

Our Ref: 201110035

30 November 2012

Chapman Tripp  
PO Box 2206  
AUCKLAND 1140

**BY EMAIL**

Attention: Bill Sandston

**Milk New Zealand Holding Limited/Pengxin New Zealand Farm  
Group Limited**

1. We refer to the application for variation dated 22 November 2012.
2. Please find attached an amended notice of decision which reflects the amendments made to the consent and to the conditions of consent.

Yours sincerely



Pedro Morgan  
Senior Solicitor  
Overseas Investment Office

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A1357322

Ref #132114



**Decision Date**

Original decision: 26 April 2012  
Varied: 30 November 2012

**Decision**

Consent has been granted to **Milk New Zealand Holding Limited** (Hong Kong company 1498348) and **Pengxin New Zealand Farm Group Limited** (New Zealand company 3899677) (the "Consent Holders") giving effect to a transaction which will result in:

- An overseas investment in sensitive land, being the Applicant's acquisition of approximately 7892.5180 hectares of freehold land, comprising:
  - Plateau Road, Reporoa (323.4931ha)
  - Rawhiti Road, Reporoa (128.5889ha)
  - Pine View, Short Road, Reporoa (398.1981ha)
  - Cirenester, Short Road, Reporoa (341.3401ha)
  - Broadlands Road, Reporoa (404.5229ha)
  - Lake View, Tia Street, Atiamuri (205.9091ha)
  - Forest Park, Forest Road, Bulls (250.2879ha)
  - Glyn Park, SH 3, Maxwell (646.9861ha)
  - Karahaki Road, Waverley (206.2506ha)
  - Karangahape Road, Kuratau (627.4693ha)
  - Benneydale 1, Barryville Road, Benneydale (895.8575ha)
  - Benneydale 2, Barryville Road, Benneydale (792.1627ha)
  - Collins Road, Hamilton (393.3905ha)
  - Tiwhaiti, Tiwhaiti Road, Hawera (148.2465ha)
  - Taharua Road, Rangitaiki (1750.8204ha)
  - Ferry View, Parewānui Road, Bulls (378.9943ha)
- An overseas investment in significant business assets, being the Applicant's acquisition of property in New Zealand used in carrying on business in New Zealand including:
  - livestock;
  - shares in Fonterra Co-operative Group Limited associated with the farms;
  - two non-sensitive parcels of land (computer registers WN45D/325 and SA38B/238); and
  - chattels and machinery on the farms;

for consideration exceeding \$100m.

("the Investment")

Consent is granted subject to the following conditions:

### **Statutory Conditions of Consent**

Section 28 of the Overseas Investment Act 2005 ("the Act") provides that it is a condition of every consent, whether or not it is stated in the consent, that

- (a) The information provided by each applicant to the regulator or the relevant Minister or Ministers in connection with the application is true and correct at the time it was provided; and
- (b) Each Consent Folder must comply with 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 is granted, unless compliance should reasonably be excused.

For the purposes of section 28, the Overseas Investment Office has taken into account the following information:

- (a) Milk New Zealand Holding Limited's application letter dated 12 April 2011;
- (b) Wildland Consultants Limited reports 2618a-2618d dated February and March 2011, and report 2441e dated June 2010;
- (c) Chapman Tripp's email dated 22 June 2011 at 10.54am;
- (d) Chapman Tripp's letter dated 20 July 2011;
- (e) The Perrin Ag Consultants Limited report dated September 2011;
- (f) Chapman Tripp's letter dated 29 September 2011;
- (g) Chapman Tripp's letter dated 25 October 2011;
- (h) PricewaterhouseCooper's email dated 15 December 2011 at 4.28pm;
- (i) Chapman Tripp's letter dated 20 December 2011;
- (j) Paragraph 5.2 of Chapman Tripp's letter dated 19 January 2012;
- (k) Chapman Tripp's email dated 19 January 2012 at 11.15am;
- (l) Chapman Tripp's letter dated 31 January 2012;
- (m) The Farm Management Agreement and Property Management Agreement entered into with Landcorp Farming limited;
- (n) Chapman Tripp's email dated 14 February 2012 at 2.57pm;
- (o) Chapman Tripp's letter dated 16 February 2012;
- (p) Landcorp Memorandum dated 16 February 2012;
- (q) Chapman Tripp's letter dated 17 February 2012;
- (r) Landcorp Memorandum dated 22 February 2012;
- (s) Chapman Tripp's email dated 23 February 2012 at 4.38pm;
- (t) Chapman Tripp's letter dated 23 February 2012;
- (u) Chapman Tripp's email dated 6 March 2012 at 11.11am;
- (v) Chapman Tripp's email dated 8 March 2012 at 10.35am;
- (w) Chapman Tripp's email dated 12 March 2012 at 12.52m;
- (x) Chapman Tripp's email dated 13 March 2012 at 1.57pm;
- (y) Chapman Tripp's email dated 13 March 2012 at 1.53pm;
- (z) Chapman Tripp's email dated 13 March 2012 at 6.16pm;
- (aa) Chapman Tripp's email dated 16 March 2012 at 4.46pm;

- (bb) Chapman Tripp's email dated 22 November 2012 at 11.49am;
- (cc) The Consent Holders' variation application letter dated 22 November 2012;
- (dd) Chapman Tripp's email dated 26 November 2012 at 16:44pm;
- (ee) Chapman Tripp's email dated 27 November 2012 at 12.11pm;
- (ff) Chapman Tripp's email dated 27 November 2012 at 12.12pm;
- (gg) Chapman Tripp's email dated 28 November 2012 at 11.02am; and
- (hh) Chapman Tripp's email dated 28 November 2012 at 12.45pm.

### **Special Conditions**

#### When the Investment may be acquired

1. The consent will lapse if:
  - (a) the Investment has not been acquired by the Consent Holders by 25 April 2013; or
  - (b) the "Property Management Agreement" and "Farm Operation Agreement" (together "the Agreements") entered into with Landcorp Farming Limited ("Landcorp") are terminated or materially changed prior to the Investment being acquired by the Consent Holders.

#### Good character

2. The individuals with control of the relevant overseas person must:
  - (a) continue to be of good character; and
  - (b) not become individuals of the kind referred to in ss 15 or 16 of the Immigration Act 2009.
3. If an individual with control of the relevant overseas person ceases to be of good character, or becomes an individual of the kind referred to in ss 15 or 16 of the Immigration Act 2009, the Consent Holders must either ensure that individual immediately ceases to be an individual with control of the relevant overseas person, or dispose of the Investment in accordance with condition 28.

#### Special conditions

4. The Consent Holders must introduce into New Zealand NZD \$16m of additional investment for development purposes.
  - (a) For the avoidance of doubt, the NZD \$16m excludes the cost of acquiring shares in Fonterra Co-operative Group Limited; and the cost of any other work that is not for development purposes.
  - (b) If the additional investment for development purposes has not been introduced into New Zealand, or the work arising from the additional investment for development purposes has not been completed by 31 May 2018, the Consent Holders must dispose of the Investment in accordance with condition 28.
5. The Consent Holders must establish an on-farm training facility for dairy farm workers in accordance with clause 5(c) of the Property Management Agreement.
  - (a) The Consent Holders must contribute a minimum of NZD towards the capital cost of establishing this facility.

- (b) The Consent Holders must apply for any consents required to establish the facility by 31 August 2014, and subject to those consents being available, the facility must be established by 30 June 2015.
- (c) The Consent Holders must dispose of the Investment in accordance with condition 28 if the on-farm training facility has not been established by 30 June 2015, unless the Consent Holders can establish to the Overseas Investment Office's satisfaction that the construction of the facility was materially delayed by the unavailability of a required consent and that it has taken and continues to take all reasonable steps to obtain that consent.
6. The Consent Holders must give two scholarships of not less than NZD \$5,000 each year to students of the on-farm training facility. The first two scholarships are to be awarded by 28 February 2016.
7. The Consent Holders must use reasonable endeavours to assist Landcorp to extend Landcorp's farm consultancy services in China, and to market Landcorp's food and animal products in China.
8. At least one of the Consent Holders must maintain a contractual relationship with Landcorp in materially the same terms as contained in the Agreements.
- (a) The Consent Holders must dispose of the property in accordance with condition 28 if:
- (i) the Agreements are terminated (other than termination at the expiry of the Agreements) and not replaced with new agreements that are materially the same as those that were terminated; or
  - (ii) the Agreements are varied in a material way.
- (b) To avoid doubt:
- (i) The novation of the Agreements by the Consent Holders and Landcorp is neither a termination nor a material variation of the Agreements, provided that no change is made to the Agreements other than changing the parties and incorporating the "variations and clarifications" described in condition 8(b)(ii) below.
  - (ii) Subject to conditions 8(b)(iii)-(v), the variations and clarifications contained in schedule 5 of the shareholders' agreement dated 28 November 2012 are not material variations to the Agreements.
  - (iii) The termination of Landcorp's provision of financial services to the Consent Holders will not be a material variation of the Agreements provided that the financial services continue to be provided in New Zealand.
  - (iv) The termination of Landcorp's management of any one or more of the farms is deemed to be a material variation of the Agreements.
  - (v) The Consent Holders giving notice to Landcorp that they will perform the "owners responsibilities" themselves is deemed to be a material variation of the Agreements.

9. The Consent Holders and their associates must not acquire an ownership or control interest in a milk processing facility in New Zealand unless a 50% or more ownership or control interest in that facility is held by non-overseas persons. If the Consent Holders or their associates acquire an ownership or control interest in a milk processing facility in New Zealand in breach of this condition, the Consent Holders must dispose of the Investment in accordance with condition 28.
10. The Consent Holders must:
- (a) deal with the Crown in accordance with the Overseas Investment Regulations 2005 as if the Consent Holders were the party offering the special land to the Crown; and
  - (b) be bound by any arrangement that the previous owner entered into with the Crown in relation to the special land and, if required by the Crown, enter into an encumbrance or other instrument with the Crown to be so bound.

*Walking access*

11. The Consent Holders must provide public walking access over Benneydale 1, Benneydale 2 and Taharua Station, in consultation with the Department of Conservation ("DOC") and New Zealand Walking Access Commission ("WAC").
- (a) Required access:
- (i) The Consent Holders must provide public walking access at the southern end of Benneydale 1, from Maraeroa Road to the Pureora Forest Park.
  - (ii) The Consent Holders must provide public walking access at the north-eastern end of Benneydale 2, between State Highway 30 (Scott Road) and the Waipapa Ecological Area.
  - (iii) The Consent Holders must provide public walking access along or adjacent to the Taharua River and to the Te Rere Falls. The Consent Holders must also provide reasonable vehicle access for maintenance and for those with limited mobility, if required by DOC or WAC.
- (b) Access routes:
- (i) The required walking access routes in respect of conditions 11(a)(i) and (ii) are shown in the maps attached to these conditions. Nothing in condition 11(b)(i) prevents the Consent Holders and DOC (in the case of Benneydale 1 and Benneydale 2) agreeing an alternative means of satisfying condition 11(a)(i) and (ii).
  - (ii) The walking and vehicle access routes in respect of condition 11(a)(iii) are to be agreed between the Consent Holders and WAC.
- (c) Public walking access to Benneydale 1, Benneydale 2 and Taharua Station is to be available by 30 November 2014.
- (d) Consultation with DOC and WAC must commence by 30 November 2013.

- (e) If required by DOC or WAC, the Consent Holders must register an easement, or other suitable instrument, to secure the access required by condition 11(a). The Consent Holders must meet the cost of registering the instrument, including the cost of any survey required to support the instrument. The Consent Holders must register the relevant instrument within two years of being required to do so by DOC or WAC.
- (f) The Consent Holders must meet the cost of forming and maintaining walking tracks, if reasonably required by DOC or WAC.
- (g) Dispute resolution:
- (i) Any dispute, difference or claim between the Consent Holders and DOC or WAC will be referred to and finally resolved by arbitration (unless otherwise agreed by the Consent Holders and DOC or WAC). The tribunal will consist of a sole arbitrator appointed by agreement between the parties or if the parties cannot agree by the President of the New Zealand Law Society. The place of arbitration will be Wellington, the language of the arbitration will be English. The Consent Holders will share the cost of any such arbitration equally with the other parties to the arbitration.
- (ii) The Consent Holders must provide a copy of any award made by an arbitrator, or evidence of the outcome of any other dispute resolution process, to the Overseas Investment Office within 14 days of the dispute being resolved.

*Environmental protection and enhancement*

12. The Consent Holders must implement the recommendations in Wildland Consultants Limited reports 2618a-2618d (dated February and March 2011), and 2441e (dated June 2010) (together the "Wildland Reports") by 31 May 2017.
13. The Consent Holders must consult with DOC before implementing the recommendations in the Wildland Reports. Consultation with DOC must begin by 30 November 2013.
14. If DOC considers that formal protection is required for any of the areas identified in the Wildland Reports, the Consent Holders must formally protect those areas (for example with the QEII National Trust or via a land management agreement with the relevant Council).
15. Of the conservation management options set out on page 11 of Wildland report 2618a, the Consent Holders must implement the option preferred by DOC.
16. The Consent Holders must undertake a survey of mudfish in the Mangemange Stream by 31 May 2015.
17. The dispute resolution procedure in condition 11(g) (excluding references to WAC) shall apply to any dispute, difference or claim between the Consent Holders and DOC.

*Protection or enhancement of historic heritage*

18. The Consent Holders must undertake an archaeological survey, in consultation with local Iwi, on Benneydale 1, Benneydale 2, Taharua and Tiwhaiti, by 31 May 2014.

