

Decision Date - 6 August 2013

Decision

Consent has been granted to **Lees Valley Station LLC**, or a 100% subsidiary of **Lees Valley Station LLC** ("the Applicant"), giving effect to a transaction which will result in:

(a) An overseas investment in sensitive land, being the Applicant's acquisition of:

- a freehold interest in approximately 13,156 hectares (known as Kingsdown, Debourbles, Island Hills, Wharfdale and Okuku Hills); and
- a pastoral leasehold interest in approximately 14,087 hectares (known as Mt Pember and Snowdale);

being seven hill country properties collectively known as Lees Valley (or Mt Pember) Station, located in the Lees Valley, Canterbury.

("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 Overseas Investment Office or the relevant Ministers in connection with the application was correct at the time it was provided; and
- (b) each consent holder must comply with the representations and plans made or submitted in support of the application and notified by the Overseas Investment Office as having been taken into account when the consent was granted, unless compliance should reasonably be excused.

For the purposes of section 28, the Overseas Investment Office has taken into account the plans and representations submitted to the Overseas Investment Office on 12 April 2013, 10 May 2013, 15 May 2013, 16 May 2013, 28 May 2013, 13 June 2013, 2 July 2013, 4 July 2013 and all attachments annexed to that correspondence (where applicable) which were submitted to the Overseas Investment Office in support of the application by the Applicant to acquire the investment and related assets.

Special Conditions

Consent is granted subject to the following conditions:

1. The consent will lapse if the Investment has not been acquired by and transferred to the Applicant within twelve months of the date of consent.
2. The Applicant must notify the Overseas Investment Office in writing as soon as practicable, and no later than twelve months from the date of consent, whether settlement of the acquisition of the Investment took place. If

settlement of the acquisition of the Investment did take place, the notice must include:

- (a) the date of settlement;
 - (b) final consideration paid (plus GST, if any);
 - (c) the structure by which the acquisition was made, and who acquired the Investment;
 - (d) where applicable, copies of transfer documents and settlement statements; and
 - (e) any other information that would aid the Overseas Investment Office in its function to monitor conditions of consent.
3. The Applicant, or the individuals with control of the Applicant, must:
- (a) continue to be of good character; and
 - (b) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.
4. The Applicant must notify the Overseas Investment Office in writing within 20 working days if:
- (a) the Applicant, or (if the Applicant is not an individual) any individual with control of the Applicant:
 - (i) ceases to be of good character; or
 - (ii) commits an offence or contravenes the law (whether convicted or not); or
 - (iii) becomes aware of any other matter that reflects adversely on the Applicant's fitness to have the Investment; or
 - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
 - (b) any person in which the Applicant, or any individual with control of the Applicant has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the law (whether convicted or not); or
 - (c) the Applicant:
 - (i) ceases to be an overseas person; or
 - (i) disposes of the Investment.

DOC condition

5. The Applicant must consult with the Department of Conservation ("DOC") as to how best to protect areas of significant native flora or fauna on the land. The Applicant must:

- (a) provide DOC with a copy of this condition of consent within 15 working days of the date of settlement with information identifying and describing the land, including aerial photographs, the *Boffa Miskell Report* attached to the Application as *Appendix 18*, maps and titles;
- (b) implement any reasonable formal protection recommended by DOC the cost of which (up to a maximum sum of \$967,000) shall be borne by the Applicant;

- (c) agree that any dispute, difference or claim between DOC and the Applicant will be referred to and finally resolved in arbitration in Wellington, New Zealand. 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;
- (d) share the cost of any arbitration equally with DOC (each party will be liable for their own legal costs); and
- (e) provide a copy of any award made by the arbitrator to the Overseas Investment Office within 14 days of the award being made.

