ORIGINAL

OVERSEAS INVESTMENT OFFICE

Land Information New Zealand
Toitū te whenua

Decision required under the Overseas Investment Act 2005: Foley Family Wines Limited

Date	6 September 2018 revised on 20 November 2018
Security Level	Commercial: In Confidence
Priority	High
Report/Case Number	1427/ 201810030
Version 2: Report/ Case Number	1435/201810030
Decision Required By	14 December 2018

Instructions

	Action Sought	Suggested Deadline
Minister for Land Information	1. Sign the attached memorandum 2. Forward the memorandum and annexure to the Associate Minister of Finance	14 December 2018
Associate Minister of Finance	1. Sign the attached memorandum 2. Forward the memorandum and annexure to the Overseas Investment Office	14 December 2018

Contact for Telephone Discussion

Name	Position	Telephone (wk)	Cellphone	First Contact
Anneke Turton	Acting Manager Applications	04 830 2513	027 597 2193	✓
Llinos Morgan	Senior Solicitor	04 830 2720		

Executive Summary:

1. Foley Family Wines Limited (**Applicant**) has applied for consent to acquire Mt Difficulty Wines Limited (**Mt Difficulty**) including approximately 180.3448 hectares of freehold and leasehold land located in Central Otago (**Investment**).
2. Mt Difficulty Wines Limited is a premium established vineyard located in Cromwell that is widely known for its pinot noir.

Application History

3. The original report was provided to the relevant Ministers for consideration on 6 September 2018.
4. The Ministers have expressed an initial view that they were concerned that criteria of the Overseas Investment Act 2005 were not met and therefore were intending to decline consent to this Investment. The Applicant has subsequently made further submissions which are included in the bundle to this report. Our assessment of the submissions, have been incorporated into this report, where relevant.

Applicant

5. The Applicant is a repeat investor in New Zealand with significant interests in the viticulture and hospitality industries including wine brands such as Te Kairanga and Vavasour, holdings in the Nourish restaurant group and holdings in Wharekauhau lodge.
6. The Applicant is listed on the NZAX and states that it is currently approximately 32% owned by New Zealanders. The majority of the shares are owned by individuals from the United States of America in particular William Patrick Foley II.

Vendor

7. Mt Difficulty is currently 100% New Zealand owned by a collective of local shareholders many of which have strong ties with the wine making industry.

Benefit to New Zealand

8. The benefits which we consider likely to result from the Investment include:
   (a) The creation of new job opportunities in particular nine full time equivalent roles in Marlborough and the Wairarapa;
   (b) Increased export receipts through the combination of Mt Difficulty's product lines with the Applicant's existing premium wine labels to create mixed case and container shipments to the Applicant's overseas distribution channels;
   (c) Greater efficiencies through the Mt Difficulty winery being able to focus on processing of red grape varietals and through the use of the Applicant's centralised bottling facility and centralised administration;
   (d) The introduction of approximately $3,000,000 into New Zealand for development purposes including winery upgrades to the Applicant's processing centre in Marlborough and to develop a restaurant at its Te Kairanga Vineyard in Martinborough; and
   (e) New Zealanders having oversight and the ability to participate in the Investment as the Applicant is listed on the New Zealand stock exchange alternative market.

Farm land advertising exemption

9. The Applicant has requested an exemption from the requirement to offer farm land or farm land securities on the open market to persons who are not overseas persons in accordance with the Overseas Investment Regulations 2005. The Vendor has undertaken some advertising in relation to the Land but has not advertised all of the Land and therefore an exemption is sought for practicality reasons. The background to the Farm land advertising sought by the Applicant is further discussed at 214.

Good character

10. Our standard open background checks identified no matters requiring comment in relation to the individuals with control. With this in mind, we have formed the view that the individuals with control are considered to be of good character.

Instructions

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

Recommendations:

12. I recommend that you:

(a) determine that:

(i) the '**relevant overseas person**' is (collectively):

Entity	**Relationship**
Foley Family Wines Limited	Applicant
William Patrick Foley II	Majority shareholder

(ii) the '**individuals with control of the relevant overseas person**' are:

Individual	**Role**
Anthony Mark Turnbull	Director of Applicant
William Patrick Foley II	
Anthony John Anselmi	

(iii) the relevant overseas person has, or (if that person is not an individual) the individuals with control of the relevant overseas person collectively have, business experience and acumen relevant to the overseas investment; and

(iv) the relevant overseas person has demonstrated financial commitment to the overseas investment; and

(v) the relevant overseas person is, or (if that person is not an individual) all the individuals with control of the relevant overseas person are, of good character; and

(vi) the relevant overseas person is not, or (if that person is not an individual) each individual with control of the relevant overseas person is not, an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009; and

(vii) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and

(viii) the benefit will be, or is likely to be, substantial and identifiable; and

(ix) agree to exempt the section 16(1)(f) criterion (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) on the basis that this criterion need not be met by reason of the circumstances relating to the particular overseas investment, as set out in the Report.

(b) determine that you are satisfied that the criteria for consent in section 16 have been met; and

(c) grant consent to the overseas investment in the form of the Proposed Decision in Appendix 1 and subject to the conditions set out in the Proposed Decision.

[s 9(2)(a)] [redacted]

Anneke Turton – Acting Manager Applications

Date 20/11/2018

Decision:

13. I am satisfied that the criteria for consent in section 16 have been met; and

Associate Minister of Finance:		Minister for Land Information:	
Satisfied	✓	Satisfied	✓
Not Satisfied		Not Satisfied	

14. Consent is granted to the overseas investment in the form of the Proposed Decision in Appendix 1 and subject to the conditions set out in the Proposed Decision.

Associate Minister of Finance:		Minister for Land Information:	
Consent Granted	✓	Consent Granted	✓
Consent Declined		Consent Declined	

Associate Minister of Finance

Date 11/12/18

E M Sage

Minister for Land Information

Date 10/12/18

subject to ~~additional~~ revised conditions in email 4/12/18 and 15/11/18

Janet Harris

From: Janet Harris
Sent: Tuesday, 4 December 2018 9:18 AM
To: Eugenie Sage
Cc: Teall Crossen
Subject: Foley Family Wines
Attachments: Re: Foley Family Wines - 201810030

Minister – Foley Family Wines has provided the attached information about the tax the company pays in NZ.

The OIO has suggested the revised special condition 5 below regarding export receipts.

Please let me know if this revised condition is satisfactory.
Thank you
Janet

Special condition 5: Export Receipts	
1. You must obtain annual export receipts of Mt Difficulty products of at least $4,000,000.	By 30 September 2021
2. You must obtain annual export receipts of Mt Difficulty products of at least $5,000,000.	By 30 September 2023
If you do not do any of the above, standard condition 6 will apply and we may require you to dispose of the Land.	

Janet Harris | Private Secretary (Land Information)
Office of Hon Eugenie Sage | Minister of Conservation | Minister for Land Information | Associate Minister for the Environment
Level 6R | Bowen House | Wellington 6160 | P: [redacted] |

Report of the Overseas Investment Office on the application for consent by Foley Family Wines Limited Case: 201810030

Contents

What is the Investment?

Applicant	**Foley Family Wines Limited** (United States of America 62.9485%, New Zealand 36.1195%, Other 0.932%)
Vendor	**Mt Difficulty Wines Limited** (New Zealand 100%)
Consideration	$52,000,000
Recommendation	Grant Consent

Description of the Investment

1. Foley Family Wines Limited (**Applicant**) has applied for consent to acquire the assets of Mt Difficulty Wines Limited (**Mt Difficulty**) including approximately 180.3448 hectares of freehold and leasehold land located in Cromwell, being an investment in sensitive land (**Investment**).
2. Mt Difficulty is a premium established vineyard and winemaker located in Cromwell that is widely known for its pinot noir.
3. The Applicant intends to continue to operate the Mt Difficulty assets as a vineyard and wine making business.

Application History

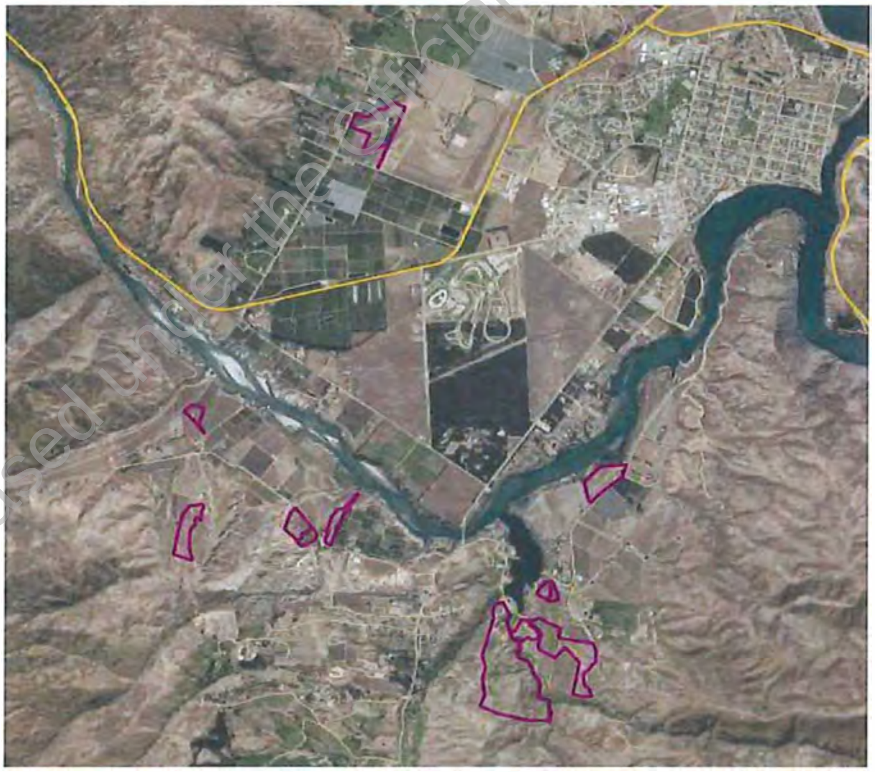
4. The Ministers have expressed an initial view that they were concerned that criteria of the Overseas Investment Act 2005 (**Act**) were not met and therefore were intending to decline consent to this Investment. The Applicant has subsequently made further submissions which are included in the bundle to this report. Our assessment of the submissions, have been incorporated into this report, where relevant.
5. The purchase price for the Investment has been reduced from $55,000,000 to $52,000,000 as a result of the Applicant negotiating an extension with Mt Difficulty to extend the conditional date within the agreement for sale and purchase and to reflect the Applicant's revised commitment to undertake the proposed development's at Mt Difficulty.