19. The Consent Holders must register a heritage covenant, in the form appearing in appendix S of the application for consent, in respect of the Te Ruaki pa site on computer register TNC1/383 by 31 May 2014.
20. The Consent Holders must, if requested by the New Zealand Historic Places Trust, write a letter supporting the registration of the Te Ruaki pa site as a wahi tapu under the Historic Places Act 1993.
21. If required by the Office of Treaty Settlements ("OTS"), the Consent Holders must transfer the Nga Herenga pa site (approximately 1.6ha located on Benneydale 1) to the Crown for nil consideration.
  - (a) The transfer must be completed within 12 months of OTS's requirement being communicated in writing to the Consent Holders.
  - (b) The Consent Holders must meet the cost of any survey required to support the transfer of the Nga Herenga pa site to the Crown.
  - (c) Within three months of the Investment being acquired, the Consent Holders must retire the Nga Herenga pa site from grazing and ensure that adequate fencing is in place to protect the site.
  - (d) The dispute resolution procedure in condition 11(g) (replacing references to DOC and WAC with references to OTS) shall apply to any dispute between the Consent Holders and OTS.
22. The Consent Holders must allow access to wahi tapu to those with a legitimate interest in the relevant wahi tapu.
  - (a) The right of access may be exercised by foot over any reasonably convenient routes specified by the Consent Holders.
  - (b) The Consent Holders may require a person intending to exercise the right of access to give the Consent Holders reasonable notice in writing of his or her intention to exercise that right.
  - (c) The Consent Holders may limit the right of access to reasonable times and during daylight hours.
  - (d) The Consent Holders may require a person exercising the right of access to observe reasonable conditions relating to the time, location, or manner of access as are reasonably required:
    - (i) for the safety of people; or
    - (ii) for operational reasons; or
    - (iii) for the protection of land, improvements, flora and fauna, plant and equipment, or livestock.
  - (e) In consultation with local iwi, the Consent Holders must register an easement, or other suitable instrument to make the access under conditions 22(a)-(d) permanent in respect of the Nga Herenga pa site. The Consent Holders must meet the cost of registration, and the cost of any survey required to support the registration of an instrument. The Consent Holders must register the relevant instrument by 30 November 2014. The dispute resolution procedure in condition 11(g) (replacing references to DOC and WAC with references to local iwi) shall apply to any dispute between the Consent Holders and local iwi.

#### Reporting to the Overseas Investment Office

23. The Consent Holders must report to the Overseas Investment Office in writing within one month of acquiring the Investment. The report must include:



- (a) the date of settlement;
  - (b) final consideration paid;
  - (c) where applicable, copies of transfer documents and settlement statements; and
  - (d) any other information that would aid the Overseas Investment Office in its function to monitor conditions of consent.
24. The Consent Holders must notify the Overseas Investment Office within 20 working days if:
- (a) the Consent Holders;
  - (b) a relevant overseas person;
  - (c) an individual with control of a relevant overseas person; or
  - (d) any person in which the Consent Holders, a relevant overseas person or an individual with control of a relevant overseas person has, or had at the time of the offence or contravention, a 25% or more ownership or control interest;

commits an offence or contravenes the law (whether convicted or not) apart from any minor offence or contravention where such offence or contravention would not be regarded by a reasonable person as indicating that any individual with control of the relevant overseas person is not of good character.

25. The Consent Holders must notify the Overseas Investment Office in writing within 20 working days if they dispose of the Investment or cease to be overseas persons.
26. The Consent Holders must provide an annual report in writing to the Overseas Investment Office. The purpose of the report is to provide information with which the Overseas Investment Office can monitor conditions of consent.
- (a) Unless the Overseas Investment Office waives this requirement (in full or in part), each report must:
    - (i) detail the introduction into New Zealand of additional investment for development purposes, must include evidence that the additional investment was introduced into New Zealand, and must detail any developments started, completed or in progress, including:
      - a description of the developments;
      - the cost of the developments; and
      - (where appropriate) photographs of the developments;
    - (ii) detail progress towards establishing the on-farm training facility, and when the facility is established, a summary of the facility's operations including the number of students enrolled;
    - (iii) provide the name and a brief biography of the individuals who have been awarded scholarships;
    - (iv) detail the extent to which the Consent Holders have complied with 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, including:

- the number of new and retained jobs, including the location and nature of each job;
  - copies of any business plans or budgets prepared under the Agreements since the previous report;
  - copies of any management reports provided to the Consent Holders by Landcorp or any other related entity; and
  - a description of the extent to which the Landcorp "Farmpride QA" and "Work Safe" programmes have been complied with;
- (v) detail the extent to which the Consent Holders have complied with conditions 7-10:
- (vi) detail the extent to which the Consent Holders have provided public walking access over Benneydale 1, Benneydale 2 and Taharua, including:
- copies of any agreements entered into with DOC, WAC, OTS, local iwi or others;
  - copies of any documents registered on the titles of Benneydale 1, Benneydale 2 and Taharua;
  - whether any dispute resolution process has been used, and copies of any documents used in that process;
- (vii) detail the extent to which the Consent Holders have implemented the recommendations in the Wildland Reports, including:
- copies of any documents registered on the titles of the properties;
  - whether any dispute resolution process has been used, and copies of any documents used in that process;
- (viii) detail the extent to which the Consent Holders have complied with the conditions 18-22, including:
- a summary of the progress towards completion of the archaeological survey;
  - if the archaeological survey is complete, a copy of the archaeological survey report;
  - whether OTS has required the Nga Herenga pa site to be transferred to the Crown, and copies of any agreements entered into with OTS;
  - details of the walking access arrangements made in respect of the Nga Herenga pa;
  - copies of any documents registered on the titles of Benneydale 1, Benneydale 2, Taharua or Tiwhaiti;
  - whether any dispute resolution process has been used, and copies of any documents used in that process;
- (ix) provide evidence of compliance with condition 2 (good character); and

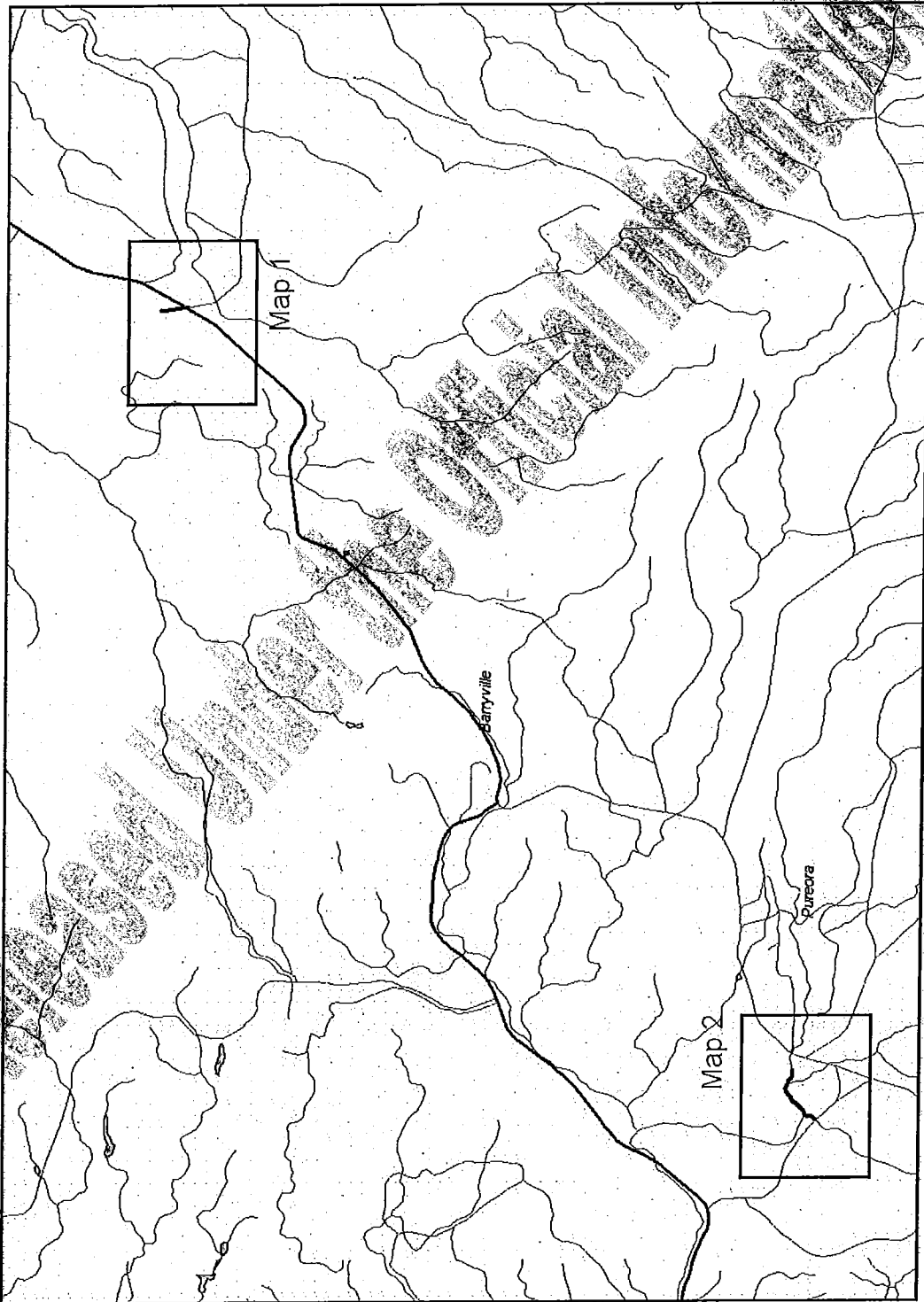
- (x) if required by the Overseas Investment Office, include police certificates for each individual deemed by the Overseas Investment Office to be an individual with control of the relevant overseas person.
- (b) The Consent Holders must report:
  - (i) by 31 August 2013, for the period ended 31 May 2013; and
  - (ii) annually thereafter until advised by the Overseas Investment Office that no further reports are required (it is anticipated that a *minimum* of five annual reports will be required); and
  - (iii) at such other times as required by the Overseas Investment Office.

#### Disposal of the Investment

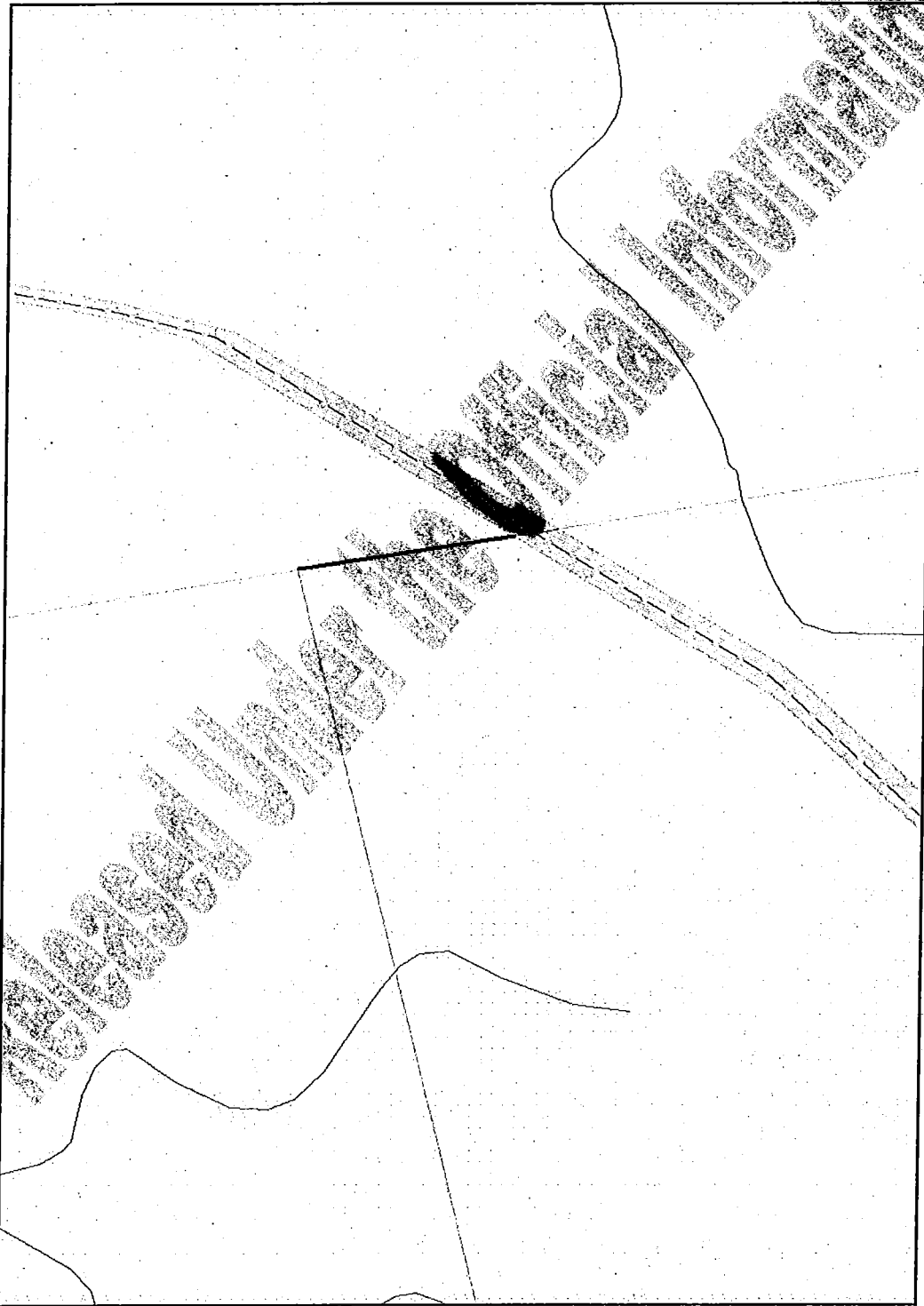
- 27. The Consent Holders must not dispose of any part of the Investment (whether under condition 28 or otherwise) unless:
  - (a) they have complied with conditions 10, 11, 18-21, and 22(e) to the extent that conditions 10, 11, 18-21, and 22(e) apply to the part of the investment being disposed of; and
  - (b) they have completed any riparian fencing work identified in the Wildland Reports, to the extent that riparian fencing work applies to the part of the investment being disposed of.
- 28. If these conditions require the Consent Holders to dispose of the Investment:
  - (a) The Consent Holders must, within six weeks:
    - (i) procure from an independent registered valuer, and provide to the Overseas Investment Office, a written market valuation of the Investment; and
    - (ii) appoint licensed real estate agents to actively market and appropriately advertise the Investment for sale on the open market; and
  - (b) The Consent Holders must dispose of the Investment within two years. If the Consent Holders have not disposed of the Investment at the expiry of the two year period, the Consent Holders must offer the Investment for sale by auction or tender within a further three months (with no reserve price or minimum bid set for the auction or tender).
  - (c) The Consent Holders must provide a written report to the Overseas Investment Office quarterly (by the last day of March, June, September and December) about the marketing activities undertaken and offers received for the Investment. The Consent Holders must also report at any other time if required by the Overseas Investment Office.
  - (d) The Consent Holders must provide a written report to the Overseas Investment Office within one month of the Investment being disposed of, providing evidence that:
    - (i) the Consent Holders have disposed of the Investment (including copies of any sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor); and
    - (ii) evidence that the purchaser is not an associate of the Consent Holders.

