

BRF 24-210 OI Assessment Report 202300230 – Cerberus Forestry Limited

Ki / To: Hon David Seymour, Associate
Minister of Finance

Rā / Date: 19 February 2024

Hon Chris Penk, Minister for Land
Information

Ngā mahi e hiahiatia ana / Action Sought

Minīta/Minister	Hohenga/Action	Rā Mutunga/Deadline
Hon David Seymour, Associate Minister of Finance and Hon Chris Penk, Minister for Land Information	<ol style="list-style-type: none"> Review this report and consult with each other if desired; Determine whether to grant consent and, if so, on what conditions; and Indicate your decision from page 3. 	4 March 2024

Toitū Te Whenua LINZ Whakapā / Contacts

Ingoa/Name	Tūnga/Position	Nama waea/ Contact number	Whakapā tuatahi/ First contact
Anneke Turton	Leader Assessment	04 830 2513	<input checked="" type="checkbox"/>
Craig Mundy-Smith	Senior Customary Regulatory Specialist	04 462 4467	<input type="checkbox"/>

Pūtake/Purpose statement

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

Summary

Applicant	Cerberus Forestry Limited Austria 100%
Vendor	Hamish Malcolm Kyle and John Scott Kyle as trustees of the Hamish Kyle Trust New Zealand 100%
Investment	Acquisition of sensitive land
Land	A freehold interest in approximately 1,342.9099 hectares of land located at 16451 Route 52,424 Daggs Road and 145 Mangarei Road, Bideford, Masterton
Consideration	[s 9(2)(b)(ii)]
Sensitivity	Is more than 5 hectares of non-urban land
Pathway	Benefit to NZ – Farm to Forestry conversion
Relevant tests	Investor test ¹ Benefit to NZ test ² Farm land offer criterion ³ National interest criterion ⁴

The Applicant is ultimately majority owned by Wolfgang Leitner (Austrian).

The Applicant is acquiring a sheep and beef farm in Masterton to convert into production forestry and is likely to export the logs at maturity. The land is located close to two of the Applicant's existing forestry blocks.

The key benefits likely to occur as a result of the investment include the creation of jobs, increased revenue from timber sales, increased investment in the land and a reduction in net carbon emissions.

It is a matter for Ministerial discretion to determine whether the benefits are proportionate to the land being acquired.

¹ Section 18A of the Act.

² Sections 16(1)(c)(ii), 16A(1A), 16A(2) of the Act.

³ Section 16(1)(f) of the Act.

⁴ Section 16(1)(g) of the Act.

Timing

The prescribed assessment timeframe has been exceeded due to the complexity of the application and the timing of the 2023 general election. A decision is required as soon as possible as the Applicant's contractual deadline has passed.

Tohutohu/Recommendations

After considering the application, LINZ's recommended assessment is that:

- the investor test has been met;
- the farm land offer test has been met
- the transaction is not considered to be a transaction of national interest; and
- whether the benefit to New Zealand test is met is a matter requiring Ministerial judgement.

LINZ refers you to page 4 of this Assessment Report to record your decision.

[s 9(2)(a)]



Anneke Turton

Leader Assessment – Overseas Investment, LINZ

Rā/Date: 4 December 2023

Released under the Official Information Act 1982

Decision

Core tests

1. I determine that:

- The 'relevant overseas person' is (collectively):

Relevant overseas person	Role
Wolfgang Leitner	Director and ultimate owner of the Applicant
Cerberus Forestry Limited	Applicant

- The 'individuals with control of the relevant overseas person' are:

Individuals with control	Role
Christopher Newton Spargo	Director of the Applicant

- None of the relevant overseas persons and individuals with control of the relevant overseas person have established any of the factors contained in section 18A(4) of the Act.
- Christopher Newton Spargo is not required to meet the investor test as he is a New Zealand citizen.

2. I am satisfied that the investor test in section 18A has been met.

Hon David Seymour

Hon Chris Penk

Agree

Agree

Disagree

Disagree

3. I am satisfied, in relation to the benefit to New Zealand test in sections 16 and 16A, that:

- the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders);
- the benefit is proportionate to the sensitivity of the land and the nature of the transaction; and
- the farm land benefit test need not be met, on the grounds set out in section 16A(2).

Hon David Seymour

Hon Chris Penk

Agree

Agree

Disagree

Disagree

4. I am satisfied that the farm land offer criterion in section 16(1)(f) has been met.

Hon David Seymour

Hon Chris Penk

Agree

Agree

Disagree

Disagree

National interest assessment

5. I note that the overseas investment in sensitive land is not a transaction of national interest under section 20A of the Act and the Minister of Finance has not notified it is a transaction of national interest under section 20B of the Act.

Hon David Seymour

Hon Chris Penk

Noted

Noted

Decision about whether to grant or decline consent

6. My ultimate decision is to:

Hon David Seymour

Hon Chris Penk

Grant consent subject to the conditions in the Proposed Decision in **Attachment 1**

Grant consent subject to the conditions in the Proposed Decision in **Attachment 1**

Grant consent with amended conditions provided on:

Grant consent with amended conditions provided on:

Decline consent

Decline consent



Hon David Seymour

Hon Chris Penk

Date: / /

Date: 20 / 2 / 2024

Decision

Core tests

1. I determine that:

- The '**relevant overseas person**' is (collectively):

Relevant overseas person	Role
Wolfgang Leitner	Director and ultimate owner of the Applicant
Cerberus Forestry Limited	Applicant

- The '**individuals with control of the relevant overseas person**' are:

Individuals with control	Role
Christopher Newton Spargo	Director of the Applicant

- None of the relevant overseas persons and individuals with control of the relevant overseas person have established any of the factors contained in section 18A(4) of the Act.
- Christopher Newton Spargo is not required to meet the investor test as he is a New Zealand citizen.

