

To: Clare Needham, Acting Manager Applications, Overseas Investment Office

ASSESSMENT REPORT: Millbrook Country Club Limited

Date	16 August 2019	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	201900165	Priority	High

Action Sought

Decision Maker	Action	Suggested Deadline
Clare Needham, Acting Manager Applications, Overseas Investment Office	<ol style="list-style-type: none"> Review the attached report and decide whether to grant consent to the application Forward the report and attachments to the Primary Assessor 	30 August 2019

LINZ Contacts

Name	Position	Contact number	First contact
Clare Needham	Acting Manager Applications	+64 4 462 4469	<input checked="" type="checkbox"/>
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ASSESSMENT REPORT: Millbrook Country Club Limited

Overview

Purpose

1. We seek your decision on the application by Millbrook Country Club Limited under the Overseas Investment Act 2005 ("Act") to acquire a freehold interest in approximately 1.875 ha of land in Arrowtown for \$1,500,000.
2. This application is delegated because the purchase price is less than \$2 million, and the relevant land is also less than 30 hectares and does not contain any foreshore, seabed, or lakebed. Accordingly, the application fits into Table A, section C, paragraphs 3 & 7 of the Ministerial delegation letter dated 17 October 2018.

Key information

Applicant	Millbrook Country Club Limited (Japan 100%)
Vendor	Waterfall Park Developments Limited (New Zealand 85%, United States of America 15%)
Consideration	\$1,500,000
Application type	Sensitive land - not residential (Benefit to New Zealand – Substantial & Identifiable)
Relevant tests	<ul style="list-style-type: none">• Investor test (s16(1)(a)-(d) of the Act)• Benefits test – substantial and identifiable benefits (s16(1)(e)(ii) and (iii) of the Act) <p>Transitional note: The contract for this transaction was entered prior to commencement of the Overseas Investment Amendment Act 2018. The versions of the Overseas Investment Act 2005 and Overseas Investment Regulations 2005 in force immediately prior to commencement of the Amendment Act continue to apply to this application. This is consistent with the Transitional provisions in Schedule 1AA of the Overseas Investment Act 2005.</p>

3. Please refer to the **A3 in Attachment 7** for overview tables summarising the application and the assessment of the Overseas Investment Office (OIO).

Provisional recommendations

4. Our provisional recommendation is to **grant consent**.
5. If you agree to grant consent, we recommend that you make the determinations set out in paragraphs 6 to 9 below.

[s 9(2)(a)]

Daniel Mumford

Senior Solicitor

Date: 16 / 8 / 2019

Decision

6. I determine that:

- 6.1 the '**relevant overseas person**' is (collectively):

Entity	Relationship
Millbrook Country Club Limited	Applicant
Millbrook Holdings (NZ) Limited	100% owner of the Applicant
Gota Ishii	25% or more owner of the Applicant

- 6.2 the '**individuals with control of the relevant overseas person**' are:

Individual	Role
Gota Ishii	Directors of Millbrook Country Club Limited and Millbrook Holdings (NZ) Limited
Bernard ("Ben") Campbell O'Malley	
Brian John Howie	
Brian John Spicer	

- 6.3 the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment;
- 6.4 the relevant overseas person has demonstrated financial commitment to the overseas investment;
- 6.5 all the individuals with control of the relevant overseas person are of good character; and

- 6.6 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 (which sections list certain persons not eligible for visas or entry permission under the Immigration Act); and
7. I am satisfied that the investor test, as outlined in paragraph 6 above, has been met; and
8. I am satisfied, in relation to the benefits test, that:
- the criteria for consent in section 16 have been met;
 - the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
 - the benefit will be, or is likely to be, substantial and identifiable.
9. Consent is granted to the investment in the form of the Proposed Decision in **Attachment 1**.

[s 9(2)(a)]

Clare Neenan

Acting Manager Applications (Overseas Investment Office)

Date: 16 / 8 / 2019

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Executive summary

10. Millbrook Country Club Limited ("**Applicant**") seeks consent to acquire a freehold interest in approximately 1.875 hectares of land in Arrowtown ("**Land**") for \$1,500,000.
11. The Land is comprised of three small parcels (coloured blue red and green on the photo below) that each adjoin Millbrook Resort in Arrowtown.



12. The Land is not farm land as it is currently undeveloped land, and is not used principally or exclusively for agricultural, horticultural, or pastoral purposes, or for the keeping of bees, poultry, or livestock.
13. The location of the Land in New Zealand is marked with a red pin in the map below left. Millbrook Resort is outlined in a broken black line in the plan below right.



14. The Applicant was formed in 1988 to acquire, own, develop, and operate Millbrook Resort. Millbrook Resort is a five-star resort with golfing, accommodation, conference, restaurant, and health and fitness facilities as well as lifestyle and accommodation living near Arrowtown.
15. The Applicant is ultimately owned by Japanese shareholders with the largest individual shareholder being Gota Ishii who holds [s 9(2)(b)(ii)] of the shares.
16. The Applicant intends to acquire the Land to provide additional development options for adjoining land owned by the Applicant and to increase the amenity values of the resort ("**Investment**").
17. The owner of the Land is Waterfall Park Developments Limited ("**Vendor**"), a New Zealand incorporated company that is involved in land development and subdivision.

18. The benefits to New Zealand that are likely to result from this investment include:

Strong weighting		Additional investment for development purposes
Moderate weighting		Jobs Export receipts Previous investments Enhanced viability

19. Guidance for applying the Act is set out in **Attachment 2**.

Timeframes

20. The agreement for sale and purchase of the Land was signed on 4 October 2018 and requires the satisfaction of the OIO consent condition by 30 August 2019 (following the exercise of extensions).

21. Processing days for the application to date are:

Quality Assurance	OIO Processing	Waiting for Applicant / Vendor	Third party consultation
3	47	34	0

