



Decision required under the Overseas  
Investment Act 2005: Kiwi Forests Investment Limited

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<b>Date</b>	12 February 2015
<b>Security Level</b>	Commercial: In Confidence
<b>Priority</b>	High
<b>Report/Case Number</b>	1250 / 201420053
<b>Consent Required By</b>	3 March 2015 Contractual date in Agreement for Sale and Purchase. Vendor entitled to cancel thereafter.

Instructions

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	<b>Action Sought</b>	<b>Suggested Deadline</b>
<b>Minister for Land Information</b>	<ol style="list-style-type: none"> <li>1. Sign the attached memorandum</li> <li>2. Forward the memorandum and annexure to the Minister for Land Information</li> </ol>	19 February 2015
<b>Associate Minister of Finance</b>	<ol style="list-style-type: none"> <li>1. Sign the attached memorandum</li> <li>2. Forward the memorandum and annexure to the Overseas Investment Office</li> </ol>	26 February 2015


Contact for Telephone Discussion

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<b>Name</b>	<b>Position</b>	<b>Telephone (wk)</b>	<b>Cellphone</b>	<b>First Contact</b>
David Viviers	Team Manager	04 460 2795	027 447 6810	✓
Oliver Turton	Senior Solicitor	04 830 0555		

## Executive Summary:

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1. The Applicant, Kiwi Forests Investment Limited, is a company incorporated in New Zealand, but ultimately 100% owned by a Chinese national. Therefore, the Applicant is an 'overseas person' as defined in the Overseas Investment Act 2005 ("the Act").
2. The Applicant seeks consent under the Act and Overseas Investment Regulations 2005 ("the Regulations") for the acquisition of the Putinka Forest, Maringi Forest, and Purunui Forest ("the Land") approximately 2,366 hectares of forestry land located in Eastern Wairarapa.
3. Following the granting of any consent there will not be any change in use of the Land, and the Applicant will continue to use the Land for forestry. However, the Applicant is able to commit to replanting the Land following harvesting, which the Vendor or any alternative New Zealand purchaser is unlikely to do.
4. 
5. In formulating its recommendation, the Overseas Investment Office has had regard to the judgment of Miller J in *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147 ("*Tiroa E*") and the Court of Appeal decision in *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZCA 355.
6. The Overseas Investment Office has applied a "counterfactual" or "comparator analysis" test in assessing the benefits of the transaction in accordance with principles set out in the Judicial Review and has concluded that this comparator test is satisfied in this case.
7. Ministerial consent is required under the "*Designation and Delegation Letter*" of 22 April 2009 as Ministers have not delegated their power to the Overseas Investment Office to make decisions where the relevant land is sensitive for the reasons listed in Appendix Two.
8. The Overseas Investment Office recommends that you determine that the overseas investment will benefit New Zealand through the creation of jobs, an increase in export receipts, added productivity on the Land, the introduction into New Zealand of additional investment for development purposes, increased processing of primary products, enhanced ecological and walking access mechanisms and the offer back of special land to the Crown and that, having had regard to those factors, the benefits are substantial and identifiable.
9. The Overseas Investment Office recommends that consent be granted to this application.

## Annexures:

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10. Report of the Overseas Investment Office on the proposed overseas investment ("Report").
11. Application for consent with supporting material ("Application").

## Instructions:

12. Ministers must grant consent to this overseas investment if they are satisfied that all of the criteria in section 16 of the Act are met. They must decline to grant consent if they are not satisfied that all of the criteria in section 16 are met. Ministers must not take into account any criteria or factors other than those identified in sections 16 and 17, and regulation 28 of the Regulations.
13. In the attached Report the Overseas Investment Office identifies each of the criteria and factors under sections 16 and 17, and regulation 28 that Ministers are required to consider in this case.

### "Benefit to New Zealand criteria"

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

### Justice Miller's "with and without test"

#### *Economic factors*

18. The High Court in *Tiroa E* requires the "economic benefit" factors in section 17(2)(a) to be assessed on the basis of a "counterfactual test". That is, Ministers must consider with respect to each section 17(2)(a) factor whether the overseas investment is likely to result in a benefit to New Zealand over and above any benefit that will or is likely to result even if the investment does not proceed. It is only the additional benefit from the overseas investment that is relevant when applying the "benefit to New Zealand" criteria.

*Non-economic factors*

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

*Regulation 28 factors*

20. With regard to the factors in regulation 28 of the Regulations, Miller J noted that:

The criteria listed in reg 28 deal, for the most part, with benefits that only an overseas buyer could provide or what may be loosely described as strategic considerations, so they do not require a counterfactual analysis.<sup>3</sup>

21. Many of the factors in regulation 28 are incapable of having a counterfactual analysis applied to them. However, as recognised by Miller J, there are some factors that may require a counterfactual analysis. The Overseas Investment Office has applied a counterfactual analysis where appropriate.

Conditions

22. Conditions may be imposed on any consent that is granted, under section 25. The attached Report recommends some conditions that Ministers may wish to consider imposing in this case.
23. If you wish to make any changes to the conditions of consent, those changes should be discussed with the Overseas Investment Office, and the other Minister, before being finalised.

Decision

24. The decision that you are required to make should be based on information available to you that you consider is sufficiently reliable for that purpose. The information that the Overseas Investment Office has taken into account in making its recommendation is summarised in the attached Report.
25. If you propose to disagree with the decision of the other Minister, you should discuss your proposed decision with the Overseas Investment Office and the other Minister.
26. If required, staff from the Overseas Investment Office are available to brief you on the Office’s recommendations.

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<sup>1</sup> *Tiroa E* at [36].

<sup>2</sup> *Tiroa E* at [38].

<sup>3</sup> *Tiroa E* at [36].

**Recommendations:**

27. I recommend that you:

(a) determine that:

(a) the 'relevant overseas person' is (collectively) Kiwi Forests Investment Limited, Golden World International Limited, [redacted]

[redacted] ultimate beneficial owner of Kiwi Forests Investment Limited; and

(b) the 'individuals with control of the relevant overseas person' are:

• [redacted] director and ultimate beneficial owner of Golden World International Limited, [redacted]

• Michael Miao and Wenhui Zhu, directors of Kiwi Forests Investment Limited; and

(c) the relevant overseas person has, or (if that person is not an individual) the individuals with control of the relevant overseas person collectively have, business experience and acumen relevant to the overseas investment; and

(d) the relevant overseas person has demonstrated financial commitment to the overseas investment; and

(e) the relevant overseas person is, or (if that person is not an individual) all the individuals with control of the relevant overseas person are, of good character; and

(f) the relevant overseas person is not, or (if that person is not an individual) each individual with control of the relevant overseas person is not, an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009; and

(g) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and

(h) the benefit will be, or is likely to be, substantial and identifiable; and

(i) Ministerial consent is required under the "Designation and Delegation Letter" of 22 April 2009 as Ministers have not delegated their power to the Overseas Investment Office to make decisions where the relevant land is sensitive for the reasons listed in Appendix Two; and

(b) and accordingly you are satisfied that the criteria for consent in section 16 have been met; and

Associate Minister of Finance:

Satisfied

Not Satisfied

Minister for Land Information:

Satisfied

Not Satisfied

- (c) grant consent to the overseas investment subject to the conditions in Appendix 1 of the Report.