Land

6. The Land is located in the wider Cromwell region and is made up of approximately 70.5305 hectares of freehold land and 109.8143 hectares of leasehold land (**Land**).
7. The Land is made up of six vineyards with approximately 68 hectares planted in vines and a housing a large cellar door and winery restaurant.
8. The Land can be illustrated as follows:

Freehold Land

Leasehold Land



9. The cellar door and winery restaurant is a prominent tourist attraction in Cromwell and provides winery tours, wine tastings and artisanal lunches.

Mt Difficulty

10. Mt Difficulty was established in 1992 as one of the first wineries in the Bannockburn region of Central Otago. This occurred when the owners of Molyneux, Mansons Farm, Verboeket Estate and Full Circle vineyards decided to work together, combine their assets, and produce wine under one label. The majority of the shares in Mt Difficulty are still owned by those founding four shareholders. The current winemaker and general manager are related to one of the shareholders.

11. Mt Difficulty is 100% New Zealand owned and is not an overseas person under the Act.

Overview of Mt Difficulty Brand

12. Mt Difficulty produced its first wines in 1998 and has continued to grow its brand through their prominent premium Mt Difficulty label and its secondary Roaring Meg label.

Reasons for Sale

13. Mt Difficulty has advised that the approach from the Applicant was an unexpected and unsolicited one. It states that the offer was accepted as it represented good value for its shareholders.

14. Mt Difficulty further state:

    It is likely that the age and stage of the shareholders played a part in their decision to sell. Given the history and the personal involvement of the founding shareholders, it would be less likely that [Mt Difficulty's] shareholders would resolve to sell the business to someone that they consider would not respect [Mt Difficulty's] strong heritage (for example a private equity investor). The founding shareholders have a strong emotional attachment to the business and would have a desire to see [Mt Difficulty] carry on in good hands as their legacy.

15. Mt Difficulty advises that it had not offered its assets to the market prior to the offer and, in the event that this transaction does not proceed, would carry on operating in the ordinary course of business unless or until its Board and Shareholders decide otherwise.

Sensitive Assets

16. The Applicant is acquiring freehold and leasehold sensitive land. See **Appendix 3**.

17. The Land is sensitive as it is non urban land that is larger than five hectares, includes and adjoins land held for conservation purposes, adjoins a reserve under the Reserves Act 1977, adjoins a section 37 reserve and adjoins land that includes historic places being Stewart Town, Menzies Dam and Bannockburn Sluicings.

18. As the Land includes rural land over five hectares, the rural land directive has been applied to this assessment as outlined in the Ministerial directive letter of 28 November 2017.

Who is making the Investment

Applicant

19. The Applicant was incorporated in New Zealand for the purpose of investing in the New Zealand wine industry by William Patrick Foley II ("**Bill Foley**").

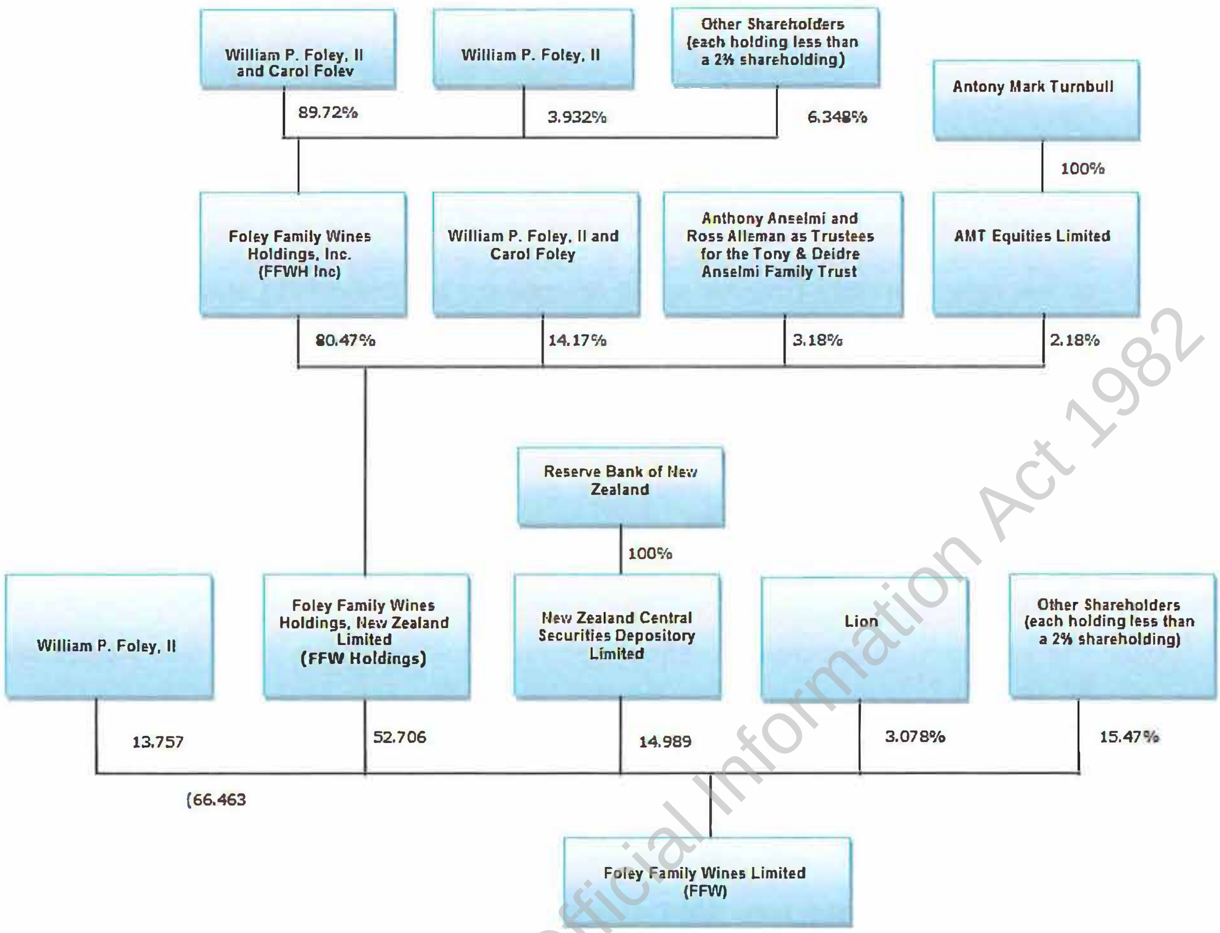
20. Today, the Applicant owns several existing established wine labels in New Zealand including Te Kairanga, Grove Mill and Martinborough Vineyard and is listed on the NZAX with plans to move to the NZX main board.

21. Mr Foley, through another company, also owns Wharekauhau lodge and estate in the Wairarapa.

Ownership of the Applicant

22. The controlling shareholder of the Applicant is Foley Family Wines Holdings, New Zealand Limited (**FFW Holdings**), an overseas person, with between 66%-70% ownership depending on whether convertible notes are converted. Information from the Applicant suggests that a high proportion of the remaining shares are held by non-overseas persons.

23. Upon consent being granted, the corporate structure of the Applicant will be as follows:



24. This shows that a large proportion of the Investment will be largely owned by Bill Foley and his wife, Carol Foley. For this reason, Bill Foley has been included in our assessment as a relevant overseas person. Carol Foley is a shareholder alongside Mr Foley but is a passive owner and does not play a role in decision-making.

25. The Applicant is governed by its board of directors which is currently made up of three directors including Bill Foley, Anthony John Anselmi and Antony Mark Turnbull (**FFW Board**).

26. FFW Holdings is governed by directors, Bill Foley and Antony Mark Turnbull.

27. The majority of the shares in FFW Holdings relate back to entities owned by the three board members of the Applicant but in particular Bill Foley who holds approximately 63% of the Applicant and its parent companies through related entities.

28. Upon completion of this transaction, the Applicant will be owned approximately 3% by Lion New Zealand.

29. The Applicant and Lion New Zealand have formed a partnership which will mean that Lion New Zealand will distribute the Applicant's wider portfolio of brands which is conditional on this transaction proceeding.

Control of the Applicant

30. The Applicant is controlled by the FFW Board who are responsible for approving acquisitions and divestments in relation to the FFW portfolio subject to shareholder approval in line with the NZX listing rules.

31. The FFW Board is also responsible for the day to day management of the Investment and has the ability to approve significant capital and operating expenditure.

32. As noted above, a large degree of control in relation to the Investment sits with Bill Foley as the largest shareholder and as a member of the FFW Board.

Relevant Overseas Person

33. We have determined that the '**relevant overseas person**' is (collectively):-

(a) Foley Family Wines Limited; and

(b) William Patrick Foley II.

Individuals with Control

34. We have determined that the '**individuals with control of the relevant overseas person**' are:-

(a) Anthony Mark Turnbull;

(b) William Patrick Foley II; and

(c) Anthony John Anselmi.

Business Activities

The Applicant

35. The Applicant has interests in the following vineyards:

(a) Te Kairanga and Martinborough Vineyard in the Wairarapa; and

(b) Vavasour and Grove Mill in Marlborough.

36. The Applicant submits that its vision is to become New Zealand's most revered wine group with the ownership of iconic brands and wineries from New Zealand's most acclaimed regions. The Applicant believes this Investment will continue to forward this strategy.

37. The Applicant also has holdings in the Nourish Hospitality Group which has several restaurants through Wellington and Auckland including Shed 5 and Pravda in central Wellington.

FFW Holdings and Mr Foley

38. FFW Holdings are largely family owned wine businesses that own a number of vineyards in New Zealand, California and the Pacific Northwest of America.

39. Mr Foley is a California based billionaire that has made the majority of his fortune through the financial services sector. Mr Foley is a repeat investor in New Zealand through his multiple related entities including the Applicant.

Previous Investments

40. The Applicant has received OIO consent six times for vineyard related applications including the acquisition of Te Kairanga Wines Limited and Martinborough Vineyard.

41. The Applicant notes in its annual report that case sales for the financial year ending 30 June 2018 were up by approximately 20% and bottled sales revenue was up by 25.2%. This indicates the Applicant's ability to increase sales through using its existing networks and supply channels which it anticipates will be enhanced further through the acquisition of Mt Difficulty.

42. The Applicant has existing overseas supply networks in place in particular for its Te Kairanga and Dashwood labels.

43. Since acquiring its first New Zealand vineyard in 2012, the Applicant has continued to expand its portfolio along with developing their processing infrastructure and supply networks.

44. The Applicant has an established production facility located at its Grove Mill Winery in Marlborough which it uses as a centralised processing facility for its vineyards across New Zealand. The Applicant crushes, ferments, bottles, stores and distributes various wines from this centre.

45. Through establishing a processing facility in Marlborough, the Applicant has shown its commitment to continue bottling its wine in New Zealand. The Applicant submits that this is in contrast to many other entities that undertake in bottling market techniques by shipping large quantities of unbottled wine to their destination markets to be bottled there.