Applicant and investor test

22. This section describes the applicant, and whether the investor test criteria in the Act are likely to be met.

Who is making the Investment

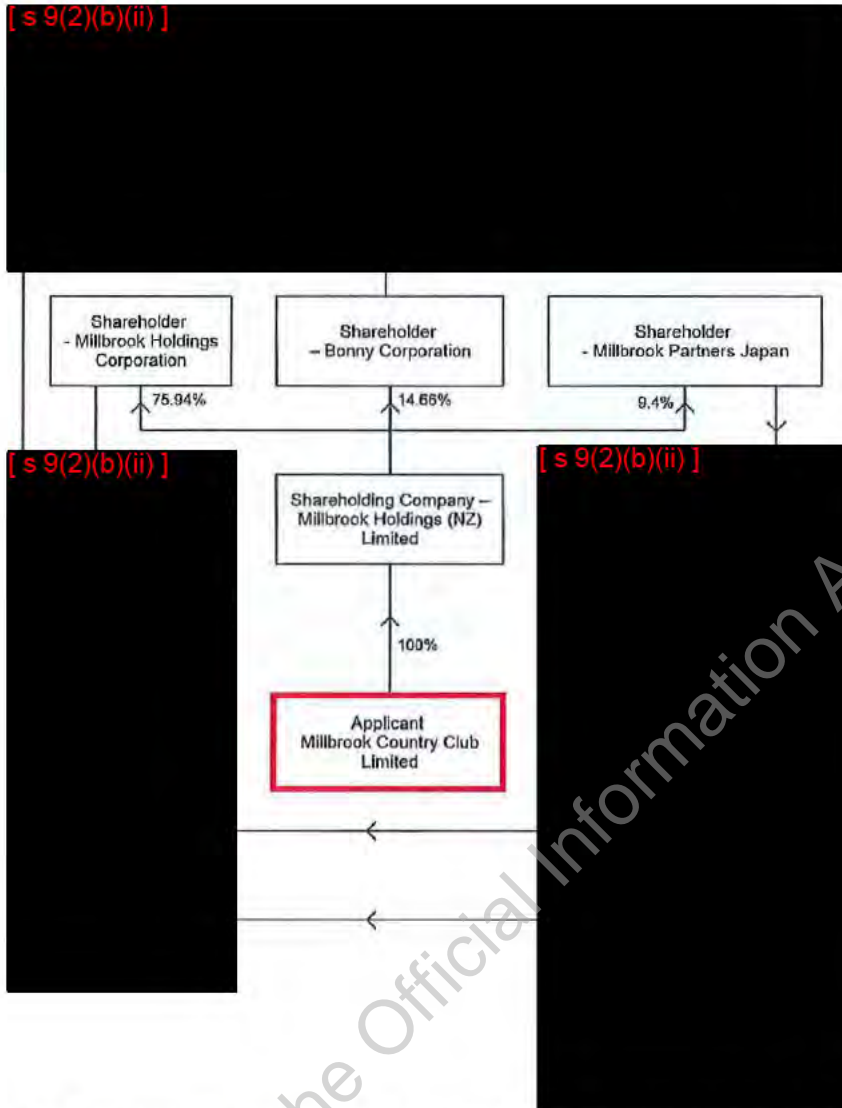
23. The Investment is being made by the Applicant, a company incorporated in New Zealand on 22 April 1988.
24. The Applicant was formed to acquire, own, develop, and operate Millbrook Resort. Millbrook Resort is a five-star resort with golfing, accommodation, conference, restaurant, and health and fitness facilities as well as lifestyle and accommodation living near Arrowtown.
25. Millbrook Resort consists of:
- a Championship 27 hole golf course;
 - five-star luxury accommodation;
 - an award-winning luxury day spa;
 - a health and fitness centre;
 - various conference and event venues; and
 - four on-site restaurants.
26. The Applicant also owns and operates a world-class country club at Millbrook Resort, and develops and then sells residential properties (both land only packages and house and land packages) within the Millbrook Resort precinct.
27. The Applicant has previously received a number of consents under the Act (see **Attachment 3** for details of previous investments).

Overview of assessment: investor test

Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
Relevant overseas persons (ROP) and individuals with control (IWCs) confirmed	ROP/IWC identified	ROP and IWCs identified	Paras 34-35. Section 15 of the Act.
Collectively have business experience and acumen relevant to the investment	Test met	ROP and IWCs have relevant business experience and acumen in property and resort operations	Paras 36-37. Sections 16(1)(a) of the Act.
ROP demonstrated financial commitment	Test met	ROP has entered into an agreement for sale and purchase and has engaged professional advisors	Sections 16(1)(b) of the Act.
Good character	Test met	We are satisfied the IWCs are of good character	Paras 38-40 and Attachment 6. Sections 16(1)(c) of the Act.
Not an individual of the kind ineligible for a visa or entry permission under ss 15 or 16 of the Immigration Act 2009	Test met	We are satisfied the IWCs are not ineligible for a visa or entry permit into New Zealand	Sections 16(1)(d) of the Act.

Ownership and control of the Applicant

28. The Applicant is a New Zealand incorporated company that is wholly-owned by its parent company Millbrook Holdings (NZ) Limited.
29. Millbrook Holdings (NZ) Limited is ultimately owned by Japanese shareholders (via intermediary companies), with the largest individual shareholder being Gota Ishii who holds s 9(2)(b)(ii) of the shares.
30. The corporate structure of the Applicant (outlined in red) is set out in the diagram below:



31. The Applicant is controlled by its directors, who are the same directors of the parent company Millbrook Holdings (NZ) Limited.
32. The day-to-day management of the Investment will be undertaken by Ben O'Malley, the Director of Property and Development for the Applicant. Two of the directors (Gota Ishii and Eiichi Ishii) have authority to approve significant capital expenditure and operating expenditure. The other directors can make such a decision provided that approval from the board is first obtained.
33. A Project Development Plan ("PDP") is prepared for each property development project and is signed off by the board. The PDP sets out the framework for the project so that once it is signed off by the board, the Director of Property and Development has authority to award all contracts expected within the PDP.
34. We have determined that the 'relevant overseas person' ("ROP") is (collectively):

Entity	Relationship
Millbrook Country Club Limited	Applicant
Millbrook Holdings (NZ) Limited	100% owner of the Applicant
Gota Ishii	25% or more owner of the Applicant

35. We have determined that the 'individuals with control of the relevant overseas person' ("IWCs") are:

Individual	Role
Gota Ishii	Directors of Millbrook Country Club Limited and Millbrook Holdings (NZ) Limited
Bernard ("Ben") Campbell O'Malley	
Brian John Howie	
Brian John Spicer	

Business experience and acumen

s16(2)(a) and 18(1)(a) of the Act.

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.

36. In this case, the Investment is the acquisition of land to provide additional development options for adjoining land owned and operated by the Applicant as Millbrook Resort.
37. We reviewed the biographical information provided by the Applicant for each of the individuals with control and note that they collectively have qualifications and extensive business experience in resort management, property development, asset management, project management, investment, finance, and accounting. The individuals with control have operational business experience relating to the development and operation of a lifestyle resort. As a result, the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the Investment.

Good character assessment

s16(2)(c) and 18(1)(c) of the Act.

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):

- 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);
- any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

38. The Applicant provided a statutory declaration stating that the IWCs are of good character, have not committed an offence or contravened the law as described above and know of no other matter that reflects adversely on their fitness to have the Investment. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957.
39. We also conducted open source background checks on the IWCs, as well as making enquiries with the Applicant in relation to certain matters. We found some matters relevant to this factor (details set out in **Attachment 6**), but none that would preclude a finding that all of the IWCs are of good character.
40. Therefore, we are satisfied that the IWCs are of good character.

Provisional conclusion – Investor test

41. Our provisional conclusion is that the investor test is met.

Investment and benefits test

42. This section describes the proposed investment, and our assessment of whether it is likely to meet the benefit criteria in the Act.

Summary of the proposed transaction and the Investment Plan

43. The Applicant intends to acquire the Land to provide additional development options for adjoining land owned by the Applicant and to increase the amenity values of Millbrook Resort. It is likely that most of the development will occur on the adjoining land that is part of Millbrook Resort, however the additional development proposed would be unlikely to occur if the Applicant could not acquire the Land.

44. The Applicant has submitted that over the last five years there has been significant growth in terms of demand and occupancy at Millbrook Resort. As a result, the Applicant is considering increasing its hotel accommodation and residential sites to meet this demand.

45. The Land is located in three separate and non-adjoining parcels (Lot 2, Lot 3, and Lot 5) that each adjoin different parts of Millbrook Resort.

46. As shown in the photo below, Lot 2 is coloured red, Lot 3 is coloured blue, and Lot 5 is coloured green. Millbrook Resort is located on the land immediately north of Lot 2 and Lot 3 and on the land immediately west and north of Lot 5.



