

OI Assessment Report 202400436 – Bupa Retirement Villages Limited

Ki / To: Emma Kelly, Principal Customer
 Regulatory Specialist
Mai / From: Heidi Hughes, Customer
 Regulatory Specialist
Rā / Date: 15 August 2024
Rā Mutunga/ Deadline: 6 November 2024

Pūtake/Purpose

We seek your decision on an application for consent to acquire an interest in sensitive land under the Overseas Investment Act 2005 (**Act**).

Summary

Applicant	Bupa Retirement Villages Limited United Kingdom 100%
Vendors	Various owners of Bupa Remuera Retirement Village units
Land	Leasehold and freehold interests in approximately 1.2195 hectares of land located at Units 1-10 and 12-28, being part of the Bupa Remuera Retirement Village at 10 Gerard Way, St Johns, Auckland.
Consideration	Current market value of approximately \$26 million ¹
Sensitivity	Includes residential land
Pathway	Benefit to NZ
Relevant tests	Investor test ² Benefit to NZ test ³ National interest criterion ⁴

Bupa Retirement Villages Limited is ultimately owned by a global health services provider, British United Provident Association. It is acquiring up to 27 retirement village units to support its operation of the wider retirement village.

¹ The units on the Land are anticipated to be purchased between 2024 and 2034. The future market value and future purchase price are unknown.

² Sections 16(1)(a) and 18A of the Act.

³ Sections 16(1)(b)(ii) and s16A(1)(b) of the Act.

⁴ Section 16(1)(g) of the Act.

Timing

A decision is required by **17 September 2024** to comply with the expectation in the Ministerial Directive Letter⁵ that the majority of consent decisions are made within half the prescribed assessment timeframe.⁶

Decision

1. I have determined that, for the reasons set out in this report:
 - the relevant overseas person(s) and individuals with control are as set out in the report;
 - the investor test has been met;
 - the benefit test is met;
2. I note that the transaction is not considered to be a transaction of national interest.
3. I therefore **grant consent** subject to the conditions in **Attachment 1**.

s9(2)(a)

Emma Kelly

Principal Customer Regulatory Specialist

Overseas Investment - LINZ

Date: 15/08/2024

⁵ Dated 6 June 2024.

⁶ The assessment timeframe for this application is 70 working days.

A. Background, land and proposed transaction

4. Bupa Retirement Villages Limited (**Applicant**) is a New Zealand company, ultimately owned by British United Provident Association (**Bupa**). The Applicant is buying residential land to support its operation of Bupa Remuera Retirement Village (**Investment**).
5. Bupa Remuera Retirement Village is at 10 Gerard Way, St Johns, Auckland. The village is comprised of a care home and 27 independent-living villas. Consent is sought to purchase the villas, numbered as units 1-10 and 12-28 (**Land**). The villas are located on cross-lease titles, with each title having an underlying freehold interest in a 1/35th share in approximately 1.2195 hectares of land.
6. An overview map of the Land is provided below.



Figure 1: overview of the Land. It comprises of 27 buildings and a care home (the large building, to the east of the map).

7. The Applicant currently owns and operates the care home⁷ and manages the wider retirement village.

B. Application of the Act

8. The Land is sensitive because it is residential land,⁸ so consent is required.⁹ The following criteria for an investment in sensitive land apply to this application:¹⁰
- The investor test must be met.¹¹
 - The benefit to New Zealand test must be met.¹²
 - You must also note whether the Investment is a transaction of national interest and, if so, whether the Minister of Finance has decided that the Investment is contrary to New Zealand's national interest.¹³
9. In order to satisfy the benefit to New Zealand test, the decision-maker must:
- Determine that the overseas investment will, or is likely to, benefit NZ (or any part of it or group of New Zealanders);¹⁴ and
 - because the Land is residential:
 - determine a residential land outcome;¹⁵
 - apply conditions of consent for the residential land outcome; and
 - be satisfied that those conditions are likely to be met.¹⁶
10. We assess the investor test in **Part C**, the benefit to New Zealand test in **Part D**, and discuss national interest matters in **Part E**.