Bill Foley's previous investments

46. Bill Foley through another entity received consent to acquire Wharekauhau lodge in the Wairarapa including Wharepapa Station. Since the acquisition of Wharekauhau lodge, Mr Foley has undertaken significant developments at the property and has returned the lodge to a being a profitable enterprise. Bill Foley intends to undertake further developments at Wharehakhau lodge in the near future including expanding rooms by approximately 25%.

47. To date the Applicant and FFW Holdings have complied with all conditions of consent and have been a reputable investor.

Investment Plan

48. The Applicant submits that the acquisition of Mt Difficulty is an important component in implementing their strategy as it will represent the acquisition of a premium pinot noir based vineyard to add to its portfolio.

49. The Applicant considers that it is well placed to significantly increase sales, particularly export sales, of Mt Difficulty wines and to leverage the Mt Difficulty brand to sell more of its existing wines.

50. The Applicant plans to use its own Marlborough facilities to process and bottle Mt Difficulty wines (work currently undertaken by third parties) and will invest further in those assets. By utilising, and investing further in, its existing assets it can also realise production efficiencies.

51. The Applicant plans to construct a new restaurant at its Te Kairanga vineyard and has made further submissions to commit to undertake the restaurant and cellar door re-development planned by Mt Difficulty.

52. These key features of the Applicant's investment plan are described in more detail below (**Investment Plan**).

Export sales strategy

53. The Applicant is confident that it can increase international exports by leveraging the Mt Difficulty brand and existing export relationships.

54. Mt Difficulty's sales are currently made up of 15% exports and 85% domestic sales. The Applicant intends to increase exports by approximately $7 million over five years.

55. The Applicant intends to increase exports of Mt Difficulty wines and its existing wines by offering "mixed cases" to its customers. The Applicant will combine wine varietals from several of its vineyards into cases and containers to provide its export customers with a range of New Zealand wines.

56. The Applicant believes this is advantageous as it will enable its customers to receive multiple varieties and brands of premium New Zealand wine from one supplier and in one shipment. The Applicant submits that this will also increase the exposure of New Zealand's lesser known varietals and ensure wider exposure of all New Zealand wines.

57. The Applicant has provided information supporting its claim that the Investment and its export strategy is likely to win it more customers and distribution agreements.

58. The Applicant currently has access to five key international markets which it intends further grow with a particular focus on the United States and China.

Productivity / production efficiencies

59. The Applicant submits that the Investment will lead to increased operational and distribution efficiencies as a result of a centralised administration and bottling facility.

Overview of Mt Difficulty's production processes

60. Mt Difficulty currently processes of all its wine in the Otago region.

61. Upon harvesting, the grapes are transported to the Mt Difficulty winery to be crushed, fermented and blended.

62. Once ready to be bottled, Mt Difficulty contracts VinPro Limited in Cromwell to undertake all the bottling. Distribution is then undertaken from the Cromwell base.

Overview of the Applicant's proposed production process

63. Upon harvesting the grapes, the Applicant intends to ship all of its white varietal grapes to its processing centre at its Grove Mill Winery in Marlborough (**Grove Mill**) only retaining the red, predominantly pinot noir, grapes at Mt Difficulty.

64. The white varietals will be processed in full at Grove Mill, the pinot noir will be processed and fermented at Mt Difficulty however will be transported to Grove Mill to be bottled and distributed.

65. The Applicant estimates that freeing up the production capacity at Mt Difficulty currently taken up by white varietals will translate to a 14% increase in production capacity.

66. The Applicant also estimates that using its centralised bottling facility and administration centre will lead to a saving of approximately $400,000 per year in the production process.

Capital improvements

67. The Applicant notes that if it is successful in the consent process it will make significant investments in its facilities including:

    (a) Upgrading primary processing capacity at the Grove Mill winery in Marlborough from 3,000 tonnes to 4,000 tonnes (estimated cost $2,150,000) to process the increased quantity of wine that will now be required as a result of the acquisition of Mt Difficulty;

(b) Purchasing a new glass 'de-palletiser' for its bottling and warehousing facility in Blenheim to automate the process of taking empty glass bottles to the bottle filler (this is the first step in the bottling process) which will lead to improving the efficiency of their production line (estimated cost $250,000); and

(c) Bringing forward by at least 3 years the construction of a new barrel storage facility at its Te Kairanga vineyard in Martinborough. The Applicant submits that this will cost approximately $1,250,000.

Te Kairanga Development

68. The Applicant also intends to develop a restaurant at Te Kairanga which it estimates will cost approximately $1,000,000 (**Te Kairanga Restaurant**).

69. The Applicant intends for the Te Kairanga Restaurant to be a casual dining experience which will showcase the Applicant's wines from all its vineyards and would also act as a wedding venue.

70. The Applicant has engaged an architect to develop plans of the Te Kairanga Restaurant:

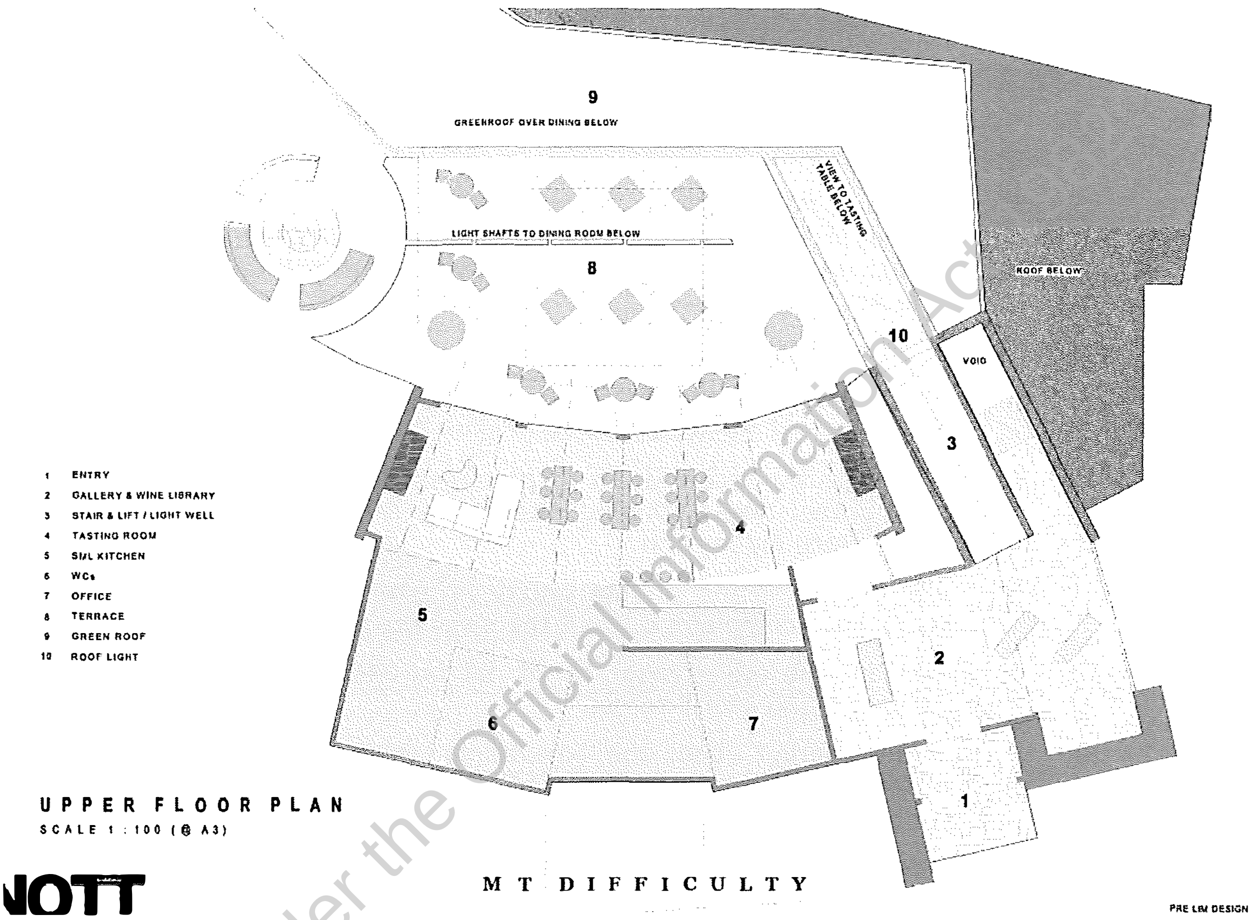
71. The Applicant has made submissions that the restaurant proposal at Te Kairanga will not proceed without the Investment as they do not have the necessary skills to develop a cellar door restaurant however are able to do so by using the management knowledge of the Mt Difficulty staff.

Mt Difficulty's restaurant redevelopment plan

72. Mt Difficulty currently operate a cellar door and restaurant facility from their Cromwell base. This restaurant operates between 12pm and 4pm and serves platters and an a la carte menu (**Mt Difficulty Restaurant**).

73. Mt Difficulty has plans to expand this restaurant and cellar door facility which is currently pending a resource consent decision. A resource consent application has been lodged with the application due to by heard by the Otago District Council's Hearings Panel on 11 December 2018.

74. Mt Difficulty anticipates the development would look as follows:



75. Mt Difficulty notes that the proposed development does have several uncertainties which would need to be addressed before the project could proceed:

    (a) Costs - being approximately 20% or more than was originally anticipated (building costs have increased since the plans were approved in 2016); and

    (b) Resource consent - resource consent has been applied for through a publicly notified process which could lead to increased costs risks or restrictions that affect the viability of the project. Mt Difficulty is located in a rural area 30 minutes from Cromwell and its existing restaurant is already subject to restrictions to mitigate against the risk of drink driving.

76. The Applicant in its Further Submissions has changed its initial view that the Mt Difficulty expansion could not be justified from an economic perspective and now intends to undertake the restaurant development at a cost of approximately $3,000,000 subject to resource consent being granted.

77. The purchase price for Mt Difficulty has decreased by $3,000,000 to reflect this cost.

What is likely to happen without the Investment

Counterfactual

As a result of *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147 ("*Tiroa E*"), the OIO and relevant Ministers must apply a "counterfactual test" when assessing whether an overseas investment will, or is likely to benefit New Zealand. This test, which was described by the Court as a "with and without" test, requires a comparison of what is likely to happen with the investment, and what is likely to happen without the investment (the counterfactual).

78. To establish the appropriate counterfactual in this case, we have considered what the likely state of affairs would be without the Investment.

79. The Land, but not the other assets making up the Mt Difficulty business, was marketed after the initial contract between the Applicant and Mt Difficulty was entered into and for the purpose of complying with the advertising requirements under the Act.

80. Details of the marketing and response:

    (a) Mt Difficulty began marketing the property with Colliers International Group Inc on 14 December 2017 until 2 February 2018;

    (b) Mt Difficulty received six expressions of interest from various parties during this time including alternative New Zealand purchasers, but no offers were made; and

    (c) One New Zealand private equity investor that expressed interest in the assets has complained about the sales process.