2. I am satisfied that the investor test in section 18A has been met.

Hon David Seymour

Hon Chris Penk

Agree

Agree

Disagree

Disagree

3. I am satisfied, in relation to the benefit to New Zealand test in sections 16 and 16A, that:

- the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders);
- the benefit is proportionate to the sensitivity of the land and the nature of the transaction; and
- the farm land benefit test need not be met, on the grounds set out in section 16A(2).

Hon David Seymour

Hon Chris Penk

Agree

Agree

Disagree

Disagree

4. I am satisfied that the farm land offer criterion in section 16(1)(f) has been met.

Hon David Seymour

Agree

Disagree

Hon Chris Penk

Agree

Disagree

National interest assessment

5. I note that the overseas investment in sensitive land is not a transaction of national interest under section 20A of the Act and the Minister of Finance has not notified it is a transaction of national interest under section 20B of the Act.

Hon David Seymour

Noted

Hon Chris Penk

Noted

Decision about whether to grant or decline consent

6. My ultimate decision is to:

Hon David Seymour

Grant consent subject to the conditions in the Proposed Decision in **Attachment 1**

Grant consent with amended conditions provided on:


Decline consent

Hon Chris Penk

Grant consent subject to the conditions in the Proposed Decision in **Attachment 1**

Grant consent with amended conditions provided on:

Decline consent


Hon David Seymour

Date: 8 / 2 / 24

Hon Chris Penk

Date: / /

A. Background and proposed transaction

7. Cerberus Forestry Limited (**Applicant**) is a forestry company, ultimately owned by an Austrian family. The Applicant is buying an approximately 1,340 hectare sheep and beef farm to convert to a *Pinus radiata* commercial forest (**Investment**).

Land

8. The land is a freehold interest in approximately 1,342.91 hectares of land located at 16451, Route 52, 424 Daggs Road and 145 Mangarei Road, Masterton (**Land**). The Land is comprised of eleven adjoining records of title⁵ as show in Figure 1 below:

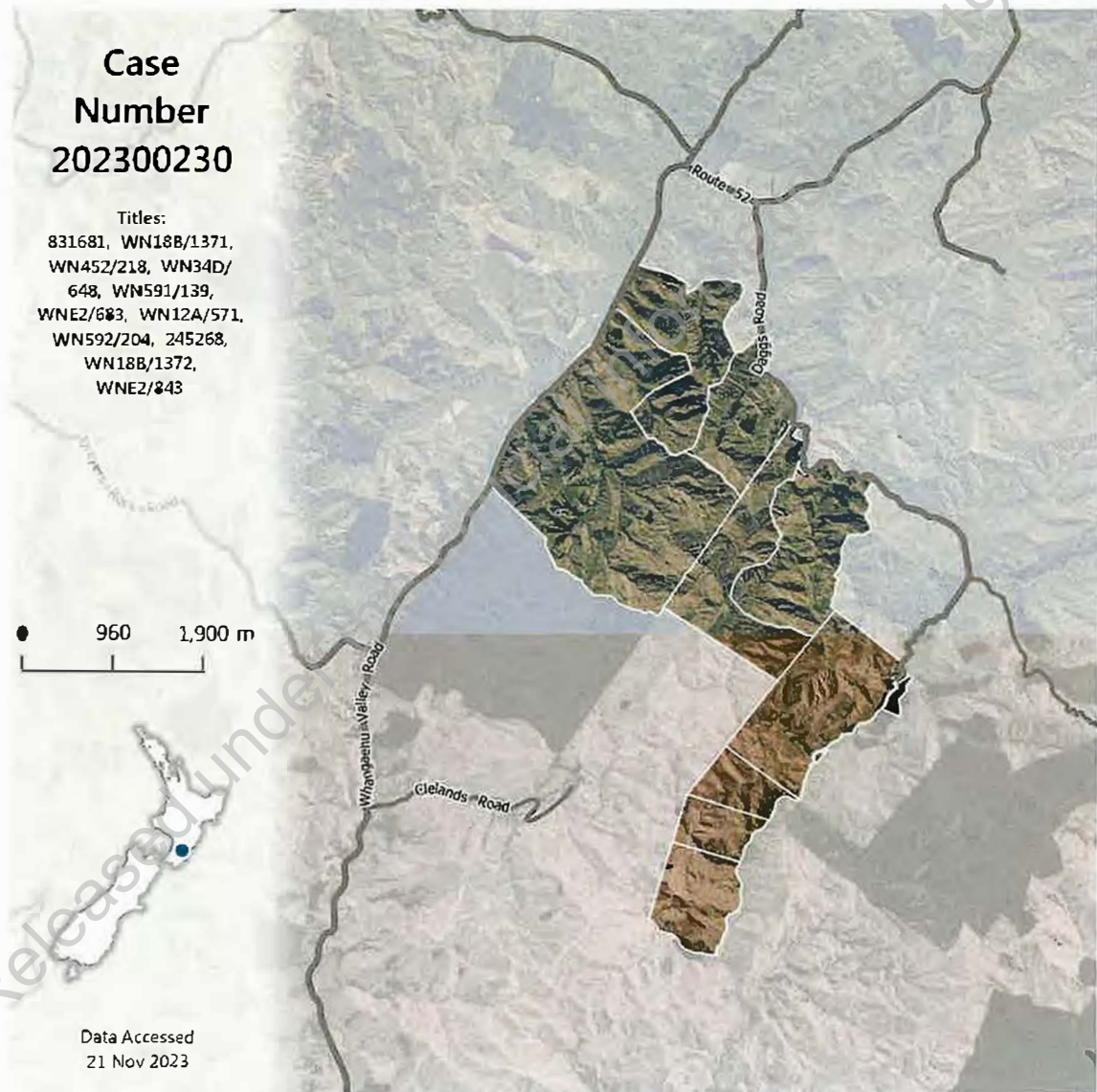


Figure 1: The Land

⁵ Being records of title 245268, 831681, WN18B/1371, WN18B/1372, WN34D/648, WN452/218, WN592/204, WNE2/683, WNE2/843, WN12A/571 and WN591/139, Wellington Registry

9. The Land is Class 4 North Island Hill Country, comprised of:

- 45 hectares of LUC⁶ 3 (3%),
- 998 hectares of LUC 6 (75%), and
- 300 hectares of LUC 7 (22%).