Associate Minister of Finance:

Consent Granted


Consent Declined

Minister for Land Information:

Consent Granted

Consent Declined



Associate Minister of Finance

Date 16/08/15



Minister for Land Information

Date 27/08/15



David Viviers - Team Manager  
Overseas Investment Office

Released under

Official Information Act 1982

Report of the Overseas Investment Office  
on the application for consent by  
Kiwi Forests Investment Limited  
Case: 201420053

## Contents

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SUMMARY OF KEY INFORMATION .....	2
APPLICATION .....	2
APPLICANT.....	2
BACKGROUND TO THE INVESTMENT .....	3
OUTLINE OF THE INVESTMENT .....	4
RATIONALE FOR THE INVESTMENT .....	4
SENSITIVE LAND .....	6
ASSESSMENT PROCESS.....	6
COUNTERFACTUAL ANALYSIS .....	7
CRITERIA SET OUT IN SECTION 16 .....	8
FACTORS SET OUT IN SECTION 17 .....	11
THIRD PARTY SUBMISSIONS.....	24
APPENDIX 1 – CONDITIONS OF CONSENT .....	25
APPENDIX 2 – SENSITIVE LAND .....	28

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## Summary of Key Information

<b>Applicant</b>	<b>Kiwi Forests Investment Limited</b> (China, People's Republic of 100.0%)
<b>Vendor</b>	<b>Schools Amalgamated Forest Trust</b> (New Zealand 100.0%)
<b>Consideration</b>	[REDACTED]
<b>Recommendation</b>	Grant Consent

## Application

1. For consent for the Applicant or a 100% subsidiary of the Applicant to give effect to:
  - (a) An overseas investment in sensitive land, being the Applicant's acquisition of:
    - (a) a freehold interest in approximately 818.0217 hectares of land, being the Purunui Forest, Wairarapa; and
    - (b) a freehold interest in approximately 815.9732 hectares of land being the Maringi Forest, Wairarapa; and
    - (c) a freehold interest in approximately 732.4000 hectares of land being the Putinka Forest, Wairarapa.

("the Investment")

## Applicant

2. The Applicant is a company incorporated in New Zealand in May 2011, but ultimately 100% owned by a Chinese national. Therefore, the Applicant is an 'overseas person' as defined in the Overseas Investment Act 2005 ("the Act").
3. The Applicant seeks consent under the Act and Overseas Investment Regulations 2005 ("the Regulations") for the acquisition of the Putinka Forest, Maringi Forest, and Purunui Forest ("the Land"), approximately 2,366 hectares of forestry land located in Eastern Wairarapa.
4. The Applicant was formed to acquire and hold forestry land in New Zealand [REDACTED]  
[REDACTED]  
[REDACTED] The forests being acquired under the Investment are [REDACTED]
5. The directors of the Applicant are Michael Miao, a New Zealand citizen, and Ms Wenhui Zhu, a Chinese citizen.
6. The sole shareholder of the Applicant is Golden World International Limited ("Golden World"), a Hong Kong incorporated company. The shareholders of Golden World are:
  - (a) [REDACTED]
  - (b) [REDACTED]
7. [REDACTED]



8.

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10.

11.

12.

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14.

Official Information Act 1982

## Background to the Investment

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15. The Vendor of the Land is a charitable trust incorporated on 3 August 2012 for the benefit of the following bodies corporate trust boards/trustees:
- (a) Christ's College Canterbury ("Christ's College") 700/1000 shares (70%);
  - (b) Samuel Marsden Collegiate School Trust Board ("Samuel Marsden") 150/1000 shares (15%);
  - (c) Wellington Diocesan School for Girls (Nga Tawa) Marton Board of Trustees 45/1000 shares (4.5%);
  - (d) St Mark's Parish Property Trust 39/1000 shares (3.9%);
  - (e) St Hilda's Collegiate Endowment Society Inc. 27/1000 shares (2.7%);
  - (f) Huntly School Endowment Trust Board 21/1000 shares (2.1%);
  - (g) St Margaret's College Trust Board 15/1000 shares (1.5%);
  - (h) Waihi School Association Inc. 3/1000 shares (0.3%).
- (together, "the Participating Schools").

16. The Participating Schools originally acquired their interests in the Land 27 years ago. The Vendor (the current holding entity) was formed in 2012. While the holding entity has changed from the original holding entities, the essential purpose has remained the same – namely to provide a long term investment providing sustainable cash flows.
17. The Vendor has confirmed that consent from neither the Overseas Investment Office nor the Overseas Investment Commission was required by the Vendor to acquire any of its assets or property or to establish its business in New Zealand. The Vendor is not an "overseas person" for the purposes of the Act.

## Outline of the Investment

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18. As noted above, the Applicant seeks consent under the Act and Regulations for the acquisition of the Land, comprising 2,366 hectares of forestry land located in Eastern Wairarapa.
19. The Applicant has entered into an agreement for sale and purchase of the Land dated 27 August 2014 ("the Agreement") on certain terms and conditions with the Vendor. The Agreement follows the Applicant being selected as the preferred bidder of the Vendor following a competitive and advertised process. Settlement of the purchase is proposed for ten working days after the date that consent is obtained under the Act.
20. The consideration payable by the Applicant to acquire the Land is [REDACTED]
21. The acquisition requires consent under section 10(1)(a) of the Act, being an overseas investment in sensitive land.
22. The Land is sensitive under the Act because:
  - (a) it is non-urban land greater than five hectares; and
  - (b) part of the Putinka Forest adjoins conservation land larger than 0.4 of a hectare.
23. The Land also includes special land, being part of the Tauweru River.
24. Following the granting of any consent there will not be any change in use of the Land, and the Applicant will continue to use the Land for forestry purposes.

## Rationale for the Investment

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25. [REDACTED]
26. [REDACTED]
27. [REDACTED]

28.

29.

30.

31.

32.

33.

Official Information Act 1982

Released under

- [REDACTED]
34. The Vendor is selling the Land is to raise funds for:
- (a) In the case of Christ's College, the rebuild/seismic strengthening of its school's assets following the Christchurch earthquakes; and
  - (b) In the case of Samuel Marsden, the costs of carrying out seismic strengthening work to its school buildings (again, in response to the increased awareness of earthquake risk following the Christchurch earthquakes).
35. These two Participating Schools have the largest interests in the Vendor (collectively 85%). Both schools have been confronted with significant and unexpected costs as a result of the Christchurch earthquakes. In the case of Christ's College, which is located in central Christchurch, the costs primarily relate to carrying out works both to rebuild and strengthen school buildings. In the case of Samuel Marsden, the increased focus on seismic ratings of buildings has resulted in Samuel Marsden planning an extensive seismic strengthening project to better protect its students and staff from the repercussions of a significant earthquake.