47. Lot 2 is approximately 0.080 hectares in size, Lot 3 is approximately 0.065 hectares in size, and Lot 5 is approximately 1.730 hectares in size. In total the Land is approximately 1.875 hectares in size.

48. The three separate land parcels that comprise the Land will be amalgamated with the records of title for Millbrook Resort following subdivision.

49. The size and location of the Land will allow the Applicant to:

- Develop additional hotel accommodation and residential properties;
- Protect and enhance views of Lake Hayes for a five-star restaurant and villas in the resort; and

- Build or extend existing resort services (such as, the health and fitness centre).

Minimum Development

50. The minimum level of development the Applicant intends to undertake ("**Scenario 1**"), subject to resource consent where applicable, is set out below:
- (a) Lot 2 – Landscaping and planting (amenity value);
 - (b) Lot 3 – Landscaping, fencing, planting and weed removal (amenity value); and
 - (c) Lot 5 – Provide additional space for expanded development of hotel and seven residential sections with new dwellings (to be sold) on neighbouring land already owned by the Applicant.
51. The Applicant expects Scenario 1 would be completed within 15 years from acquisition of the Land. This timeframe takes account of the number of current development projects the Applicant needs to complete before starting Scenario 1, and also allows:
- (a) up to five years for the planning, design, and consenting process;
 - (b) up to one year for the land development (subdivision and infrastructure) process; and
 - (c) up to three years to complete the sales of the seven new residential allotments; and
 - (d) up to five years for the new owners of the seven residential allotments to construct their houses.
52. A plan of Scenario 1 (showing the approximate location and size of the seven residential sections on Millbrook Resort land) is below. Lot 5 is coloured red and land already part of Millbrook Resort is coloured green. Lots 2 and 3 are likely to be used solely for landscaping, amenity, and view protection and so do not feature on the development plan below.

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



Additional Development

53. The Applicant could potentially undertake further development of Millbrook Resort ("**Additional Development**") in addition to Scenario 1. The Additional Development includes two options, being Scenario 2 and Scenario 3, which are outlined in further detail below.

Scenario 2

54. The Scenario 2 development is expected to involve:
- (a) new hotel accommodation – likely to be a hotel with up to a maximum of [s 9(2)(b)(ii)] single hotel rooms;
 - (b) expansion of the health and fitness centre – likely to include additional outdoor spa pools and/or other outdoor facilities; and
 - (c) increased residential development – likely to be nine large residential allotments, each approximately 2,400 sqm in size, with new dwellings (to be sold).
55. A plan of the Scenario 2 development (showing the approximate location and size of the hotel and the nine residential sections on Millbrook Resort land as well as the Land) is below.

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



Scenario 3

56. The Scenario 3 development is expected to involve:
- (a) new accommodation – likely to be [s 9(2)(b)(ii)] ;
 - (b) expansion of the health and fitness centre – likely to include additional outdoor spa pools and/or other outdoor facilities;
 - (c) increased residential development – likely to be 30 small residential allotments, with seven allotments approximately 2,750 sqm in size and the other 23 allotments approximately 750 sqm in size, with new dwellings (to be sold).

57. A plan of the Scenario 3 development (showing the approximate location and size of the villas and the 30 residential sections on Millbrook Resort land as well as the Land) is below.

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



Comparison of proposed development options

58. The Applicant has prepared a business plan with a development summary table for each of the development scenarios. The table (that includes details of the expected development costs, timeframes for planning, development, and construction, as well as creation of jobs) is set out below:

	Scenario 1	Scenario 2	Scenario 3
Proposed No. of Residential Sites	7	9	30
No. of Hotel keys	0	0	[s 9(2)(b)(ii)]
Consents Required	OIO, Resource Consents for subdivision and land use (QLDC).	OIO, Resource Consents for subdivision and land use (QLDC)	OIO, Resource Consents for subdivision and land use (QLDC),
Likely Direct Development Costs.	[s 9(2)(b)(ii)]	[s 9(2)(b)(ii)]	[s 9(2)(b)(ii)]
Likely In-Direct Develop Costs (house construction)	[s 9(2)(b)(ii)]	[s 9(2)(b)(ii)]	[s 9(2)(b)(ii)]
Likely Planning, Design and Consenting Process Timeframe	Five years from OIO approval	Eight years from OIO approval	Ten years from OIO approval
Likely Land Development Timeframe	12 Months from consent approval	18 months from consent approval	Two years from consent approval
Likely House Construction Timeframe	5-8 years from completion of the Land Development	5-8 years from completion of the Land Development	5-18 years from completion of the Land Development
Likely Additional Staff Requirement post Development	Grounds Staff – 1.4 Home Maint – 0.25 Housekeeping 0.25 Front office/porters 0.1	Grounds Staff – 1.8 Home Maint – 0.3 Housekeeping 0.3 Front office/porters 0.12	Grounds Staff – 5 Home Maint – 1.5 Housekeeping 5 Front office/porters 2

59. The 'Likely Direct Development Costs' row in the table above sets out the likely development costs to be incurred by the Applicant (for subdivision, infrastructure, and sales costs) for each of the three development scenarios.
60. The 'Likely In-Direct Develop Costs (house construction)' row in the table above sets out the likely development costs to be incurred by the respective purchasers of the subdivided land allotments (for the construction of the dwellings) for each of the three development scenarios.

What is likely to happen without the investment (Counterfactual)

61. We consider that if the Investment does not occur, the most likely outcome is
 - (a) in the short-term the Vendor is likely to retain the Land;
 - (b) in the medium-term the Vendor is likely to sell the Land (along with other land owned by the Vendor) to an alternative New Zealand purchaser ("ANZP"), who would most likely use the land as part of a development.
62. The Land itself is on a slope and is immediately adjacent to land already part of Millbrook Resort. The highest and best use of the Land does appear to be to provide greater development options for the Applicant. Accordingly, there is a very limited ability for an ANZP to use the Land and create a greater level of benefit than the Applicant would under the investment.
63. In 2016 the Vendor submitted an Expression of Interest to Queenstown Lakes District Council to develop a Special Housing Area (Waterfall Park Special Housing Area) on land located on Arrowtown-Lake Hayes Road that currently contains the Land. If the Vendor intends to continue with this development, the sale of the Land to the Applicant does not appear to significantly diminish the viability or amenity of the proposed Waterfall Park development. Due to the contour of the Land, it is likely only to be used by the Vendor as landscaped open area. There is likely to be sufficient open space in the Waterfall Park development even if the investment proceeds and the Land is sold to the Applicant.
64. As the Applicant owns the adjoining land (being Millbrook Resort), it would be able to use the Land in a way that no other entity or person could do, especially noting the contour and shape of the Land. The Applicant would be able to allow the Land to be used as part of a development and put to its highest and best use, resulting in a greater level of benefit than would occur under the counterfactual.

Consultation and submissions about the investment

Consultation with Department of Conservation

65. We consulted with the Department of Conservation ("DOC") on whether the Land contained any areas of significant indigenous vegetation and significant habitats of indigenous fauna or any areas of significant habitats of trout, salmon, wildlife, and game.
66. DOC advised that there does not appear to be any significant indigenous vegetation on the Land as the vegetation appears to be exotic trees.
67. DOC also advised that the nearby Mill Stream is the site of a native fish called kōaro (classified as "at risk" gradual decline). However, the three areas that comprise the Land are not part of the bed of the stream.
68. As a result of our consultation with DOC, we consider that the Land does not contain any areas of significant indigenous vegetation and significant habitats of indigenous fauna or any areas of significant habitats of trout, salmon, wildlife, and game.