An LUC Map is included at **Attachment 3**.

10. The Applicant's parent company owns two neighbouring properties known as Earlyhurst and Te Awa outlined in pink and grey respectively in Figure 2 below. Te Awa is an existing commercial forest and Earlyhurst is being converted into a commercial forest.



Figure 2: Earlyhurst and Te Awa forests

Vendor

11. The Land is currently owned by the Hamish Kyle Trust (**Vendor**), which is a family trust owned by New Zealanders. The Vendor employs a farm manager who currently lives on the Land.
12. The Vendor wishes to sell the Land to so they can purchase a farm in a less isolated location.

B. Application of the Act

13. The Land is sensitive because it is non-urban land over 5 ha in size,⁷ so consent is required.⁸ The following criteria for an investment in sensitive land apply to this application:⁹

⁶ The Land Use Capability (LUC) classification system is a system in which land is categorised into eight classes based on a broad assessment of the land's capability and versatility for different types of agricultural production. Generally speaking, lower numbered classes (classes 1-5) are more productive and lend themselves to a broader range of activities (e.g. quality and versatile soils for farming), whereas classes 6-8 have greater limitations on what they can support and may be more appropriate for forestry.

⁷ Table 1, Part 1, Schedule 1 of the Act.

⁸ Under sections 10(1)(a) and 12(1)(a)(i) of the Act.

⁹ Set out in section 16(1) of the Act.

- The investor test must be met.¹⁰
 - The benefit to New Zealand test must be met.¹¹
 - The farm land must have been offered for sale on the open market,¹² unless exempt.¹³
 - You must also note whether the investment is a transaction of national interest and, if so, whether the Minister of Finance has decided that the investment is contrary to New Zealand's national interest.¹⁴
14. In order to satisfy the benefit to New Zealand test, the decision-maker must determine that the overseas investment will, or is likely to, benefit NZ (or any part of it or group of New Zealanders).¹⁵
15. We assess the investor test in Part C, the benefit to New Zealand test in Part D, the farm land offer test in Part E, and discuss national interest matters in Part F.

C. Applicant and investor test

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

Business Activities

17. The Applicant's parent company, Cerberus Vermögensverwaltung GmbH, is a repeat investor in forestry, having had eight previous consents granted under the special forestry test to acquire land for forestry purposes.¹⁶ The Applicant's ultimate owner, Dr Wolfgang Leitner, also holds three consents in his own name.¹⁷
18. The Applicant was recently established for the purpose of making forestry investments primarily in New Zealand. It has been investing in New Zealand forestry since 2021 and has acquired approximately 6,427 hectares of land in 6 separate transactions.

Ownership and Control

19. The Applicant is ultimately majority owned by Austrian citizen Dr Wolfgang Leitner through a holding company, Cerberus Vermögensverwaltung GmbH. Dr Leitner and his New Zealand property lawyer Christopher Newton Spargo will have sole control over the Investment.
20. For completeness, Roger Dickie (NZ) Limited (**RDL**) will manage the Investment for the Applicant. However, neither RDL, nor any Director or Shareholder of RDL will have any ownership or control interest in the Applicant.

¹⁰ Section 18A / 16(1)(a) of the Act.

¹¹ Section 16(1)(c)(ii).

¹² Section 16(1)(f) of the Act.

¹³ Section 20(1)(a) or (b) of the Act.

¹⁴ Section 16(1)(g) of the Act.

¹⁵ Section 16A(1)(a) of the Act.

¹⁶ OI cases 201900359, 201900671 and 202000125 in Dr Leitners personal capacity. 202100159, 202100311, 202200020, 202200021 and 202200126 as the Parent.

¹⁷ Case numbers 201900359, 201900671, 202000125.

21. A diagram of the intended ownership structure is in **Attachment 2**.

Relevant overseas person and individuals with control

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

Relevant overseas person	Reason
Wolfgang Leitner	Director and ultimate owner of the Applicant
Cerberus Forestry Limited	Applicant

23. We recommend that the '**individuals with control of the relevant overseas person**' (**IWC**)¹⁸ are:

Individuals with control	Reason
Christopher Newton Spargo	Director of the Applicant

Summary of investor test

24. The relevant overseas persons and individuals with control established none of the factors contained in section 18A(4) of the Act, therefore LINZ considers **the investor test has been met**.

D. Investment plan and benefit to NZ test

25. This section describes the proposed investment and our assessment of whether it is likely to meet the benefit criteria in the Act.

Current state (counterfactual)

26. The Land is currently a freehold sheep and beef breeding unit with some finishing. The useable area of the farm is approximately 1,250 hectares and currently runs 10,192 stock units.¹⁹

27. The Vendor advises that the farming activities support:

- **Jobs:** 3 employees (a manager and two shepherds).
- **Revenue:** The average gross annual profit from farming activities over the last 3 years was \$1.234 million.
- **Expenses:** The average annual operating expenses were \$914,000.
- **Export receipts:** The Applicant has provided a Compass Agri Report in relation to the Land which confirms that the Land is currently producing approximately \$1.7 million export receipts annually from sheep and beef exports.

¹⁸ Section 15 of the Act.

¹⁹ Made up of 742 head of beef cattle and 9,450 head of sheep.

28. There is a small stand of 21-year-old pine trees and other small areas of pine trees, totalling approximately 3 hectares. There is a redundant forestry right relating to this stand that will be extinguished prior to settlement.
29. There is a 3 hectare QEII Open Space Covenant on the Land that is protecting indigenous vegetation. The Land does not contain any significant waterways or identified archaeological or heritage sites. There is no evidence of any streams over 3 metres average width.
30. There are four dwellings on the property (totalling approximately 76.3 hectares of land), and these will be subdivided off once consent has been obtained.
31. The Land was not impacted by Cyclone Gabrielle, except for the odd, minor slip. The Applicant's forestry advisors have confirmed that the slips should not impact the plantable area.