Maps referred to in condition 11(b)

Overview map

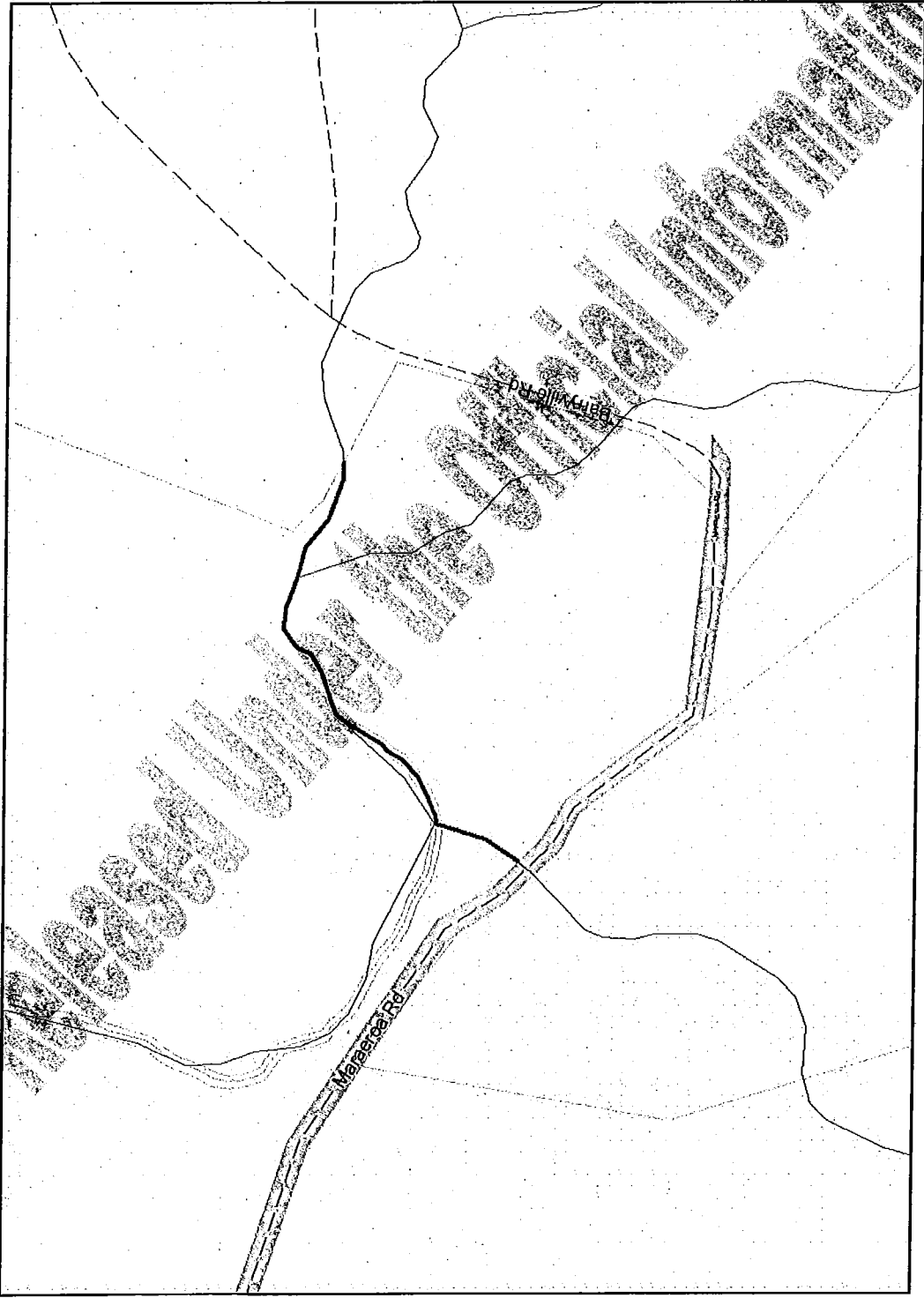


Map 1 - Benneydale 2 - Conditions 11(a)(ii) and 11(b)(i)



The required access route for public walking access between State Highway 30 (Scott Road) and the Waipapa Ecological Area is along the north-eastern boundary of Benneydale 2, as shown in blue on map 1.

Map 2 - Benneydale 1 - Conditions 11(a)(i) and 11(b)(i)



The required access route for public walking access between Maraeroa Road and the Pureora Forest Park is along the route shown in blue on map 2. The route is shown in blue on map 2.

### **Monitoring Conditions of Consent**

For the purpose of monitoring conditions of consent, the Overseas Investment Office may, under section 38 of the Act, require the Consent Holders to provide information or documents, or both, that are specified in the notice. Under section 40 of the Act, the Overseas Investment Office may also require the Consent Holders to provide a statutory declaration verifying the extent to which the Consent Holders have complied with the conditions of consent, and, if the Consent Holders are in breach of a condition or conditions, the reasons for the breach and the steps the Consent Holders intend to take to remedy the breach.

### **Sanctions**

The Act provides for civil and criminal sanctions for breaching the Act, failing to comply with conditions of consent and failing to provide information required by the Overseas Investment Office. The Overseas Investment Office has an obligation to investigate and act upon alleged and suspected breaches of the Act.

### **General**

A reference to the "Overseas Investment Office" in this Notice includes a reference to the regulator (as defined by the Act).



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Pedro Morgan - Senior Solicitor  
Overseas Investment Office



**Land Information  
New Zealand**  
*Toitū te whenua*

**Decision required under the Overseas Investment Act 2005: Milk New Zealand  
Holding Limited**

<b>Date</b>	30 November 2012
<b>Security Level</b>	Commercial: In Confidence
<b>Priority</b>	<b>URGENT</b>
<b>Case Number</b>	201110035

Released Under the Official Information Act



**MEMORANDUM**

**Annexure:**

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

**Recommendations:**

3. I recommend that you vary the consent granted on 26 April 2012 by adding Pengxin New Zealand Farm Group Limited as an additional consent holder.

Agree

Don't agree

4. I recommend that you vary the consent granted on 26 April 2012 to clarify that livestock, shares in Fonterra Co-operative Group Limited associated with the 16 farms, two non-sensitive parcels of land (computer registers WN45D/325 and SA38B/238), and chattels and machinery on the 16 farms form part of the significant business assets for which consent has been granted.

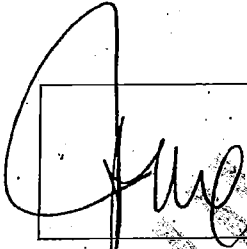
Agree

Don't agree

5. I recommend that you vary the conditions of the consent granted on 26 April 2012 as outlined in the annexed report.

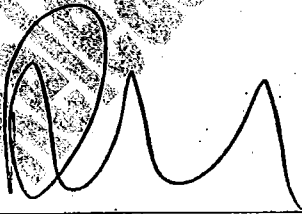
Agree

Don't agree



Annelies McClure - Manager  
Overseas Investment Office

Date 20/11/2012



Pedro Morgan - Senior Solicitor  
Overseas Investment Office

**Report of the Overseas Investment Office  
on the application by Milk New Zealand Holding Limited  
to vary the consent dated 26 April 2012  
Case 201110035**

**Contents**

Summary .....	1
Application.....	1
Applicant .....	2
Background to the Variation .....	2
Variation .....	3
Appendix 1 – Ownership of Milk NZ and Pengxin Farm.....	8
Appendix 2 – Date changes .....	9
Appendix 3 – Updated Notice of Decision.....	12

**Summary**

1. Summary of key information:

<b>Applicant</b>	Milk New Zealand Holding Limited (China, People's Republic of 100%) Pengxin New Zealand Farm Group Limited (China, People's Republic of 100%)
<b>Vendors</b>	Hillside Limited (in receivership & liquidation) Plateau Farms Limited (in receivership & liquidation) Ferry View Farms Limited (in receivership & liquidation) Taharua Limited (in receivership & liquidation) Hillside Limited (in receivership & liquidation), Ian Ross Blackman and Robert Scott Crafar (All New Zealand 100%)
<b>Consideration</b>	NZD plus livestock (estimated to be NZD
<b>Recommendation</b>	GRANT VARIATION

**Application**

2. An application to vary the consent granted to Milk New Zealand Holding Limited ("Milk NZ") on 26 April 2012 ("the Consent") and the conditions of the Consent ("the Consent Conditions").

3. The Consent was for Milk NZ to acquire:
- (a) a freehold interest in 16 farms (thirteen dairy and three drystock) located in the central North Island collectively known as the Crafar Farms and comprising approximately 7892 hectares (dairy area approximately 5990 hectares) ("the 16 farms"); and
  - (b) significant business assets (the 16 farms along with other assets);  
(together, "the Assets").
4. The 16 farms were located at:
- Plateau Road (323 hectares)
  - Rawhiti Road (129 hectares)
  - Pine View (398 hectares)
  - Cirenester (341 hectares)
  - Broadlands (405 hectares)
  - Lake View (206 hectares)
  - Forest Park (drystock, 250 hectares)
  - Glyn Park (drystock, 647 hectares)
  - Waverley (drystock, 206 hectares)
  - Karangahape Road (627 hectares)
  - Benneydale 1 (896 hectares)
  - Benneydale 2 (792 hectares)
  - Collins Road (398 hectares)
  - Tiwhaiti (148 hectares)
  - Tairāua (1751 hectares)
  - Ferry View (379 hectares)
5. On 22 April 2009, the relevant Ministers delegated to the regulator the power under section 27 of the Act to
- (a) vary a consent with the agreement of the consent holder;
  - (b) vary or add to conditions of consent with the agreement of the consent holder; and
  - (c) revoke a condition of consent.

## Applicant

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6. Milk NZ is a Hong Kong incorporated company which is an overseas person under the Overseas Investment Act 2005 ("the Act"). Pengxin New Zealand Farm Group Limited ("Pengxin Farm") is a New Zealand incorporated subsidiary of Milk NZ, and is also an overseas person under the Act.
7. A diagram showing the ownership of Milk NZ and Pengxin Farm can be found at **appendix 1**.
8. More detail about the ownership of Milk NZ can be found in the OIO's 29 March 2012 report on the application for consent by Milk NZ.

## Background to the Variation

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9. The original consent (granted on 26 January 2012) contemplated the acquisition of the Assets on or about 1 June 2012, the first day of the 2012-13 milking season. It is normal for the sale of dairy farms to be completed at the turn of the milking season.
10. On 24 January 2012, Baytown Investments Limited (a company associated with Sir Michael Fay and David Richwhite) and the Tiroa E and Te Hape B Trusts (collectively, "the plaintiffs") brought judicial review proceedings challenging recommendation of the Overseas Investment Office ("OIO"). On 30 January 2012, the plaintiffs amended their claim to also challenge the consent decision itself. On 15 February 2012, the High Court set aside the original consent.
11. The OIO made a further recommendation to the relevant Ministers on 29 March 2012.
12. The second consent (granted on 26 April 2012) also contemplated the acquisition of the Assets on or about 1 June 2012, the first day of the 2012-13 milking season. However, due to further judicial review proceedings, the acquisition of the 16 farms could not be given effect.

13. The Court of Appeal (hearing both an appeal of the first judicial review and the second judicial review at first instance) dismissed the plaintiff's claim on 7 August 2012. An application for leave to appeal to the Supreme Court was refused on 17 October 2012.
14. The refusal by the Supreme Court to grant leave to the Tiroa E and Te Hape B Trusts to appeal has allowed Milk NZ to proceed with their plans to purchase the Assets. Despite the judicial review proceedings being completed relatively quickly, the delay means that the dates by which Milk NZ must comply with certain consent conditions need to be varied. Milk NZ also wish to vary both the Consent and the Consent Conditions by permitting Pengxin Farm (instead of Milk NZ) to give effect to the acquisition of the Assets.

## Variation

15. Milk NZ has raised six matters which may require a variation to the Consent or to the Consent Conditions. Milk NZ would like to:
  - (a) nominate a New Zealand registered company to give effect to the overseas investment;
  - (b) alter a number of the compliance and reporting dates in the Consent Conditions (to account for the delay caused by the judicial review proceedings);
  - (c) clarify the wording of the Consent in relation to its investment in assets other than sensitive land;
  - (d) novate the Property Management Agreement ("PMA") and Farm Operation Agreement ("FOA") (together, "the Agreements") entered into with Landcorp;
  - (e) vary the PMA and FOA; and
  - (f) cancel the novated PMA and FOA and replace them with new agreements between Pengxin Farm and Landcorp, in the same terms as the varied, novated, PMA and FOA.
16. In addition to the six matters raised by Milk NZ, the OIC considers that the application for a variation presents an opportunity to remedy minor typographical errors in the Consent Conditions.
17. A proposed replacement notice of decision, which includes the proposed varied Consent Conditions, can be found in **appendix 3**. The proposed replacement notice of decision was provided (in draft) to Milk NZ and Pengxin Farm, and Milk NZ and Pengxin Farm have agreed to the Consent and the Consent Conditions being varied in the manner shown in the draft notice of decision.

### Nomination of a New Zealand company

#### *Variation Sought*

18. Milk NZ and Pengxin Farm wish to have the consent varied to allow Pengxin Farm to give effect to the overseas investment instead of Milk NZ.

#### *Reason for Variation*

19. Rather than register as an overseas company within the New Zealand Companies Act 1993 and for certain structuring reasons, Milk NZ would like to nominate Pengxin Farm to complete the acquisition of the Assets and therefore step into the position of Milk NZ under the Consent. The acquisition of the Assets by Pengxin Farm, rather than Milk NZ, will simplify a number of New Zealand company and tax law compliance requirements in relation to the investment in and operation of the Assets.
20. Pengxin Farm is a New Zealand registered company which was incorporated on 27 June 2012. Pengxin Farm was incorporated for the purpose of acquiring the Assets.

21. The sole shareholder of Pengxin Farm is a New Zealand registered company Milk New Zealand Holding Limited (Company Number 3883536) ("Holding Co")<sup>1</sup>. Holding Co was incorporated on 26 June 2012. Holding Co was incorporated to be the shareholder of Pengxin Farm and to provide funding to Pengxin Farm for the acquisition of the Assets.
22. The sole shareholder of Holding Co is a British Virgin Islands registered company Milk New Zealand Investment Limited (Company Number 1714180) ("Investment Co"). Investment Co was incorporated on 24 May 2012.
23. Zhaobai Jiang, the sole director of Investment Co, Holding Co and Pengxin Farm exercises control over Pengxin Farm. Mr Jiang is also the sole director and 99% ultimate beneficial owner of Milk NZ.
24. Pengxin Farm is a wholly owned subsidiary of Holding Co. Holding Co is a wholly owned subsidiary of Investment Co and Investment Co is a wholly owned subsidiary of the Applicant.
25. Given the specific nature of the Consent and the Consent Conditions, Milk NZ appreciates that the exemption in regulation 33(a) of the Overseas Investment Regulations 2005 would not apply in respect of Pengxin Farm acquiring the Assets.
26. Accordingly, Milk NZ requests a variation to the Consent to permit the acquisition of the Assets by Pengxin Farm and as such for Pengxin Farm to assume the position of Milk NZ in respect of the Consent.