Consultation with Walking Access Commission

69. We consulted with the Walking Access Commission (“**WAC**”) on whether there are any issues around providing, protecting, or improving walking access over the Land.
70. WAC liaised with the Queenstown Trails Trust around the opportunity for public walking access over parts of the Land that connect with public walking access over parts of the Waterfall Park development that adjoin the Land. The connection of walking access over these two areas could allow the extension of walking trails and cycle trails across Arrowtown.
71. We examined the existing walking access areas in the vicinity and there does not appear to be any that would connect with the Land. The proposed Waterfall Park development to the immediate east of the Land could create some walking or cycle trails that might adjoin Lot 2, however any new walking access over Lot 2 would not connect to any other walking access areas, so would effectively be a dead end.
72. There also do not appear to be any features of significance in or around the Land for which walking access would be required. As such, there appears to be minimal benefit from providing walking access over the Land.
73. As a result of our consultation with WAC we consider that walking access should not be required over the Land.

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Overview of assessment: investment and benefit test

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Additional investment for development purposes	Additional investment for development purposes of approximately [s 9(2)(b)(ii)] for land subdivision, infrastructure, and landscaping	Unlikely to result in any additional investment for development purposes	Strong	Additional investment for development purposes	<ul style="list-style-type: none"> Notify the development option chosen by 31 August 2024 Consents required by 31 August 2025, 2028, or 2030 (depending on development option) Land development started by 31 August 2026, 2030, or 2032 (depending on development option) 	Paras 76-83. s17(2)(a)(v)
Job opportunities	<ul style="list-style-type: none"> Approximately 10 new direct FTE jobs (for 12 months) involved in landscaping and infrastructure Approximately 42 FTE indirect jobs (for 14 months) involved in building at least seven new dwellings 	Unlikely to result in the creation of any new jobs	Moderate	New jobs involved with infrastructure, landscaping, and house building	N/A	Paras 84-90. s17(2)(a)(i)
Increased export receipts	Increased annual export receipts of approximately [s 9(2)(b)(ii)]	Unlikely to result in the creation of any increased export receipts	Moderate	Increased export receipts resulting from additional international visitor spending on accommodation, food and beverage, and golf	N/A	Paras 91-102. s17(2)(a)(iii)

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Previous investments	Applicant has undertaken previous investments resulting in benefit to New Zealand	Not applicable under this factor	Moderate	Applicant has undertaken previous investments that benefit New Zealand	N/A	Paras 103-108. reg 28(e)
Enhance the viability of other investments	Investment is likely to enhance the viability of other investments	Unlikely to enhance the viability of other investments	Moderate	Investment is likely to enhance the viability of Millbrook Resort	N/A	Paras 109-116. reg 28(g)

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74. The section below sets out our discussion in relation to factors under which we consider the proposed investment is likely to result in benefit to New Zealand.
75. Factors that we considered were either not relevant to the investment, or the benefit to New Zealand was not sufficient enough to be relied on, are discussed in **Attachment 4**.

Additional investment for development purposes

There are four key elements to this factor (s17(2)(a)(v) of the Act):

- 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**.

76. We consider that the Investment is likely to result in additional investment for development purposes.

Investment

77. The Applicant submitted that the Investment is likely to result in approximately [REDACTED] [REDACTED] being invested in the subdivision, landscaping, and infrastructure of the Land (and adjoining land already part of the Millbrook Resort) as part of Scenario 1 (over approximately 12 months).
78. Under the Additional Development the estimated additional investment is between [REDACTED] and [REDACTED]. However, we have taken a conservative approach and have completed our assessment based on the lower level of development proposed under Scenario 1 (as this outcome has a higher degree of certainty compared with the Additional Development).

Likely counterfactual

79. The counterfactual scenario is unlikely to result in any additional investment for development purposes.
80. Whether the Land is retained by the Vendor or sold as part of a larger development, due to its location, contour, and terrain it is most likely to be used as a landscaped open area. It is unlikely infrastructure or construction work would take place on the Land.

Assessment

81. We consider the Investment is likely to result in additional investment for development purposes of approximately [REDACTED] [REDACTED] compared with the counterfactual scenario.
82. We consider this factor has been met and should be given strong weight in the context of the Investment due to the high level of capital expenditure relevant to the value of the Land.

Recommended conditions

83. We recommend conditions of consent are imposed requiring the Applicant to obtain the necessary consents and start the proposed development within a specific timeframe, as the development will result in additional investment for development purposes (as well as the creation of new jobs and increased export receipts).

Job opportunities

There are three key elements to this factor (s17(2)(a)(i) of the Act):

- 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**.

84. We consider that the Investment is likely to result in the creation of new jobs.

Investment

85. The Applicant submitted that the Investment is likely to result in:

- approximately 10 full-time equivalent ("FTE") direct jobs (for a period of 12 months) involved in the landscaping and infrastructure as part of Scenario 1; and
- approximately 42 FTE indirect jobs (for a period of 14 months) involved in the construction of at least seven new dwellings as part of Scenario 1 (the construction of each dwelling requires approximately 6 FTE construction workers – hired by the purchaser of each new allotment - and is estimated to take approximately 14 months to complete).

86. Under the Additional Development a greater number of jobs would be likely to be created. However, we have taken a conservative approach and have completed our assessment based on the lower level of development proposed under Scenario 1 (as this outcome has a higher degree of certainty compared with the Additional Development).

Likely counterfactual

87. The counterfactual scenario is unlikely to result in the creation of any new jobs.

88. Whether the Land is retained by the Vendor or sold as part of a larger development, due to its location, contour, and terrain it is most likely to be used as a landscaped open area. It is unlikely infrastructure or construction work would take place on the Land.

Assessment

89. We consider the Investment is likely to result in approximately 10 FTE landscaping and infrastructure jobs over a 12 month period and approximately 42 FTE dwelling construction jobs over a 14 month period compared with the counterfactual scenario.

90. We consider this factor has been met and should be given moderate weight in the context of the Investment due to the moderate level of benefit resulting under this factor.

Increased export receipts

There are two key elements to this factor (s17(2)(a)(iii) of the Act):

- **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 that are likely to occur without the investment.

91. We consider that the Investment is likely to result in increased annual export receipts.

Investment

92. The Applicant submitted that the Investment is likely to result in increased export receipts in the form of increased tourist expenditure in New Zealand.

93. Currently [REDACTED] of the Applicant's houses are in the hotel rental pool, so it is estimated that approximately [REDACTED] houses in Scenario 1 might become part of the rental programme.

94. The Applicant submitted that the average number of nights per year that these houses are rented is [REDACTED] at an average daily rate of [REDACTED], therefore total revenue from houses in Scenario 1 would be approximately [REDACTED]. The Applicant submitted that approximately 50% of guests are likely to be from overseas, with annual export receipts resulting from accommodation spending totalling approximately [REDACTED].

