenario.

82. r28(e) Overseas Investment Regulations 2005

<b>Has the relevant overseas person previously undertaken investments that have been, or are, of benefit to New Zealand?</b>	<b>x</b>
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While the Applicant has not made any previous investments, Craigmores Farming NZ Limited Partnership (part of the Craigmores Farming Group) has made a number of farming and horticultural acquisitions as further detailed in paragraph 23. However, [ s 9(2)(b)(ii) ] is not a relevant overseas person in relation to this Investment. Therefore we consider that **this factor is not met.**

83. r28(f) Overseas Investment Regulations 2005

<b>Will the overseas investment give effect to or advance, or is it likely to give effect to or advance, a significant Government policy or strategy?</b>	<b>x</b>
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The Applicant claims that the Investment will support Government's policies relating to increasing exports, increasing exports to China, and environmental protection.

Although the Investment is likely to lead to some growth in export receipts, this is relatively low in the context of New Zealand's export market as a whole. The benefits relating to increasing exports have also been covered under other factors.

No specific Government policies have been mentioned in relation to the environmental protection claim.

Overall, we do not consider that sufficient information has been provided to demonstrate that the Investment is likely to have a noticeable impact on a significant Government policy or strategy. Therefore we consider that **this factor is not met.**

84. r28(g) Overseas Investment Regulations 2005

<b>Will the overseas investment enhance, or is it likely to enhance, the ongoing viability of other overseas investments undertaken by the relevant overseas person?</b>	<b>x</b>
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This will be one of the first investments by this Applicant, so there are no other investments in place whose viability could be affected by this Investment. However, the Applicant claims the Investment will [ s 9(2)(b)(ii) ] [ s 9(2)(b)(ii) ]

The Applicant has not provided any specific submission to show how this Investment may increase the viability of Craigmores Farming Group's other investments. Therefore we consider that **this factor is not met.**

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

<b>Will the overseas investment assist, or is it likely to assist, New Zealand to maintain New Zealand control of strategically important infrastructure on sensitive land?</b>	<b>Not Relevant</b>
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This factor is not relevant given the nature of this particular investment.

## 86. r28(i) Overseas Investment Regulations 2005

<b>Will New Zealand's economic interests be adequately promoted by the overseas investment?</b>	<b>X</b>
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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, the OIO has 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.

The OIO's overall assessment of this factor is that the overseas investment is unlikely to have any material effect on New Zealand's economic interests. We are satisfied that **this factor is not 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 likely to result in increased and more reliable production from the Land. The greater productivity may result in New Zealand becoming a more reliable supplier of primary products through the increased production of kiwifruit, and more specifically organic G3 kiwifruit. However, the extent to which the Investment will result in supplies that are more reliable is difficult to quantify. Considering the size and scale of the kiwifruit industry in New Zealand, any increase in reliability is likely to be minor.

*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 the OIO considers that kiwifruit production forms an important part of New Zealand's export earnings, the overseas investment is unlikely to have any material impact on the makeup of the kiwifruit growing industry. As such, the overseas investment is unlikely to increase the diversity of ownership within the kiwifruit growing industry or reduce the likelihood of kiwifruit production being controlled by a single overseas person or its associates.

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

No, 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*

No, the Investment is unlikely to have any effect on New Zealand's key economic capacity.

87. r28(j) Overseas Investment Regulations 2005

<b>To what extent will New Zealanders be, or are likely to be, able to oversee or participate in the overseas investment and any relevant overseas person?</b>	✓
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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, the OIO has 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, there will be a high level of New Zealand oversight and control in both the Investment and the relevant overseas person as the General Partner, the Investment Manager, [ s 9(2)(b)(ii) ] that have predominantly New Zealand directors or partners.

While the majority of the ownership of the Applicant (96.95%) is held by overseas persons, as noted in paragraphs 14-17 the limited partner owners of the Applicant are passive investors [ s 9(2)(b)(ii) ]

Overall, the OIO considers that New Zealanders are likely to have meaningful involvement in the Investment and the relevant overseas person. We are satisfied that **this factor is met.**

**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 has not advised the OIO of any requirement that one or more New Zealanders be part of the relevant overseas person's governing bodies. However, CPCP – Kiwifruit Limited (the acquiring entity that is wholly owned by the Applicant), General Partner, [ s 9(2)(b)(ii) ] are all New Zealand registered companies, so must all have at least one New Zealand resident director.