81. We note that the advertising should not be viewed as having fully tested the New Zealand market for interest.

82. Further information about the advertising, the complaint, and the Applicant's request for an exemption from the advertising requirement are set out below at paragraph 214.

Applicant's submissions on the Counterfactual

83. The Applicant submits the most likely counterfactual is the **status quo with the Vendor retaining ownership of the Investment** for the following reasons:

    (a) The Applicant approached the Vendor with an unsolicited offer;

    (b) Mt Difficulty have advised if this Investment does not proceed they will retain ownership of the assets; and

    (c) The shareholders of Mt Difficulty have a significant personal attachment to the brand and vineyard and therefore are only likely sell to an entity with a similar view and passion about wine making that would continue the legacy of Mt Difficulty.

84. In support of its view, the Applicant has submitted that there are a limited number of New Zealand-owned wine companies with the financial capability to buy an asset of this nature (reflecting the high level of overseas ownership in the wine industry). The Applicant has identified these companies (to the best of its knowledge) and provides reasons why they are unlikely to be interested in the Mt Difficulty assets. None of these companies expressed interest in the assets during the sales process.

Our Assessment of the likely Counterfactual

Who would own the land without the investment?

85. The Mt Difficulty assets were not for sale prior to the unsolicited offer by the Applicant and, according to Mt Difficulty, would be retained if the transaction did not proceed. The business appears to be profitable and the shareholders have plans to invest in it further. Information suggests that the shareholders also have a strong emotional attachment to the assets.

86. With many shareholders advancing in age, it is possible that they may (together) choose to fully realise their investments by selling the assets in the future. However, the timing and likelihood of this is unclear and we do not consider that it is appropriate to use this scenario as the counterfactual.

87. We therefore consider the most appropriate counterfactual is that the assets would continue to be owned in much the same way as they are today.

What would Mt Difficulty likely do with its assets

88. Under the counterfactual, we consider that the Mt Difficulty business is likely to be operated as it is currently. This includes continuing efforts to increase export sales and ultimately re-developing the Mt Difficulty Restaurant.

89. While we note that there is a level of uncertainty with the restaurant project, we consider that the planning for the project is sufficiently advanced for it to be viewed as likely under the counterfactual.

What would the Applicant do with its existing assets without the Investment

90. We consider that the Applicant will largely operate its existing assets in New Zealand in the same way as they would without the Investment however we note there may be some uncertainty around the restaurant proposal at Te Kairanga.

91. The Applicant notes in its application that liquor licencing laws in the South Wairarapa have been amended and will require all cellar doors from 2019 to have a substantial food offering. The Applicant has two existing cellar door facilities in Martinborough, neither of which have food offerings at their cellar doors and therefore will be required to close with the amended liquor licencing rules.

92. We consider that the Te Kairanga restaurant may proceed in the long run without the Investment as it is likely to be uneconomical for the Applicant to close both cellar doors in the Wairarapa. Although there is some uncertainty as to whether the Te Kairanga restaurant would proceed without the Investment, on balance, given the intention to use Mt Difficulty staff with this development, we consider that the development is unlikely to occur without the Investment.

Does the Applicant meet the Investor Test criteria?

Business Experience s16(1)(a)

The relevant overseas person, or the individuals with control of the relevant overseas person, must have business experience and acumen relevant to the overseas investment. There is considerable flexibility in determining what is relevant and 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.

93. In this case, the Investment can be described as acquisition of a medium sized vineyard and wine making business.

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

- All three of the directors of the Applicant have been involved with the Applicant since 2012 and have significantly grown the business within a short period of time;
- The Applicant has large holdings in vineyards in New Zealand and has its own bottling facility in Marlborough;
- The experience of the Applicant and its directors in the New Zealand tourism market, owning various tourist ventures including vineyards and luxury lodges;
- The Applicant has existing supply channels and connections it intends to utilise to further distribute Mt Difficulty products; and
- All of the directors of the Applicant have managerial experience and the requisite professional knowledge to undertake an investment of this nature.

95. 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.

Financial Commitment s16(1)(b)

The financial commitment criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the overseas investment.

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

97. 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; and
- Engaging professional advisers such as architects and legal advisors.

Good Character s16(1)(c)

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

98. The individuals with control consist of Mark Turnbull and Tony Anselmi (New Zealanders) and Bill Foley (US citizen). They have been directors of the Applicant for around 6 years and have satisfied the good character test in the Act on multiple occasions.

99. The application and our good character searches did not identify any new matters of concern that have not already been considered previously.

100. Statutory declarations stating that the individuals with control are of good character have been provided in support of the application. We are satisfied that the statutory declarations can be relied on as they comply with the requirements of the Oaths and Declarations Act 1957.

101. In our assessment, the individuals with control are of good character and meet the requirements of this criterion.

Immigration Act s16(1)(d)

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.

102. The Applicant has provided a statutory declaration stating that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957.

103. 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.

Benefits that are likely to occur with the Investment

104. We **are satisfied** that the Investment is likely to benefit New Zealand in regard to the **following factors:**

Jobs – s17(2)(a)(i) - high relative importance

There are three key elements to this factor: • The "new job opportunities" must be **new**, or if existing jobs are being "retained", the existing jobs **would** or **might** otherwise be lost if the investment does not proceed; • The new job opportunities or retained jobs must be **in New Zealand**; • The new job opportunities or retained jobs that are **likely to result** from the overseas investment must be **additional** to those which are likely to occur **without the overseas investment**.

105. We consider this Investment is likely to result in the creation of a net of nine full time equivalent jobs in New Zealand as a result of the additional personnel required to grow the Applicant's business and operate the Te Kairanga Restaurant.

Further Submissions

106. As noted above, the Applicant has now committed to undertaking the restaurant development at Mt Difficulty and to creating the same number of jobs at the restaurant as proposed by Mt Difficulty.

Job situation without the Investment

107. Mt Difficulty as a medium sized vineyard, currently employs 15 full time equivalent employees, ten part time equivalent employees and ten casual employees to run the cellar door, restaurant and winery.

108. Without the Investment and under its proposed restaurant development, Mt Difficulty estimates that it will create a further five to seven further full time equivalent roles. These roles will be created in the Otago region as a result of the cellar door and restaurant development.

Job opportunities with the Investment

Jobs in Otago region

109. The Applicant intends to retain the majority of Mt Difficulty's current employees as the winery, cellar door and restaurant will largely be operated in the same manner.

110. The Applicant intends to disestablish two administration roles at Mt Difficulty due to the move to a more centralised administration function across all of its vineyards which will lead to a duplication of functions.

111. The Application will also require additional employees to operate the new restaurant and cellar door development at Mt Difficulty. The Applicant claims it will require the same number of employees as proposed by Mt Difficulty and therefore no additional jobs will be created from this development as a result of the Investment.

112. As the Applicant intends to disestablish two roles at Mt Difficulty the net result of jobs in Otago will result in a loss of two full time equivalent employees as a result of the Investment.

Jobs in the Wairarapa region

113. The Applicant anticipates that, through construction of the restaurant at the Te Kairanga vineyard, it will create five full time equivalent roles in the high season reducing to four full time equivalent roles in the low season.

114. The Applicant has submitted that these roles are unlikely to be created without the Investment as it will not proceed with the Te Kairanga Restaurant.

115. Although there is some uncertainty as to whether the jobs whether the jobs would proceed without the Investment, on balance, we consider that the roles proposed to be created at the Te Kairanga Restaurant are likely to be in addition to what would occur without the Investment and therefore a net of four roles will be created in the Wairarapa.

Jobs in Marlborough and Auckland

116. Upon acquisition of Mt Difficulty, the Applicant also submits that it will require eight additional full time equivalent employees including an operations manager, quality assurance specialist, two wine specialists and a business analyst to enable Mt Difficulty and the Applicant's other brands to grow.

117. These roles will be located in the Applicant's administration hubs in Marlborough and Auckland.

118. The Applicant has already created one of the roles proposed and therefore we consider that this cannot be taken into account for the purpose of this assessment.

119. The Applicant submits that it will not create the roles mentioned above without acquiring Mt Difficulty as its existing business does not require these roles currently. It is understood that these roles will be used to enhance, the Applicant's brand as a producer of premium New Zealand wine and to develop its export markets and premium labels.

120. The roles proposed by the Applicant will be as a result of the additional wine being processed and bottled at its Grove Mill facility, along with a new Operations Manager at Grove Mill and wine specialists to manage its partnership with Lion New Zealand.

121. We consider, that the seven jobs proposed by the Applicant are likely to be in addition to what would be created without the Investment.

Summary

122. As a result of the Investment, the Applicant will create a net of nine new equivalent full time roles when considering the seven skilled roles to be created minus the two roles to be disestablished at Mt Difficulty and the four roles at the Te Kairanga Vineyard. These roles will be located in Marlborough, Auckland and the Wairarapa.

123. The Applicant will also retain the majority of the roles at the Mt Difficulty vineyard.

124. We are of the view that the creation of the skilled roles in particular is likely to provide benefit to New Zealand and this factor has therefore been met.

Recommended conditions

125. We recommend conditions of consent be imposed requiring the Applicant to:

(a) Retain at least 15 full time equivalent roles and 10 part time equivalent roles at Mt Difficulty on an on going basis;

(b) Create at least four full time equivalent roles at the restaurant to be constructed at the Te Kairanga Vineyard;

(c) Create seven full time equivalent roles at Foley Family Wines Limited including a wine specialist role and a managerial role; and

(d) Report on the number and type of roles created and retained as a result of the Investment.

Increased export receipts – s17(2)(a)(iii) - high relative importance

There are two key elements to this factor: • **Export receipts** must be likely to be **increased**. • The increased export receipts that are **likely to result** from the overseas investment must be **additional** to those which are likely to occur **without the overseas investment**.

126. We consider that export receipts are likely to increase by approximately $7,000,000 over five years as a result of an approximate 60% increase in export sales. This will largely be driven by the portfolio approach that the Applicant has established by cross selling several premium brands to international markets at once.

Current situation

127. Mt Difficulty's sales are currently made up of 15% exports, earning approximately $3,000,000 mostly from the Australian and the United Kingdom markets and 85% domestic sales of approximately $10,000,000.

128. Mt Difficulty's forecasted export sales for 2018 is approximately $2,000,000 which represents a decrease of approximately 30% from 2017.

129. Mt Difficulty advised it has experienced significant difficulty in penetrating the international market despite having undertaken several initiatives to do so. Mt Difficulty submit that it is difficult for a small to medium sized vineyard to receive exposure internationally due to its small market share.

130. Mt Difficulty in particular notes, its efforts in penetrating the United States market through a co-funded initiative with New Zealand Trade and Enterprise however this investment did not convert into sufficient sales to be financially viable.