#### *Our Assessment*

27. Ordinarily, the consent granted and any conditions of consent would permit a 100% subsidiary of the consent holder to give effect to the overseas investment. In order to give the OIO a greater ability to control the ultimate purchaser of the sensitive assets, the Consent and Consent Conditions in this case prevent a subsidiary giving effect to the overseas investment.
28. In this case, the OIO does not object to Pengxin Farm giving effect to the overseas investment. Changes to the Consent and the Consent Conditions are required to permit this change and to ensure that Pengxin Farm will be bound by the Consent Conditions.

#### Alter compliance and reporting dates

##### *Variation Sought*

29. Milk NZ and Pengxin Farm wish to have some (but not all) of the compliance dates in the Consent Conditions varied to account for the delay caused by the judicial review proceedings. Milk NZ and Pengxin Farm also wish to have the reporting schedule altered to align with the milking season.

##### *Reason for Variation*

30. The Court of Appeal and Supreme Court proceedings challenging the validity of the Consent resulted in a six month delay during which Milk NZ could not complete its acquisition of the Assets. These delays meant that the receivers of the Cratar companies were required to enter into new sharemilking agreements in respect of the 2012/2013 farming year. This means that the sharemilking arrangements with Landcorp will not be able to commence until the commencement of the 2013/2014 farming year on 1 June 2013.

##### *Our Assessment*

31. The majority of the changes are a function of the delay caused by the judicial review proceedings. The OIO considers that the changes sought are reasonable having regard to the delay caused by the judicial review proceedings.
32. One further change (to the reporting schedule) seeks to align Milk NZ and Pengxin Farm's reporting obligations to the milking year instead of the calendar year. The OIO does not object to this change being made.
33. The detail of the changes sought, and the OIO's detailed assessment, can be found in **appendix 2**.

<sup>1</sup> Holding Co is not the same company as Milk NZ, though the two companies share the same name. Milk NZ was incorporated in Hong Kong, while Holding Co was incorporated in New Zealand.

### Clarification of wording of the Consent

#### *Variation Sought*

34. Milk NZ and Pengxin Farm wish to have the Consent clarified to confirm that consent was granted to acquire two parcels of non-sensitive land and other assets.

#### *Reason for Variation*

35. Included in the Assets are two properties which are not sensitive land, being the properties contained in certificates of title WN45D/325 (being a part of the Glyn Park Farm) and SA38B/238 (being 17 Arthur Crescent (Apt 6)) (together, "the Non-Sensitive Land"). The Consent only describes the overseas investment as being the Applicant's acquisition of the sensitive land forming part of the Assets.

#### *Our Assessment*

36. While the OIO is not convinced that a variation is necessary, it does not object to the Consent being clarified in the manner proposed.

### Novation of the PMA and FOA

#### *Variation Sought*

37. Milk NZ and Pengxin Farm wish to have the Consent Conditions varied to permit the novation of the Agreements (replacing Milk NZ with Pengxin Farm as the contracting party).

#### *Reason for Variation*

38. Milk NZ, Pengxin Farm, and Landcorp will enter into a conditional deed of novation which will, subject to the variation being granted, novate the Agreements to Pengxin Farm and will appoint the joint venture company, Pengxin New Zealand Farm Management Limited, ("Pengxin Management") as the portfolio manager. Under the Agreements, when they are ratified by Pengxin Management, Landcorp is appointed as the farm manager. Pengxin Farm will be the party to the Joint Venture Shareholders' Agreement with Landcorp in respect of Pengxin Management.
39. The novation of the Agreements to Pengxin Farm would result in a termination of the Agreements between Milk NZ and Landcorp and the replacement of those Agreements with new agreements between Pengxin Farm and Landcorp on exactly the same terms. The purpose of this novation is to ensure that the arrangements with Landcorp are preserved and continue with the intended purchaser of the Assets.

#### *Our Assessment*

40. Condition 8 provides that Milk NZ:
- (a) must maintain its contractual relationship with Landcorp in materially the same terms as contained in the Agreements; and
  - (b) dispose of the property in accordance with condition 28 if:
    - (i) the Agreements are terminated (other than termination at the expiry of the Agreements) and not replaced with new agreements that are materially the same as those that were terminated; or
    - (ii) the Agreements are varied in a material way.
41. The proposed novation will end Milk NZ's contractual relationship with Landcorp, and the OIO considers that the replacement of one contracting party with another is a material change to the Agreements.
42. Despite that, the OIO does not object to the novation occurring. The OIO considers that the relevant Ministers would likely have granted consent even if the contracting party was Pengxin Farm (as will be the case when the novation is given effect) as the same individuals are ultimately behind the transaction.
43. A new consent condition is required to permit the novation to be given effect.

Amendment of the PMA and FOA

*Variation Sought*

44. Milk NZ and Pengxin Farm wish to have the Consent Conditions varied to permit a number of clarifications and variations to the Agreements.

*Reason for Variation*

45. In the course of extensive negotiations over a shareholders' agreement (to be entered into between Landcorp and Pengxin Farm, the intended shareholders of Pengxin Management), a number of detailed clarifications and variations to the terms of the FOA and the PMA have been agreed. These clarifications and variations are summarised in Schedule 6 of the application letter. Milk NZ and Pengxin Farm consider the clarifications and variations to be self explanatory and not material, in the sense that Landcorp's management obligations and rights are preserved.

*Our Assessment*

46. The OIO considers that most of the clarifications and variations are immaterial. However, the OIO considers that three of the clarifications and variations are material, and require amendments to the Consent Conditions:

(a)

(b)

(c)

Cancellation and replacement of the PMA and FOA

*Variation Sought*

47. Milk NZ and Pengxin Farm wish to have the Consent Conditions varied to permit the cancellation and replacement of the Agreements.

*Reason for Variation*

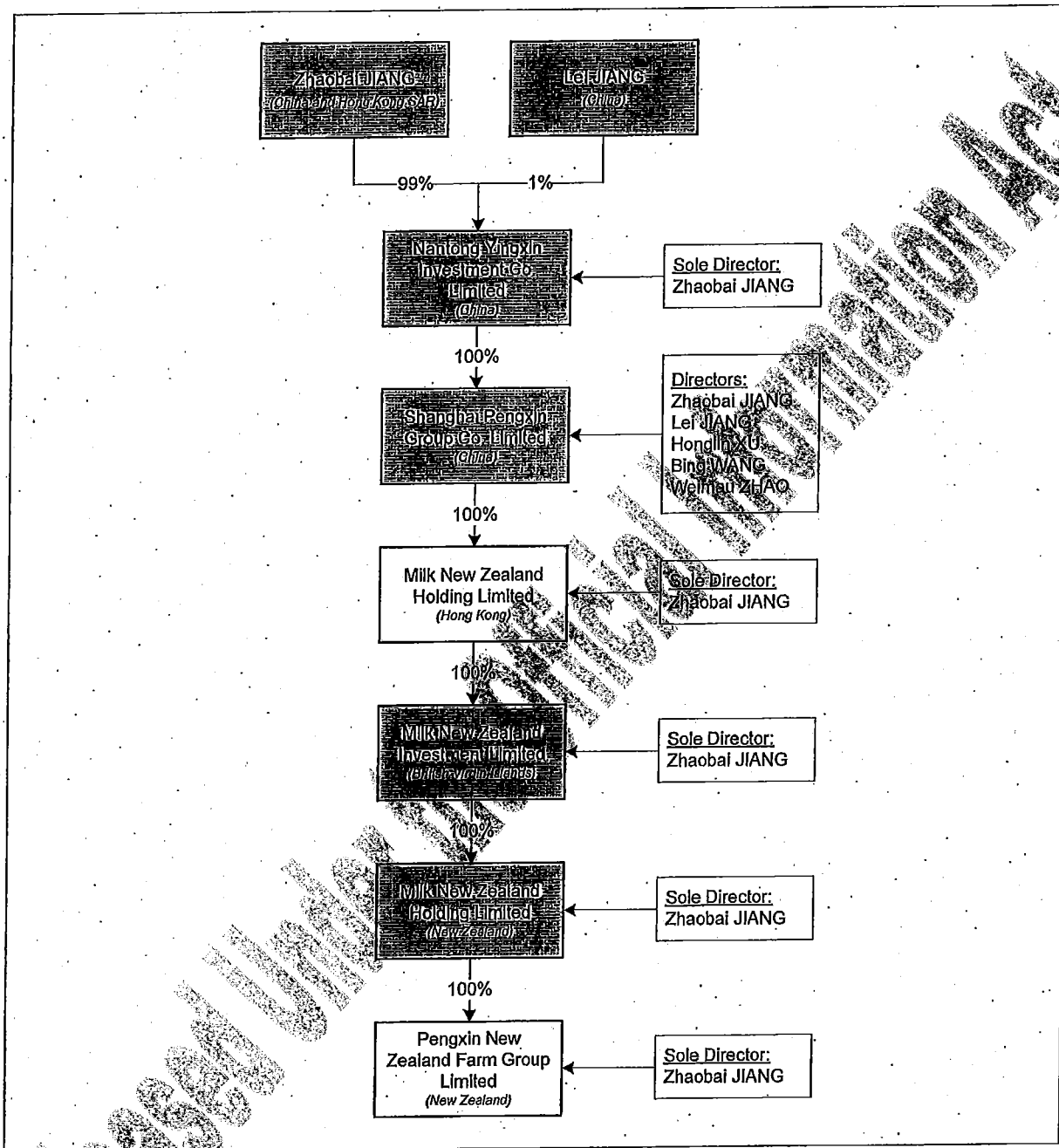
48. If consent to the variations to the PMA and FOA is granted, eventually Landcorp and Pengxin Farm will cancel the novated PMA and FOA and enter into replacement PMA and FOA documents between Landcorp and Pengxin Farm which include the approved variations to the PMA and FOA but will otherwise be on the same terms as the existing PMA and FOA.

*Our Assessment*

49. The OIO considers that no variation will be required provided the replacement PMA and FOA are in the same terms as the cancelled PMA and FOA. Milk NZ and Pengxin Farm would not breach condition 8 if the Agreements are terminated and replaced with new agreements that are materially the same as those that were terminated.



Appendix 1 – Ownership of Milk NZ and Pengxin Farm



Appendix 2 – Date changes

Condition	Date in the condition	Requested varied date	Reason for variation request	OIO assessment
4(b) Investment for development purposes	31-May-2017	31-May-2018	<p>The Applicant's proposed capital expenditure programme was designed to be implemented over a 5 year period. Practically it will be difficult for the Applicant to implement capital expenditure until the existing sharemilking arrangements have expired. This extended date will mean that the Applicant and Landcorp do not have to review their agreed capital expenditure budgets and condense the spending.</p>	<p>The original condition provided for the additional investment for development purposes to be introduced into New Zealand within five milking seasons after consent was granted.</p> <p>The changes sought by Milk NZ and Pengxin Farm provides for this time period to be maintained.</p> <p>The OIO considers that the changes sought are reasonable having regard for the delay caused by the judicial review proceedings.</p>
5(b) & (c) Training facility	31-Aug-2013	31-Aug-2014	<p>The Applicant considers that a 10 month period to prepare and finalise plans and apply for resource consents (if required) and building consents is insufficient. The Applicant requests an additional 6 months to complete these steps.</p>	<p>The original conditions provided for:</p> <ul style="list-style-type: none"> <li>- any consents required for the on-farm training facility to be applied for by 31-Aug-2013;</li> <li>- the on-farm training facility to be established by 31-Dec-2014; and</li> <li>- the first two scholarships for students to be awarded by 31-Aug-2015.</li> </ul> <p>Milk NZ and Pengxin Farm seek:</p> <ul style="list-style-type: none"> <li>- a one year extension to the time by which they must obtain any consents required for the on-farm training facility; and</li> <li>- six month extensions to the time by which the on-farm training facility must be established, and the first scholarships awarded (this is approximately the length of the delay caused by the judicial review proceedings).</li> </ul>
6 Scholarships	31-Aug-2015	28-Feb-2016	<p>This date is requested to be extended in line with the dates for the establishment of the training facility so that the facility can be finished a reasonable period before applications for scholarships are sought.</p>	<p>The OIO considers that the changes sought are reasonable having regard for the delay caused by the judicial review proceedings. The OIO does not object to the one year extension to the time for obtaining consents, as the one year delay does not affect the date by which the on farm-training facility must be established.</p> <p>One-off reports under condition 26(b)(iii) may be sought to monitor compliance with these conditions.</p>

Condition	Date in the condition	Requested varied date	Reason for variation request	OIO assessment
11(c) Public access	31-May-2014	30-Nov-2014	To allow sufficient time to complete consultation and to complete any construction required for walking access.	<p>The original condition provided for public walking access to Benneydale 1, Benneydale 2 and Taharua Station to be available by 31-May-2014.</p> <p>The change sought by Milk NZ and Pengxin Farm provides for this time period to be extended by six months, approximately the length of the delay caused by the judicial review proceedings.</p> <p>The OIO considers that the change sought is reasonable having regard for the delay caused by the judicial review proceedings.</p> <p>A one-off report under condition 26(b)(iii) may be sought to monitor compliance with this condition.</p>
11(d) Consultation on public access	31-May-2013	30-Nov-2013	The existing sharemilking arrangements will continue until 31 May 2013. This will allow the Applicant some time with Landcorp management in place before consultation begins.	<p>The original conditions provided for consultation with DOC and WAC in respect of public walking access and implementation of the recommendations in the Wildland Consultants reports to begin by 31-May-2013.</p> <p>The changes sought by Milk NZ and Pengxin Farm provide for this time period to be extended by six months, approximately the length of the delay caused by the judicial review proceedings.</p> <p>The OIO considers that the changes sought are reasonable having regard for the delay caused by the judicial review proceedings.</p> <p>A one-off report under condition 26(b)(iii) may be sought to monitor compliance with these conditions.</p>
13 Consultation on Wildlands recommendations	31-May-2013	30-Nov-2013	The existing sharemilking arrangements will continue until 31 May 2013. This will allow the Applicant some time with Landcorp management in place before consultation begins.	<p>The original condition provided for registration of an easement or other instrument providing for permanent access to the Nga Herenga pas site by 31-May-2014.</p> <p>The change sought by Milk NZ and Pengxin Farm provides for this time period to be extended by six months, approximately the length of the delay caused by the judicial review proceedings.</p> <p>The OIO considers that the change sought is reasonable having regard for the delay caused by the judicial review proceedings.</p> <p>A one-off report under condition 26(b)(iii) may be sought to monitor compliance with this condition.</p>
22(e) Nga Herenga pa site access	31-May-2014	30-Nov-2014	To allow sufficient time to consult with local iwi, agree the form of easement and attend to registration. +	<p>The original condition provided for registration of an easement or other instrument providing for permanent access to the Nga Herenga pas site by 31-May-2014.</p> <p>The change sought by Milk NZ and Pengxin Farm provides for this time period to be extended by six months, approximately the length of the delay caused by the judicial review proceedings.</p> <p>The OIO considers that the change sought is reasonable having regard for the delay caused by the judicial review proceedings.</p> <p>A one-off report under condition 26(b)(iii) may be sought to monitor compliance with this condition.</p>