## Sensitive Land

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36. The Applicant is acquiring sensitive land. See Appendix 2.

## Assessment Process

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37. We have sought sufficient information from the Applicant for us to be assured about the accuracy of the information supplied and have sought sufficient evidence from the Applicant for us to be able to judge whether the criteria and factors that apply are met.
38. We did not consider it necessary to seek input from third parties in order to verify the information or evidence gathered.
39. We have determined that the:
- (a) **'relevant overseas person'** is (collectively) Kiwi Forests Investment Limited, Golden World International Limited, [REDACTED] ultimate beneficial owner of Kiwi Forests Investment Limited; and
  - (b) **'individuals with control of the relevant overseas person'** are:
    - (a) [REDACTED] director and ultimate beneficial owner of Golden World International Limited, [REDACTED] and
    - (b) Michael Miao and Wenhui Zhu, directors of Kiwi Forests Investment Limited.
40. Note that the directions the Minister of Finance has given to the Overseas Investment Office on the relative importance of certain factors are not binding on you. It is a matter for you, in carrying out your overall evaluation, to decide what weight to give to each factor.

## Counterfactual Analysis

41. In *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147 ("*Tiroa E*"), the Court made specific reference to the counterfactual assessment to be made. Miller J recognised that the statute's perspective is forward looking and that, "if it is to isolate the economic benefits attributable to the overseas investment, the counterfactual must similarly be forward looking, requiring that the Overseas Investment Office ask what will happen if the investment is not made".<sup>4</sup> Miller J also suggested that the "status quo may serve as the counterfactual under s 17(2)(a) only if Ministers think it likely that in the hands of another owner or owners, the farms will remain in their present state".<sup>5</sup>
42. To establish the appropriate counterfactual in this case, the Overseas Investment Office has considered what the likely state of affairs would be without the Investment ("the Counterfactual").
43. The Overseas Investment Office considers that the likely Counterfactual is the '**status quo**' – **that is, continued ownership of the Land by the Vendor**. There is no likely New Zealand buyer of the Land should the Investment not proceed.
44. Critically, the Applicant is **committed to replanting the forest once harvested**. There is no indication any potential alternative New Zealand purchaser, if identified, would do this.
45. In forming this opinion, the Applicant has advised the Overseas Investment Office that:
  - (a) The Land was widely advertised as for sale in the open market, including in the National Business Review. The Vendor received 31 enquiries from interested parties, all of whom were sent detailed information packs.
  - (b) As a result of its tender process, the Vendor received six conditional bids for the Land.
  - (c) All six bids were made by overseas persons. No bids were made by New Zealand purchasers.
  - (d) It is the Applicant's view that the appropriate counterfactual for this acquisition is the 'status quo'.
  - (e) This is because currently, forest estates of any size are not being bought by New Zealanders and are only being acquired by overseas persons. This is evidenced by the fact that no bids were made by New Zealanders for the Land.
46. The Vendor has advised that if consent to the sale of the Land was declined:
  - (a) it would retain ownership of the Land, given that it appears that no New Zealand purchasers exist, and in particular no New Zealand purchasers that would pay an acceptable price for the Land, but continue to try to sell the Land;
  - (b) it would be likely to harvest the trees on the Land when those trees reached maturity;
  - (c) it has not yet made a decision as to whether it would replant the trees following harvesting, but in view of current circumstances it is unlikely that it would elect to replant the trees as this would be of questionable affordability;
  - (d) the prospect of the Vendor not replanting following harvesting, and instead leaving the trees to regenerate with wilding pines is realistic given that planting of new forests in New Zealand is currently at near-historic lows.

<sup>4</sup> *Tiroa E* at [37].

<sup>5</sup> *Tiroa E* at [42].

## Criteria set out in section 16

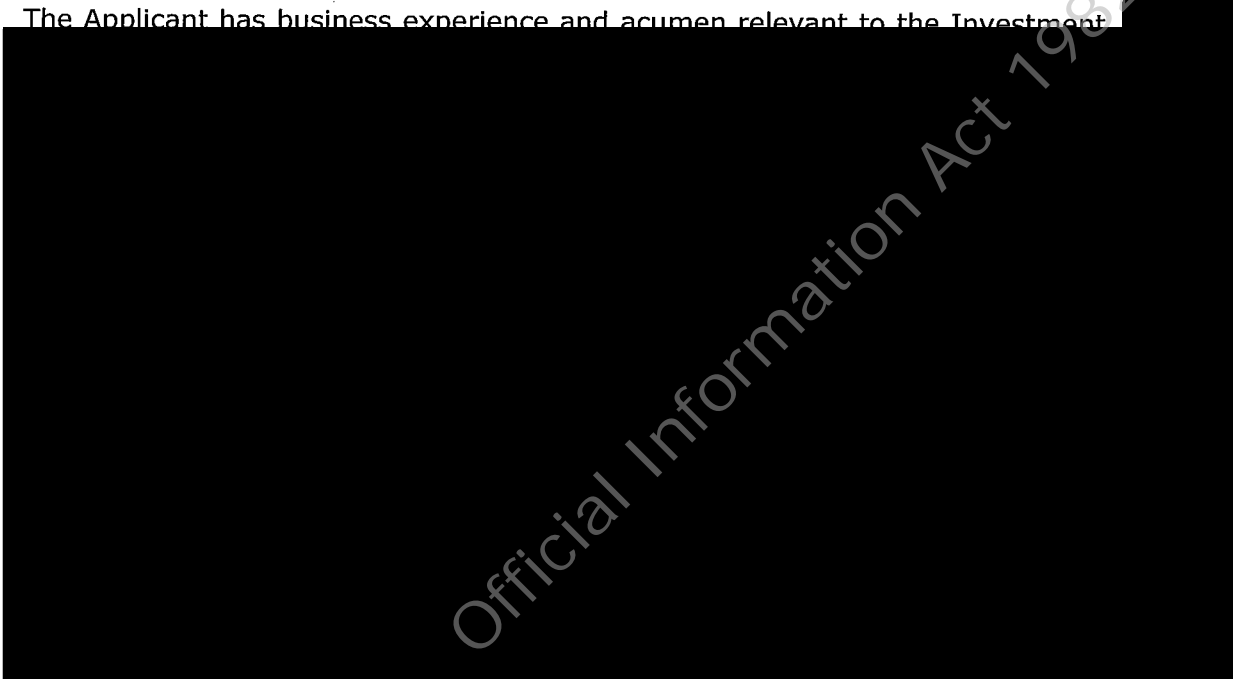
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47. s16(1)(a) Overseas Investment Act 2005

<p><b>Does the relevant overseas person, or (if that person is not an individual) do the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to that overseas investment?</b></p>	<p style="text-align: center;">✓</p>
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Applicant's Claims:

The Applicant has business experience and acumen relevant to the Investment



The directors of the Applicant, Michael Miao and Wenhui Zhu, are also both experienced businesspeople with experience in both New Zealand and China.