95. The Applicant submitted that the average daily food and beverage spend per night of house rental is [REDACTED] therefore total revenue from houses in Scenario 1 (based on [REDACTED] room nights) would be [REDACTED]. The Applicant submitted that approximately 50% of guests are likely to be from overseas, with annual export receipts resulting from food and beverage spending totalling approximately [REDACTED].

96. The Applicant submitted that approximately 15% of guests play golf and an average daily golf spend per night of house rental is [REDACTED] therefore total revenue from houses in Scenario 1 (based on [REDACTED] room nights) would be [REDACTED]. The Applicant submitted that approximately 50% of guests are likely to be from overseas, with annual export receipts resulting from golf spending totalling approximately [REDACTED].

97. As a result, the Investment is likely to result in increased annual export receipts of approximately [REDACTED].

98. Under the Additional Development, a greater number of houses would be likely to be created. However, we have taken a conservative approach and have completed our assessment based on the lower level of development proposed under Scenario 1 (as this outcome has a higher degree of certainty compared with the Additional Development).

Likely counterfactual

99. The counterfactual scenario is unlikely to result in the creation of any increased export receipts.

100. Whether the Land is retained by the Vendor or sold as part of a larger development, due to its location, contour, and terrain it is most likely to be used as a landscaped open area. It is unlikely infrastructure or construction work would take place on the Land.

Assessment

101. We consider the Investment is likely to result in increased annual export receipts of approximately [REDACTED] compared with the counterfactual scenario.

102. We consider this factor has been met and should be given moderate weight in the context of the Investment due to the moderate level of benefit resulting under this factor.

Previous investments

There are two key elements to this factor (reg28(e) of the Act):

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

103. We consider the Applicant has undertaken previous investments that have resulted in benefit to New Zealand.
104. The Applicant has undertaken investments since Millbrook Resort was established in 1988, including the development of resort facilities as well as over 250 houses built and sold.
105. The Applicant submitted that Millbrook Resort now has approximately 235 FTE workers to operate the resort and the associated operations during summer (October to April) and approximately 190 FTE workers during winter (May to September) with an annual salary and wage bill of \$11.8 million.
106. In November 2014, the Applicant obtained consent to acquire what is known as Dagleish Farm, comprising approximately 66.8661 hectares of land situated at 902 Malaghans Road, Arrowtown under consent 201420010. This investment resulted in the creation of new jobs, increased export receipts, the offer back of special land to the Crown, previous investments, and enhanced viability of other overseas investments.
107. We are satisfied the Applicant has previously undertaken investments that have resulted in benefit to New Zealand.
108. We consider this factor has been met and should be given moderate weight in the context of the Investment due to the moderate level of benefit resulting under this factor.

Enhance the viability of other investments

There are three key elements to this factor (reg28(g) of the Act):

- The relevant overseas person must have undertaken **other overseas investments**.
- The overseas investment must **enhance the ongoing viability** of the other overseas investments.
- The enhancement in viability that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

109. We consider that the Investment is likely to enhance the viability of other investments (specifically Millbrook Resort).

Investment

110. The Applicant submitted that the cost of implementing Scenario 1 (or potentially the Additional Development) is currently prohibitive and economically unviable without owning the Land. If the Land can be acquired, Scenario 1 (or potentially the Additional Development) would be economically viable.
111. The Applicant submitted that while development of Millbrook Resort's central zone (that houses the hotel, conferencing, resort and a large part of the golf infrastructure) is complete, this could be extended. The main western zone of Millbrook Resort is also largely complete, except for those parts of the resort located adjacent to the Land.

112. The Applicant submitted that acquisition of the Land would help unlock further development potential at Millbrook Resort, enhance and protect the existing amenities values, and increase the ongoing viability of Millbrook Resort (including the ability to continue providing jobs to local people) while continuing to contribute to New Zealand's tourism industry.

Likely counterfactual

113. The counterfactual scenario is unlikely to enhance the viability of Millbrook Resort, and may lead to increased pressure on its existing accommodation services.

Assessment

114. The acquisition of the Land would provide additional and more expansive development options and increase the amenity values of Millbrook Resort. This would ultimately enhance the ongoing viability of the resort (especially if the resort is reaching maximum occupation) more than would otherwise occur under the counterfactual scenario.
115. We consider the Investment is likely to enhance the viability of Millbrook Resort compared with the counterfactual scenario.
116. We consider this factor has been met and should be given moderate weight in the context of the Investment due to the moderate level of benefit resulting under this factor.

Provisional conclusion – benefits test

Benefits from the Investment

117. We consider the Investment is likely to benefit New Zealand through:
- creating approximately 10 new direct temporary FTE jobs (for 12 months) involved in landscaping and infrastructure, as well as approximately 42 new indirect temporary FTE jobs (for 14 months) involved in the construction of at least seven new dwellings (moderate weighting);
 - creating increased export receipts of approximately [REDACTED] resulting from additional international visitor spending on accommodation, food and beverage, and golf (moderate weighting);
 - additional investment for development purposes of approximately [REDACTED] (strong weighting);
 - previous investments that have resulted in benefit to New Zealand (moderate weighting); and
 - enhancing the viability of other investments, specifically Millbrook Resort (moderate weighting).
118. We have undertaken our assessment having regard to the characteristics of the Land and the nature of the interest being acquired (reflecting the proportional nature of the benefit assessment). In this case, the Applicant is seeking consent to acquire a freehold interest in approximately 1.875 hectares of land in Arrowtown that adjoins Millbrook Resort, which is owned by the Applicant.
119. Further details regarding the benefits test as set out in the Act are included in paragraphs 5-12 in **Attachment 2**.

Rural land directive

120. The rural land directive does not apply to the Land because the Land is less than 5 hectares of non-urban land in size (excluding any associated land).

Substantial and identifiable benefits

121. The Land is approximately 1.875 hectares in size, but as it adjoins land already owned by the Applicant (that together exceed five hectares of non-urban land), this requires the Investment to provide substantial and identifiable benefit in accordance with s16(1)(e)(ii) and (iii) of the Act.
122. We are satisfied that the benefits resulting from the Investment are more likely to occur under the Investment than under the counterfactual scenario for the reasons set out in the 'Counterfactual' section.
123. We consider that the economic benefits are, in the context of this Investment, collectively substantial and identifiable, and are more likely to occur under the Investment than under the Counterfactual scenario.
124. We also recommend imposing conditions on the Applicant to ensure that the above benefits occur, as set out in **Attachment 1**.

Impact of declining consent

125. If consent is declined to the Investment:
 - (a) in the short-term the Vendor is likely to retain the Land; and
 - (b) in the medium-term the Vendor is likely to sell the Land (along with other land owned by the Vendor) to an ANZP, who would most likely use the land as part of a development.

Provisional conclusion

126. Our provisional view is that the Applicant has met the benefits test. Overall, when examined together and taking a proportional approach, we consider that the benefits of the investment are likely to be substantial and identifiable.

Provisional recommendation

127. Our provisional recommendation is to **grant consent**, as we consider that the investor test and the benefits test have been met.
128. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and to paragraphs 6 to 9 of this Assessment Report to record your decision.