WAC condition

6. The Applicant must consult with the New Zealand Walking Access Commission ("WAC") concerning whether any public access should be formalised. The Applicant must:
- (a) Provide WAC with a copy of this condition of consent within 15 working days of the date of settlement with information identifying and describing the land including aerial photographs, maps and titles;
 - (b) Implement any reasonable formal protection recommended by WAC, the cost of which (up to a maximum sum of \$20,000) shall to be borne by the Applicant;
 - (c) Agree that any dispute, difference or claim between WAC and the Applicant will be referred to and finally resolved in arbitration in Wellington, New Zealand. 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;
 - (d) Share the cost of any arbitration equally with WAC (each party will be liable for their own legal costs); and
 - (e) Provide a copy of any award made by the arbitrator to the Overseas Investment Office within 15 working days of the award being made.

Special land condition

7. The Applicant must:
- (a) offer any special land to the Crown for nil consideration;
 - (b) if accepted by the Crown, the Applicant must transfer any rights it holds (subject to any reserved rights agreed with the Crown) in respect of the special land to the Crown as soon as practicable after acceptance of the offer;
 - (c) if accepted by the Crown, and pending transfer, the Applicant shall permit the registration of an appropriate instrument against the computer registers containing any special land if so required by the Crown to protect its interest in the special land. All costs of preparation and registration of any such instrument shall be paid by the Crown;
 - (d) if any survey is required to accurately identify the special land for the purposes of the Crown acquiring it, the Crown will undertake such survey at its own cost;
 - (e) the Crown agrees and warrants that the Applicant (including its successors and assigns) and all persons authorised by the Applicant

(and its successors and assigns) including without limitation employees, contractors, licensees and invitees may at all times after the date of acquisition of any part of the special land by the Crown, cross, occupy and use any part of the special land to facilitate it carrying out activities for normal farming purposes provided that each such person does so in accordance with all necessary laws, regulations and consents;

- (f) in accordance with Regulation 25, the special land offer is conditional upon the overseas investment transaction being given effect to (and shall otherwise be of no effect).

Development Condition

8. The Applicant must (unless otherwise varied in agreement with the Overseas Investment Office) implement the proposed development referred to in the *Business Plan* attached to the Application as *Appendix 10* (and in particular the *Capital Improvement Plan* set out in paragraph H) within five years of the date of consent.

Divestment condition

9. Unless otherwise varied under the Act in agreement with the Overseas Investment Office, if the development referred to in condition 8 does not proceed:
- (a) The Applicant must, within six weeks of receiving notice from the Overseas Investment Office that in its opinion there has been Non-Compliance (the "Notice Date"):
- (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 Applicant must dispose of the Investment within eighteen months of the Notice Date to a third party who must not be an associate of the Applicant. If the Applicant has not disposed of the Investment at the expiry of the eighteen month period, the Applicant must offer the Investment for sale by auction or tender within a further three months (with no reserve price or minimum bid set for the auction or tender) and dispose of the Investment.
- (c) The Applicant 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 Applicant must also report at any other time if required by the Overseas Investment Office.
- (d) The Applicant must provide a written report to the Overseas Investment Office within two months of the Investment being disposed of, providing evidence that:
- (i) the Applicant has disposed of the Investment (including copies of any sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor); and
- (ii) the purchaser is not an associate of the Applicant.

Reporting condition

10. The Applicant must report in writing to the Overseas Investment Office (on an annual basis on the anniversary of the date of consent until no longer required to do so by the Overseas Investment Office) as to progress with implementing the development referred to in condition 8, and include details of:
- (a) the Applicant's compliance with conditions 5 and 6;
 - (b) any job opportunities (including the internships referred to in paragraph 65(a) of the Application) created in New Zealand as a result of the overseas investment;
 - (c) any greater production or efficiencies generated by the overseas investment;
 - (d) any other matter relating to its compliance with:
 - (i) the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent was granted; or
 - (ii) the conditions of this consent.

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 holder 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 a consent holder to provide a statutory declaration verifying the extent to which the consent holder has complied with the conditions of consent, and, if the consent holder is in breach of a condition or conditions, the reasons for the breach and the steps the consent holder intends 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). A reference to the Applicant includes a reference to the consent holder.

Yours sincerely

[Redacted Signature]

[Redacted Name]

Senior Solicitor
Overseas Investment Office

DDI: [Redacted]

Email: [Redacted]

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