OIO Assessment:

The Overseas Investment Office has reviewed the curricula vitae of the individuals with control of the relevant overseas person and is satisfied that they have business experience and acumen relevant to the Investment.

Rele

## 48. s16(1)(b) Overseas Investment Act 2005

<b>Has the relevant overseas person demonstrated financial commitment to the overseas investment?</b>	✓
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Applicant's Claims:

The Applicant has paid a deposit of [REDACTED] under the terms of the Agreement.

As at 2 September 2014, the Applicant has spent approximately [REDACTED] on professional services and on carrying out due diligence in relation to the successful tender for the Land [REDACTED]

OIO Assessment:

The Overseas Investment Office is satisfied that the relevant overseas person has demonstrated financial commitment to the overseas investment as it has paid a deposit of [REDACTED] under the Agreement. The Applicant has also incurred significant costs in preparation of the Investment so far.

## 49. s16(1)(c) Overseas Investment Act 2005

<b>Is the relevant overseas person, or (if that person is not an individual) are all the individuals with control of the relevant overseas person, of good character?</b>	✓
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Applicant's Claims:

A statutory declaration has been received from [REDACTED] director of the Applicant and the Applicant's ultimate beneficial shareholder, which states that he, Michael Miao and Wenhui Zhu are of good character.

OIO Assessment:

The Applicant has provided a statutory declaration from [REDACTED] director of the Applicant and the Applicant's ultimate beneficial shareholder, stating that he, Michael Miao and Wenhui Zhu are of good character.

The Overseas Investment Office is satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957. We have also conducted internet searches on the above individuals and have found nothing relevant.

Therefore the Overseas Investment Office is satisfied that the individuals with control of the relevant overseas person are of good character.

## 50. s16(1)(d) Overseas Investment Act 2005

<b>Is the relevant overseas person, or (if that person is not an individual) is each individual with control of the relevant overseas person, not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009?</b>	✓
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Applicant's Claims:

A statutory declaration has been received from [REDACTED] director of the Applicant and the Applicant's ultimate beneficial shareholder, which states that he, Michael Miao and Wenhui Zhu are not individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.

OIO Assessment:

The Applicant has provided a statutory declaration from [REDACTED] director of the Applicant and the Applicant's ultimate beneficial shareholder, stating that he, Michael Miao and Wenhui Zhu are not individuals of the kind referred to in section 15 and 16 of the Immigration Act 2009.

The Overseas Investment Office is satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957. We have also conducted internet searches on the above individuals and have found nothing relevant.

Therefore the Overseas Investment Office is satisfied that the individuals with control of the relevant overseas person are not individuals of the kind referred to in section 15 or 16 of the Immigration Act 2005.

## 51. s16(1)(e)(ii) Overseas Investment Act 2005

<b>Will the overseas investment benefit, or is it likely to benefit, New Zealand (or any part of it or group of New Zealanders)?</b>	✓
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OIO Assessment:

The proposed overseas investment will or is likely to benefit New Zealand (or any part of it or group of New Zealanders) having regard to the following factors:

**Overseas Investment Act 2005**

17(2)(a)(i) – Jobs

17(2)(a)(iii) – Increased export receipts

17(2)(a)(iv) – Added productivity

17(2)(a)(v) – Additional investment for development purposes

17(2)(a)(vi) – Increased processing of primary products

17(2)(b) – Indigenous vegetation/fauna

17(2)(e) – Walking access

17(2)(f) – Offer to gift riverbed to the Crown

**Overseas Investment Regulations 2005**

28(d) – Owner to undertake other significant investment

28(i) – Economic interests



## 52. s16(1)(e)(iii) Overseas Investment Act 2005

<b>Will the benefit be, or is the benefit likely to be, substantial and identifiable?</b>	✓
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Applicant's Claims:

The Applicant considers the benefit to New Zealand under the Investment is likely to be substantial and identifiable. The most important benefit to New Zealand arising under the Investment is that the Applicant is willing to commit to replant the forests following the harvest of the current crop of trees.

OIO Assessment:

The Overseas Investment Office considers that the benefit identified above satisfies the criteria of being substantial and identifiable.

### Factors Set Out in section 17

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## 53. s17(2)(a)(i) Overseas Investment Act 2005

<b>Will the overseas investment result in, or is it likely to result in, the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost?</b>	✓
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Applicant's Claims:*Ongoing management of current forest*

Following the granting of any consent the Applicant will engage a local forestry manager to perform in-forest functions, likely to be [REDACTED]. As a result, the Investment will result in the retention of jobs of all forestry workers presently employed by the Vendor. Presently three full time equivalent ("FTE") employees are employed on the Land, as no harvesting is occurring, replanting has not commenced, and pruning operations have been downscaled by the Vendor in the past few years as a cost saving measure.

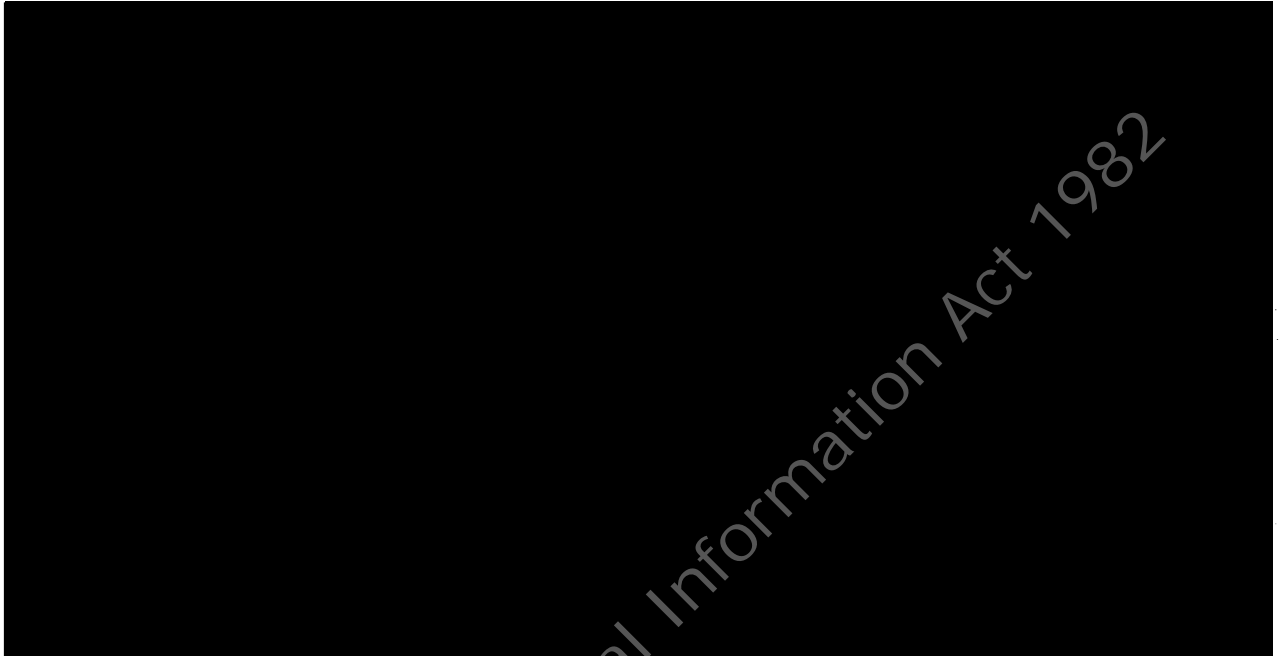
Once the Applicant's operations on the Land are fully ramped up, there will be approximately 27.7 FTE employees, although there will be some fluctuation depending upon seasonal demands.

