

Decision Date

16 March 2015

Decision

Consent has been granted to **Kiwi Forests Investment Limited**, or a 100% subsidiary of **Kiwi Forests Investment Limited** ("the Applicant"), giving effect to a transaction which will result in:

- (a) An overseas investment in sensitive land, being the Applicant's acquisition of:
- (i) a freehold interest in approximately 818.0217 hectares of land at Purunui Forest, Wairarapa; and
 - (ii) a freehold interest in approximately 815.9732 hectares of land at Maringi Forest, Wairarapa; and
 - (iii) a freehold interest in approximately 732.4000 hectares of land at Putinka Forest, Wairarapa.

("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(1)(b), the representations and plans made or submitted in support of the application and taken into account when consent was granted are those contained in the correspondence listed in the statutory declaration of [REDACTED] dated 29 January 2015 and in all attachments annexed to that correspondence.

Special 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:
 - (b) ceases to be of good character; or
 - (c) commits an offence or contravenes the law (whether convicted or not); or
 - (d) becomes aware of any other matter that reflects adversely on the Applicant's fitness to have the Investment; or
 - (e) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
 - (f) 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
 - (g) the Applicant:
 - (h) ceases to be an overseas person; or
 - (i) disposes of the Investment.
5. The Applicant must consult with the Department of Conservation ("DOC") to determine what the Applicant can reasonably do to protect or enhance any existing areas of significant indigenous vegetation or significant habitats of indigenous fauna on the relevant land (such as the registration of new instruments) ("Environmental Protection"). The Applicant must:
 - (a) Write to DOC within 15 working days of the date of settlement advising that the Applicant wishes to consult about Environmental Protection and enclose:
 - (b) a copy of the Public Decision Summary for this consent; and
 - (c) a copy of this condition together with information identifying and describing the relevant land including aerial photographs, maps and Certificate(s) of Title;
 - (d) Implement any reasonable Environmental Protection recommended by DOC ("Recommendation") (in determining what is reasonable Environmental Protection, regard must be had to the Applicant's proposed use for the relevant land);

- (e) The cost of any recommended Environmental Protection shall be borne by the Applicant (up to a maximum of \$10,000, excluding GST);
 - (f) 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;
 - (g) Share the cost of any arbitration equally with DOC (each party will be liable for their own legal costs); and
 - (h) Provide a copy of any award made by the arbitrator to the Overseas Investment Office within 15 working days of the award being made.
6. The Applicant must consult with the New Zealand Walking Access Commission ("WAC") to determine what the Applicant can reasonably do to provide, protect or improve public walking access over the relevant land or relevant part of that land (such as the registration of new instruments) ("Walking Access"). The Applicant must:
- (a) write to WAC within 15 working days of the date of settlement advising that the Applicant wishes to consult about Walking Access and enclose:
 - (b) a copy of the Public Decision Summary for this consent; and
 - (c) a copy of this condition together with information identifying and describing the relevant land including aerial photographs, maps and Certificate(s) of Title;
 - (d) Implement any reasonable Walking Access recommended by WAC ("Recommendation") (in determining what is reasonable Walking Access, regard must be had to the Applicant's proposed use for the relevant land);
 - (e) The cost of any recommended Walking Access shall be borne by the Applicant (up to a maximum of \$5,000, excluding GST);
 - (f) 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;
 - (g) Share the cost of any arbitration equally with WAC (each party will be liable for their own legal costs); and
 - (h) Provide a copy of any award made by the arbitrator to the Overseas Investment Office within 15 working days of the award being made.
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 forestry 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).
8. Upon harvest of the existing forest, the Applicant must replant the forest on the relevant land.
9. The Applicant must, within five years of the date of consent, through its forest manager employ approximately 27.7 full time equivalent employees on the relevant land.
10. The Applicant must report in writing annually to the Overseas Investment Office, on the anniversary of the date of settlement, and until as directed, detailing progress of its investment plan, including the following:
- (a) the Applicant's compliance with conditions 5, 6, 7, 8 and 9;
 - (b) any increased export receipts generated by the Applicant, including information as to the annual percentage and value of logs that are sold domestically and on the export market;
 - (c) the introduction into New Zealand of any additional investment for development purposes, including sums spent in replanting the forests on the land.
11. If requested in writing by the Overseas Investment Office, the Applicant must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
- (a) 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
 - (b) 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 the 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.



Oliver Turton
Senior Solicitor
Overseas Investment Office

Released under the Official Information Act 1982