Condition	Date in the condition	Requested varied date	Reason for variation request	OIO assessment
26(b)(i) Reporting	28-Feb-2013	31-Aug-2013	All of the reporting and management of the Assets will be on the basis of a financial year that commences on 1 June (the commencement of the dairy farming year). It therefore makes sense that the Applicant reports as at the end of its financial year. The Applicant requests a three month period to compile these reports.	<p>The original condition provided for a series of annual reports to be received by 28 February each year reporting on the immediately prior January-December year.</p> <p>Milk NZ and Pengxin Farm seek a variation such that the reporting period be June-May, instead of January-December, to align to the milking season. Milk NZ and Pengxin Farm also seek an additional month after the end of the reporting period in which to supply their annual report. The OIO does not object to these changes being made.</p> <p>Note that the changes sought are not connected to the delay caused by the judicial review proceedings.</p>

This document contains confidential information

Released Under the Official Information Act

**Decision Date**

Original decision: 26 April 2012

Varied: 30 November 2012

**Decision**

Consent has been granted to **Milk New Zealand Holding Limited** (Hong Kong company 1498348) and **Pengxin New Zealand Farm Group Limited** (New Zealand company 3899677) (the "Consent Holders") giving effect to a transaction which will result in:

- An overseas investment in sensitive land, being the Applicant's acquisition of approximately 7892.5180 hectares of freehold land, comprising:
  - Plateau Road, Reporoa (323.4931ha)
  - Rawhiti Road, Reporoa (128.5889ha)
  - Pine View, Short Road, Reporoa (398.1981ha)
  - Cirenester, Short Road, Reporoa (341.3401ha)
  - Broadlands Road, Reporoa (404.5229ha)
  - Lake View, Tia Street, Atiamuri (205.9091ha)
  - Forest Park, Forest Road, Bulls (250.2879ha)
  - Glyn Park, SH 3, Maxwell (646.9861ha)
  - Karahaki Road, Waverley (206.2506ha)
  - Karangahape Road, Kuratau (627.4693ha)
  - Benneydale 1, Barryville Road, Benneydale (895.8575ha)
  - Benneydale 2, Barryville Road, Benneydale (792.1627ha)
  - Collins Road, Hamilton (393.3905ha)
  - Tiwhaiti, Tiwhaiti Road, Hawera (148.2465ha)
  - Taharua Road, Rangitaiki (1750.8204ha)
  - Ferry View, Parewanui Road, Bulls (378.9943ha)
- An overseas investment in significant business assets, being the Applicant's acquisition of property in New Zealand used in carrying on business in New Zealand including:
  - livestock;
  - shares in Fonterra Co-operative Group Limited associated with the farms;
  - two non-sensitive parcels of land (computer registers WN45D/325 and SA38B/238); and
  - chattels and machinery on the farms;for consideration exceeding \$100m.

("the Investment")

Consent is granted subject to the following conditions:

### **Statutory Conditions of Consent**

Section 28 of the Overseas Investment Act 2005 ("the Act") provides that it is a condition of every consent, whether or not it is stated in the consent, that

- (a) The information provided by each applicant to the regulator or the relevant Minister or Ministers in connection with the application is true and correct at the time it was provided; and
- (b) Each Consent Folder must comply with 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 is granted, unless compliance should reasonably be excused.

For the purposes of section 28, the Overseas Investment Office has taken into account the following information:

- (a) Milk New Zealand Holding Limited's application letter dated 12 April 2011;
- (b) Wildland Consultants Limited reports 2618a-2618d dated February and March 2011, and report 2441e dated June 2010;
- (c) Chapman Tripp's email dated 22 June 2011 at 10.54am;
- (d) Chapman Tripp's letter dated 20 July 2011;
- (e) The Perrin Ag Consultants Limited report dated September 2011;
- (f) Chapman Tripp's letter dated 29 September 2011;
- (g) Chapman Tripp's letter dated 25 October 2011;
- (h) PricewaterhouseCooper's email dated 15 December 2011 at 4.28pm;
- (i) Chapman Tripp's letter dated 20 December 2011;
- (j) Paragraph 5.2 of Chapman Tripp's letter dated 19 January 2012;
- (k) Chapman Tripp's email dated 19 January 2012 at 11.15am;
- (l) Chapman Tripp's letter dated 31 January 2012;
- (m) The Farm Management Agreement and Property Management Agreement entered into with Landcorp Farming limited;
- (n) Chapman Tripp's email dated 14 February 2012 at 2.57pm;
- (o) Chapman Tripp's letter dated 16 February 2012;
- (p) Landcorp Memorandum dated 16 February 2012;
- (q) Chapman Tripp's letter dated 17 February 2012;
- (r) Landcorp Memorandum dated 22 February 2012;
- (s) Chapman Tripp's email dated 23 February 2012 at 4.38pm;
- (t) Chapman Tripp's letter dated 23 February 2012;
- (u) Chapman Tripp's email dated 6 March 2012 at 11.11am;
- (v) Chapman Tripp's email dated 8 March 2012 at 10.35am;
- (w) Chapman Tripp's email dated 12 March 2012 at 12.52m;
- (x) Chapman Tripp's email dated 13 March 2012 at 1.57pm;
- (y) Chapman Tripp's email dated 13 March 2012 at 1.53pm;
- (z) Chapman Tripp's email dated 13 March 2012 at 6.16pm;
- (aa) Chapman Tripp's email dated 16 March 2012 at 4.46pm;

- (bb) Chapman Tripp's email dated 22 November 2012 at 11.49am;
- (cc) The Consent Holders' variation application letter dated 22 November 2012;
- (dd) Chapman Tripp's email dated 26 November 2012 at 16:44pm;
- (ee) Chapman Tripp's email dated 27 November 2012 at 12.11pm;
- (ff) Chapman Tripp's email dated 27 November 2012 at 12.12pm;
- (gg) Chapman Tripp's email dated 28 November 2012 at 11.02am; and
- (hh) Chapman Tripp's email dated 28 November 2012 at 12.45pm.

### **Special Conditions**

#### When the Investment may be acquired

1. The consent will lapse if:
  - (a) the Investment has not been acquired by the Consent Holders by 25 April 2013; or
  - (b) the "Property Management Agreement" and "Farm Operation Agreement" (together "the Agreements") entered into with Landcorp Farming Limited ("Landcorp") are terminated or materially changed prior to the Investment being acquired by the Consent Holders.

#### Good character

2. The individuals with control of the relevant overseas person must:
  - (a) continue to be of good character; and
  - (b) not become individuals of the kind referred to in ss 15 or 16 of the Immigration Act 2009.
3. If an individual with control of the relevant overseas person ceases to be of good character, or becomes an individual of the kind referred to in ss 15 or 16 of the Immigration Act 2009, the Consent Holders must either ensure that individual immediately ceases to be an individual with control of the relevant overseas person, or dispose of the Investment in accordance with condition 28.

#### Special conditions

4. The Consent Holders must introduce into New Zealand NZD \$16m of additional investment for development purposes.
  - (a) For the avoidance of doubt, the NZD \$16m excludes the cost of acquiring shares in Fonterra Co-operative Group Limited; and the cost of any other work that is not for development purposes.
  - (b) If the additional investment for development purposes has not been introduced into New Zealand, or the work arising from the additional investment for development purposes has not been completed by 31 May 2018, the Consent Holders must dispose of the Investment in accordance with condition 28.
5. The Consent Holders must establish an on-farm training facility for dairy farm workers in accordance with clause 5(c) of the Property Management Agreement.
  - (a) The Consent Holders must contribute a minimum of NZD towards the capital cost of establishing this facility.



- (b) The Consent Holders must apply for any consents required to establish the facility by 28 February 2014, and subject to those consents being available, the facility must be established by 30 June 2015.
- (c) The Consent Holders must dispose of the Investment in accordance with condition 28 if the on-farm training facility has not been established by 30 June 2015, unless the Consent Holders can establish to the Overseas Investment Office's satisfaction that the construction of the facility was materially delayed by the unavailability of a required consent and that it has taken and continues to take all reasonable steps to obtain that consent.
6. The Consent Holders must give two scholarships of not less than NZD \$5,000 each year to students of the on-farm training facility. The first two scholarships are to be awarded by 28 February 2016.
7. The Consent Holders must use reasonable endeavours to assist Landcorp to extend Landcorp's farm consultancy services in China, and to market Landcorp's food and animal products in China.
8. At least one of the Consent Holders must maintain a contractual relationship with Landcorp in materially the same terms as contained in the Agreements.
- (a) The Consent Holders must dispose of the property in accordance with condition 28 if:
- (i) the Agreements are terminated (other than termination at the expiry of the Agreements) and not replaced with new agreements that are materially the same as those that were terminated; or
- (ii) the Agreements are varied in a material way.
- (b) To avoid doubt:
- (i) The novation of the Agreements by the Consent Holders and Landcorp is neither a termination nor a material variation of the Agreements, provided that no change is made to the Agreements other than changing the parties and incorporating the "variations and clarifications" described in condition 8(b)(ii) below.
- (ii) Subject to conditions 8(b)(iii)-(v), the variations and clarifications contained in schedule 5 of the draft shareholders agreement provided to the Overseas Investment Office on 27 November 2012 are not material variations to the Agreements.
- (iii) The termination of Landcorp's provision of financial services to the Consent Holders will not be a material variation of the Agreements provided that the financial services continue to be provided in New Zealand.
- (iv) The termination of Landcorp's management of any one or more of the farms is deemed to be a material variation of the Agreements.
- (v) The Consent Holders giving notice to Landcorp that they will perform the "owners responsibilities" themselves is deemed to be a material variation of the Agreements.

9. The Consent Holders and their associates must not acquire an ownership or control interest in a milk processing facility in New Zealand unless a 50% or more ownership or control interest in that facility is held by non-overseas persons. If the Consent Holders or their associates acquire an ownership or control interest in a milk processing facility in New Zealand in breach of this condition, the Consent Holders must dispose of the Investment in accordance with condition 28.
10. The Consent Holders must:
- (a) deal with the Crown in accordance with the Overseas Investment Regulations 2005 as if the Consent Holders were the party offering the special land to the Crown; and
  - (b) be bound by any arrangement that the previous owner entered into with the Crown in relation to the special land and, if required by the Crown, enter into an encumbrance or other instrument with the Crown to be so bound.

*Walking access*

11. The Consent Holders must provide public walking access over Benneydale 1, Benneydale 2 and Taharua Station, in consultation with the Department of Conservation ("DOC") and New Zealand Walking Access Commission ("WAC").
- (a) Required access:
    - (i) The Consent Holders must provide public walking access at the southern end of Benneydale 1, from Maraeroa Road to the Pureora Forest Park.
    - (ii) The Consent Holders must provide public walking access at the north-eastern end of Benneydale 2, between State Highway 30 (Scott Road) and the Waipapa Ecological Area.
    - (iii) The Consent Holders must provide public walking access along or adjacent to the Taharua River and to the Te Rere Falls. The Consent Holders must also provide reasonable vehicle access for maintenance and for those with limited mobility, if required by DOC or WAC.
  - (b) Access routes:
    - (i) The required walking access routes in respect of conditions 11(a)(i) and (ii) are shown in the maps attached to these conditions. Nothing in condition 11(b)(i) prevents the Consent Holders and DOC (in the case of Benneydale 1 and Benneydale 2) agreeing an alternative means of satisfying condition 11(a)(i) and (ii).
    - (ii) The walking and vehicle access routes in respect of condition 11(a)(iii) are to be agreed between the Consent Holders and WAC.
  - (c) Public walking access to Benneydale 1, Benneydale 2 and Taharua Station is to be available by 30 November 2014.
  - (d) Consultation with DOC and WAC must commence by 30 November 2013.

- (e) If required by DOC or WAC, the Consent Holders must register an easement, or other suitable instrument, to secure the access required by condition 11(a). The Consent Holders must meet the cost of registering the instrument, including the cost of any survey required to support the instrument. The Consent Holders must register the relevant instrument within two years of being required to do so by DOC or WAC.
- (f) The Consent Holders must meet the cost of forming and maintaining walking tracks, if reasonably required by DOC or WAC.
- (g) Dispute resolution:
- (i) Any dispute, difference or claim between the Consent Holders and DOC or WAC will be referred to and finally resolved by arbitration (unless otherwise agreed by the Consent Holders and DOC or WAC). The tribunal will consist of a sole arbitrator appointed by agreement between the parties or if the parties cannot agree by the President of the New Zealand Law Society. The place of arbitration will be Wellington, the language of the arbitration will be English. The Consent Holders will share the cost of any such arbitration equally with the other parties to the arbitration.
- (ii) The Consent Holders must provide a copy of any award made by an arbitrator, or evidence of the outcome of any other dispute resolution process, to the Overseas Investment Office within 14 days of the dispute being resolved.