Employment opportunities will likely include the following roles:

- (a) Forest management: 1.5 FTEs;
- (b) Harvesting and replanting: 15 FTEs;
- (c) Log transport: 3.2 FTEs;
- (d) Road Construction: 1.8 FTEs; and
- (e) Establishment and tending: 6.2 FTEs.

This means that approximately 24.7 FTE roles will likely be created under the Investment.

Under the counterfactual, where replanting is unlikely and the Land is instead left to regenerate as wildings, there will be no ongoing requirement for a forest manager such as [REDACTED] and its employees once the forest has been harvested. A naturally regenerating forest does not require any such employment.



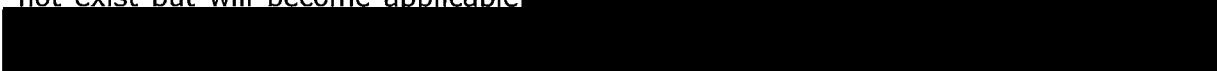
*Establishment of Office*

The Applicant intends to establish a permanent place of business in New Zealand. One of the two directors of the Applicant, Michael Miao, is a New Zealand citizen based in Auckland. His role as director of the Applicant, [REDACTED]

In addition, the establishment of a permanent place of business will also necessarily involved new appointments of external advisors – auditors, valuers, and legal advisors. The preliminary budgeted annual spend, on a business as usual basis, is as follows:

- (a) Auditors: [REDACTED]
  - (b) Valuers: [REDACTED]
  - (c) Legal: [REDACTED]
  - (d) Carbon assessors/financial advisors/Southern Capital Partners: [REDACTED]
- Total [REDACTED]

The auditor and valuer roles will be new annual legal requirements which currently do not exist but will become applicable [REDACTED]



The level of this additional external spend predicates the likelihood of two to three new FTEs (using Statistics NZ data of average weekly earnings of [REDACTED] for the professional services sector) and is a direct consequence of the Investment.

This place of business in New Zealand would not be established, and the above jobs would not be created, but for the Investment.

OIO Assessment:

The Overseas Investment Office considers that the Investment is likely to result in the creation of approximately 24.7 new FTE roles in the day to day management of the forests by the forestry manager.

Under the Counterfactual, the Vendor would still require forestry management services during the harvesting of the existing forest on the Land, which would result in the creation of some employment above its present 3 FTE roles. However, without the Applicant's commitment to the replanting of forests on the Land, these jobs will not remain. The Applicant is likely to begin replanting of the Land in 2017.

In the future it is possible that further employment may be created for auditors and valuers if the Applicant's assets exceed [REDACTED]. However, the Overseas Investment Office considers this potential job creation is too contingent on future land purchases to amount to a benefit for the purposes of the present application.

A proposed condition of consent has been imposed, requiring the Applicant to report on all jobs retained and created.

Accordingly, this factor is met.

54. s17(2)(a)(ii) Overseas Investment Act 2005

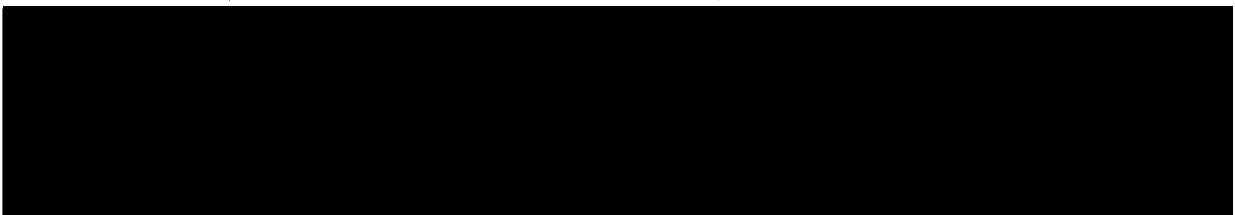
<b>Will the overseas investment result in, or is it likely to result in, the introduction into New Zealand of new technology or business skills?</b>	<b>Not Relevant</b>
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55. s17(2)(a)(iii) Overseas Investment Act 2005

<b>Will the overseas investment result in, or is it likely to result in, increased export receipts for New Zealand exporters?</b>	✓
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Applicant's Claims:

The Applicant's commitment to replanting the forests will result in a significantly larger quantity of logs, and higher quality logs being produced from the forests than would be produced if the Vendor did not replant the forests. This will result in increased export receipts.



Under the counterfactual, should the forest be left to regenerate with wilding pines and very little spent on pruning and thinning, the expected export receipts in the same market would likely be minimal. Although there is an export market for logs produced from wilding pines, as the quality of trees grown as wilding pines is variable and largely a matter of chance, net returns for exported logs are so low (or negative) that it may not be viable exporting them.

OIO Assessment:

The Overseas Investment Office considers that the Investment is likely to result in increased export receipts for the Applicant, due to its commitment to replanting the Land rather than leaving the Land to regenerate as wilding pines following the current harvest. Under the Counterfactual, the Vendor is unlikely to commit to replanting the forests on the Land once harvested.

A proposed condition of consent has been imposed, requiring the Applicant to report on all export receipts generated by the Investment, and the proportion of logs sold on the export and domestic markets respectively.

Accordingly, this factor is met.

56. s17(2)(a)(iv) Overseas Investment Act 2005

<b>Will the overseas investment result in, or is it likely to result in, added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand?</b>	✓
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Applicant's Claims:

While the Investment will not affect competition or efficiency, or create enhanced domestic services, it will likely lead to increased productivity as a consequence of the Applicant's commitment to replanting the forests on the Land.

Accordingly, the Investment will:

- (a) improve the use of an existing resource or asset (being the forests on the Land); and
- (b) increase the amount of goods (logs) ultimately produced.