Investment plan

32. The Applicant intends to establish a commercial production forest by planting 1,127.8 hectares of the Land in *Pinus radiata* trees. The Applicant has engaged RDL to confirm the feasibility of the Investment, provide advisory services, and assist with the establishment and ongoing management of the Investment.

Planting

33. The Land will be planted with 1,000 stems per hectare which will be thinned to 550 stems per hectare. The trees will be thinned at around year 9 and will not be pruned.
34. RDL advise that the unpruned structural regime is the best silviculture regime for the Land as it will maximise the value of the forest through higher value wood products, higher timber volumes, and increased carbon storage compared to a pruned regime.
35. The Erosion Susceptibility Classifications shows that the majority of the land is zoned moderate (yellow) and high (orange), therefore no resource consent is currently required for planting.

Subdivision

36. The Applicant intends to subdivide 76.3 hectares of the Land, including all of the LUC 3 land, the four dwellings and two woolsheds. The subdivision is expected to be complete and sold by 2025.

Harvesting and export

37. The Applicant intends to harvest the trees starting at 26 years old. Approximately 57.8 hectares of trees will not be harvested as they are inaccessible for harvest machinery.
38. Once harvested, the trees will likely be sold to export markets given the Applicant's claims that there is limited domestic processing capacity²⁰ currently available for

²⁰ Although there are existing sawmill facilities in Masterton, the Applicant claims that these are 'at capacity'. We also note that in the intervening two and a half decades, it is possible that additional domestic sawmill facilities may become available in the Masterton area.

unpruned logs in the Wairarapa. Logs will be exported via the Port of Wellington (approximately 130km away).

Employment

39. The Applicant estimates it will create the equivalent of 11 direct new Full Time Equivalent (**FTE**) annual job opportunities as a result of establishing this forest.²¹ With forestry the number of jobs is cyclical in nature, but these numbers have been averaged out through to 2052.

Development expenditure

40. Establishing and managing the new forest estate will result in an estimated [s 9(2)(b)(ii)] being paid to local suppliers of goods and services throughout the first rotation (average of [s 9(2)(b)(ii)] per year over 28 years).
41. This investment would be approximately [s 9(2)(b)(ii)] above the current farming spend over the same 28-year period.²²

Timber revenues and export receipts

42. The Applicant expects the total timber revenues from the first rotation to be [s 9(2)(b)(ii)] (approximately \$ [s 9(2)(b)(ii)] per year averaged over 28 years²³).
43. The projected total export receipts are [s 9(2)(b)(ii)] by 2051 (approximately [s 9(2)(b)(ii)] per year averaged over 28 years).
44. Converting the Land to a production forest will result in a net increase in export receipts of approximately [s 9(2)(b)(ii)] (over a 28-year period)²⁴.

Carbon sequestration

45. The removal of the stock from the farm will result in the reduction of approximately 5,400 tonnes of CO₂ emissions from the Land per year. In addition, the forest is expected to sequester 1.2 million tonnes of carbon over the 28-year period before the trees are harvested.
46. The forest will be registered in the New Zealand Emissions Trading Scheme and will generate approximately [s 9(2)(b)(ii)]²⁵ in carbon revenues.
47. This investment will result in a total net emission reduction of approximately 1.3 million tonnes of CO₂ per rotation.

Environmental initiatives

48. The Applicant will retain the existing 3-hectare QEII Covenant and will protect an additional 78 hectares of native bush area.

²¹ This is a net increase of approximately 0.59 annual FTE per 100 ha.

²² Net annual increase of approximately [s 9(2)(b)(ii)] per 100 hectares.

²³ Net annual increase of approximately [s 9(2)(b)(ii)] per 100 hectares.

²⁴ Net annual export receipts of approximately [s 9(2)(b)(ii)] per 100 hectares.

²⁵ [s 9(2)(b)(ii)]

49. The Applicant will undertake ongoing pest control at a total approximate cost of s 9(2)(b)(ii).

Public access

50. The forestry managers will operate a permit system to allow access to the Land for recreational purposes. Currently the public have no access to the farm.
51. Signage will be placed at the property with contact details for the forest management company. A permit and gate key will be issued on request.

Assessment of benefits

52. The benefits to New Zealand that are likely to result from this investment and our assessment of the relative weight we consider could be given to each benefit (proportionate to the Investment) are set out in the table below.²⁶

Farmland benefit test does not apply

53. The Investment involves the acquisition of farm land over 5 hectares which would ordinarily need to meet the modified farm land benefit test. In this case, the test has not been applied because the land will be used for forestry activities.²⁷

Benefit claims

54. LINZ have analysed the benefits that are likely to occur as a result of the Investment, compared to the current state of the Land, in the table below. This may include benefits that the Applicant did not specifically claim, but that LINZ have identified may occur. Carbon and climate related claims are assessed under their own heading to prevent double counting as they relate to more than one benefit factor.
55. Factors that we considered were either not relevant to the Investment, or the benefit to New Zealand was not sufficient to be relied on, are noted in **Attachment 4**.

²⁶ In applying the benefit to NZ test, you are required to consider each of the benefit factors, decide which of them are relevant and determine the relative importance of those relevant factors. The weight and relative importance to be given to each factor is a matter to be determined by you as the decision-maker (except where the farm land benefit test requires a factor to be given high relative importance). This report sets out our assessment to guide your consideration, however it is not determinative.

²⁷ Section 16A(2) of the Act states the modified farm land benefit test does not apply if the relevant Ministers are satisfied that:

- the farm land will, or is likely to, be used exclusively, or nearly exclusively, for forestry activities; and
- whenever a crop of trees is harvested on the farm land, a new crop will be, or is likely to be, established on the farm land to replace the crop that is harvested; and
- the non-occupation outcome will, or is likely to, occur in relation to the farm land.²⁷

LINZ considers that all three of these requirements are met in this case.