131. Mt Difficulty notes its heavy reliance on the domestic market poses a significant business risk moving forward.

Applicant's existing international supply channels

132. The Applicant has identified five key international markets it intends to focus its growth on. This growth will be as a business as a whole for all the Applicant's vineyards not just the Investment through exporting mixed cases and containers to various markets.

United States

133. The Applicant notes that there is a high demand in the United States for New Zealand sauvignon blanc. The Applicant intends to leverage this demand to increase demand for New Zealand pinot noir.

134. The Applicant notes that as a whole it has exported approximately $10,000,000 worth of products to the United States in the financial year ended 2017.

China

135. The Applicant has experienced an approximately 133% in demand for its products in China from June 2017 until January 2018.

136. The Applicant submits that it is in discussions with a [s 9(2)(b)(ii)] [redacted]

Australia

137. The Applicant has a direct supply relationship with [s 9(2)(b)(ii)] [redacted] representatives of which have visited Mt Difficulty and have indicated a willingness to stock Mt Difficulty products in their stores. The Applicant notes [s 9(2)(b)(ii)] [redacted]

United Kingdom

138. The Applicant submits that it has exported approximately 64,000 dozen cases to the United Kingdom in the financial year ending June 2017.

139. The Applicant has an existing connection with [s 9(2)(b)(ii)] [redacted] which already distributes several of its brands and have indicated a willingness to distribute Mt Difficulty products upon completion of this transaction.

Ireland

140. The Applicant submits that it is in discussions with [s 9(2)(b)(ii)] [redacted]

Applicant's export projections

141. The Applicant has advised that they intend to export approximately 39% of Mt Difficulty's production compared with the current approximately 20%. The Applicant intends to achieve this by processing an additional 1,200 tonnes of fruit using its Grove Mill facility.

142. The Applicant has provided the below estimates of their estimated growth compared with Mt Difficulty's proposals.

Export Sales
MTD compared with FFW.

	MTD	FFW
Yr1	2,310,000	2,610,240
Yr2	2,379,300	3,467,968
Yr3	2,450,679	4,062,516
Yr4	2,524,199	4,439,487
Yr5	2,599,925	5,168,735
	12,264,104	19,748,945
FFW Increase	$7,484,841	61%

143. The above export sales estimate that the Applicant is likely to increase export sales by 61% more than Mt Difficulty due to its greater exposure to international markets and existing distribution networks it already has in place.

144. We note that these figures are estimates and should be treated as indicative. However, we consider the estimates to be credible based on the Applicant's export plan, distribution network, and track record. The Applicant has increased exports of its existing products from approximately $4,000,000 in 2013 to approximately $10,000,000 in 2017.

The Applicant's Export strategies - Roaring Meg Sauvignon Blanc

145. The Applicant intends to introduce a Roaring Meg sauvignon blanc product into the Mt Difficulty product range in the same format that it has used the Russian Jack brand for its Martinborough Vineyard.

146. The Russian Jack brand is a blend range which the Applicant makes from excess grapes from around its vineyards and prices at a mid price point as an introduction wine to its other labels at Martinborough Vineyard

147. As New Zealand wine production is often associated with sauvignon blanc, the Applicant intends to use the Roaring Meg sauvignon blanc product as a springboard to introduce Mt Difficulty and its other varietals (which while well known in New Zealand) are lesser known overseas.

148. The Applicant submits that the use of the strength sauvignon blanc varietal has led to a lift in export sales in the United States of lesser known varietals.

149. The Applicant estimates could achieve 10,000 dozen cases worth of sales within three years.

150. The Applicant anticipates that the exposure of the Mt Difficulty brand along with a product that New Zealand is well known for will lead to increased efficiencies and exports by getting the brands out in the market faster.

Summary

151. Based on the Applicant's existing supply channels available to them, it appears that export receipts are likely to increase by approximately 60% as a result of the Investment.

152. Evidence to date illustrates the Applicant has a consistent track record of increasing exports in its existing vineyards therefore we are satisfied that the increases modelled by the Applicant are likely.

153. We are of the view that this is unlikely to occur without the Investment as Mt Difficulty has already tried to increase export receipts with limited effect.

Recommended conditions

154. Based on the Applicant's track record in delivering increased export receipts, we recommend that a condition of consent be imposed requiring the Applicant to report on export receipts including the number of bottles or cases exported, a breakdown of export markets and comments on how the Applicant is track against its five year estimates shown above in paragraph 142.

Added market competition, greater efficiency or productivity, enhanced domestic services – s17(2)(a)(iv)

There are three key elements to this factor:

- The overseas investment must be likely to result in one or more of:
  - (i) **added market competition**;
  - (ii) **greater efficiency or productivity**; or
  - (iii) **enhanced domestic services**.
- The added market competition, greater efficiency or productivity, or enhanced domestic services must occur **in New Zealand**.
- The added market competition, greater efficiency or productivity, or enhanced domestic services that **is likely to result** from the overseas investment must be **additional** to that which is likely to occur without the overseas investment.

155. We consider that this Investment is likely to result in increased productivity through the Applicant using its existing infrastructure at its Grove Mill Winery for additional bottling.

Increased production capacity

156. The Applicant intends to only process the red varietal grapes at Mt Difficulty. White varietal grapes grown by Mt Difficulty, which are currently processed in Otago, will be transported to Marlborough to be processed at the Applicant's Grove Mill Winery.

157. This will result in an increase in the volume of pinot noir processed at Mt Difficulty as pinot noir is the premium varietal for the region. The Applicant estimates that it will be able to increase production of pinot noir by 10% through undertaking this strategy.

158. Additional pinot noir grapes will be required to fulfil the increased production capacity at Mt Difficulty. The Applicant has advised that it has secured several grape supply contracts to meet the demand.

159. The volume of white varietal grapes processed at Mt Difficulty is comparatively small. The Applicant considers that it will create efficiencies to process all the white varietal grapes centrally with its other brands.

160. The specialisation of the Mt Difficulty winery in red variety processing is likely to result in efficiencies in the Otago processing facility also.

Centralised bottling facility

161. The Applicant intends to bottle all of the wine produced at Mt Difficulty at its Grove Mill Winery. Currently Mt Difficulty uses third party providers to bottle its wine.

162. Once the wine is ready to be bottled, the Applicant will transport the wine from Mt Difficulty to the Grove Mill facility to be bottled.

163. The Applicant estimates that approximately $400,000 would be saved per annum through bottling the bulk of its wine at Grove Mill.

Centralised Administration

164. The Applicant also intends to gain economies of scale by making use of its centralised administration department in Marlborough. This will enable the Applicant to manage and provide administrative support to Mt Difficulty in the same manner as it does for its existing vineyards.

Summary

165. The Applicant's use of its existing infrastructure at Mt Difficulty to specialise in red wine production is likely to result in efficiencies by making it a dedicated red wine production centre.

166. The Applicant is likely to achieve economies of scale through undertaking the whole wine making process itself rather than outsourcing the bottling and through making use the existing centralised administration resources.

Recommended Conditions

167. We recommend that the Applicant is conditioned to undertake the developments required at its Grove Mill facility to ensure the increased production capacity can be achieved.

Additional investment for development purposes – s17(2)(a)(v)

There are four key elements to this factor.
- The investment must be **additional investment**.
- The additional investment must be **introduced into New Zealand**.
- The additional investment must be **for development purposes**.
- The additional investment that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

168. We consider this Investment is likely to result in approximately $4,000,000 being introduced into New Zealand for development purposes relating to winery upgrades at Grove Mill, the purchase of a glass de-palletiser, construction of a barrel facility and development of a restaurant at Te Kairanga Vineyard.

Restaurant Developments

169. As discussed above, the Applicant is intending to undertake the Te Kairanga Restaurant Development in addition to the Mt Difficulty Restaurant Development and therefore the Investment is likely to result in additional investment of $1,000,000 for development purposes being introduced into New Zealand. The Applicant has made the same commitment as Mt Difficulty to develop the Mt Difficulty cellar door and restaurant facility therefore we do not consider that the Applicant is likely to introduce additional investment for development purposes into New Zealand through undertaking the same commitment as would likely occur without the Investment.

Grove Mill Winery Developments

170. The Applicant submits that it will be in a position to commit to approximately $2,000,000 worth of improvements to the Grove Mill Winery to process the increased volume of wine if this Investment proceeds.

171. The Applicant anticipates that as a result of the Investment, it will need to upgrade its processing facility at Grove Mill to enable production to increase from 3,000 tonnes to 4,000 tonnes which enable approximately an additional 80,000 dozen cases of wine to be produced.

172. The Applicant has provided the following estimated break down of costs for the upgrades:

Grove Mill Winery, Marlborough		Comments
To fill the remaining space in the cold cellar at Grove Mill		
2 x 55,000L Stainless Steel tanks	$185,000	Increased vintage capacity or storage of Mt D wines. Equivalent of 150T
Increase capacity by 1,000T at Grove Mill		
10 x 100,000L Stainless Steel tanks	$1,740,000	Includes concrete slab, tanks, refrigeration, catwalks, services, fence
Press	$160,000	Enable increase to 4,000T & improve current delays at receive
Press freight & installation	$38,000	
Must line & catwalk associated with press	$13,400	Re-configure must lines and catwalk
Conveyor associated with press	$119,000	Current conveyor failed in V18. Worn out. Technology changed. Safer
Switch board amp associated with press	$50,000	GM at maximum power supply. New equipment requires upgrade
Shift marc bay associated with press	$29,100	Shift marc bay to fit press in
	$2,149,500	

173. The Applicant intends to fund the proposed developments from retained earnings that may otherwise be remitted to the overseas shareholders.

174. The Applicant notes that it has recently undertaken irrigation improvements to the sum of approximately $800,000 at the Grove Mill winery to future proof the business. This indicates that the Applicant has a past record of upgrading its winery assets to ensure the business is best equipped for future vintages and further vineyard acquisitions.

Glass de-palletiser and barrel facility upgrades

175. The Applicant also submits that it intends to purchase both:-

(a) A glass de-palletiser at its Grove Mill Winery which will automate a labour intensive part of the bottling process to assist with the increased volume of wine it will now process; and

(b) Upgrade the barrel facility at its Te Kairanga Winery to enable them to increase their storage capacity of wine in particular the additional cases of Mt Difficulty wine it will now need to store.

176. The Applicant anticipates the barrel facility and the glass de-palletiser will cost approximately $1,250,000 which will be paid for from retained earnings. The Applicant submits that these improvements will be required immediately as a result of the Investment however may occur in the long term without the Investment.

Summary of additional investment for development purposes

177. We consider that the Grove Mill Winery upgrades and the development of the Te Kairanga restaurant are likely to result in approximately $3,000,000 being introduced into New Zealand for development purposes. We also note the upgrades to the barrel facility and the glass de-palletiser are also likely to result in approximately $1,250,000 being introduced into New Zealand in the short term rather than in the long term.