List of Attachments

1. Proposed Decision
2. Guidance for applying the Act
3. Previous Investments
4. Other Benefit Factors
5. Sensitive Land Details
6. Good Character Searches and Analysis
7. Overview Tables

List of other documents in the Bundle

- A. Application
- B. Investment Plan (Appendix 1 of the Application)

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ATTACHMENT 1 - PROPOSED DECISION

OVERSEAS INVESTMENT OFFICE



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	201900165
Consent	Millbrook Country Club Limited may acquire the Land subject to the Conditions set out below.
Consent holder/s	Millbrook Country Club Limited We will also refer to the Consent holder as you .
Land	A freehold interest in approximately 1.875 hectares of land in Arrowtown comprised of parts of the land contained in records of title 789176, 666857, and OT250/39 (Otago).
Timeframe	You have until 31 August 2020 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**. You must notify us in writing within 20 working days of the satisfaction of any of the **Special conditions**. These apply specifically to this Consent and were considerations that particularly influenced us to give consent:

Definition:

Business Plan means the business plan entitled 'Waterfall Park Land Purchase – OIO Application' with the subject 'Development Business Case for the Proposed Development Scenarios' dated March 2019 prepared by Ben O'Malley and submitted as Appendix 16 in the application for consent 201900165.

Details
Special condition 1: notify development scenario
You must notify us which development scenario (as set out in the Business Plan) the Applicant will undertake in relation to the investment by 31 August 2024.
Special condition 2: obtain consents
You must obtain the necessary consents from the local authority for the development of the Land (and the adjoining land owned by the Consent holder) by either: (a) 31 August 2025 if the 'Scenario 1' development (as detailed in the Business Plan) is selected, (b) 31 August 2028 if the 'Scenario 2' development (as detailed in the Business Plan) is selected, or (c) 31 August 2030 if the 'Scenario 3' development (as detailed in the Business Plan) is selected.
Special condition 3: start the land development
You must start the development of the Land (and the adjoining land owned by the Consent holder) by either: (a) 31 August 2026 if the 'Scenario 1' development (as detailed in the Business Plan) is selected, (b) 31 August 2030 if the 'Scenario 2' development (as detailed in the Business Plan) is selected, or (c) 31 August 2032 if the 'Scenario 3' development (as detailed in the Business Plan) is selected.

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	
<p>You must acquire the Land:</p> <ol style="list-style-type: none"> 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 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. 	As stated in the Consent
Standard condition 2: tell us when you acquire the Land	
<p>You must tell us in writing when you have acquired the Land. Include details of:</p> <ol style="list-style-type: none"> 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	
<p>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:</p> <ol style="list-style-type: none"> 1. Allow a person we appoint ("Inspector") to: <ol style="list-style-type: none"> (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, 	At all times

<p>(e) take photographs and video records, and</p> <p>(f) do all other things reasonably necessary to carry out the Inspection.</p> <p>2. Take all reasonable steps to facilitate an Inspection including:</p> <p>(a) directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection,</p> <p>(b) being available, or requiring your employees, agents, tenants or other occupiers to be available, 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.</p> <p>During an Inspection:</p> <p>(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,</p> <p>(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.</p>	
<p>Standard condition 4: remain of good character</p>	
<p>You and the Individuals Who Control You:</p> <p>1. must continue to be of good character, and</p> <p>2. must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009.</p> <p>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 be a threat or risk to security, public order or the public interest.</p> <p>The Individuals Who Control You are individuals who:</p> <p>(a) are members of your governing body,</p> <p>(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</p> <p>(c) are members of the governing body of the people referred to in paragraph (b) above.</p>	<p>At all times</p>

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 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.

Within 20 working days after the change

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,

<p>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,</p> <p>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.</p> <p>If all or part of this Standard condition 6 applies to a Special condition, we have said so in that condition.</p> <p>We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:</p>	
<p>Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.</p>	<p>Within six weeks of the date of our notice.</p>
<p>Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.</p>	<p>Within six weeks of the date of our notice.</p>
<p>Dispose of the Land: dispose of the Land to a third party who is not your associate.</p>	<p>Within six months of our notice.</p>
<p>Offer without reserve: if you have not disposed of the Land within six months of our notice, offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.</p>	<p>Within nine months of our notice.</p>
<p>Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.</p>	<p>By the last day of every March, June, September and December after our notice or at any other time we require.</p>
<p>Report disposal to us: send us, in writing, evidence:</p> <p>(a) that you have disposed of the Land,</p> <p>(b) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor),</p> <p>(c) the purchaser is not your associate.</p>	<p>Within one month after the Land has been disposed of.</p>

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 in which a Special condition is due for satisfaction you must lodge an **annual report**. It must:

1. be sent to oiomonitoring@linz.govt.nz by these dates:
 - (a) 31 October 2024, and

If Scenario 1 is selected:

 - (b) 31 October 2025, and
 - (c) 31 October 2026.

If Scenario 2 is selected:

 - (d) 31 October 2028, and
 - (e) 31 October 2030.

If Scenario 3 is selected:

 - (f) 31 October 2030, and
 - (g) 31 October 2032.
2. contain information about:
 - (a) your progress in implementing the Special conditions, and
 - (b) the number of jobs created as a result of the Investment compared with the number of jobs forecast in paragraph 44 of the Investment Plan, and
 - (c) the amount of capital expenditure resulting from the Investment compared with the amount of capital expenditure forecast in paragraph 30 of the Investment Plan and the 'Likely Direct Development Costs' in section 3 of the Business Plan.
3. follow the format of the template annual report published on our website at <https://www.linz.govt.nz/overseas-investment/enforcement/how-we-take-action>.

ATTACHMENT 2 - GUIDANCE FOR APPLYING THE ACT

1. The contract for this transaction was entered prior to the commencement of the Overseas Investment Amendment Act 2018 (“**Amendment Act**”), so the version of the Overseas Investment Act and the Overseas Investment Regulations in force immediately before its commencement continue to apply to this application as if the Amendment Act had not been enacted.
2. The regulator must grant consent to this overseas investment if it is satisfied that all of the criteria in sections 16 and 18 of the Overseas Investment Act are met. It must decline to grant consent if it is not satisfied that all of the criteria in sections 16 and 18 are met. The regulator must not take into account any criteria or factors other than those identified in sections 16, 17 and 18, and regulation 28 of the Overseas Investment Regulations.
3. Where the criteria under sections 16 and 18 are the same, the regulator need only consider each criterion once.
4. In the attached Report the Overseas Investment Office identifies each of the criteria and factors under sections 16, 17, and 18, and regulation 28 that the regulator is required to consider in this case.

“Benefit to New Zealand criteria”

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

Justice Miller’s “with and without test”

Economic factors

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

Non-economic factors

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

Regulation 28 factors

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

The criteria listed in reg 28 deal, for the most part, with benefits that only an overseas buyer could provide or what may be loosely described as strategic considerations, so they do not require a counterfactual analysis.³
12. Many of the factors in regulation 28 are incapable of having a counterfactual analysis applied to them. However, as recognised by Miller J, there are some factors that may require a counterfactual analysis. The Overseas Investment Office has applied a counterfactual analysis where appropriate.

“Rural Land” Directive

13. The rural land directive does not apply to this overseas investment because the land being acquired is less than 5 hectares of non-urban land in size (excluding any associated land).

Conditions

14. Conditions may be imposed on any consent that is granted, under section 25(A) of the Act. The attached Report recommends some conditions that you may wish to consider imposing in this case.

¹ *Tiroa E* at [36].

² *Tiroa E* at [38].

³ *Tiroa E* at [36].