Benefit		Analysis
Economic Moderate	Creation of jobs	The creation of the equivalent of approximately 8 additional FTE per annum fluctuating over the life of the forest.
	Revenue and export receipts	Increased revenue of approximately [s 9(2)(b)(ii)] per annum (including export receipts of approximately [s 9(2)(b)(ii)] per annum).
	Development and operating expenditure	Increased spending on development and operating expenses by approximately [s 9(2)(b)(ii)] per annum.
Carbon & Climate change Moderate	Reduction in net carbon emissions	The conversion to forestry and removal of the stock is likely to result in a net emission reduction of approximately 1.3 million tonnes of CO ₂ over a 28 year period.
	Revenue from carbon credits	This investment is expected to generate approximately [s 9(2)(b)(ii)] in carbon revenues for the first rotation of trees.
	Support the Government Emissions Reduction Plan 2022.	The net emission reduction is likely to advance this Government policy. LINZ notes that the Plan acknowledges the importance of afforestation initiatives and growing the forestry industry.
Environmental Weak	Protection of vegetation	Ongoing protection of indigenous trees through a QEII Covenant and the additional protection of 78 hectares of native bush.
	Reduction in animal effluent and nitrogen leaching issues	By removing the stock units and ceasing the use of fertilizers will result in a complete removal of animal effluents and nitrogen leaching.
	Erosion control	Planting trees will likely reduce erosion risk.
Public access Weak	Permit system	Increased public access from zero however it is unclear how much public awareness or uptake of access there will be.

Consultation and submissions about the investment

Third party submission

56. LINZ received a third party submission from a neighbouring property opposing the investment. The neighbour opposed the conversion of "good sheep and beef hill

country" to forestry and noted that local farmers were not able to compete with the bids that overseas persons could make.

57. The Applicant noted that there were no other bidders for the Land and asserted that conversion to plantation forestry was the best and most productive use of the Land.
58. We note that it is a privilege for overseas persons to own or control sensitive land²⁸, therefore, in this case, they must show that the investment will benefit New Zealand proportionate to the interest in land they are acquiring. Whether the benefits of this investment are sufficient to meet the benefit to New Zealand test is for Ministers to determine in their discretion.

Consultation

59. The Applicant is a repeat investor and has acquired several parcels of land under the Special Forestry Test. Consultation was done with MPI for those applications²⁹ and no additional consultation was done for this one. We note that the material provided, and the claims made by the Applicant are consistent across their recent applications.
60. In undertaking our recent assessments of similar investments under this test, LINZ consulted with other agencies including Outdoor Access Commission, Department of Conservation, The Treasury New Zealand and Ministry for the Environment. Where applicable, this consultation has been referred to throughout.

Proposed conditions and rationale

61. The Applicant's afforestation proposal is the primary action from which all the specific benefit claims flow. The proposed conditions require the Applicant to use the Land for forestry activities (including planting, maintaining, harvesting and replanting a crop of trees) and undertake the other initiatives referred to above.

Conclusion – benefit to NZ test

Key benefits

62. After considering the application, we are satisfied that the Investment is likely to result in the benefits considered above. In particular, it is likely to result in economic benefits such as jobs, additional expenditure and increase export receipts. The Investment is also likely to result in environmental benefits, primarily due to the sequestration of carbon.

Proportionality

63. We have undertaken our assessment having regard to the sensitivity of the Land and the nature of the Investment, reflecting the proportional nature of the benefit to NZ test.
64. Matters which were considered to raise the proportionality include:
 - The Land being acquired is 1,343 hectares which is relatively large;

²⁸ Section 3 of the Act.

²⁹ Earlyhurst (case 202200020), Te Awa (case 202200126), Parent evaluation (case 202300064).

- The Land is currently being used as farm land and is a viable sheep and beef operation;
- the Land will be converted to an alternative (non-farming) use.
- The Applicant is acquiring a freehold interest in the Land; and
- The Applicant is entirely overseas owned.

65. Mitigation factors include:

- The Land is majority LUC 6, and 7;
- All of the LUC 3 land will be subdivided and not converted into forestry;

66. LINZ considers that the Land is medium on the spectrum of "sensitivity" for farm land.

67. The Vendor wishes to sell due to the isolated nature of the property and the only offer received was that from the Applicant. The Applicant submits that this acquisition will result in benefits for New Zealand.

Conclusion

68. After considering the application, LINZ is satisfied that the Investment is likely to result in moderate economic and climate change benefits, as well as weak environmental and public access benefits.

69. Ministerial judgement is required to determine the importance and weighting that should be given to the benefits likely to occur as a result of this investment and whether they are proportionate to the land being acquired.

E. Farm land offer test

70. Because the Land is farm land,³⁰ we note that it was advertised for sale on the open market with the required information for a period exceeding 30 working days³¹ on www.Bayleys.co.nz; www.Trademe.co.nz; and www.Realestate.co.nz³² and in the Wairarapa Property Guide³³ and Farmers Weekly.³⁴

71. We are therefore satisfied the regulations requiring that farm land be offered for acquisition on the open market have been complied with.³⁵

F. Not a transaction of national interest

72. The investment does not involve a transaction of national interest under the mandatory criteria of the Act.³⁶ This is because the investment does not involve a non-NZ

³⁰ Currently being used primarily for sheep and beef breeding and finishing (see the definition of farm land in s 6 of the Act).

³¹ For sale by tender, closing on 6 December 2022. It continues to be advertised for sale as "under contract".

³² From 20 October 2022.

³³ A full page advertisement was published in the Wairarapa Property Guide (an insert to the local newspaper, the Wairarapa Times Age) on 26 October 2022, 2 November 2022, 9 November 2022, 16 November 2022 and on 23 November 2022.

³⁴ a half page advertisement was published in the Farmer's Weekly on 7 November 2022..