178. Without the Investment we consider it is unlikely that this level of additional investment for development purposes would occur, therefore we consider this factor has been met.

Recommended Conditions

179. We recommend the proposed capital developments be conditioned including the purchase of the new glass de-palletiser, new barrel facility and restaurant at Te Kairanga and the upgrades to the Grove Mill facility to enable the processing capacity to increase to 4,000 tonnes.

180. We also recommend that the Applicant is conditioned to undertake the restaurant development at Mt Difficulty. Although no benefit has been attributed to this proposal due to the counterfactual, it is relevant that the development proceeds to maintain the status quo and ensure that the Applicant's proposed restaurant jobs at Mt Difficultyoccur.

Previous investments – r28(e)

There are two key elements to this factor:

- The **relevant overseas person** must have **previously undertaken investments**;
- The previous investments must have been, or are, of **benefit to New Zealand**.

181. The Applicant is an established investor in New Zealand in the viticulture and hospitality sectors.

182. The Applicant notes it has provided a large degree of benefit to New Zealand including increasing export receipts, jobs and through introducing significant capital into New Zealand.

183. The Applicant submits that since 2013, it has increased export receipts to the United States from its products from approximately $4,500,000 to $10,000,000.

184. The Applicant submits that it has invested in excess of $13,000,000 in additional investment for development purposes for the period between 2014 and 2017 as outlined in the following table:

Year	Land and Land Improvements	Winery Improvements	Bottling and Warehousing	Other	Total
JYE2017	$256,155	$3,991,718	$58,685	$741,424	**$5,047,982**
JYE2016	$369,212	$654,861	$467,926	$775,966	**$2,267,966**
JYE2015	$204,876	$633,603	$2,240,384	$640,085	**$3,718,949**
JYE2014	$8,737	$1,022,844	$929,717	$902,179	**$2,843,477**
TOTAL	**$838,981**	**$6,283,027**	**$3,696,713**	**$3,059,654**	**$13,878,375**

185. The Applicant also notes that it has significantly increased job numbers across its investments, increasing its staffing levels from 56 in 2012 to 104 in 2017.

186. The Applicant has undertaken a large amount of investment in New Zealand over the last 10 years and is a reputable investor. The Applicant's investments have benefitted New Zealand through creating jobs, investing in the viticulture and hospitality industries and through increasing the exports of premium New Zealand wines.

187. We consider that the Applicant has previously undertaken investments which has been of benefit to New Zealand.

Oversight and participation by New Zealanders – r28(j) - high relative importance

There are three key elements to this factor: • There must be persons who are not overseas persons (**New Zealanders**); • The New Zealanders must be **likely** to be able to **oversee or participate in** the overseas investment or any relevant overseas person; • The overseeing or participation must be in the **overseas investment** or **any relevant overseas** person. This factor is relevant to all overseas investments in sensitive land.

188. 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.

189. We consider that this factor requires New Zealanders to be able to oversee or participate in the overseas investment at an ownership level in a meaningful way.

190. The Applicant is registered in New Zealand with their core functions located in Marlborough and its vineyards and hospitality holdings being located throughout regional New Zealand.

191. The Applicant is listed on the NZAX and has plans to move to the NZX main board. The controlling shareholder is FFW Holdings, an overseas person, with between 66%-70% ownership depending on whether convertible notes are converted.

192. Information from the Applicant suggests that a high proportion of the remaining shares are held by non-overseas persons. Being a listed entity, provides New Zealanders with an opportunity to acquire shares in the Applicant and ultimately participate in the Investment.

193. The Applicant is largely run on a day to day basis by its New Zealand based director, Anthony Mark Turnbull.

194. Based on the degree of New Zealand ownership, the ability for New Zealanders to participate as shareholders, and that day to day control of the investment is largely sits with the New Zealand based directors, we consider that this factor has been met.

Further Submissions

195. The Applicant submits that while Bill Foley owns the majority of the shares, practical control and day to day management sits with New Zealanders.

196. The Applicant notes that they actively encourage New Zealanders to participate in the Investment and anticipate this will increase when they move the NZX main board.

Benefit to New Zealand Test - s16(1)(e)(ii)

Benefit test

197. In order for consent to be granted, the Applicant must demonstrate that the:
    (a) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
    (b) that benefit will be, or is likely to be, substantial and identifiable.
198. We have assessed the benefit likely to result from this investment in accordance with the rural land directive contained in the directive letter dated 28 November 2017.
199. We have undertaken our assessment having regard to the characteristics of the Investment and the nature of the interests being acquired (reflecting the proportional nature of the benefit assessment). In this case, the Applicant is seeking consent to acquire Mt Difficulty Wines Limited including approximately 180.3448 hectares of freehold and leasehold land in Otago. We note that Mt Difficulty is a productive, well run asset with a strong reputation in New Zealand.
200. The Land is 'rural land' as defined in the Ministerial Directive Letter.

Rural land directive

201. In relation to rural land, the Ministerial Directive Letter states:

> *The primary sector, and the rural land it is based on, forms a particularly important part of the New Zealand economy.*
>
> *The Act acknowledges the privilege associated with the ownership or control of rural land is greater than for non-rural land by requiring the benefits resulting from the overseas investment to be substantial and identifiable (a higher threshold).*
>
> *The merits of overseas investment in the primary sector can be less compelling given that we are already world leaders in this area. The Government is therefore concerned to ensure that the benefits from overseas investments in rural land are genuinely substantial and identifiable.*

202. The rural land directive provides that the following factors will generally be of high relative importance:
    (a) The 'jobs' factor;
    (b) The 'new technology or business skills' factor;
    (c) The 'increased exports receipts' factor;
    (d) The 'increased processing of primary products' factor; and
    (e) The 'oversight and participation by New Zealanders' factor.
203. We do not consider that any other factor should be given high relative importance in the context of this Investment.
204. Our initial recommendation was to grant consent to the Investment.
205. Ministers had concerns regarding the levels of benefit to New Zealand associated with the Investment and in particular whether the benefits to New Zealand proposed by the Investment were substantial and identifiable.
206. The Applicant was asked to provide further submissions in relation to its benefit claims. From the further submissions received and after careful consideration, we consider the following benefits are likely to result from the Investment:

(a) The creation of at least a net of nine full time equivalent roles including an operations manager and wine specialists mostly in the Marlborough region to continue to develop the premium brands of the Applicant in New Zealand and internationally. Job creation is a factor of high relative importance;

(b) Increased export receipts through the combination of Mt Difficulty's product lines with the Applicant's existing premium wine labels to create mixed case and container shipments to the Applicant's overseas distribution channels. Increased export receipts is a factor of high relative importance;

(c) Greater efficiencies through the Mt Difficulty winery being able to focus on processing of red grape varietals and through the use of the Applicant's centralised bottling facility and centralised administration;

(d) The introduction of capital into New Zealand for development purposes including approximately $3,000,000 to undertake upgrades to the Applicant's Grove Mill facility in Marlborough, for the construction of a restaurant at the Applicant's Te Kairanga Vineyard and providing expedited funding to purchase a glass de-palletiser and undertake upgrades to a barrel facility at Te Kairanga Vineyard;

(e) Being a reputable repeat investor in New Zealand in the viticulture and hospitality sectors; and

(f) New Zealanders having oversight and the ability to participate in the Investment as the Applicant is an NZAX listed entity.

207. The Applicant's Investment Plan focuses on increasing export receipts of Mt Difficulty products.

Assessment of the "Benefit to New Zealand criteria"

208. Section 16 of the Act requires Ministers to decide, amoung other things, whether they are satisfied that the granting of consent is likely to result in substantial and identifiable benefits to New Zealand, as determined by the relevant Ministers.

209. The application of the benefit to New Zealand criteria involves the exercise of Ministerial judgement. The fact that responsibility for making this decision has been conferred on Ministers confirms that this is a high-level decision with significant policy content. That is also apparent from the language and content of the factors that must be considered, many of which require a high degree of evaluative judgement, and are not capable of quantification or calculation.

210. In applying the benefit to New Zealand criteria, Ministers are required to consider each of the factors in section 17(2), determine which of the factors are relevant to the investment, and have regard to the relevant section 17(2) factors. The relative importance to be given to each factor is a matter to be determined by Ministers. It is a matter for you, in carrying out your overall evaluation, to decide what weight to give to each factor.

211. 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.

Benefits not likely to occur

212. We considered that the factors below were either not relevant to the Investment or a benefit to New Zealand was unlikely to arise with regard to those factors. The Applicant made submissions in relation to some of these factors. However, we were **not** satisfied that the evidence provided showed that these benefits were likely to result from the Investment.

213. The following factors were therefore not met:

Factor	**Reason not met / not relevant**
New technology or business skills – 17(2)(a)(ii) - **high relative importance**	The Applicant has submitted that this factor is not relevant as no new technology or business skills will be introduced and we agree.
Increased processing of primary products – 17(2)(a)(vi) - **high relative importance**	The Applicant submits that this Investment is likely to result in increased processing of primary products through its commitment to producing, bottling, labelling and packaging its wines in New Zealand. The Applicant submits that several vineyards undertake in-market bottling which results in a large amount of processing in the wine production process being undertaken overseas. Mt Difficulty currently processes all of its wine locally and does not undertake any in market bottling practices therefore the Applicant's claims are unlikely to result in benefit beyond what is currently happening under the counterfactual. The Applicant has made Further Submissions in relation to this factor and note that the upgrading of Grove Mill Winery will lead to increased processing of primary products. While the increased production capacity may lead to more processing, the processing will likely be of grapes that would otherwise be processed by another vineyard in New Zealand. With this in mind, this Investment will not result in the increased processing of primary products in New Zealand.
Indigenous vegetation/fauna – 17(2)(b)	The Applicant submits that this factor is not relevant as there is no significant indigenous vegetation or significant habitats of indigenous fauna on the Land. We have consulted with the Department of Conservation in relation to the Land who have outlined that they are not aware that there is any flora, fauna or public access that require protection on the Land as there are already adequate mechanisms in place.