C. Applicant and investor test

11. This section describes the Applicant and assesses whether the investor test is met.

Business Activities

12. Bupa is a global health services provider. Health insurance accounts for 70% of its business. It also operates hospitals, dental clinics and aged care facilities across the regions of Asia-Pacific, North America and Europe.

⁷ The care home is located on residential but not otherwise sensitive land. At the time it was purchased, in July 2005, consent under the Act was not required.

⁸ Table 1, Part 1, Schedule 1 of the Act.

⁹ Sections 10(1)(a) and 12(1)(a) of the Act.

¹⁰ Set out in section 16(1) of the Act.

¹¹ Sections 18A and 16(1)(a) of the Act.

¹² Section 16(1) of the Act.

¹³ Section 16(1)(g) of the Act.

¹⁴ Section 16A(1)(a) of the Act.

¹⁵ Section 16B(3)(a). The Act specifies a range of outcomes to choose from in clause 19, Schedule 2 of the Act.

¹⁶ Section 16A(1)(b) of the Act.

13. The Applicant owns and operates 39 retirement villages across New Zealand. The retirement villages accommodate more than 5,000 residents and employ more than 3,500 staff.

Ownership and control

14. The Applicant is a wholly owned subsidiary of Bupa Care Services NZ Limited (**Bupa Care Services**). The Applicant is ultimately owned by Bupa, via several New Zealand, Australian and British subsidiaries.
15. The three directors of the Applicant and Bupa Care Services manage the New Zealand business and make capital expenditure decisions within their delegation of up to s9(2)(b)(ii). They will be responsible for the acquisition and management of the Investment and any subsequent divestment.
16. A diagram of the intended ownership structure is in **Attachment 2**.

Relevant overseas person and individuals with control

17. We recommend that the 'relevant overseas person' is (collectively):

Relevant overseas person	Reason
Bupa Retirement Villages Limited	The Applicant and acquiring entity
Bupa Care Services NZ Limited	The parent company of the Applicant

18. We recommend that the 'individuals with control of the relevant overseas person'¹⁷ are:

Individuals with control ^{*18}	Reason
Julie Anne Sellar*	Directors of Bupa Retirement Villages Limited and Bupa Care Services NZ Limited
Timothy Neville Griffiths*	
Pedro Sanchez Soro	

Summary of investor test

19. The relevant overseas persons and individuals with control established one of the factors contained in section 18A(4) of the Act, related to enforceable undertakings for separate breaches of the Holidays Act 2003.
20. Audits by a labour inspector found discrepancies in payments made to employees by Bupa Care Services. However, we consider this does not make Bupa Care Services unsuitable to invest in New Zealand due to the inadvertent nature of the breaches and the fact that it has rectified the breaches.

¹⁷ Section 15 of the Act.

¹⁸ Individuals marked with an asterisk are not overseas persons, either because they are New Zealand citizens or are ordinarily resident in New Zealand, therefore they do not need to meet the investor test.

21. For the reasons set out above, our conclusion is that **the investor test has been met.**

D. Investment plan and benefit to NZ test

22. This section describes the Investment and our assessment of whether it is likely to meet the benefit to NZ test in the Act.

Current state (counterfactual)

23. The residents of the villas have entered an occupation right agreement (**ORA**) with the Applicant. The ORA outlines the expectations for the operation and funding of the retirement of the village, in compliance with the provisions of the Retirement Villages Act 2003.
24. Residents are responsible for long-term maintenance, under the terms of their cross-lease titles and the ORA. They pay additional levies into a long-term maintenance fund (**LTM Fund**) to finance the upgrade, repair and replacement of large communal items, infrastructure and landscaping.
25. There is currently a shortfall between the funds required for long-term maintenance and the balance of the LTM Fund. The Applicant anticipates that annual levies will increase by approximately s9(2)(a), per villa, to address the current shortfall. s9(2)(a). The Applicant submits that at least one resident is experiencing delays in selling their unit due to the required maintenance.