³⁵ Overseas Investment Regulations 2005, regulations 5 to 10.

³⁶ Under s 20A of the Act.

government investor, or an investment in a strategically important business (as defined in the Act).

73. The Minister of Finance has not called the transaction in for a national interest assessment.³⁷

G. Conclusion

74. For the reasons set out in this report, LINZ consider that it is open to Ministers to either grant or decline consent.
75. We refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and to page 3 of this report to record your decision.

H. Attachments

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

³⁷ Under s20B of the Act.

ATTACHMENT 1 PROPOSED DECISION

Consent for Overseas Person to Acquire Sensitive New Zealand Land

Read this consent carefully - you must comply with all the conditions. If you do not, you may be required to dispose of the land and/or be subject to fines or other penalties.

Consent

Decision date: [date]

The following people have been given the following consent:

Case	202300230
Consent	Cerberus Forestry Limited may acquire the Land subject to the Conditions set out below.
Consent holder/s	Cerberus Forestry Limited (New Zealand Company number: 8544527) We will also refer to each Consent holder and the Consent holders together as you .
Land	A Freehold Interest in 1342.9099 hectares of land located at 16451 Route 52, 424 Daggs Road and 145 Mangarei Road, Bideford, contained in Records of Title 245268, 831681, WN18B/1371, WN18B/1372, WN34D/648, WN452/218, WN592/204, WNE2/683, WNE2/843, WN12A/571, WN591/139 (Wellington).
Timeframe	You have until 31 December 2025 to acquire the Land.

Conditions

Your Consent is subject to the Special conditions, Standard conditions and Reporting conditions (Conditions) set out below. You must comply with them all. Be aware that if you do not comply with the Conditions you may be subject to fines or other penalties, and you may also be required to dispose of the Land.

In the Consent and the Conditions, we refer to Toitū Te Whenua Land Information New Zealand as **LINZ, us or we**.

Act means the Overseas Investment Act 2005.

Crop of trees means:

- the **new crop of trees** that will be established under special condition 1,
- any **existing crop of trees** already established on the Land;
- any **replanted crop of trees** replanted in accordance with special condition 5,

but for the avoidance of doubt excludes trees that were not planted with the intention of being harvested to provide wood, such as native species planted in riparian margins.

Dwellings means the houses and associated buildings and land identified in the proposed subdivision map in **Appendix A**.

Existing Trees means the 3 hectares of *Pinus radiata* trees planted on the Land at the time of acquisition by the Consent Holder.

Forestry Activities has the same meaning as in the Act and, for the avoidance of doubt, excludes permanent forestry.

Forestry Land means the parts of the Land which you intend to use exclusively, or nearly exclusively, for Forestry Activities (which, for the avoidance of doubt, may include areas of native bush, and reasonable allowances for roads, setbacks, buffer areas, riparian planting and other land reasonably deemed "non-productive").

NES-PF means the National Environmental Standards for Plantation Forestry.

New Trees means the Pinus Radiata trees to be planted by the Applicant which are not the Existing Trees.

Other Land means Land that is not Forestry Land (which for the avoidance of doubt, comprises approximately 54 hectares containing the Dwellings and associated farm buildings to be subdivided and sold. See **Appendix A**).

Regulations means the Overseas Investment Regulations 2005.

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

Special conditions

You must comply with the following **special conditions**. These apply specifically to this Consent and were considerations that particularly influenced us to give consent:

Details	Required date
Special condition 1: Land must be planted with trees	
You must establish a new crop of trees on the Land covering at least 1 100 hectares.	By 31 October 2026
If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.	
Special condition 2: Forestry Land must be used for forestry activities	
The Forestry Land must be used exclusively, or nearly exclusively, for Forestry Activities except as otherwise permitted by these Conditions.	At all times
If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.	
Special condition 3: Minimum silvicultural practices	
The crop of trees must be maintained in accordance with minimum silvicultural practices. In particular, the crop of trees must be planted at approximately 1,000 stems per hectare and thinned to approximately 550 stems per hectare.	At all times
If you do not comply with this condition, Standard Condition 6 will apply, and we may require you to dispose of the Land.	
Special Condition 4: Crop of trees must be harvested	
<p>You must ensure that no more than 5% (by area) of the crop of trees on the Land is older than the species age limit.</p> <p>For <u>pinus radiata</u>, species age limit is 35 years.</p> <p>For <u>all other species</u>, the species age limit is as determined by LINZ.</p>	At all times

Details	Required date
<p>If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	
<p>Special condition 5: Trees must be replanted after harvest</p>	
<p>You must replace each crop of trees (Existing Trees and New Trees) which you harvest with a new crop of trees (Replant). You may Replant on a like-for-like basis or on any similar basis.</p> <p>This condition does not require you to:</p> <ul style="list-style-type: none"> (a) replant the Land with the same species of tree or use the same silvicultural regime; or (b) do anything in breach of any other Act, regulation, rule, bylaw, or that is otherwise contrary to law. <p>This condition does not limit Special Condition 2 (Forestry Land must be used for forestry activities) or Special Condition 3 (Minimum silvicultural practices).</p>	<p>Within 3 years of harvest (or as otherwise permitted by this condition).</p>
<p>If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	
<p>Special condition 6: Confirm area of Forestry Land and Other Land</p>	
<p>You must:</p> <ul style="list-style-type: none"> a) confirm to us in writing the area of Forestry Land and the area of Other Land; b) provide a map showing the extent of the Forestry Land and the Other Land. 	<p>By 31 October 2026</p>
<p>Special condition 7: Subdivide and dispose of Other Land</p>	
<p>You must complete a subdivision so the Other Land can be disposed of.</p>	<p>By 31 October 2026</p>
<p>You must dispose of the Other Land.</p>	<p>By 31 October 2027</p>