As noted above, the Applicant's commitment to replanting the forests will result in a significantly larger quantity of logs and higher quality logs being produced on the Land than would be produced if the Vendor did not replant the forests.

If the Land is properly planted and managed as a plantation forestry, expected net returns of approximately [REDACTED] per hectare for logs sold on the export market could be expected at maturity for a well-managed forest, rather than net returns as low as [REDACTED] per hectare should the forest be left to regenerate with wilding pines.

OIO Assessment:

The Overseas Investment Office considers that the Investment is likely to result in increased productivity on the Land, as the Applicant's commitment to replanting the Land is likely to result in increased production of logs from the Land. Under the Counterfactual, the Vendor is unlikely to replant the forests on the Land following harvesting of the current crop of trees, beginning in 2017.

This use of the Land is also more efficient, as the difference in net return between a replanted forest and a forest of wilding pines once eventually harvested could be as much as [REDACTED] per hectare for logs sold on the export market.

Accordingly, this factor is met.

57. s17(2)(a)(v) Overseas Investment Act 2005

<b>Will the overseas investment result in, or is it likely to result in, the introduction into New Zealand of additional investment for development purposes?</b>	✓
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Applicant's Claims:

The Applicant's commitment to replanting will result in an investment of approximately [REDACTED] per hectare, being the costs of land preparation, seedlings, replanting, spraying, fertilising, and early pruning. This is a total cost of approximately [REDACTED] per hectare, over [REDACTED] plantable hectares) that would not be invested in the New Zealand economy if the Investment did not proceed and the Vendor did not replant. Leaving the forests to regenerate with wildings will not result in any investment.

OIO Assessment:

The Overseas Investment Office considers that the Investment is likely to result in the introduction of additional investment for development purposes into New Zealand amounting to approximately [REDACTED] per hectare, over [REDACTED] plantable hectares. The [REDACTED] per hectare costs includes the costs of land preparation, seedlings, replanting, spraying, fertilising, and early pruning.

The Applicant anticipates that the forests on the land will be completely replanted by [REDACTED]

Under the Counterfactual, this introduction of additional investment for development purposes into New Zealand will not occur, as the Vendor is not an overseas person and would not introduce any funds into New Zealand, even if it was committed to replanting the forests on the Land.

A proposed condition of consent has been imposed, requiring the Applicant to report on all sums expended by the Applicant in replanting the forests on the Land.

Accordingly, this factor is met.

58. s17(2)(a)(vi) Overseas Investment Act 2005

<b>Will the overseas investment result in, or is it likely to result in, increased processing in New Zealand of New Zealand's primary products?</b>	✓
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Applicant's Claims:

The Applicant anticipates that approximately [REDACTED] of all logs produced on the Land by the replanted forest will be sold on the domestic market. This equates to [REDACTED] tonnes of logs.

The Applicant's commitment to replanting the forests will result in a significantly larger quantity of logs and higher quality logs being produced on the Land than would be produced if the Vendor did not replant the forests. Indeed, the actual net stocked area of a naturally regenerating forest would likely reduce by 15% as weed species outcompete the regenerating tree crop.

OIO Assessment:

The Overseas Investment Office considers that the Investment is likely to result in increased processing of logs in New Zealand, as the replanted forest on the Land is likely to produce a larger quantity of logs and higher quality logs than a forest left to naturally regenerate, as under the Counterfactual.

A proposed condition of consent has been imposed, requiring the Applicant to report on the proportion and value of logs sold on the export and domestic markets respectively.

Accordingly, this factor is met.

59. s17(2)(b) Overseas Investment Act 2005

<b>Are there, or will there be, adequate mechanisms in place for protecting or enhancing existing areas of significant indigenous vegetation and significant habitats of indigenous fauna?</b>	✓
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Applicant's Claims:

The Applicant is willing to agree to create and register conservation covenants over the areas of indigenous forest and areas of broadleaved indigenous hardwoods located on the Land as long as the Department of Conservation considers that these are desirable, and as long as such covenants do not interfere with harvesting of the forests.

Similarly, the Applicant is willing to consult with the Department of Conservation and implement any reasonable formal protection recommended by the Department.

OIO Assessment:

The Overseas Investment Office is satisfied that there are, or will be, adequate mechanisms in place for protecting or enhancing existing areas of significant indigenous vegetation and significant habitats of indigenous fauna on the Land. The Applicant has committed to consulting with the Department of Conservation as to protection of areas of indigenous forest on the Land.

A proposed condition of consent has been imposed, requiring the Applicant to consult with the Department of Conservation 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 Land.

Accordingly, this factor is met.

60. s17(2)(c) Overseas Investment Act 2005

<b>Are there, or will there be, adequate mechanisms in place for protecting or enhancing existing areas of significant habitats of trout, salmon, protected wildlife and game, and providing, protecting or improving walking access to those habitats?</b>	<b>Not Relevant</b>
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Applicant's Claims:

There are no known habitats of trout, salmon or protected wildlife and game in the forests.

61. s17(2)(d) Overseas Investment Act 2005

<b>Are there, or will there be, adequate mechanisms in place for protecting or enhancing historic heritage within the relevant land?</b>	<b>Not Relevant</b>
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OIO Assessment:

There are no historic sites on the Land.

62. s17(2)(e) Overseas Investment Act 2005

<b>Are there, or will there be, adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land, or a relevant part of that land, by the public or any section of the public?</b>	✓
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Applicant's Claims:

The Applicant is willing to offer to create an esplanade strip to facilitate public access along the banks of the Tauweru River within the Marangi Forest.

In addition, the Applicant is willing to consult with the Walking Access Commission ("WAC") and implement any reasonable formal walking access recommended by the Commission.

OIO Assessment:

The Maringi Forest contains part of the banks of the Tauweru River. The Overseas Investment Office therefore considers that it would be appropriate for the Applicant to consult with WAC about whether the walking access arrangements across the Land are appropriate.

The Overseas Investment Office considers that, without the Investment, or without the recommended conditions, there would not likely be adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land. The Overseas Investment Office considers that under the Counterfactual the Vendor would not consult with WAC and implement any reasonable requirements to provide public walking access.

Accordingly, the Overseas Investment Office recommends that conditions of consent be imposed requiring consultation with WAC and the implementation of any reasonable requirements to provide public walking access. With this condition of consent imposed, the Overseas Investment Office is satisfied that there will be adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land, or a relevant part of that land, by the public or any section of the public.

## 63. s17(2)(f) Overseas Investment Act 2005

<b>Has any foreshore, seabed, riverbed, or lakebed been offered to the Crown?</b>	✓
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Applicant's Claims:

The Maringi Forest includes special land (as defined in the Act), being part of the Tauweru River.

The Applicant offers the special land to the Crown for nil consideration, on the basis that the Crown assumes all obligations in respect of any required surveys or title registrations.