Investment plan

26. The Applicant will purchase the Land, as each of the villas come to the market for sale. The sales are proposed to occur, in multiple transactions, between 2024 and 2034.
27. The Investment involves a transition from the current ownership model to a more commonly used form of ORA. Under the common ORA, the Applicant will own legal title to the Land and provide greater services to residents, such as long-term maintenance. The common ORA requires less upfront capital from future residents and integrates the villas into the operation of the wider Bupa Remuera Village.
28. The Applicant submits that the purchase of the Land will prevent the villas from becoming illiquid assets because there are no alternative potential purchasers. The restrictions¹⁹ of the cross-lease titles and the current ORA limit commercial interest from retirement village providers or other businesses that may seek to buy the Land for alternative uses. However, the villas have been sold to owner-occupiers several times, since their construction in the 1980s.
29. If all the Land is acquired, the Applicant plans to invest a total of between s9(2)(b)(ii) into upgrading the villas. The capital upgrades may involve:
- painting and redecorating the villas;
 - replacing carpet and vinyl flooring;

¹⁹ Residents must be aged 55 years or older, want to live within a retirement village, and pay the Applicant to provide amenities.

²⁰ The equivalent of s9(2)(b)(ii) is currently budgeted for each villa.

- refurbishing bathrooms;
- refurbishing kitchens; or
- replacing appliances and whiteware.

Assessment of benefits

30. The benefits to New Zealand that are likely to result from the Investment and our assessment of the relative weight to be given to each are set out in the table below.
31. We have analysed the benefits that are likely to occur as a result of the Investment, compared to the current state of the Land, in the table below. This may include benefits that the Applicant did not specifically claim, but that we have identified may occur.
32. LINZ is directed²¹ that where an investment demonstrates strong benefits under one or two key benefit factors, other factors may require less consideration if the threshold for meeting the benefit test is clearly met without reference to them. Therefore, benefits that were not considered to be key have not been considered as part of our assessment.
33. Factors that we considered were either not relevant to the Investment, or the benefit to New Zealand was not sufficient to be relied on, are noted in **Attachment 3**.

Benefit		Analysis
Economic Moderate	Capital investment	Additional capital investment of at least s9(2)(b)(i) into each villa (for a total of at least s9(2)(b)(ii) if all the Land is acquired).
	Enhanced viability of assets	The Applicant's investment in Bupa Remuera Retirement Village is enhanced, through shared management of resources.

Consultation and submissions about the investment

34. No third-party submissions were sought or received in relation to this application.

Residential land outcome

35. As the Land is residential land, one or more of the residential land outcomes must apply. The most appropriate residential land outcome is to require the operation of a long-term accommodation facility on the Land.²² The Applicant has demonstrated a commitment to operating a retirement village on the Land and its proposed use of the Land meets this defined²³ outcome. The Applicant is also conditioned to comply with the non-occupation outcome in clause 17.

²¹ Ministerial directive letter 6 June 2024.

²² Clause 19(3), Schedule 2 of the Act.

²³ Long-term accommodation facility is defined as "a retirement village or rest home" in section 6 of the Act.

36. We consider that the residential land outcome is met. (See **Attachment 1** for the proposed conditions.)

Proposed conditions and rationale

37. We have applied the mandatory conditions requiring the Land be used for the operation of a long-term accommodation facility and restricting relevant overseas persons or individuals with control from occupying the Land (non-occupation outcome).

Conclusion – benefit to NZ test

Key benefits

38. After considering the application, we are satisfied that the Investment is likely to result in the benefits considered above. In particular, capital investment totalling at least s9(2)(b)(i) if all of the Land is acquired.