*Environmental protection and enhancement*

12. The Consent Holders must implement the recommendations in Wildland Consultants Limited reports 2618a-2618d (dated February and March 2011), and 2441e (dated June 2010) (together the "Wildland Reports") by 31 May 2017.
13. The Consent Holders must consult with DOC before implementing the recommendations in the Wildland Reports. Consultation with DOC must begin by 30 November 2013.
14. If DOC considers that formal protection is required for any of the areas identified in the Wildland Reports, the Consent Holders must formally protect those areas (for example with the QEII National Trust or via a land management agreement with the relevant Council).
15. Of the conservation management options set out on page 11 of Wildland report 2618a, the Consent Holders must implement the option preferred by DOC.
16. The Consent Holders must undertake a survey of mudfish in the Mangemange Stream by 31 May 2015.
17. The dispute resolution procedure in condition 11(g) (excluding references to WAC) shall apply to any dispute, difference or claim between the Consent Holders and DOC.

*Protection or enhancement of historic heritage*

18. The Consent Holders must undertake an archaeological survey, in consultation with local Iwi, on Benneydale 1, Benneydale 2, Taharua and Tiwhaiti, by 31 May 2014.

19. The Consent Holders must register a heritage covenant, in the form appearing in appendix S of the application for consent, in respect of the Te Ruaki pa site on computer register TNC1/383 by 31 May 2014.
20. The Consent Holders must, if requested by the New Zealand Historic Places Trust, write a letter supporting the registration of the Te Ruaki pa site as a wahi tapu under the Historic Places Act 1993.
21. If required by the Office of Treaty Settlements ("OTS"), the Consent Holders must transfer the Nga Herenga pa site (approximately 1.6ha located on Benneydale 1) to the Crown for nil consideration.
- (a) The transfer must be completed within 12 months of OTS's requirement being communicated in writing to the Consent Holders.
  - (b) The Consent Holders must meet the cost of any survey required to support the transfer of the Nga Herenga pa site to the Crown.
  - (c) Within three months of the Investment being acquired, the Consent Holders must retire the Nga Herenga pa site from grazing and ensure that adequate fencing is in place to protect the site.
  - (d) The dispute resolution procedure in condition 11(g) (replacing references to DOC and WAC with references to OTS) shall apply to any dispute between the Consent Holders and OTS.
22. The Consent Holders must allow access to wahi tapu to those with a legitimate interest in the relevant wahi tapu.
- (a) The right of access may be exercised by foot over any reasonably convenient routes specified by the Consent Holders.
  - (b) The Consent Holders may require a person intending to exercise the right of access to give the Consent Holders reasonable notice in writing of his or her intention to exercise that right.
  - (c) The Consent Holders may limit the right of access to reasonable times and during daylight hours.
  - (d) The Consent Holders may require a person exercising the right of access to observe reasonable conditions relating to the time, location, or manner of access as are reasonably required:
    - (i) for the safety of people; or
    - (ii) for operational reasons; or
    - (iii) for the protection of land, improvements, flora and fauna, plant and equipment, or livestock.
  - (e) In consultation with local iwi, the Consent Holders must register an easement, or other suitable instrument to make the access under conditions 22(a)-(d) permanent in respect of the Nga Herenga pa site. The Consent Holders must meet the cost of registration, and the cost of any survey required to support the registration of an instrument. The Consent Holders must register the relevant instrument by 30 November 2014. The dispute resolution procedure in condition 11(g) (replacing references to DOC and WAC with references to local iwi) shall apply to any dispute between the Consent Holders and local iwi.

Reporting to the Overseas Investment Office

23. The Consent Holders must report to the Overseas Investment Office in writing within one month of acquiring the Investment. The report must include:

- (a) the date of settlement;
  - (b) final consideration paid;
  - (c) where applicable, copies of transfer documents and settlement statements; and
  - (d) any other information that would aid the Overseas Investment Office in its function to monitor conditions of consent.
24. The Consent Holders must notify the Overseas Investment Office within 20 working days if:
- (a) the Consent Holders;
  - (b) a relevant overseas person;
  - (c) an individual with control of a relevant overseas person; or
  - (d) any person in which the Consent Holders, a relevant overseas person or an individual with control of a relevant overseas person has, or had at the time of the offence or contravention, a 25% or more ownership or control interest;

commits an offence or contravenes the law (whether convicted or not) apart from any minor offence or contravention where such offence or contravention would not be regarded by a reasonable person as indicating that any individual with control of the relevant overseas person is not of good character.

25. The Consent Holders must notify the Overseas Investment Office in writing within 20 working days if they dispose of the Investment or cease to be overseas persons.

26. The Consent Holders must provide an annual report in writing to the Overseas Investment Office. The purpose of the report is to provide information with which the Overseas Investment Office can monitor conditions of consent.

- (a) Unless the Overseas Investment Office waives this requirement (in full or in part), each report must:

- (i) detail the introduction into New Zealand of additional investment for development purposes, must include evidence that the additional investment was introduced into New Zealand, and must detail any developments started, completed or in progress, including:

- a description of the developments;
- the cost of the developments; and
- (where appropriate) photographs of the developments;

- (ii) detail progress towards establishing the on-farm training facility, and when the facility is established, a summary of the facility's operations including the number of students enrolled;

- (iii) provide the name and a brief biography of the individuals who have been awarded scholarships;

- (iv) detail the extent to which the Consent Holders have complied with 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, including:

- the number of new and retained jobs, including the location and nature of each job;
  - copies of any business plans or budgets prepared under the Agreements since the previous report;
  - copies of any management reports provided to the Consent Holders by Landcorp or any other related entity; and
  - a description of the extent to which the Landcorp "Farmpride QA" and "Work Safe" programmes have been complied with;
- (v) detail the extent to which the Consent Holders have complied with conditions 7-10:
- (vi) detail the extent to which the Consent Holders have provided public walking access over Benneydale 1, Benneydale 2 and Taharua, including:
- copies of any agreements entered into with DOC, WAC, OTS, local iwi or others;
  - copies of any documents registered on the titles of Benneydale 1, Benneydale 2 and Taharua;
  - whether any dispute resolution process has been used, and copies of any documents used in that process;
- (vii) detail the extent to which the Consent Holders have implemented the recommendations in the Wildland Reports, including:
- copies of any documents registered on the titles of the properties;
  - whether any dispute resolution process has been used, and copies of any documents used in that process;
- (viii) detail the extent to which the Consent Holders have complied with the conditions 18-22, including:
- a summary of the progress towards completion of the archaeological survey;
  - if the archaeological survey is complete, a copy of the archaeological survey report;
  - whether OTS has required the Nga Herenga pa site to be transferred to the Crown, and copies of any agreements entered into with OTS;
  - details of the walking access arrangements made in respect of the Nga Herenga pa;
  - copies of any documents registered on the titles of Benneydale 1, Benneydale 2, Taharua or Tiwhaiti;
  - whether any dispute resolution process has been used, and copies of any documents used in that process;
- (ix) provide evidence of compliance with condition 2 (good character); and

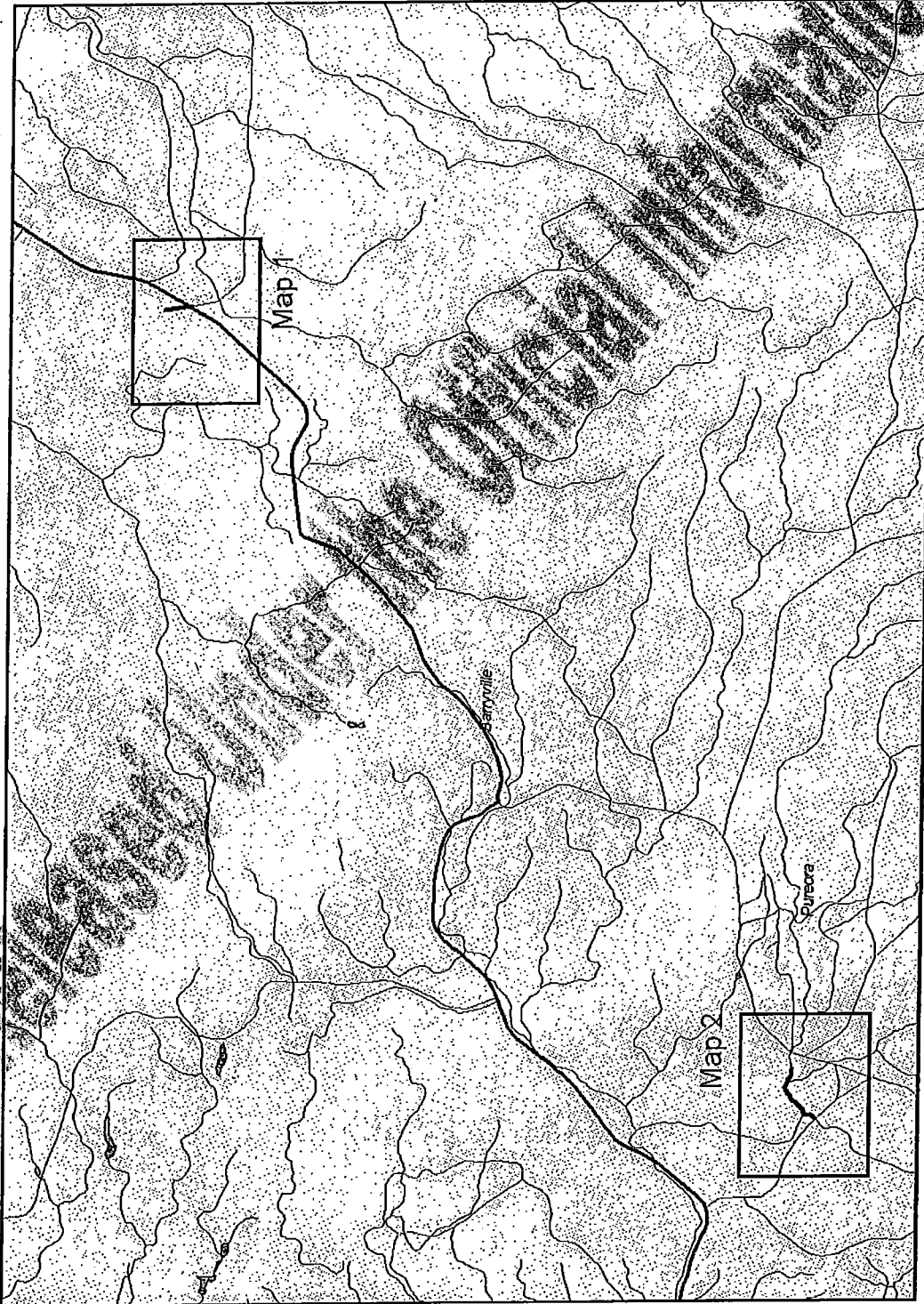
- (x) if required by the Overseas Investment Office, include police certificates for each individual deemed by the Overseas Investment Office to be an individual with control of the relevant overseas person;
- (b) The Consent Holders must report:
  - (i) by 31 August 2013, for the period ended 31 May 2013; and
  - (ii) annually thereafter until advised by the Overseas Investment Office that no further reports are required (it is anticipated that a *minimum* of five annual reports will be required); and
  - (iii) at such other times as required by the Overseas Investment Office.

Disposal of the Investment

27. The Consent Holders must not dispose of any part of the Investment (whether under condition 28 or otherwise) unless:
- (a) they have complied with conditions 10, 11, 18-21, and 22(e) to the extent that conditions 10, 11, 18-21, and 22(e) apply to the part of the investment being disposed of; and
  - (b) they have completed any riparian fencing work identified in the Wildland Reports, to the extent that riparian fencing work applies to the part of the Investment being disposed of.
28. If these conditions require the Consent Holders to dispose of the Investment:
- (a) The Consent Holders must, within six weeks:
    - (i) procure from an independent registered valuer, and provide to the Overseas Investment Office, a written market valuation of the Investment; and
    - (ii) appoint licensed real estate agents to actively market and appropriately advertise the Investment for sale on the open market; and
  - (b) The Consent Holders must dispose of the Investment within two years. If the Consent Holders have not disposed of the Investment at the expiry of the two year period, the Consent Holders must offer the Investment for sale by auction or tender within a further three months (with no reserve price or minimum bid set for the auction or tender).
  - (c) The Consent Holders must provide a written report to the Overseas Investment Office quarterly (by the last day of March, June, September and December) about the marketing activities undertaken and offers received for the Investment. The Consent Holders must also report at any other time if required by the Overseas Investment Office.
  - (d) The Consent Holders must provide a written report to the Overseas Investment Office within one month of the Investment being disposed of, providing evidence that:
    - (i) the Consent Holders have disposed of the Investment (including copies of any sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor); and
    - (ii) evidence that the purchaser is not an associate of the Consent Holders.