The certificate prepared by The Property Group identifies two further streams that may constitute special land (although whether the streams are in fact special land is unclear as the streams have not been surveyed):

- (a) A stream located adjoining WN408/72 (Purunui Forest); and
- (b) A stream passing from WN1300/9, WN1300/10 and WN1300/11 into WN57A/417 (part of Putinka Forest).

In the absence of a survey determining this issue, The Property Group has prepared the land certificate on the basis that these two streams may be special land.

If the Crown elects to carry out a survey, and in the event that such survey determines that the streams are special land, the Applicant offers that special land to the Crown for no consideration on the basis that the Crown assumes all obligations in respect of any required surveys or title registrations.

In addition to the offer of the special land, the Applicant will offer to create a public access esplanade strip along the part of the Tauweru River that is special land.



OIO Assessment:

The relevant land includes special land, including the bed of the Maringi River. The Overseas Investment Office recommends that a condition of consent be imposed requiring the Applicant to offer the special land to the Crown for nil consideration.

The process of offering special land to the Crown generally involves a two step process. Firstly, the land is offered to the Crown. The Crown then determines whether or not it wishes to acquire the land, and if it does, makes the acquisition.

The Overseas Investment Office notes that only the first step needs to be completed before an application for consent is determined (section 17(2)(f) of the Act relates to the offer of the special land rather than its acquisition by the Crown). The Overseas Investment Office will forward a separate report in due course regarding whether the Crown should acquire the special land. In the interim, the Overseas Investment Office recommends that consent conditions be imposed confirming that the Applicant will formally offer the special land to the Crown for nil consideration (preserving the Crown's position). Consent conditions proposed by the Overseas Investment Office are set out in Appendix 1.

## 64. r28(a) Overseas Investment Regulations 2005

<b>Will the overseas investment result in, or is it likely to result in, other consequential benefits to New Zealand (whether tangible or intangible benefits (such as, for example, additional investments in New Zealand or sponsorship of community projects))?</b>	<b>Not Relevant</b>
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## 65. r28(b) Overseas Investment Regulations 2005

<b>Is the relevant overseas person a key person in a key industry of a country with which New Zealand will, or is likely to, benefit from having improved relations?</b>	<b>Not Relevant</b>
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## 66. r28(c) Overseas Investment Regulations 2005

<b>Will refusal adversely affect, or likely adversely affect, New Zealand's image overseas or its trade or international relations, or result in New Zealand breaching any of its international obligations?</b>	<b>x</b>
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Applicant's Claims:

Refusal of the application by the Overseas Investment Office would be counter to MFAT's strategy regarding New Zealand's relationship with China. It may damage New Zealand's overseas image and standing with China.

Refusing consent would also be contrary to the spirit of:

- (a) the Free Trade Agreement ("FTA") between New Zealand and China that came into force in October 2008, which requires New Zealand and China to treat investors of the other country at least as well as they treat their own investors (although we note that the FTA is subject to existing laws, and subject to the provisions of the Act); and

- (b) MFAT's NZ Inc China Strategy of February 2012 ("NZ Inc China Strategy"), which reflects China's importance to New Zealand both bilaterally and regionally as an economic and trading partner.

A negative outcome to this application will serve to confirm the perception created in China by *Tiroa E* that investing in New Zealand is a difficult, fraught and overly complicated process.

OIO Assessment:

The Overseas Investment Office accepts that refusal of consent would attract some adverse publicity, but any decline would be on the basis that Ministers were not satisfied that the relevant criteria for consent were met. The Office would think it unlikely that a well reasoned decision to decline will or is likely to adversely affect New Zealand's image overseas or its trade or international relations.

Nor does the Overseas Investment Office consider that a refusal would likely result in New Zealand breaching any of its international obligations.

The Act states that it is a privilege for overseas persons to own or control sensitive New Zealand assets. The Act is one of the agreed exceptions to the principle in the New Zealand-China FTA that New Zealand and China will treat investors and investments of the other country at least as well as they treat their own investors. Each application for consent under the Act is assessed on its own merits and against the criteria and factors set out in the Overseas Investment legislation.

Accordingly, this factor is not met.

67. r28(d) Overseas Investment Regulations 2005

<b>Will granting the application for consent result in, or is it likely to result in, the owner of the relevant land undertaking other significant investment in New Zealand?</b>	✓
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Applicant's Claims:

The Overseas Investment Office does not, as a rule, take the financial benefit of an investment to the vendor into account under section 17 of the Act. The stated rationale for this position is to ensure that an overseas investor cannot pass the benefit test under the Act merely by outbidding others.

The Applicant contends that this general position is not applicable on the facts of this application, and that the Ministers should take into consideration the Vendor's status and circumstances under regulation 28(a). This is because the Vendor is not a private sector person, but is a charitable trust formed for the benefit of the Participating Schools and ultimately their students, staff and wider communities of families, suppliers and contractors.

This means that the Vendor and the Participating Schools are essentially part of the New Zealand public (or a group of New Zealanders), and that the financial benefit of the sale to the Vendor and the Participating Schools is a benefit to part of New Zealand or a group of New Zealanders.

Samuel Marsden and Christ's College intend to use the funds for, in the case of Samuel Marsden, seismic strengthening costs, and in the case of Christ's College, the Christchurch rebuild. Both uses of the proceeds will be of benefit to the relevant school's communities and will directly benefit the students and staff of each of those schools.

This is a significant and noteworthy investment that will benefit part of New Zealand or a group of New Zealanders.

OIO Assessment:

The Overseas Investment Office considers that the Vendor is likely to apply its sale proceeds to seismic strengthening. This expenditure is a 'significant investment', and will be of benefit to future generations of New Zealanders in ensuring a safe built environment in which to learn.

Under the Counterfactual, the Vendor would likely retain ownership of the Land and this investment would be unable to occur.

Accordingly, this factor is met.

68. r28(e) Overseas Investment Regulations 2005

<b>Has the relevant overseas person previously undertaken investments that have been, or are, of benefit to New Zealand?</b>	<b>Not Relevant</b>
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69. r28(f) Overseas Investment Regulations 2005

<b>Will the overseas investment give effect to or advance, or is it likely to give effect to or advance, a significant Government policy or strategy?</b>	<b>Unknown</b>
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Applicant's Claims:

Both the FTA and MFAT's NZ Inc China Strategy are significant Government policies and strategies.

*FTA*

The FTA was entered into to facilitate free trade between China and New Zealand. This is because of the recognised benefits of such trade. The acquisition of the forests will facilitate trade between New Zealand and China.

*NZ Inc China Strategy*

One of five goals contained in the NZ Inc China Strategy is to increase bilateral investment to levels that reflect the growing commercial relationship with China. The NZ Inc China Strategy has identified that New Zealand would benefit from foreign direct investment from China. A significant investment such as this will advance that policy

*Carbon sequestration*

In addition, the Applicant's commitment to replant will ensure the sequestration of approximately 814 tonnes of carbon dioxide per hectare (being approximately 1,709,400 tonnes of carbon dioxide) that would otherwise be released into the atmosphere if the Vendor retained the forests and did not replant. Wilding regeneration would sequester much lower rates of carbon dioxide (approximately 525 tonnes per hectare, being 1,081,500 tonnes of carbon dioxide).