Proportionality

39. We have undertaken our assessment having regard to the sensitivity of the Land and the nature of the overseas investment transaction, reflecting the proportional nature of the benefit to NZ test.
40. We consider the matters relevant to the sensitivity of the Land are that a modest 1.2 hectares of residential but not otherwise sensitive land is being acquired.
41. We consider the matters relevant to the nature of the Investment are that the Land is located within a retirement village and subject to occupancy restrictions (such as the age of residents). The use of the land is unchanged as a result of the Investment. There may therefore be limited public interest in the Land.

Conclusion

42. After considering the application, we are satisfied that the Investment is likely to result in economic benefits in proportion to the sensitivity of the Land and the nature of the Investment.

E. Not a transaction of national interest

43. The Investment does not involve a transaction of national interest under the mandatory criteria of the Act.²⁴ This is because the Investment does not involve a non-NZ government investor, or an investment in a strategically important business (as defined in the Act).
44. The Minister of Finance has not called the Investment in for a national interest assessment.²⁵

²⁴ Under s 20A of the Act.

²⁵ Section 20B of the Act.

F. Conclusion

45. For the reasons set out in this report, we consider that the criteria for consent have been met and our recommendation is to **grant** consent.
46. We refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and from page 2 of this Assessment Report to record your decision.

G. Attachments

1. Proposed Decision
2. Intended ownership structure
3. Other benefit factors

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ATTACHMENT 1 PROPOSED DECISION

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: 15 August 2024

The following people have been given the following consent:

Case	202400436
Consent Holder	Bupa Retirement Villages Limited (company number 1626627) We will also refer to the Consent Holder as you .
Consent	The Consent Holder may acquire the Land, through one or more transactions, subject to the Conditions set out below.
Land	An interest in a total of approximately 1.2195 hectares of land located at Units 1-10 and 12-28 (inclusive), being part of the Bupa Remuera Retirement Village at 10 Gerard Way, Saint Johns, Auckland, contained in Records of Title NA72C/793, NA72C/794, NA76A/512, NA76A/513, NA81C/127, NA81C/128, NA82A/485, NA81C/129, NA81C/130, NA82A/486, NA72C/795, NA72C/796, NA72C/797, NA72C/798, NA72C/799, NA76A/514, NA82A/487, NA72C/800, NA72C/801, NA72C/802, NA72C/803, NA72C/804, NA82A/488, NA76A/516, NA76A/517, NA82C/231 and NA72C/806 (North Auckland).
Timeframe	You have until 31 August 2034 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 Land Information New Zealand as **LINZ, us or we**.

Definitions

Act means Overseas Investment Act 2005

Regulations means Overseas Investment Regulations 2005

Any term or expression that is defined in the Act or Regulations and used, but not defined, in this Consent has the same meaning as in the Act or Regulations.

Special Conditions

You must comply with the following **special conditions**. These apply specifically to this Consent and include conditions that we must impose under the Act.

Details	Required date
Special condition 1: Operation of a long-term accommodation facility	
You must use the Land for the operation of a retirement village.	At all times
If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.	
Special condition 2: Non-occupation outcome	
None of the following people may occupy the Land acquired under this consent for residential purposes: i. You ii. Any overseas person with more than 25% ownership or control of the people in You; iii. Any overseas person that occupies the Land on other than arm's length terms; ²⁶	At all times

²⁶ Has the meaning in clause 17, Part 5, Schedule 2 of the Act. In summary it means terms, for example under a lease (or other contract), that are on a reasonable commercial basis.

- | | |
|--|--|
| <ul style="list-style-type: none">iv. Any overseas person who has a beneficial interest in, or beneficial entitlement to, the relevant interest in the Land;v. If (i) is a trust, any beneficiary (direct or indirect) who may benefit under the trust at the trustees' discretion. | |
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If any such persons do occupy land for residential purposes, Standard Condition 6 will apply and we may require you to dispose of the Land.