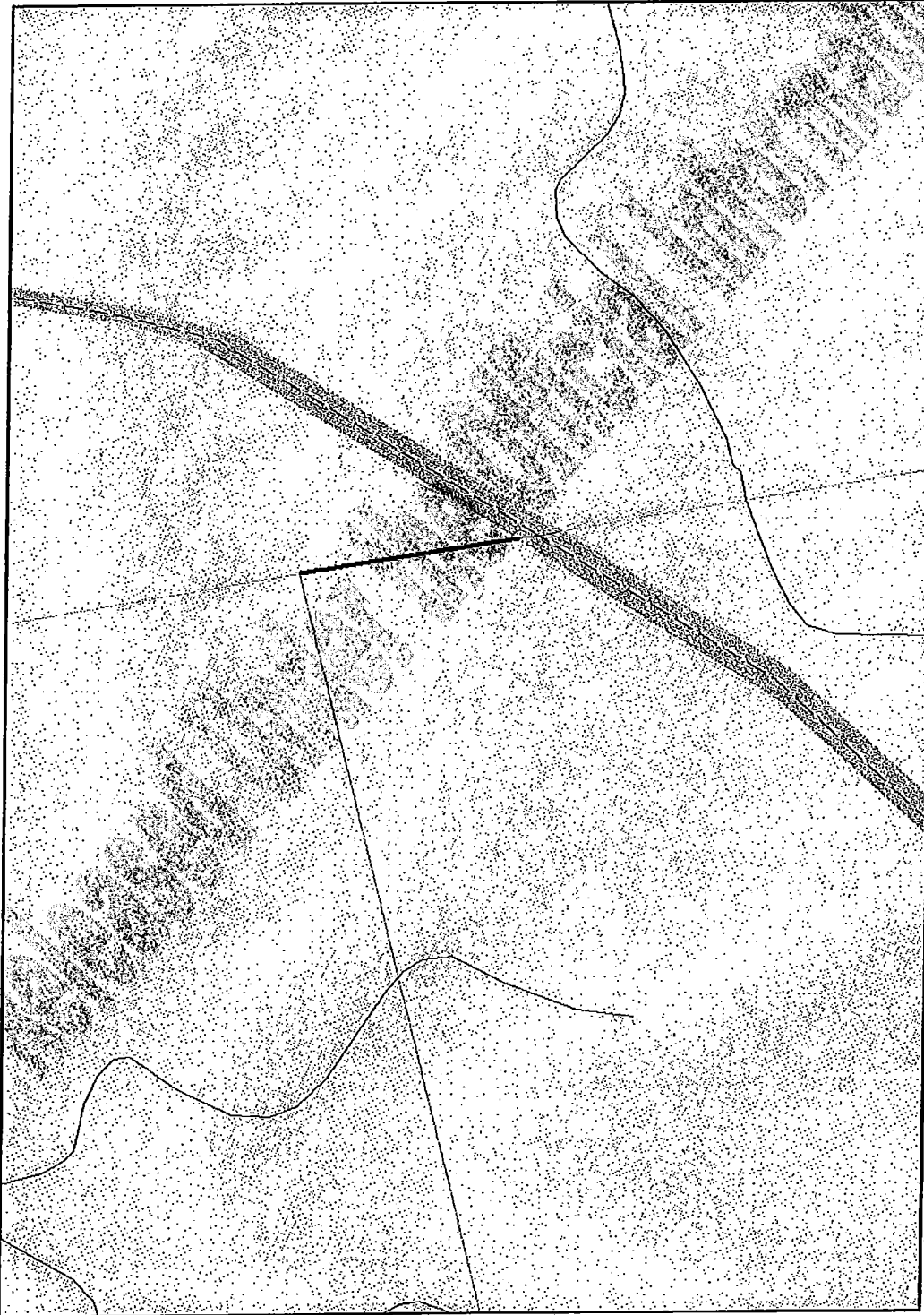
Maps referred to in condition 1(b)

Overview map



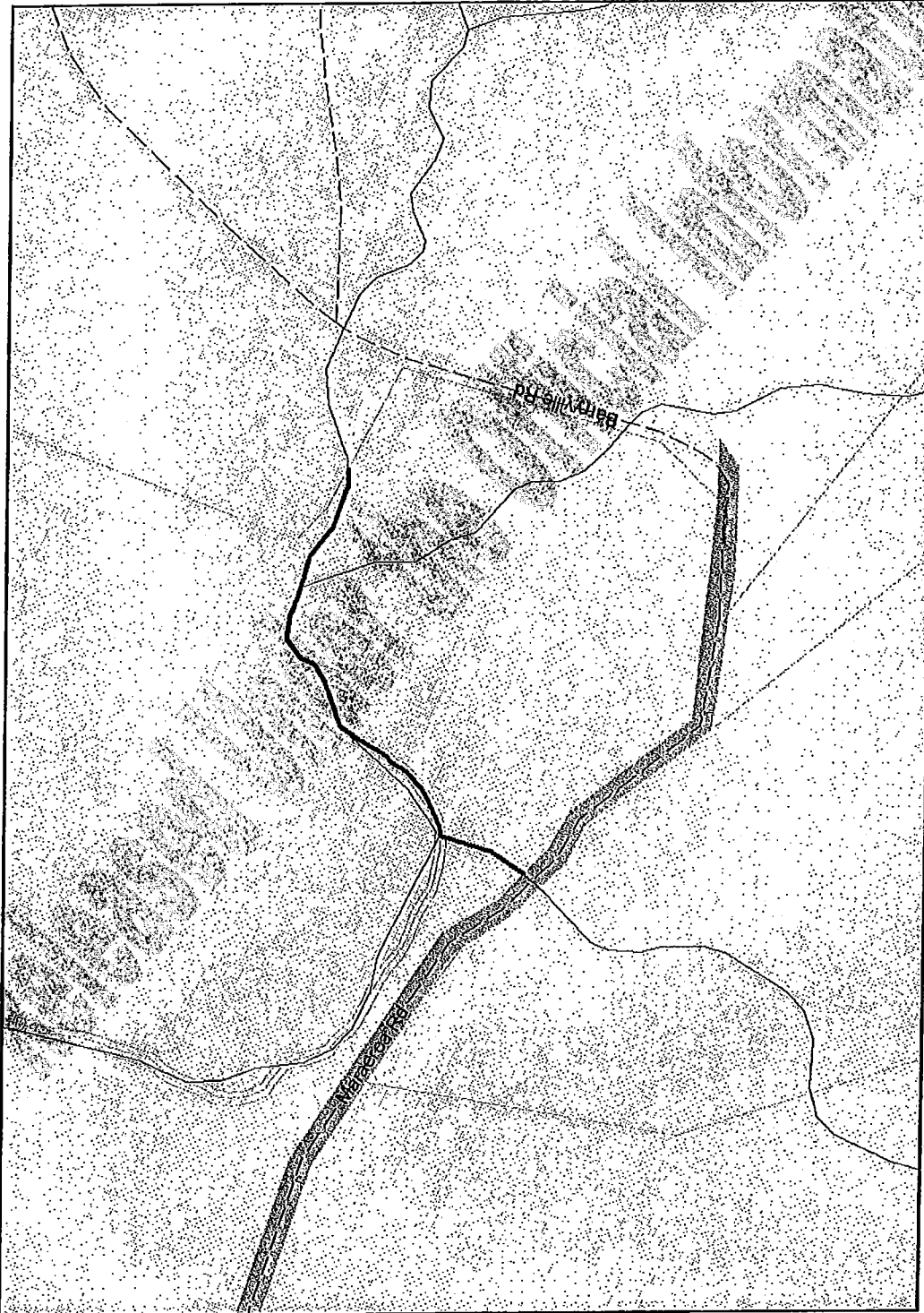


Map 1 - Benneydale 2 - Conditions 11(a)(ii) and 11(b)(i)



The required access route for public walking access between State Highway 30 (Scott Road) and the Waipapa Ecological Area is along the north-eastern boundary of Benneydale 2, as shown in blue on map 1.

Map 2 - Benneydale 1 - Conditions 11(a)(i) and 11(b)(i)



The required access route for public walking access between Maraeroa Road and the Pureora Forest Park is along or adjacent to the Te Kakaho Stream, and along the existing marginal strips, shown in blue on map 2.

### **Monitoring Conditions of Consent**

For the purpose of monitoring conditions of consent, the Overseas Investment Office may, under section 38 of the Act, require the Consent Holders to provide information or documents, or both, that are specified in the notice. Under section 40 of the Act, the Overseas Investment Office may also require the Consent Holders to provide a statutory declaration verifying the extent to which the Consent Holders have complied with the conditions of consent, and, if the Consent Holders are in breach of a condition or conditions, the reasons for the breach and the steps the Consent Holders intend to take to remedy the breach.

### **Sanctions**

The Act provides for civil and criminal sanctions for breaching the Act, failing to comply with conditions of consent and failing to provide information required by the Overseas Investment Office. The Overseas Investment Office has an obligation to investigate and act upon alleged and suspected breaches of the Act.

### **General**

A reference to the "Overseas Investment Office" in this Notice includes a reference to the regulator (as defined by the Act).



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Pedro Morgan – Senior Solicitor  
Overseas Investment Office

## Peter R Hill

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**From:** Bill Sandston <Bill.Sandston@chapmantripp.com>  
**Sent:** Thursday, 22 November 2012 11:48 a.m.  
**To:** Pedro Morgan  
**Cc:** Tessa Kennings;  
**Subject:** Milk New Zealand Holding Limited - Case No 20111035 - Variation Application under s 27 Overseas Investment Act 2005  
**Attachments:** img-Y22114554-0001.pdf  
**Importance:** High

Pedro

Please find **attached** an application for a variation to the above consent.

As we have discussed with you Mr Jiang is currently in Zimbabwe and is therefore currently unable to sign the application letter. We will arrange for him to sign the letter and will forward a copy of the signed letter as soon as possible. We would appreciate it if you could commence processing of the application pending receipt of the signed letter. We note that the Applicant will have to provide a true and correct declaration prior to any final decision.

To assist your understanding of the variations of the FOA and PMA set out in Schedule 6 of the letter, the references to "Farm Group" are to Pengxin New Zealand Farm Group Limited, the intended property owner and references to "PNZFML" are to Pengxin New Zealand Farm Management Limited, the portfolio manager and JV company with Landcorp. There may be some further minor changes to those variations but we will advise you of these and they will be concluded within the next few days. They will not affect the agreed structure of management of the farms by Landcorp through the mandate of PNZFML.

The cheque for the application fee for this variation application, together with a hard copy of the application, will follow via overnight courier.

As you are aware, settlement of the purchase of the farms is scheduled for 29 November 2012.

Regards

**BILL SANDSTON**  
PARTNER

**CHAPMAN TRIPP**  
[www.chapmantripp.com](http://www.chapmantripp.com)

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22 November 2012

The Manager  
Overseas Investment Office  
Land Information New Zealand  
Radio New Zealand House  
Level 7, 155 The Terrace  
Wellington  
New Zealand

**by courier and email**

Attention: Annelies McClure/Pedro Morgan

**MILK NEW ZEALAND HOLDING LIMITED - CASE 2011/10035 - DECISION DATED  
16 APRIL 2012 - APPLICATION TO VARY UNDER SECTION 27 OVERSEAS  
INVESTMENT ACT 2005 (ACT)**

**Introduction**

- 1 We refer to the decision dated 16 April 2012, and the conditions of consent (*the Conditions*) upon which consent was granted to the Hong Kong registered company Milk New Zealand Holding Limited (*the Applicant*) acquiring certain land and assets including 7,892.5180 hectares of sensitive land (*the Assets*) referred to in that decision (*the Consent*).
- 2 The Applicant would like to clarify the wording of the Consent in relation to its investment in assets other than sensitive land.
- 3 The Applicant would like to nominate a New Zealand registered company to complete the acquisition of the Assets.
- 4 The Applicant also out of caution seeks consent to some variations to the Property Management Agreement (*PMA*) and Farm Operation Agreement (*FOA*) with Landcorp Farming Limited (*Landcorp*) although the variations are not considered material.
- 5 In addition, given the delays in the Applicant completing its acquisition of the Assets which have resulted from the Court of Appeal and Supreme Court proceedings challenging the validity of the Consent, a number of the compliance and reporting dates in the Conditions require reconsideration to ensure that they can be met.
- 6 The Applicant would also like to in due course, for the sake of clarity and ease of future reference, redocument the FOA and PMA to include in the FOA and the PMA the parties to whom they are novated, and the correct Joint Venture company (Pengxin New Zealand Farm Management Limited (*Pengxin Management*)) as the

portfolio manager. The agreed variations referred to in paragraph 4 will also be included in the replacement FOA and PMA.

7 The Applicant therefore applies under section 27 of the Act for:

- 7.1 A variation to the Consent to clarify that the Applicant's investment in significant business assets includes freehold land which is not sensitive;
- 7.2 A variation to the Consent to permit the acquisition of the Assets by the New Zealand registered company Pengxin New Zealand Farm Group Limited (Company Number 3899677) (*Pengxin Group*), thereby making that company the applicant under the Consent;
- 7.3 A variation to the Consent to permit the novation of the PMA and the FOA (together, *the Agreements*) between the Applicant and Landcorp to Pengxin Group and the appointment of Pengxin Management as the portfolio manager. This includes the technical termination which would occur on novation of those Agreements to the New Zealand registered Pengxin Group;
- 7.4 Variations to the Conditions to vary certain dates as referred to below;
- 7.5 The variations to the PMA and the FOA recorded in the schedule attached; and
- 7.6 Eventually the cancellation of the novated PMA and FOA and their replacement by a PMA and a FOA between Landcorp, Pengxin Group and PNZFML, including the approved variations to the PMA and FOA, but otherwise on the same terms as the existing PMA and FOA.

8 Settlement of the acquisition of the Assets is scheduled to occur on 29 November 2012. The Applicant therefore requests that this variation be considered urgently to allow sufficient time for the documentation required to complete settlement to be prepared in the correct company name and executed in time for settlement.

#### **Investment**

9 As you are aware, included in the Assets are two properties which are not sensitive land, being the properties contained in certificates of title WN45D/325 (being part of the Glyn Park Farm) and SA38B/238 (being 17 Arthur Crescent Taupo) (together, *the Non-Sensitive Land*). The Consent only describes the overseas investment as being the Applicant's acquisition of the sensitive land forming part of the Assets. To ensure that the acquisition of the Non-Sensitive Land and any other assets not comprising the sensitive land are permitted in respect of the significant business assets aspect of the Consent, the Applicant requests a variation of the Consent to record that the Applicant's investment *includes* the acquisition of the farms which are sensitive land but that the investment also relates to additional assets other than the sensitive land.

#### **Applicant**

10 Rather than register as an overseas company within the New Zealand Companies Act 1993 and for certain structuring reasons, the Applicant would like to nominate Pengxin Group to complete the acquisition of the farms and therefore step into the position of the applicant in respect of the Consent. The acquisition of the Assets by Pengxin Group, rather than the Applicant, will simplify a number of New Zealand

company and tax law compliance requirements in relation to the investment in and operation of the Assets.

- 11 Pengxin Group is a New Zealand registered company which was incorporated on 27 June 2012. The New Zealand Companies Office Company Extract in respect of Pengxin Group is **attached** as Schedule 1 to this application letter. Pengxin Group was incorporated for the purpose of acquiring the Assets.
- 12 The sole shareholder of Pengxin Group is a New Zealand registered company Milk New Zealand Holding Limited (Company Number 3883536) (*Holding Co*). Holding Co was incorporated on 26 June 2012. The New Zealand Companies Office Company Extract in respect of Holding Co is **attached** as Schedule 2 to this application letter. Holding Co was incorporated to be the shareholder of Pengxin Group and to provide funding to Pengxin Group for the acquisition of the Assets.
- 13 The sole shareholder of Holding Co is a British Virgin Islands registered company Milk New Zealand Investment Limited (Company Number 1714180) (*Investment Co*). Investment Co was incorporated on 24 May 2012. A Certificate of Incorporation and a register showing the shareholder and director in respect of Investment Co are **attached** as Schedule 3 to this application letter.
- 14 The sole director of Investment Co, Holding Co and Pengxin Group exercises control over Pengxin Group. The sole director of Investment Co, Holding Co and Pengxin Group is Zhaobal Jiang, who is also the sole director and the ultimate beneficial owner of the Applicant.
- 15 Pengxin Group is a wholly owned subsidiary of Holding Co. Holding Co is a wholly owned subsidiary of Investment Co and Investment Co is a wholly owned subsidiary of the Applicant. A structure diagram is **attached** as Schedule 4 to this application letter.
- 16 Given the specific nature of the Consent and the Conditions, the Applicant appreciates that the exemption in regulation 33(a) of the Overseas Investment Regulations 2005 would not apply in respect of Pengxin Group acquiring the Assets. Accordingly, the Applicant requests a variation to the Consent to permit the acquisition of the Assets by Pengxin Group and as such for Pengxin Group to assume the position of the Applicant in respect of the Consent.