All of the current directors of these entities are New Zealand residents. The Applicant is a New Zealand registered limited partnership so it must have a New Zealand resident General Partner.

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

CPCP – Kiwifruit Limited, the General Partner, and [ s 9(2)(b)(ii) ] are all New Zealand registered companies of which all the directors are New Zealand citizens and residents. The Applicant is a New Zealand registered limited partnership.

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

The Applicant is a New Zealand registered limited partnership, with a General Partner that is a New Zealand registered company, and an Investment Manager that is

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

*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*

We have no information on this matter.

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

New Zealanders have a small (3.05%) ownership interest in the Applicant, however New Zealanders own [ s 9(2)(b)(ii) ] of Craigmore Sustainable Group Limited Partnership (which owns [ s 9(2)(b)(ii) ] of the General Partner and the [ s 9(2)(b)(ii) ] ).

*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*

The 96.95% overseas ownership of the Applicant is widely spread among a number of non-associated overseas persons (including Germany, Hong Kong, UK, and Finland among the larger share owners).

### Third Party Submissions

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88. No third party submissions were received.

Released under the Official Information Act 1982

## Appendix 1 – Conditions of Consent

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### Interpretation

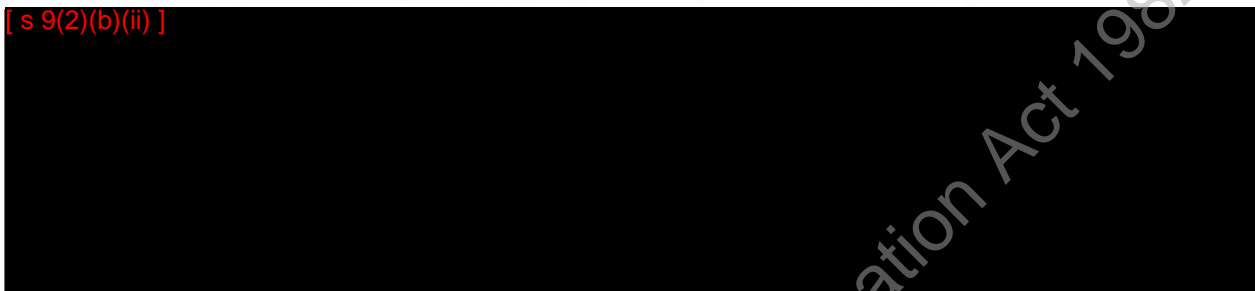
Any term or expression that is defined in the Overseas Investment Act 2005 and used, but not defined, in this consent has the same meaning as in the Overseas Investment Act 2005.

**Act** means the Overseas Investment Act 2005.

**Application Letter** means the application letter dated 18 July 2017.

**Consent Holder** means Craigmore Permanent Crop Limited Partnership.

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



**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 Craigmore Permanent Crop Limited Partnership, Craigmore Permanent Crop GP Limited, [ s 9(2)(b)(ii) ] and CPCP - Kiwifruit Limited.

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

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

**Investment** means the acquisition of the Land and [ s 9(2)(b)(ii) ]



**Land** means a freehold interest in approximately 13.2845 hectares located at 60 and 74 Orchard Road, Edgecumbe, Whakatane being land comprised in computer freehold registers SA68C/245 and SA68C/246 (South Auckland).

**OIO** means the Overseas Investment Office.

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

**Regulations** means the Overseas Investment Regulations 2005.

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

### Special Conditions

1. The consent will lapse if the Investment has not been acquired by and transferred to the Consent Holder's subsidiary CPCP – Kiwifruit Limited within 12 months of the date of consent.

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

### Good character

3. 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.

### Capital Investment

4. The Consent Holder must invest at least [ s 9(2)(b)(ii) ] for converting 1.55 hectares of existing Hayward kiwifruit to G3 kiwifruit, planting an additional 0.7 hectares of G3 kiwifruit, and converting the orchard to organic G3 production by 30 June 2019.