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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> <ul style="list-style-type: none"> i. 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 ii. Using the acquisitions, 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.</p> <p>Include details of:</p> <ul style="list-style-type: none"> i. The date you acquired the Land (Settlement) ii. Consideration paid (plus GST if any) iii. The structure by which the acquisition was made and who acquired the Land, and iv. Copies of any transfer documents and Settlement statements. 	As soon as you can, and no later than 2 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 2 weeks written notice if we want to do this.</p> <p>A. You must then:</p> <ul style="list-style-type: none"> i. Allow a person we appoint (Inspector) to: <ul 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) 	At all times

- 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 recordings and
- f. do all other things reasonably necessary to carry out the Inspection
- ii. 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 reasonable times during an Inspection to facilitate access onto and across the land. This includes providing transport across the Land if reasonably required.
- B. During an Inspection:
 - i. 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
 - ii. Our Inspector will comply with any reasonable instruction and cooperate with any reasonable health and safety policy or procedure you notify to us before the Inspection.

Standard condition 4: Remain not unsuitable to invest in New Zealand

You, and to the extent that you are not an individual, the Individuals Who Control You must remain not unsuitable to own or control the Land in accordance with section 18A(1) of the Act

The **Individuals Who Control You** are individuals who:

- i. Are members of your governing body
- ii. Directly or indirectly, own or control more than 25% of you or a person who itself owns or controls more than 25% of you, and

At all times

<p>iii. Are members of the governing body of the people referred to in ii above.</p>	
<p>Standard condition 5: Tell us about the changes that affect you, the people who control you, or people you control</p>	
<p>You must tell us in writing if any of the following events happen to any of the Consent Holders:</p> <ul style="list-style-type: none"> i. You become aware that you and/or any Individual Who Controls you establishes any of the investor test factors listed in section 18A(4) of the Act. ii. You cease to be an overseas person or dispose of all or any part of the Land iii. Your New Zealand service address changes. This is the address you provided us in your application as the address which we will send any legal document we need to serve on you. 	<p>Within 20 working days after the change</p>
<p>Standard condition 6: Dispose of the Land if you do not comply with key special conditions</p>	
<p>If all or part of this Standard Condition 6 applies to a special condition, we have said so in that special condition. 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 will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:</p> <ul style="list-style-type: none"> i. Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer. ii. Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market. iii. Dispose of the Land: dispose of the Land to a third party who is not your associate. iv. Offer without reserve: if you have not disposed of the Land within 6 month 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>Within 6 weeks of the date of our notice</p> <p>Within 6 weeks of the date of our notice.</p> <p>Within 6 months of our notice</p> <p>Within 9 months of our notice</p>

<p>v. Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.</p> <p>vi. Report disposal to us: send us, in writing, evidence of the following:</p> <p>a. That you have disposed of the land (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor) and</p> <p>b. That the purchaser is not your associate.</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>Within 1 month after the Land has been disposed of</p>
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Reporting conditions

We need information from you about how your investment plan is tracking so we can monitor your progress against the conditions.

In addition to Settlement reporting (as set out in Standard Condition 2) you must provide LINZ with reports detailing the progress of the investment. The reports must:

- i. be submitted via our [Webform](#) by these dates:
 - a. 31 August 2027
 - b. 31 August 2030
 - c. 31 August 2034
- ii. contain information about your progress in implementing the special conditions (which can include photographs, maps or aerial imagery as evidence of compliance with relevant conditions)
- iii. Follow the format of the template annual report published on our website

If requested in writing by LINZ, the Consent Holder(s) must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:

- i. the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent was granted, or
- ii. the conditions of this consent.

Power to vary reporting date

The dates on which reports are due to be provided may be changed by agreement between LINZ and the Consent Holder(s), provided that this power may not be used to give a time extension for an individual report.