Factor	Reason not met / not relevant
Trout, salmon, wildlife and game – 17(2)(c)	The Applicant submits that this factor is not relevant as there is no significant habitats of trout, salmon or wildlife on the Land and we agree.
Historic heritage – 17(2)(d)	The Applicant submits that this factor is not relevant as there is no historic heritage on the Land and we agree.
Walking access – 17(2)(e)	The Applicant submits that this factor is not relevant as there is no public access required as much of the Land is planted in vineyards. We have consulted with the Walking Access Commission in relation to the Land who has not recommended any new access in relation to the Land as much of the Land is subject to Part IVA of the Conservation Act 1987.
Offer to sell seabed/foreshore/riverbed to the Crown – 17(2)(f)	The Applicant submits that this factor is not relevant as there is no qualifying special land associated with the Land and we agree.
Consequential benefits – 28(a)	The Applicant submits that this factor is not relevant as there are no consequential benefits proposed and we agree.
Key person in a key industry – 28(b)	The Applicant submits that this factor is not relevant as there is no introduction of a key person in a key industry as a result of this Investment and we agree.
Affect image, trade or international relations – 28(c)	The Applicant submits that Bill Foley is a high profile, high net worth individual and declining the Investment is likely to negatively affect his attitude to investing in New Zealand which could have negative implications for New Zealand. We are not of the view that declining this Investment is likely to negatively affect New Zealand's image, trade or international relations as this could be mitigated by a well reasoned decline and therefore this factor is not met.
Owner to undertake other significant investment – 28(d)	The Applicant submits that this factor is not relevant as the shareholders of Mt Difficulty do not intend to undertake any other significant investment in New Zealand as a result of this Investment and we agree.
Advance significant Government policy or strategy – 28(f)	The Applicant submits that the Investment advances a Government policy through employing local people in rural New Zealand at its vineyards. The Applicant has failed to identify a key significant Government policy or strategy that the Investment will advance.

Factor	Reason not met / not relevant
Enhance the viability of other investments – 28(g)	The Applicant submits that this Investment will enhance the on-going viability of its other investments by achieving efficiencies and synergies. The efficiencies to be achieved as a result of this Investment have already been considered under another factor and therefore have not been considered under this factor.
Strategically important infrastructure – 28(h)	The Applicant submits that this factor is not relevant as the Investment does not relate to any strategically important infrastructure and we agree.
Economic interests – 28(i)	The Applicant submits that this factor is relevant as the Investment will result in Mt Difficulty becoming a more reliable supplier of grapes. We do not consider that this factor has been adequately addressed and therefore consider that the Investment is unlikely to affect New Zealand's economic interests.

Has the farm land been offered on the open market?

Farm land advertising - s16(1)(f)

> 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 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.

214. 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 offers will be accepted for that longer period).

215. Section 20(a) of the Act provides for Ministers to exempt investments from the need to meet this criterion by reason of the circumstances relating to the particular overseas investment, interest in land, or rights or interests in securities.

Agreement for sale and purchase

216. The Applicant and Mt Difficulty entered into an agreement for sale and purchase for the Mt Difficulty assets on 14 November 2017. The assets being purchased include farm land and other assets that are neither farm land nor sensitive assets in their own right (e.g. the Mt Difficulty business).

217. The Applicant and Mt Difficulty included within the agreement for sale and purchase, a clause that Mt Difficulty would advertise the Land in accordance with the farm land advertising requirements under the Act.

Advertising

218. The Land was advertised by Colliers International Group Inc, on behalf of Mt Difficulty, from 14 December 2017 until 2 February 2018 as follows:

(a) An information memorandum was prepared and supplied to interested parties; and

(b) The Land was advertised through multiple mediums including print and websites for a period of 20 working days.

219. The advertising:

(a) Was limited to the farm land being purchased and excluded the Mt Difficulty business;

(b) Did not include a number of leasehold interests (the Additional Leases) that were added to the application in July 2018 and therefore did not include all of the Land covered by this application; and

(c) Occurred after the Applicant and Mt Difficulty entered into the initial sale and purchase agreement was entered into but allowed for Mt Difficulty to accept an alternative offer from a non-overseas person.

Complaint

220. On 5 March 2018, a complaint was received alleging that Mt Difficulty's farm land advertising process did not comply with the spirit of the Act. The complainant cited two issues:

(a) only the Land was advertised and not the wider winery business which was not a valid commercial offering due to its impact on the value of the winery; and

(b) the Vendor did not engage genuinely with the complainant (a New Zealand investment fund manager) in regard to their interest in acquiring the assets or their requests for further information.

221. The complainant's view is that the advertising either did not comply or that the advertising process set out in the Regulations is flawed.

Applicant submissions

222. The Applicant considers that the advertising was genuine and, other than for the additional leases, met the requirements of the Act and Regulations. In terms of the advertising the Applicant notes:

(a) It approached the OIO about the possibility of an exemption from the requirement to advertise and the OIO could not provide any comfort that one would be granted;

(b) The advertising process was run by Mt Difficulty and it engaged Colliers International to ensure that the advertising was undertaken in an appropriately professional manner;

(c) Nothing in the agreement prevented an alternative New Zealand party making an offer for the entire business despite the fact that only the land was being advertised, and doing so knowing the Applicant's publicly disclosed purchase price;

(d) The farm land advertising rules clearly state that only the farm land itself needs to be advertised, and also state that it only needs to be advertised for 20 working days (which is often not, in any event, long enough for a party to obtain enough information to make an offer for a business such as Mt Difficulty); and

(e) If the process prescribed by the Act gives rise to commercially challenging scenarios that the legislature wishes to resolve, then this will require an amendment to the terms of the legislation itself.

223. In terms of the Additional Leases, the Applicant seeks an exemption from the requirement to advertise for the following reasons:

(a) Advertising the Land is neither practical or workable;

(b) Mt Difficulty is only the tenant of the relevant land;

(c) Only a sublease couldbe offered; and

(d) Mt Difficulty has no interest in offering a sublease as in doing so (the owner of the land is not party to the agreement and has no involvement in the consent process).

OIO assessment

224. The Act requires that the *farm land* be offered for acquisition on the open market to persons who are not overseas persons in accordance with the procedure set out in regulations. Mt Difficulty have technically complied with the requirements of the Act (other than for the additional leases) as they advertised the farm land on the open market for the required timeframe at the time of the application being lodged.

225. We note that the advertising requirements do not always work well for integrated assets (i.e. where the farm land is being purchased alongside other assets which do not require advertising).

226. Advertising can, and often does, occur after an agreement for sale and purchase has been entered into. This is permitted under the Act provided that the vendor has the ability to accept an alternative offer from a non-overseas person in their agreement (which is the case here). There is no requirement that the vendor must accept such an offer and information provided to the OIO indicates that Mt Difficulty was unlikely to sell the land separately from the business or sell the business and the land to someone who "would not respect [Mt Difficulty's] strong heritage (for example a private equity investor)".

227. It is acknowledged that the current requirements can cause frustration for potential purchasers, particularly when they expect to engage with a vendor who is seeking to sell rather than being required to advertise. We have explained this situation to the complainant and advised The Treasury of these issues so they may consider whether any changes are required as part of their on-going review of the Act.

228. Ultimately, it is our view that while the advertising was not ideal, it does comply with the requirement to advertise but for the Additional Leases. Having regard to the specific circumstances, we consider there to be little utility in requiring the advertising of the Additional Leases given the short term nature of these and therefore recommend that an exemption from the section 16(1)(f) criterion be granted.

Consent criteria

229. As detailed above, we are satisfied that the criteria in section 16 are met, and therefore consent should be granted to the Investment.

Third Party Submissions

230. No third party submissions were received.

Appendices

Appendix 1 - Proposed Decision

Land Information New Zealand
Toitū te whenua

Consent for Overseas Person to Acquire Sensitive New Zealand Land

Read this consent carefully - you must comply with all the conditions. If you do not, you may be required to dispose of the land and/or be subject to fines or other penalties.

Consent

Decision date: [date]

The following people have been given the following **consent**:

Case	201810030
Consent	Foley Family Wines Limited may acquire the Land subject to the Conditions set out below.
Consent holder/s	Foley Family Wines Limited We will also refer to the Consent holder as **you**.
Land	You may acquire the following interests in land: 1. a freehold interest in approximately: i. 2.2270 hectares at Felton Road, being land comprised of computer freehold register 467462; ii. 8.7668 hectares at Felton Road, being land comprised of computer freehold register 467463; iii. 0.2023 hectares at Felton Road, being land comprised of computer freehold register 706527; iv. 10.6364 hectares at Felton Road, being land comprised of computer freehold register 311424; v. 7.7100 hectares at Felton Road, being land comprised of computer freehold register OT18A/420; vi. 10.7946 hectares at Felton Road, being land comprised of computer freehold register 82763; vii. 40.9880 hectares at Luggate-Cromwell Road, being land comprised of computer freehold register 142422; and viii. 7.6231 hectares at Target Gully, being land comprised of computer freehold register OT15D/952. 2. a leasehold interest for the term of the existing lease and

	any right of renewal currently in the existing lease in approximately: i. 24.6200 hectares at Luggate-Cromwell Highway 6;, being land comprised of computer freehold register 122198; ii. 12.2780 hectares at Loop Rd, being land comprised of computer freehold register 97275; iii. 2.2219 hectares at Felton Road, being land comprised of computer freehold register 82762; iv. 0.5700 hectares at Cairnmuir Road, being land comprised of computer freehold register OT17B/626; v. 0.400 hectares at Cairnmuir Road, being land comprised of computer freehold register OT17B/627; vi. 4.8800 hectares at Felton Road, being land comprised of computer freehold register 124232 and 124233; vii. 0.9300 hectares at Felton Road, being land comprised of computer freehold register 233110; viii. 6.5919 hectares at Ferris 1, being land comprised of computer freehold register OT17A/102; ix. 5.4 hectares at Inlet Vineyard, being land comprised of computer freehold register 602771; x. 2.18 hectares at Redback (Cairnmuir) Vineyard, being land comprised of computer freehold register 55400; xi. 8 hectares at Serendipity Ceres, being land comprised of computer freehold register 509407; xii. 8.7200 hectares at Luggate-Tarras Road, being land comprised of computer freehold register 778169; xiii. 7.5648 hectares at Felton Road, being land comprised of computer freehold register 360797; xiv. 1.46 hectares at Black Rabbit Vineyard, being land comprised of computer freehold register 17929; and xv. 5.55 hectares at Golden Hills, being land comprised of computer freehold register OT141/249.
Timeframe	You have 12 months after the date of consent to acquire the Land.

Conditions

Your Consent is subject to the Special conditions, Standard Conditions and Reporting conditions (**Conditions**) set out below. You must comply with them all. Be aware that if you do not comply with the Conditions you may be subject to fines or other penalties, and you may also be required to dispose of the Land.

In the Consent and the conditions, we refer to the Overseas Investment Office as **OIO, us or we**.