Decision

15. 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.

Good character criterion

16. Section 16(1)(c) of the Act requires that the regulator be satisfied that the relevant overseas person or, (if that person is not an individual) all the individuals with control of the relevant overseas persons are of good character.
17. The term "good character" is not defined in the Act. The majority of the Select Committee reporting back on the Bill in 2005 confirmed that the "good character" test was needed as it is important to ensure that all persons investing in New Zealand are people unlikely to act inappropriately and bring New Zealand into disrepute.
18. When undertaking the good character assessment, the regulator must be satisfied that the character of all the individuals with control of the relevant overseas person is sufficient so that they should be granted the privilege of owning or controlling sensitive New Zealand assets.
19. The good character test is applicable to individuals, not entities such as body corporates. However, where the investment is to be carried out by a body corporate, the character of the relevant individuals who control the body corporate will need to be considered. Where an offence or contravention is committed by a person to which an individual had a 25% or more ownership or control interest, this is a mandatory consideration. Where the individual's interest in the person is less than this, there generally must be other grounds to reasonably infer participation by the individual in the alleged wrongdoing.
20. Section 19(1) of the Act states that the following factors must be taken into account (without limitation) in assessing whether or not a person is of good character:
 - (a) offences or contraventions of the law by the person, or by any person in which the individual 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.
21. All relevant matters must be weighted up before making a decision that an individual is of good character. If the decision-maker wishes to rely on a matter to which the applicant has not had an opportunity to respond, then such an opportunity to respond needs to be given to the applicant.
22. How much weight should be given to a particular matter depends on a number of factors, including how closely linked the particular matter is with the investment being made. While submissions on weighting given by the relevant overseas person or individual with control may be considered, the ultimate decision as to the weighting to be given to relevant matters is for the decision-makers.
23. Matters which might be relevant include:
 - (a) Credible allegations of offending or contraventions of the law (assessing whether the allegation is sufficiently linked to an individual with control or relevant overseas person);
 - (b) Investigations, prosecutions or other enforcement action by regulatory or professional bodies;

- (c) Track record in New Zealand.
24. Matters which are unlikely to be relevant include:
- (a) Adverse information that does not relate to an individual with control (for example, offences or contraventions by a relevant overseas person which occurred before the particular individual became involved with the relevant overseas person);
 - (b) Where the decision-maker is satisfied that allegations about a relevant overseas person or individual with control have been fully investigated by the relevant regulatory or other authority and the person or individual has been cleared of any wrongdoing;
 - (c) Adverse information that does not impact on the character of a relevant overseas person or individual with control.
25. Briefly, some of the things we consider when weighing up "good character" include:
- (a) connection to the Individuals with Control ("IWCs") or Relevant Overseas Person ("ROP"): we assess the level of control between any of the IWCs of the ROP and the particular matter. For example, a breach of safety rules by an employee of subsidiary company where the company was fined would likely have a low (or no) connection with an IWC who was an executive director of the parent company, whereas an executive decision by a company to illegally collude with a competitor would likely have a high connection with that IWC.
 - (b) relevance to this investment: we assess how relevant the particular matter is to the nature of this particular investment. For example, a dangerous driving conviction by an IWC would have low relevance in connection with the acquisition of a dairy farm, whereas a conviction for discharging farm effluent into a waterway would have a high relevance to the acquisition of a dairy farm.
 - (c) what actions, if any, were taken to remedy the situation and reduce the chances of it reoccurring.
26. The onus is on the applicants to satisfy the decision maker that all the individuals with control are of good character.
27. If the decision-maker has doubts about the character of an individual with control which result in it not being satisfied that the test for good character has been met, then the application for consent must be declined.

ATTACHMENT 3 – PREVIOUS INVESTMENTS

1. Case 201420010 – Acquisition of 66.8661 hectares of land at 902 Malaghan Road, Queenstown – Consent granted on 14 November 2014.

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ATTACHMENT 4 - OTHER BENEFIT FACTORS

1. The table **below** lists other factors in the Act and regulations for assessing the benefit of overseas investments.
2. We considered that the factors below were either not relevant to the Investment, or the benefit to New Zealand was not likely or sufficient to be relied on for purposes of our assessment.

Factor	Reason not relevant or insufficient
New technology or business skills – s17(2)(a)(ii)	Not relevant. The Investment will not involve the introduction of new technology or business skills.
Added market competition, increased productivity, efficiency, and enhanced domestic services – s17(2)(a)(iv)	Not relevant. The Investment will not involve added market competition greater efficiency or productivity, or enhanced domestic services.
Increased processing of primary products – s17(2)(a)(vi)	Not relevant. The Investment will not involve increased processing of primary products.
Indigenous vegetation/fauna – s17(2)(b)	Not relevant. There is no significant indigenous vegetation or fauna on the Land.
Trout, salmon, wildlife and game – s17(2)(c)	Not relevant. There are no significant fish and game habitats on the Land.
Historic heritage – 17(2)(d)	Not relevant. There is no historic heritage on the Land.
Walking access – s17(2)(e)	Not relevant. There is currently no walking access over the Land, and there are no other adjoining walking access areas to connect with, so we do not consider that walking access is required.
Offer to sell seabed/foreshore/riverbed to the Crown – s17(2)(f)	Not relevant. The Land does not include special land.
Consequential benefits – reg 28(a)	Not relevant. The Investment does not involve any consequential benefits.
Key person in a key industry – reg 28(b)	Not relevant. The Investment does not involve a key person in a key industry.
Affect image, trade or international relations – reg 28(c)	Not relevant. The Investment does not affect trade, image, or international relations.
Owner to undertake other significant investment – reg 28(d)	Not relevant. The Vendor does not intend to undertake any other significant investment as a result of the sale of the Land.
Advance significant government policy or strategy – reg 28(f)	Not relevant. The Investment will not advance any significant government policy or strategy.

Factor	Reason not relevant or insufficient
Strategically important infrastructure – reg 28(h)	Not relevant. The Investment does not involve strategically important infrastructure.
Economic interests – reg 28(i)	The Investment is unlikely to adequately promote New Zealand's economic interests.
Oversight and participation by New Zealanders – reg 28(j)	The Investment does not involve any significant oversight and participation by New Zealanders.

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ATTACHMENT 5 - SENSITIVE LAND DETAILS

1. Approximately 1.875 hectares of land in Arrowtown

Land Interest	Freehold Interest (approximately 1.875 hectares)
Records of Title	OT250/39, 666857, 789176 (Otago)
Sensitivity	Is more than 5 hectares of non-urban land (together with any associated land)

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ATTACHMENT 6 - GOOD CHARACTER SEARCHES AND ANALYSIS

The OIO undertook an open-source search of the relevant overseas person (“ROPs”) and individuals with control (“IWCs”).

The searches of the International Consortium of Investigative Journalists database, United Nations Security Council Terrorist Entities List, and Interpol Red Notice List did not produce any relevant results.