Details	Required date
<p>If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	
<p>Special condition 8: ETS registration</p>	
<p>You must not register the crop of New Trees or any replacement trees on the Land as “permanent forestry” (or in any category similar to permanent forestry) in the Emissions Trading Scheme established under the Climate Change Response Act 2002 (or any replacement for that scheme or enactment).</p>	<p>At all times</p>
<p>If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	
<p>Special condition 9: Non-occupation outcome</p>	
<p>None of the following people may occupy the Land acquired under this consent for residential purposes or as otherwise permitted by Special Condition 10 (Permitted temporary activities):</p> <ol style="list-style-type: none"> 1. You; 2. Any overseas person with a more than 25% ownership or control interest in any of the people in (a); 3. Any overseas person who occupies the Land other than on arm’s length terms³⁸; 4. Any overseas person who has a beneficial interest in, or beneficial entitlement to, the relevant interest in the Land; 5. If (a) is a trust, any beneficiary (direct or indirect) who may benefit under the trust at the trustees’ discretion. <p>This condition does not apply to the extent that accommodation is being provided for the purpose only of supporting forestry</p>	<p>At all times</p>

³⁸ ‘At arms length terms’ has the meaning in clause 17, Part 5, Schedule 2 of the Act. In summary it means terms, for example under a lease (or other contract), that are on a reasonable commercial basis.

Details	Required date
activities (as defined in section 16A(9)) being carried out on the Land	
If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.	
Special condition 10: Permitted temporary activities	
<p>The Land may be used temporarily for the following activities for transitional purposes:</p> <ol style="list-style-type: none"> 1. The Land may be grazed prior to being planted with a crop of trees in accordance with Special Condition 1 (Land must be planted with trees); and 2. The Dwellings may be used for residential purposes. 	<p>a) Until 31 October 2026</p> <p>b) Until 31 October 2027</p>
If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.	
Special condition 11: Comply with NES-PF	
You must comply with the NES-PF in respect of the Land.	At all times
If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.	
Special condition 12: Permit system	
<ol style="list-style-type: none"> 1. You must establish and maintain a public permit system for access to the Land. For the avoidance of doubt access permits may be refused or be subject to reasonable limitations, for reasons including but not limited to: <ul style="list-style-type: none"> (a) prohibiting or limiting access for operational reasons (like during planting and harvest or to manage the risk of fire), 	<p>1) by 31 October 2026 and once established, at all times.</p>

Details	Required date
<p>(b) defining the times and frequency of access, entry and exit points, routes, and activities undertaken on the Land,</p> <p>(c) rules to manage for health and safety and other risks (including communications, insurance requirements, and induction processes),</p> <p>(d) to ensure the access does not disturb or cause a nuisance to the vegetation and activities on the Land.</p> <p>2. You must advertise this permit system by installing signage on the Land.</p> <p>3. You must advise the local DOC office of this permit system so that DOC is able to direct any enquiries to the correct place.</p>	<p>2 and 3) by 31 October 2026</p>
<p>If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	

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Standard conditions

You must also comply with the **standard conditions** set out below. These apply to all overseas people who are given consent to acquire sensitive New Zealand land, including you:

Details	Required date
Standard condition 1: Acquire the Land	
<p>You must acquire the Land:</p> <ol style="list-style-type: none"> 1. by the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Land; and 2. using the acquisition, ownership, and control structure you described in your application. <p>Note, only you – the named Consent Holder – may acquire the Land, not your subsidiary, trust, or other entity.</p>	As stated in the Consent
Standard condition 2: Tell us when you acquire the Land	
<p>You must tell us in writing when you have acquired the Land. Include details of:</p> <ol style="list-style-type: none"> 1. the date you acquired the Land (settlement); 2. consideration paid (plus GST if any); 3. the structure by which the acquisition was made and who acquired the Land; and 4. copies of any transfer documents and settlement statements. 	As soon as you can, and no later than two months after settlement
Standard condition 3: Allow us to inspect the Land	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions.</p> <p>We will give you at least two weeks' written notice if we want to do this.</p> <p>You must then:</p> <ol style="list-style-type: none"> 1. allow a person we appoint (Inspector) to: 	At all times

<ul style="list-style-type: none"> a. enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (Inspection); b. remain there as long as is reasonably required to conduct the Inspection; c. gather information; d. conduct surveys, inquiries, tests, and measurements; e. take photographs and video records; and f. do all other things reasonably necessary to carry out the Inspection; and <p>2. take all reasonable steps to facilitate an Inspection including:</p> <ul style="list-style-type: none"> a. directing your employees, agents, tenants, or other occupiers to permit an Inspector to conduct an Inspection; and b. being available, or requiring your employees, agents, tenants, or other occupiers to be available, at all reasonable times, during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required. <p>3. During an Inspection:</p> <ul style="list-style-type: none"> a. we will not compel you and your employees, agents, tenants, or other occupiers to answer our questions or to let us look at, copy, or take away documents; and b. our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection. 	
Standard condition 4: Remain not unsuitable to invest in New Zealand	
<p>You, and to the extent that you are not an individual, the Individuals Who Control You must remain not unsuitable to own or control the assets in accordance with section 18A(1) of the Act.</p> <p>The Individuals Who Control You are individuals who:</p> <p>(a) are members of your governing body;</p>	<p>At all times</p>