Special conditions

You must comply with the following **special conditions**. These apply specifically to this Consent and were considerations that particularly influenced us to give consent:

Details	Required date
Special condition 1: Restaurant development at Te Kairanga	
1. You must construct and open a new restaurant at the Te Kairanga Vineyard in Martinborough (estimated cost $1m) that can accommodate at least 50 seats.If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.	By 30 September 2021
Special condition 2: Restaurant development at Mt Difficulty	
1. You must continue progressing Mt Difficulty's existing resource consent application lodged with the Otago District Council on 5 July 2018 for the development of the restaurant and cellar door as described within the resource consent application ("**Restaurant Development**").	On-going
2. You must undertake all necessary endeavours to obtain resource consent and any other necessary local authority consents to undertake the Restaurant Development	By 30 September 2019
3. If resource consent is obtained to develop the restaurant at Mt Difficulty, you must begin construction.	By 30 September 2021
4. If resource consent is obtained to develop the restaurant at Mt Difficulty, you must complete the development (as set out in the resource consent) and begin operating the restaurant (estimated cost $3m). If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.	By 30 September 2023
Special condition 3: Capital developments	
1. You must purchase and install a new glass 'de-palletiser' at the Consent Holder's bottling and warehousing facility in Blenheim (estimated cost $250k), to automate the process of taking empty glass bottles to	By 30 September 2019

the bottle filler;	
2. You must construct a new barrel facility at 'Te Kairanga' winery (estimated cost $1m); and	By 30 September 2020
3. You must complete the staged upgrade of primary processing capacity at the Grove Mill winery from 3,000 tonnes to 4,000 tonnes (estimated cost $2.15m).	By 30 September 2022
4. You must introduce the funds mentioned above into New Zealand for the purpose of the developments.	
If you do not do any of the above, standard condition 6 will apply and we may require you to dispose of the Land.	
Special condition 4: Jobs	
1. You must retain at least 15 full-time equivalent roles and 10 part-time equivalent roles (of at least 25 hours per week) at Mt Difficulty, Cromwell.	On-going
2. You must create at least seven new full-time equivalent roles including a wine specialist role, a quality assurance role and a managerial role within Foley Family Wines Limited.	By 30 September 2020
3. In addition to 2, you must create at least four new full-time equivalent roles at the Te Kairanga restaurant.	By 30 September 2021
4. If resource consent is obtained to develop the restaurant at Mt Difficulty, you must create at least five new full-time equivalent roles at the Mt Difficulty Vineyard in Cromwell.	By 30 September 2023
If you do not do any of the above, standard condition 6 will apply and we may require you to dispose of the Land.	

Standard conditions

You must also comply with the **standard conditions** set out below. These apply to all overseas people who are given consent to acquire sensitive New Zealand land, including you:

Details	Required date
Standard condition 1: acquire the Land	
You must acquire the Land: 1. by the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Land, and	As stated in the Consent

2. using the acquisition, ownership and control structure you described in your application. Note, only you – the named Consent holder - may acquire the Land, not your subsidiary, trust or other entity.	
Standard condition 2: tell us when you acquire the Land	
You must tell us in writing when you have acquired the Land. Include details of: 1. the date you acquired the Land (**Settlement**), 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the Land, and 4. copies of any transfer documents and Settlement statements.	As soon as you can, and no later than two months after Settlement
Standard condition 3: allow us to inspect the Land	
Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions. We will give you at least two weeks' written notice if we want to do this. You must then: 1. Allow a person we appoint (**Inspector**) to: (a) enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (**Inspection**), (b) remain there as long as is reasonably required to conduct the inspection, (c) gather information, (d) conduct surveys, inquiries, tests and measurements, (e) take photographs and video records, and (f) do all other things reasonably necessary to carry out the Inspection. 2. Take all reasonable steps to facilitate an Inspection including: (a) directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection, (b) being available, or requiring your employees, agents, tenants or other occupiers to be available,	At all times

at all reasonable times during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required. During an Inspection: (a) we will not compel you and your employees, agents, tenants or other occupiers to answer our questions or to let us look at, copy or take away documents, (b) our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection.	
Standard condition 4: remain of good character	
You and the Individuals Who Control You: 1. must continue to be of good character, and 2. must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009. In summary, these sections describe convicted or deported people who are not eligible for visa or entry permission to enter or be in New Zealand and people who are considered likely to commit an offence or to prevent a threat or risk to security, public order or the public interest. The **Individuals Who Control You** are individuals who: (a) are members of your governing body, (b) directly or indirectly, own or control 25% or more of you or of a person who itself owns or controls 25% or more of you, and (c) are members of the governing body of the people referred to in paragraph (b) above.	At all times
Standard condition 5: tell us about changes that affect you, the people who control you, or people you control	
You must tell us in writing if any of the following events happens to any of the Consent holders: 1. You, any Individual Who Controls You, or any person in which you or any individual who controls you hold (or at the time of the offence held) a 25% or more ownership or control interest commits an offence or contravenes the law anywhere in the world. This applies whether or not you or they were convicted of the offence. In particular, please tell us about any offences or contraventions that you are charged with or sued over and any investigation by enforcement	Within 20 working days after the change

or regulatory agencies or professional standard bodies. 2. An Individual Who Controls You ceases to be of good character; commits an offence or contravenes the law (whether they were convicted or not); becomes aware of any other matter that reflects adversely on their fitness to have the Land; or becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (see standard condition 4). 3. You cease to be an overseas person or dispose of all or any part of the Land. 4. You, any Individual Who Controls You, or any person in which you or any Individual Who Controls You hold (or at the time of the event held) a 25% or more ownership or control interest: (a) becomes bankrupt or insolvent (b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or (c) becomes subject to any form of external administration.	
Standard condition 6: dispose of the Land if you do not comply with key Special conditions	
Some of the special conditions were key to the decision to give consent. If we consider you have failed to comply with one of those Special conditions in a material way we may require you to dispose of the Land. We may also require you to execute a security deed before you may acquire the Land. The security deed: 1. must be in the form we require, 2. must be executed and delivered to us before you acquire the Land, 3. gives us power to appoint a receiver to dispose of the Land if you do not do that as required by this Standard condition 6, 4. will provide, among other things, that if we appoint a receiver, the receiver may dispose of the Land, deduct his or her costs from the proceeds of sale, and pay the remainder to you. If all or part of this Standard condition 6 applies to a Special condition, we have said so in that condition. We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:	

1.	**Value the Land:** obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.	Within six weeks of the date of our notice.
2.	**Market the Land**: instruct a licensed real estate agent to actively market the Land for sale on the open market.	Within six weeks of the date of our notice.
3.	**Dispose of the Land**: dispose of the Land to a third party who is not your associate.	Within six months of our notice.
4.	**Offer without reserve**: offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.	Within nine months of our notice.
5.	**Report to us about marketing**: tell us in writing about marketing activities undertaken and offers received for the Land.	By the last day of every March, June, September and December after our notice or at any other time we require.
6.	**Report disposal to us**: send us, in writing, evidence: (a) that you have disposed of the Land, (a) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor), (b) the purchaser is not your associate.	Within one month after the Land has been disposed of.

Reporting conditions

We need information from you about how your Investment Plan is tracking so we can monitor your progress against the Conditions and so we can measure the benefits you have brought to New Zealand through your investment.

Every year, you must lodge an **annual report.** It must:

1. be sent to **oiomonitoring@linz.govt.nz** by these dates:
   - (a) Year one: 30 November 20190
   - (b) Year two: 30 November 2020
   - (c) Year three: 30 November 2021
   - (d) Year four: 30 November 2022
   - (e) Year five: 30 November 2023
   - (f) Year six: 30 November 2024
2. contain information about:
   - (a) your progress in implementing Special Condition 1, 2 and 3;
   - (b) your progress on your five year export plan including details of the increased exports which have resulted from the investment, by sale value and number of bottles or cases, including information showing:
     - (i) A breakdown by export market;
     - (ii) Any increase in exports of Mt Difficulty products; and
     - (iii) Comment on how export growth is tracking against the 5 year estimates provided on page 31 of the investment plan.
   - (c) the number and type of jobs created as a result of the investment including location, job title, salary band and location of the jobs:
3. follow the format of the template annual report published on our website.

Appendix 2 - Instructions

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

"Benefit to New Zealand criteria"

3. In this case, section 16 requires Ministers to decide, among other things, whether they are satisfied in relation to the following "benefit to New Zealand" criteria:

   (a) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined under section 17 (section 16(1)(e)(ii)); and

   (b) that benefit will be, or is likely to be, substantial and identifiable (section 16(1)(e)(iii)).

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

Justice Miller's "with and without test"

Economic factors

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

Non- economic factors

8. 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[1] 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. However, we consider that Ministers should not give weight to benefits that are likely to result in any event.

Regulation 28 factors

9. 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.[2]

10. 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.

"Rural Land" Directive

11. The overseas investment involves the acquisition of 'rural land' being land that is non-urban and over 5 hectares in size (excluding any associated land), but excludes 'forest land'. Therefore, in accordance with directions from Ministers, we have treated the following factors as being of high relative importance:[3]

    (a) the "jobs" factor (section 17(2)(a)(i));

    (b) the "new technology or business skills" factor (section 17(2)(a)(ii));

    (c) the "increased exports receipts" factor (section 17(2)(a)(iii));

    (d) the "increased processing of primary products" factor (section 17(2)(a)(vi)); and

    (e) the "oversight and participation by New Zealanders" factor (regulation 28(j)).

Conditions

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

13. If you wish to make any changes to the conditions of consent, those changes should be discussed with the Overseas Investment Office, and the other Minister, before being finalised.

Decision

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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[1] *Tiroa E* at [36].
[2] *Tiroa E* at [36].
[3] Ministerial Directive letter date 28 November 2017, paras 13-17.

15. If you propose to disagree with the decision of the other Minister, you should discuss your proposed decision with the Overseas Investment Office and the other Minister.

16. If required, staff from the Overseas Investment Office are available to brief you on the Office's recommendations.

Appendix 3 - Sensitive Land

1. Central Otago

Land Interest	**Leasehold Interest** (approximately 109.8143 hectares), **Freehold Interest** (approximately 70.5305 hectares)
CTs	122198, 124232 & 124233, 142422, 17929, 233110, 311424, 360797, 467462, 467463, 509407, 55400, 602771, 706527, 778169, 82762, 82763, 97275, OT141/249, OT15D/952, OT178/626, OT178/627, ot17a/102, OT18A/420 (Otago)
Sensitivity	Is more than 5 hectares of non-urban land
	Includes land that is held for conservation purposes under the Conservation Act 1987
	Adjoins land that is over 0.4 hectares and is held for conservation purposes under the Conservation Act 1987
	Adjoins land that is over 0.4 hectares and is a scientific, scenic, historic, or nature reserve under the Reserves Act 1977 that is administered by the Department of Conservation
	Adjoins land that is over 0.4 hectares and is listed, or in a class listed, as a reserve, a public park, or other sensitive area by the regulator under s37
	Adjoins land that is over 0.4 hectares that includes a historic place, historic area, wahi tapu, or wahi tapu area that is entered on the New Zealand Heritage List/Rarangi Korero or for which there is an application that is notified under section 67(4) or 68(4) of the Heritage New Zealand Pouhere Taonga Act 2014