This will help give effect to the significant Government policy embodied in the New Zealand Emissions Trading Scheme ("the ETS") whereby the Government is seeking to meet its announced unconditional 2020 climate change target of 5 per cent below 1990 emissions. This is in addition to the conditional target announced in August 2009 that New Zealand is prepared to take on a 'responsibility target' for greenhouse gas emissions reductions of between 10 per cent and 20 per cent below 1990 levels by 2020 if there is a comprehensive global agreement.

In March 2011, the Government announced a long-term target of a 50 per cent reduction in net greenhouse gases from 1990 levels by 2050.

A 'responsibility target' means New Zealand is expected to meet its target through a mixture of domestic emission reductions, the storage of carbon in forests and the purchase of emission reduction units in other countries. The Government's principal policy response to climate change is ETS. The ETS has been designed to support global efforts to reduce greenhouse gas emissions while maintaining economic productivity. Given the unconditional international commitments referred to above the ETS is self-evidently a 'significant Government policy'. Carbon sequestration in forests is a key element to achieving those targets. Accordingly, the Applicant's commitment to replant will give effect to this significant Government policy.

OIO Assessment:

The Applicant has failed to provide sufficient detail as to how this Investment will give effect to or advance the government policies and strategies that it has identified, in particular as the Investment involves only a modest amount of sensitive land.

Accordingly, this factor is not met.

70. r28(g) Overseas Investment Regulations 2005

<b>Will the overseas investment enhance, or is it likely to enhance, the ongoing viability of other overseas investments undertaken by the relevant overseas person?</b>	<b>Not Relevant</b>
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71. r28(h) Overseas Investment Regulations 2005

<b>Will the overseas investment assist, or is it likely to assist, New Zealand to maintain New Zealand control of strategically important infrastructure on sensitive land?</b>	<b>Not Relevant</b>
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72. r28(i) Overseas Investment Regulations 2005

<b>Will New Zealand's economic interests be adequately promoted by the overseas investment?</b>	✓
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OIO Assessment:

In relation to the matters expressly laid out by regulation 28(i):

- (a) through the Applicant's commitment to replanting of the forests on the Land, the Investment is likely to result in New Zealand becoming a more reliable supplier of primary products in the future;
- (b) New Zealand's ability to supply the global economy with a product that forms an important part of New Zealand's export earnings is unlikely to be less controlled by a single overseas person or its associates;

- (c) New Zealand's strategic and security interests are unlikely to be enhanced; and  
 (d) New Zealand's key economic capacity is likely to be improved, albeit modestly.

Accordingly, the Overseas Investment Office considers that this factor has been met.

73. r28(j) Overseas Investment Regulations 2005

<b>To what extent will New Zealanders be, or are likely to be, able to oversee or participate in the overseas investment and any relevant overseas person?</b>	<b>x</b>
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Applicant's Claims:

One of the two directors of the Applicant is a New Zealand citizen. As a director, Michael Miao will have an important role in overseeing and participating in the management and operation of the Forests and forestry business.

In addition:

- (a) [REDACTED]
- (b) [REDACTED] an important Senior Executive, is a New Zealand citizen.

OIO Assessment:

In relation to the matters expressly laid out by regulation 28(j):

- (a) *New Zealanders part of relevant overseas person's governing body - regulation 28(j)(i):*

There is no requirement that any New Zealander be part of any relevant overseas person's governing body.

- (b) *Incorporation in New Zealand of relevant overseas person - regulation 28(j)(ii):*

The Applicant is incorporated in New Zealand.

- (c) *Head Office or principal place of business in New Zealand- regulation 28(j)(iii):*

The Applicant will have a head office and principal place of business in New Zealand, although its ultimate beneficial owners are based in China.

- (d) *Listing Agreement with NZX- regulation 28(j)(iv):*

No relevant overseas person has or intends to enter into a listing agreement with NZX Limited or any other registered exchange that operates a securities market in New Zealand.

- (e) *Partial New Zealand ownership- regulation 28(j)(v):*

There is no ownership of the relevant overseas person by New Zealanders.

- (f) *Dispersed ownership or control of the overseas investment- regulation 28(j)(vi):*

[REDACTED]

The Overseas Investment Office considers that this factor has not been met



### Third Party Submissions

74. No third party submissions were received.

Released under

Official Information Act 1982

## Appendix 1 – Conditions of Consent

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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:
    - (a) ceases to be of good character; or
    - (b) commits an offence or contravenes the law (whether convicted or not); or
    - (c) becomes aware of any other matter that reflects adversely on the Applicant's fitness to have the Investment; or
    - (d) 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:
    - (a) ceases to be an overseas person; or
    - (b) 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:
    - (a) a copy of the Public Decision Summary for this consent; and

- (b) a copy of this condition together with information identifying and describing the relevant land including aerial photographs, maps and Certificate(s) of Title;
  - (b) 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);
  - (c) The cost of any recommended Environmental Protection shall be borne by the Applicant (up to a maximum of \$10,000, excluding GST);
  - (d) 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;
  - (e) Share the cost of any arbitration equally with DOC (each party will be liable for their own legal costs); and
  - (f) 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:
    - (a) a copy of the Public Decision Summary for this consent; and
    - (b) a copy of this condition together with information identifying and describing the relevant land including aerial photographs, maps and Certificate(s) of Title;
  - (b) 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);
  - (c) The cost of any recommended Walking Access shall be borne by the Applicant (up to a maximum of \$5,000, excluding GST);
  - (d) 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;
  - (e) Share the cost of any arbitration equally with WAC (each party will be liable for their own legal costs); and
  - (f) 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.

## Appendix 2 – Sensitive Land

### 1. Purunui Forest

<b>Land Interest</b>	<b>Freehold Interest</b> (approximately 818.0217 hectares)
<b>CTs</b>	WN263/279, WN408/72, WN56C/602 (Wellington)
<b>Sensitivity</b>	Is more than 5 hectares of non-urban land

### 2. Maringi Forest

<b>Land Interest</b>	<b>Freehold Interest</b> (approximately 815.9732 hectares)
<b>CTs</b>	WN59A/200 (Wellington)
<b>Sensitivity</b>	Is more than 5 hectares of non-urban land

### 3. Putinka Forest

<b>Land Interest</b>	<b>Freehold Interest</b> (approximately 732.4000 hectares)
<b>CTs</b>	WN57A/417 (Wellington)
<b>Sensitivity</b>	Is more than 5 hectares of non-urban land
	Adjoins land that is over 0.4 hectares and is held for conservation purposes under the Conservation Act 1987