#### **Landcorp Agreements**

- 17 The Applicant, Pengxin Group and Landcorp will enter into a conditional Deed of Novation **attached** as Schedule 5 which will, subject to this variation being granted, novate the Agreements to Pengxin Group and will appoint the joint venture company Pengxin Management as the portfolio manager. Under the Agreements, when they are ratified by Pengxin Management, Landcorp is appointed as the farm manager. Pengxin Group will be the party to the Joint Venture Shareholders' Agreement with Landcorp in respect of Pengxin Management.
- 18 The novation of the Agreements to Pengxin Group would result in a termination of the Agreements between the Applicant and Landcorp and the replacement of those Agreements with new Agreements between Pengxin Group and Landcorp on exactly the same terms. The purpose of this novation is to ensure that the arrangements

with Landcorp are preserved and continue with the Intended purchaser of the Assets.

- 19 Accordingly, subject to the variation requested at paragraphs 10 to 16 above being granted, the Applicant requests a variation to condition 1(b) to permit the technical termination of the Agreements only in the context of a novation of the Agreements to Pengxin Group where Pengxin Group is completing the acquisition of the Assets.

**Dates**

- 20 The Court of Appeal and Supreme Court proceedings challenging the validity of the Consent resulted in a six month delay during which the Applicant completing its acquisition of the Assets. Furthermore, these delays meant that the Receivers were required to enter into new sharemilking agreements in respect of the 2012/2013 farming year. This means that the sharemilking arrangements with Landcorp will not be able to commence until the commencement of the 2013/2014 farming year on 1 June 2013.

- 21 Accordingly, the Applicant applies for variations to certain dates in the Conditions as set out in the table below and for the reasons set out in that table:

Condition	Date in the Condition	Requested varied date	Reason for variation request
4(b) (Investment for Development Purposes)	31 May 2017	31 May 2018	The Applicant's proposed capital expenditure programme was designed to be implemented over a 5 year period. Practically it will be difficult for the Applicant to implement capital expenditure until the existing sharemilking arrangements have expired. This extended date will mean that the Applicant and Landcorp do not have to review their agreed capital expenditure budgets and condense the spending.
5(b) (Training facility)	31 August 2013	28 February 2014	The Applicant considers that a 10 month period to prepare and finalise plans and apply for and obtain both resource consents (if required) and building consents is insufficient. The Applicant requests an additional 6 months to complete these steps.
	31 December 2014	30 June 2015	This date is requested to be extended in line with the extension to the above date.
6 (Scholarships)	31 August 2015	28 February 2016	This date is requested to be extended in line with the dates for the establishment of the training facility so that the facility can be finished a reasonable period before applications for scholarships are sought.
11(c) (Public access)	31 May 2014	30 November 2014	To allow sufficient time to complete consultation and to complete any construction required for walking access.



Condition	Date in the Condition	Requested varied date	Reason for variation request
11(d) (Consultation on public access)	31 May 2013	30 November 2013	The existing sharemilking arrangements will continue until 31 May 2013. This will allow the Applicant some time with Landcorp management in place before consultation begins.
12 (Wildland recommendations)	31 May 2017	No change requested	N/A
13 (Consultation on Wildland recommendations)	31 May 2013	30 November 2013	The existing sharemilking arrangements will continue until 31 May 2013. This will allow the Applicant some time with Landcorp management in place before consultation begins.
16 (Mudflsh survey)	31 May 2015	No change requested	N/A
18 (Archaeological survey)	31 May 2014	No change requested	N/A
19 (Heritage covenant)	31 May 2014	No change requested	N/A
22(e) (Nga Herenga pa site access)	31 May 2014	30 November 2014	To allow sufficient time to consult with local iwi, agree the form of easement and attend to registration.
26(b)(i) (Reporting)	28 February 2013	31 August 2013	All of the reporting and management of the Assets will be on the basis of a financial year that commences on 1 June (the commencement of the dairy farming year). It therefore makes sense that the Applicant reports as at the end of its financial year. The Applicant requests a three month period to compile these reports.
	31 December 2012	31 May 2013	

#### Variations to PMA and FOA and Replacement PMA and FOA

22 In the course of extensive negotiations over Joint Venture Shareholders' Agreement Landcorp and the Pengxin Group have negotiated a number of detailed clarifications of, and variations to, the terms of the FOA and the PMA. These are summarised in Schedule 5 to the Shareholders' Agreement, attached to this letter as Schedule 6. We consider the clarifications/variations to be self explanatory and not material, in the sense that Landcorp's management obligations and rights are preserved. If any issue requires clarification, please let us know.

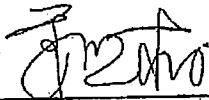
23 In consent to the variations to the PMA and FOA is granted, eventually Landcorp and Pengxin Group will cancel the novated PMA and FOA and enter into replacement PMA and FOA documents between Landcorp, PNZFML which include the approved variations to the PMA and FOA but will otherwise be on the same terms as the existing PMA and FOA.

**24 Declaration in support of application**  
The Applicant will provide a declaration verifying that the information contained in this application letter is true and current once we have received confirmation from the Office that there are no further documents or particulars required by the Office for its consideration of this variation application.

**25 Notification to Applicant if information sought on application**  
The Applicant requests that the OIO gives notice to the Applicant and its solicitors if it receives a request under the Official Information Act 1982 or otherwise for the disclosure of any information contained in this application letter.

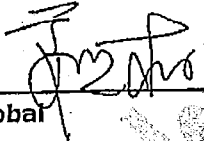
**26 Fee**  
A cheque for relevant fee for this variation of \$12,573.33, including GST, will be enclosed with the hard copy of this application letter.

Signed for and on behalf of  
**Milk New Zealand Holding Limited**



**Jiang Zhaobai**  
Director

Signed for and on behalf of  
**Pengxin New Zealand Farm Group Limited**



**Jiang Zhaobai**  
Director

**SCHEDULE 1 – PENGXIN NEW ZEALAND FARM GROUP LIMITED COMPANY  
EXTRACT**

Released Under the Official Information Act



# COMPANIES OFFICE

## Company Extract

### PENGXIN NEW ZEALAND FARM GROUP LIMITED 3899677

<b>Entity Type:</b>	NZ Limited Company
<b>Incorporated:</b>	27 Jun 2012
<b>Current Status:</b>	Registered
<b>Constitution Filed:</b>	Yes
<b>Annual Return Filing Month:</b>	July

#### Company Addresses

##### Registered Office

Suite 1, 139 Vincent Street, Auckland Central, Auckland, 1010, NZ

##### Address for Service

Suite 1, 139 Vincent Street, Auckland Central, Auckland, 1010, NZ

#### Directors

JIANG, Zhaobai  
No. 57, Lane 2188, Hongqiao Road, Shanghai, CN

#### Shareholdings

**Total Number of Shares:** 100

**Extensive Shareholdings:** No

100                      3883536  
MILK NEW ZEALAND HOLDING LIMITED  
Suite 1, 139 Vincent Street, Auckland Central, Auckland, 1010, NZ

For further details relating to this company, check <http://www.business.govt.nz/companies/app/ui/pages/companies/3899677>

Extract generated 22 November 2012 10:13 AM NZDT

**SCHEDULE 2 – MILK NEW ZEALAND HOLDING LIMITED COMPANY EXTRACT**

Released Under the Official Information Act



# COMPANIES OFFICE

## Company Extract

### MILK NEW ZEALAND HOLDING LIMITED 3883536

<b>Entity Type:</b>	NZ Limited Company
<b>Incorporated:</b>	26 Jun 2012
<b>Current Status:</b>	Registered
<b>Constitution Filed:</b>	Yes
<b>Annual Return Filing Month:</b>	June
<b>FRA Reporting Month:</b>	March

#### Company Addresses

##### Registered Office

Suite 1, 139 Vincent Street, Auckland Central, Auckland, 1010, NZ

##### Address for Service

Suite 1, 139 Vincent Street, Auckland Central, Auckland, 1010, NZ

#### Directors

JIANG, Zhaobai

Suite 1, 139 Vincent Street, Auckland Central, Auckland, 1010, NZ

#### Shareholdings

**Total Number of Shares:** 100

**Extensive Shareholdings:** No

100

Milk New Zealand Investment Limited

Suite 1, 139 Vincent Street, Auckland Central, Auckland, 1010, NZ

For further details relating to this company, check <http://www.business.govt.nz/companies/app/ui/pages/companies/3883536>

Extract generated 22 November 2012 10:14 AM NZDT

**SCHEDULE 3 – MILK NEW ZEALAND INVESTMENT LIMITED COMPANY SEARCH  
AND REGISTER OF SHAREHOLDER AND DIRECTOR**

Released Under the Official Information Act

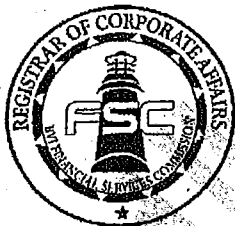
TERRITORY OF THE BRITISH VIRGIN ISLANDS  
BVI BUSINESS COMPANIES ACT, 2004

CERTIFICATE OF INCORPORATION  
(SECTION 7)

The REGISTRAR of CORPORATE AFFAIRS, of the British Virgin Islands HEREBY CERTIFIES, that pursuant to the BVI Business Companies Act, 2004, all the requirements of the Act in respect of incorporation having been complied with,

MILK NEW ZEALAND INVESTMENT LIMITED  
新西蘭乳業投資有限公司  
BVI COMPANY NUMBER: 1714180

is incorporated in the BRITISH VIRGIN ISLANDS as a BVI BUSINESS COMPANY, this 24th day of May, 2012.



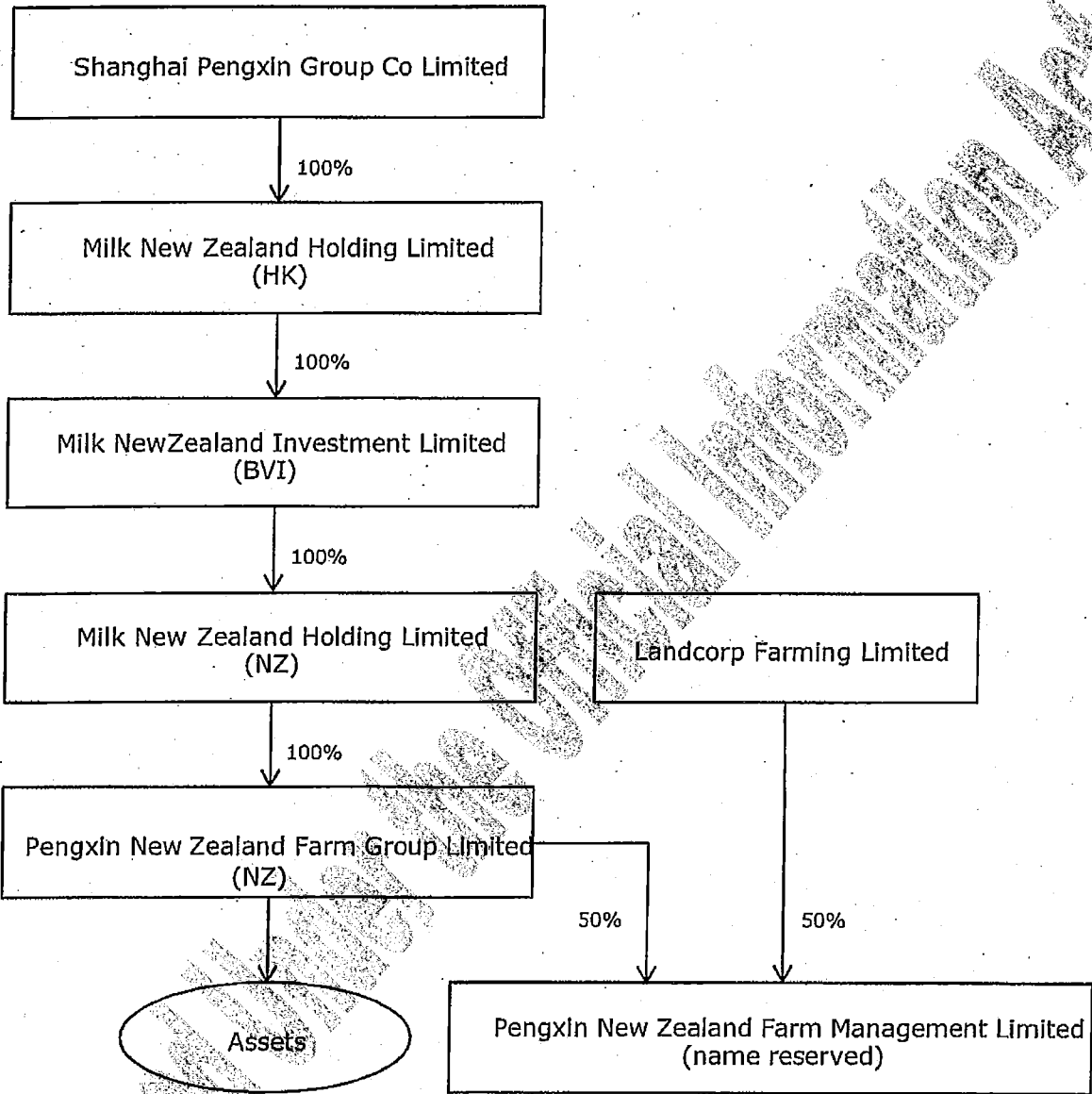
for REGISTRAR OF CORPORATE AFFAIRS  
24th day of May, 2012







**SCHEDULE 4 – STRUCTURE DIAGRAM**



**SCHEDULE 5 - DEED OF NOVATION**

Released Under the Official Information Act

**DOCUMENT  
WITHHELD  
UNDER THE  
OFFICIAL  
INFORMATION  
ACT 1982**

being the Deed of Novation

**SCHEDULE 6 – VARIATIONS TO AND CLARIFICATIONS OF THE PMA AND FOA**

Released Under the Official Information Act

**DOCUMENT  
WITHHELD  
UNDER THE  
OFFICIAL  
INFORMATION  
ACT 1982**

being the variations to and clarifications of the Property  
Management Agreement and the Farm Operation  
Agreement