Name	Search Findings / Disclosures	Applicant Comment	OIO Analysis
Relevant overseas persons			
Millbrook Country Club	Between 2007 and 2011 the Applicant acquired a number of small parcels of sensitive land in Arrowtown (together comprising approximately 2.55 hectares) for the development of the resort without obtaining OIO consent	The Applicant submitted that the land acquired was urban (and therefore not sensitive) so OIO consent was not required.	The OIO investigated the acquisitions, and while it concluded that consent should have been obtained, after consideration ultimately decided not to take any enforcement action. This matter is not sufficient to preclude a finding that each of the IWCs are of good character.
Millbrook Country Club	In 2016 Queenstown Lakes District Council (“QLDC”) sought to make the Applicant a party to a leaky building claim on the basis that it had a duty of care to home owners affected by leaky cladding.	The Applicant did not design or build the home in question, and only sold the homeowner the bare land. Once this was pointed out to the solicitors for QLDC, a notice of discontinuance was issued and the Applicant was removed from the proceeding. As is usual in such cases, costs followed the event which QLDC agreed to pay for the wrongful inclusion.	We do not consider this adversely impacts on the good character of any of the IWCs because the event related to a singular leaky building not designed, built, or consented by any of the IWCs. This matter does not preclude a finding that each of the IWCs are of good character.

Individuals with control

<p>Brian Howie</p>	<p>In 2010 the Employment Relations Authority ("ERA") that determined a former employee had a personal grievance arising from the Applicant's failure to provide appropriate support when dismissing her for redundancy, and required the Applicant to pay \$2,000 compensation.</p>	<p>This related to a redundancy of a Human Resources administrator. The ERA found the employee to have been fairly dismissed (redundancy), however the Applicant had not provided her with the appropriate training in how to write a CV and apply for new jobs.</p> <p>The Applicant has varied its redundancy procedures in the light of the ERA decision. Further, the decisions undertaken which led to the ERA finding were commercial decisions made on reasonable grounds, without malice and with good intentions.</p>	<p>We do not consider this adversely impacts on the good character of Mr Howie because the event related to a redundancy as part of restructuring services and the Applicant has taken reasonable steps to address the issue and prevent reoccurrence.</p> <p>The ERA decision only found fault by not providing appropriate support, not on other claims eg breach of good faith, breach of employment agreement, and lost remuneration.</p> <p>This matter does not preclude a finding that Mr Howie is of good character.</p>
<p>Bernard ('Ben') Campbell O'Malley</p>	<p>[s 9(2)(a)]</p>	<p>[s 9(2)(a)]</p>	<p>[s 9(2)(a)]</p>

Released under the Official Information Act 1982

ATTACHMENT 7 - OVERVIEW TABLES FOR MILLBROOK COUNTRY CLUB LIMITED 201900165

	<p>Application</p> <ul style="list-style-type: none"> • Millbrook Country Club Limited seeks consent to acquire a freehold interest in approximately 1.875 hectares of land in Arrowtown for \$1,500,000. • The Applicant was formed in 1988 to acquire, own, develop, and operate Millbrook Resort. Millbrook Resort is a five-star resort with golfing, accommodation, conference, restaurant, and health and fitness facilities as well as lifestyle and accommodation living near Arrowtown. • The Applicant is ultimately owned by Japanese shareholders with the largest individual shareholder being Gota Ishii who holds 50% of the shares. • The Applicant intends to acquire the land to provide additional development options for adjoining land owned by the Applicant and to increase the amenity values of Millbrook Resort. • The owner of the land is Waterfall Park Developments Limited, a New Zealand incorporated company that is involved in land development and subdivision • The Application was at QA for 3 days, with the OIO for 42 days, and with the Applicant for 28 days. • The Applicant previously obtained consent on 14 November 2014 to acquire approximately 66 hectares of land at 902 Malaghans Road, Arrowtown (that now forms part of Millbrook Resort). 	<p>Provisional recommendation</p> <ul style="list-style-type: none"> • Our provisional recommendation is to grant consent. • Relevant tests for this transaction: <ul style="list-style-type: none"> ◦ Investor test (s16(1)(a)-(d) of the Act) ◦ Benefits test – substantial and identifiable benefits (s16(1)(e)(ii) and (iii) of the Act) • The contract for this transaction was entered prior to commencement of the Overseas Investment Amendment Act 2018. <p>Factors for the regulator to particularly consider:</p> <ul style="list-style-type: none"> • The rural land directive does not apply to this overseas investment because the land being acquired is less than 5 hectares of non-urban land in size (excluding any associated land). • The land is approximately 1.875 hectares in size, but as it adjoins land already owned by the Applicant (that together exceed five hectares of non-urban land), this requires the Investment to provide substantial and identifiable benefit in accordance with s16(1)(e)(ii) and (iii) of the Act. • Many of the benefits relate to the additional development options for the adjoining land at Millbrook Resort (owned by the Applicant) that would not occur under the counterfactual scenario.
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Overview of assessment: Investor test

Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
Relevant overseas persons (ROP) and individuals with control (IWCs) confirmed	ROP/IWC identified	ROP and IWCs identified	Paras 34-35. Section 15 of the Act.
Collectively have business experience and acumen relevant to the investment	Test met	ROP and IWCs have relevant business experience and acumen in property and resort operations	Paras 36-37. Sections 16(1)(a) and 18(1)(a) of the Act.
ROP demonstrated financial commitment	Test met	ROP has entered into an agreement for sale and purchase and has engaged professional advisors	Sections 16(1)(b) and 18(1)(b) of the Act.
Good character	Test met	We are satisfied the IWCs are of good character	Paras 38-40 and Attachment 6. Sections 16(1)(c) and 18(1)(c) of the Act.
Not an individual of the kind ineligible for a visa or entry permission under ss 15 or 16 of the Immigration Act 2009	Test met	We are satisfied the IWCs are not ineligible for a visa or entry permit into New Zealand	Sections 16(1)(d) and 18(1)(d) of the Act.

Overview of assessment: Benefit test

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Additional investment for development purposes	Additional investment for development purposes of approximately [s 9(2)(b)(ii)] for land subdivision, infrastructure, and landscaping	Unlikely to result in any additional investment for development purposes	Strong	Additional investment for development purposes	<ul style="list-style-type: none"> Notify the development option chosen by 31 August 2024 Necessary consents must be obtained for the development by 31 August 2025, 2028, or 2030 (depending on the development option chosen) Construction of the land development must have started by 31 August 2026, 2030, or 2032 (depending on the development option chosen) 	Paras 76-83. s17(2)(a)(v)
Job opportunities	<ul style="list-style-type: none"> Approximately 10 new FTE jobs (for 12 months) involved in landscaping and infrastructure Approximately 42 FTE jobs (for 14 months) involved in building at least seven new dwellings 	Unlikely to result in the creation of any new jobs	Moderate	New jobs involved with infrastructure, landscaping, and house building	N/A	Paras 84-90. s17(2)(a)(i)
Increased export receipts	Increased annual export receipts of approximately [s 9(2)(b)(ii)]	Unlikely to result in the creation of any increased export receipts	Moderate	Increased export receipts resulting from additional international visitor spending on accommodation, food and beverage, and golf	N/A	Paras 91-102. s17(2)(a)(iii)
Previous investments	Applicant has undertaken previous investments resulting in benefit to New Zealand	Not applicable under this factor	Moderate	Applicant has undertaken previous investments that benefit New Zealand	N/A	Paras 103-108. reg 28(e)
Enhance the viability of other investments	Investment is likely to enhance the viability of other investments	Unlikely to enhance the viability of other investments	Moderate	Investment is likely to enhance the viability of Millbrook Resort	N/A	Paras 109-116. reg 28(g)

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