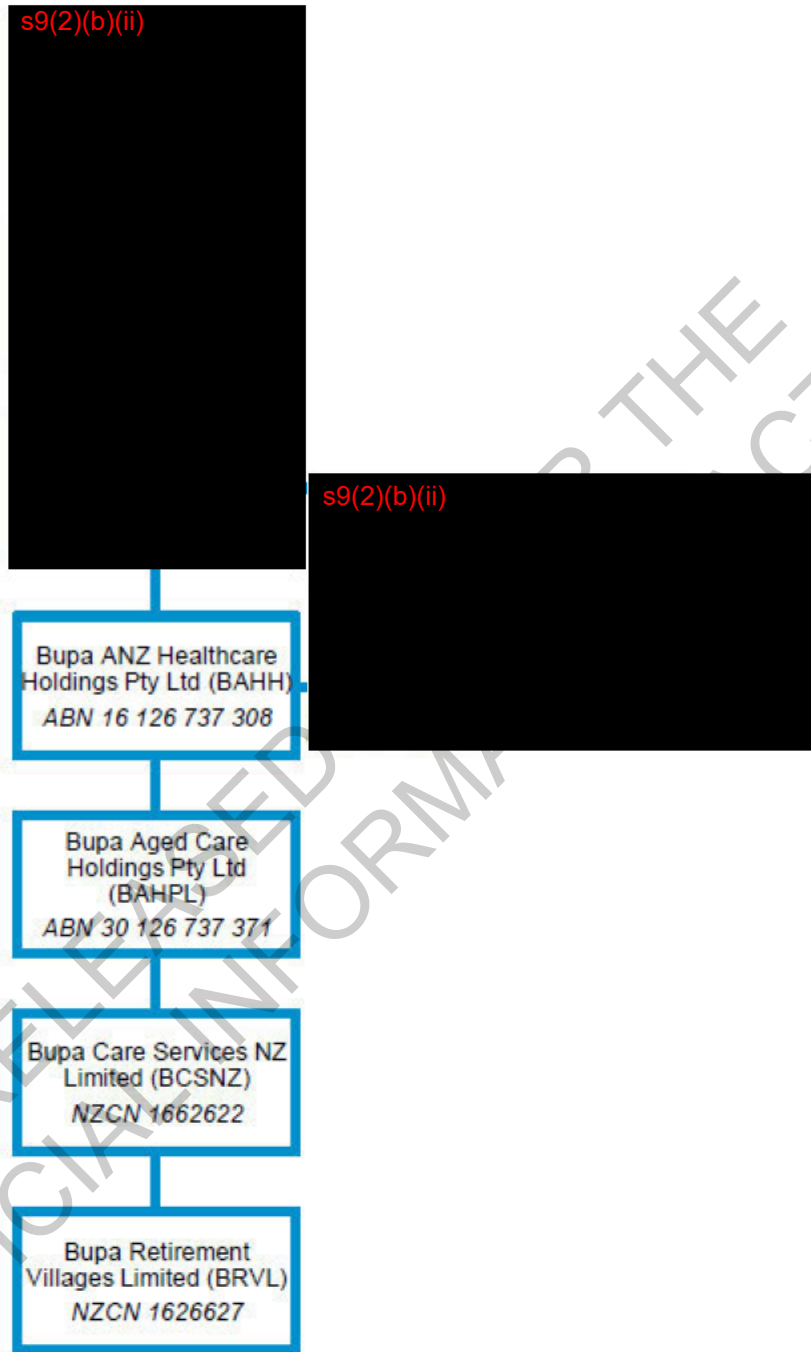
Power to narrow scope of reports

LINZ may temporarily or permanently waive the requirement to report on a particular matter.

Power not to require further reporting

LINZ may waive the requirement to submit a report and may waive the requirement for future reporting.

ATTACHMENT 2 INTENDED OWNERSHIP STRUCTURE



ATTACHMENT 3 OTHER BENEFIT FACTORS

The table **below** lists other factors in the Act for assessing the benefit of overseas investments.

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 the purposes of our assessment.

Factor	Reason not relevant or insufficient
Environmental benefits	Not relevant
Public access	Not relevant
Historic heritage	Not relevant
Significant government policy	Not relevant
Oversight or participation by New Zealanders	Insufficient – two New Zealand directors control the Applicant, but New Zealand ownership will reduce as a result of the Investment.
Consequential benefits	Not relevant
Extraction of water for human consumption / bottling	Not relevant

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