### Reporting to the OIO

5. The Consent Holder must notify the OIO in writing if it settles a transaction under this consent, particularly the acquisition of the Investment under condition 1 and the [ s 9(2)(b)(ii) ]. Notice shall be provided as soon as practicable, and no later than two months from the date of settlement of the transaction, and must include:
  - (a) the date of settlement;
  - (b) final consideration paid (plus GST, if any);
  - (c) the structure by which the acquisition was made, and who acquired it;
  - (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.

### Annual reporting

6. The Consent Holder must report in writing annually to the OIO detailing progress of its Investment Plan ("Annual Report"), including the following:
  - (a) the Consent Holder's compliance with condition 4;
  - (b) the number of FTE jobs created in the last 12 months compared with the FTE jobs forecast in paragraph 50 of the Investment Plan;
  - (c) the amount of export receipts created in the last 12 months compared with the export receipts forecast in paragraph 50 of the Investment Plan;
  - (d) the amount of kiwifruit produced in the last 12 months compared with the kiwifruit production forecast in paragraph 50 of the Investment Plan.

The first Annual Report is due on 30 June 2018 and the final report is due on 30 June 2023 (or such other date as advised by the OIO in writing).

7. 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.
8. 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.

#### Disposal Process

9. If in the opinion of the OIO condition 4 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 eighteen 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 eighteen 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.

Inspection for the purposes of monitoring these conditions

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

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## Appendix 2 – Sensitive Land

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1. 60 and 74 Orchard Road, Edgecumbe, Whakatane

<b>Land Interest</b>	<b>Freehold Interest</b> (approximately 13.2845 hectares)
<b>CTs</b>	SA68C/245 and SA68C/246 (South Auckland) and 1/5 <sup>th</sup> share in Lot 8 Deposited Plan South Auckland 30708 for each of SA68C/245 & SA68C/246 (total area of Lot 8 used in accordance with OIO requirements)
<b>Sensitivity</b>	Is more than 5 hectares of non-urban land

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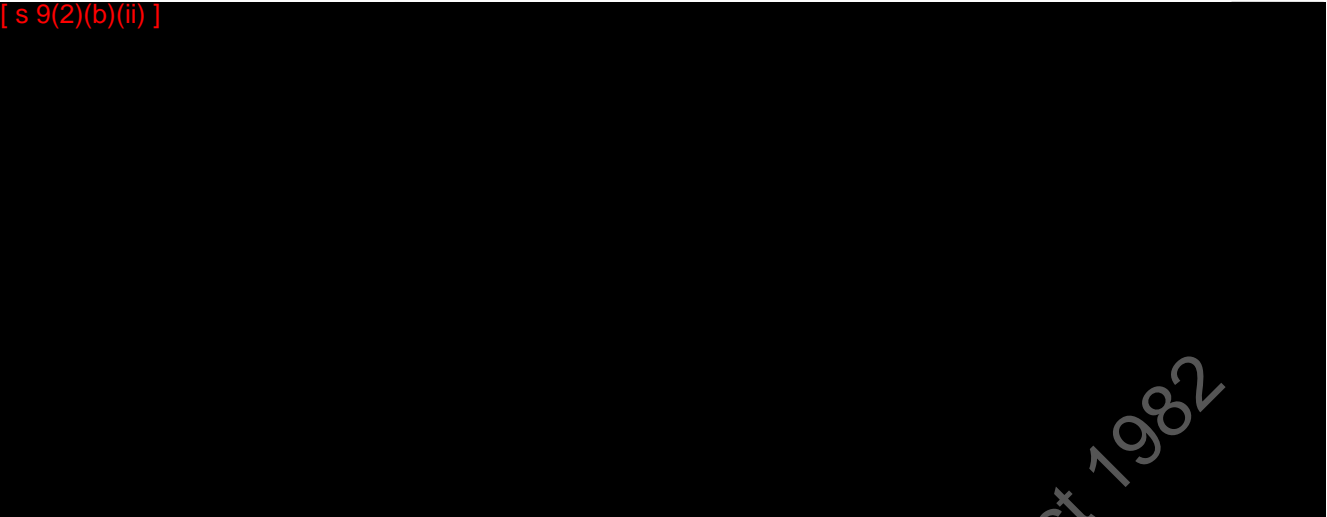
## Appendix 3 – Applicant Structure

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

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



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

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