<p>(b) directly or indirectly, own or control more than 25% of you or of a person who itself owns or controls more than 25% of you; and</p> <p>(c) are members of the governing body of the people referred to in paragraph (b) above.</p>	
<p>Standard condition 5: Tell us about changes that affect you, the people who control you, or people you control</p>	
<p>You must tell us in writing if any of the following events happen to the Consent Holder:</p> <ol style="list-style-type: none"> 1. You become aware that you and/or any Individual Who Controls You establishes any of the investor test factors listed in section 18A(4) of the Act. 2. You cease to be an overseas person or dispose of all or any part of the Land. 3. Your New Zealand Service Address changes. This is the address you provided us in your application as the address which we will send any legal document we need to serve on you. 	<p>At all times</p>
<p>Standard condition 6: Dispose of the Land if you do not comply with key special conditions</p>	
<p>Some of the special conditions were key to the decision to give consent. If we consider you have failed to comply with one of those special conditions in a material way, we may require you to dispose of the Land.</p> <p>If all or part of this standard condition 6 applies to a special condition, we have said so in that condition.</p> <p>We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:</p>	
<p>Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.</p>	<p>Within six weeks of the date of our notice</p>
<p>Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.</p>	<p>Within six weeks of the date of our notice</p>
<p>Dispose of the Land: dispose of the Land to a third party who is not your associate.</p>	<p>Within six months of our notice</p>
<p>Offer without reserve: if you have not disposed of the Land within six months of our notice, offer the Land for sale by</p>	<p>Within nine months of our notice</p>

auction or tender without a reserve price or minimum bid and dispose of the Land.	
Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.	By the last day of every March, June, September and December after our notice or at any other time we require
Report disposal to us: send us, in writing, evidence of the following: <ol style="list-style-type: none"> 1. that you have disposed of the Land (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor); and 2. that the purchaser is not your associate. 	Within one month after the Land has been disposed of

Reporting conditions

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

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

1. be submitted via our [Webform](#) by these dates:
 - (a) 30 November 2026; and
 - (b) 30 November 2027.
2. contain information about:
 - a. your progress in implementing the special conditions (which can include photographs, maps or aerial imagery as evidence of compliance with relevant conditions),
 - b. the subdivision of the Other Land, and
 - c. your most current forecast or schedule for harvesting and replanting of various areas of the Land (including maps indicating the particular areas and likely schedules).
3. follow the format of the template annual report published on our website.
4. If requested in writing by LINZ, the Consent Holder(s) must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
 - 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.

Power to vary reporting date

The dates on which reports are due to be provided may be changed by agreement between the regulator and the consent holder, provided that this power may not be used to give a time extension for an individual report.

Power to narrow scope of reports

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

Power not to require further reporting

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

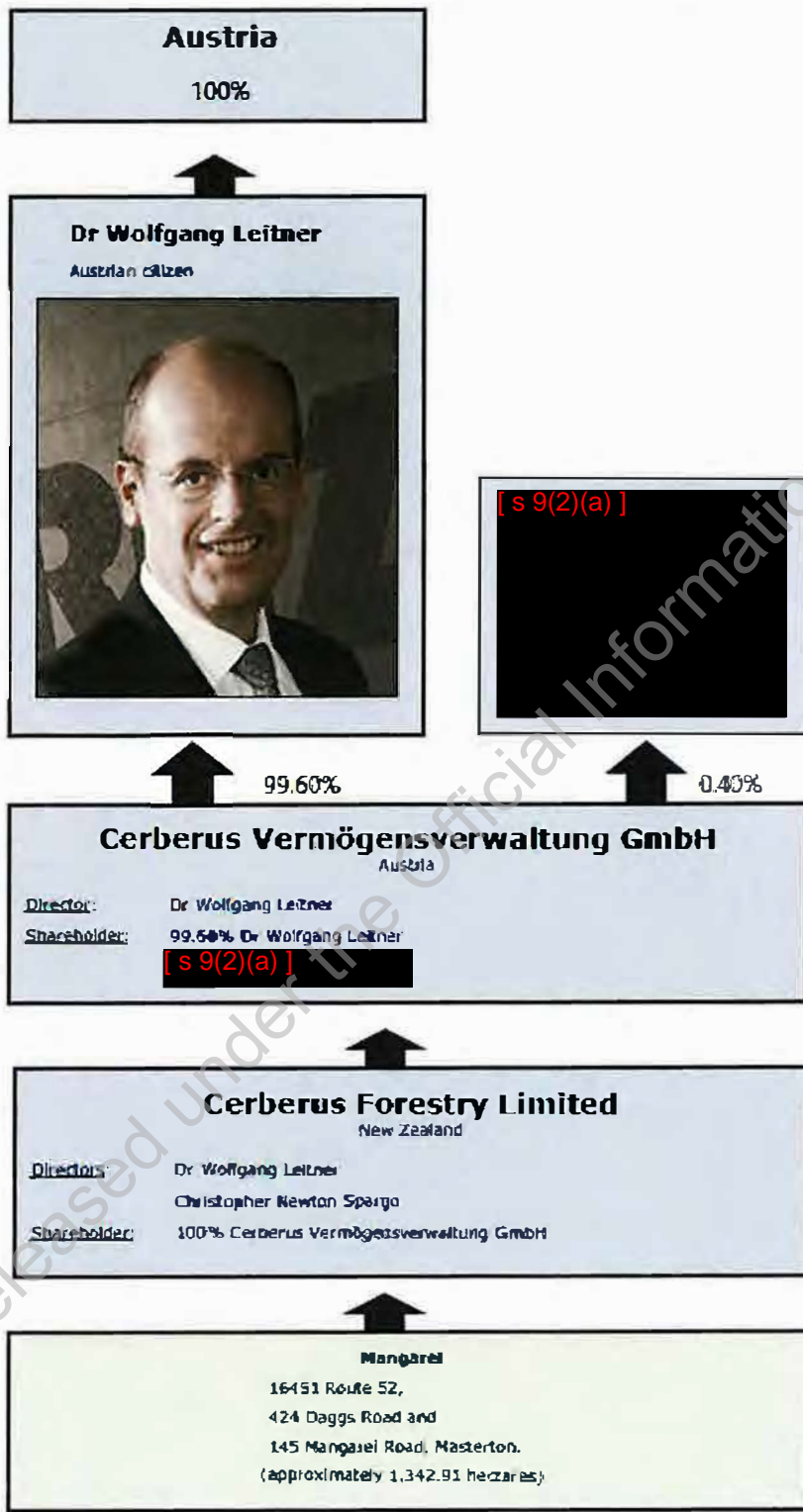
Appendix A – Proposed Subdivision maps





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ATTACHMENT 2 – INTENDED OWNERSHIP STRUCTURE



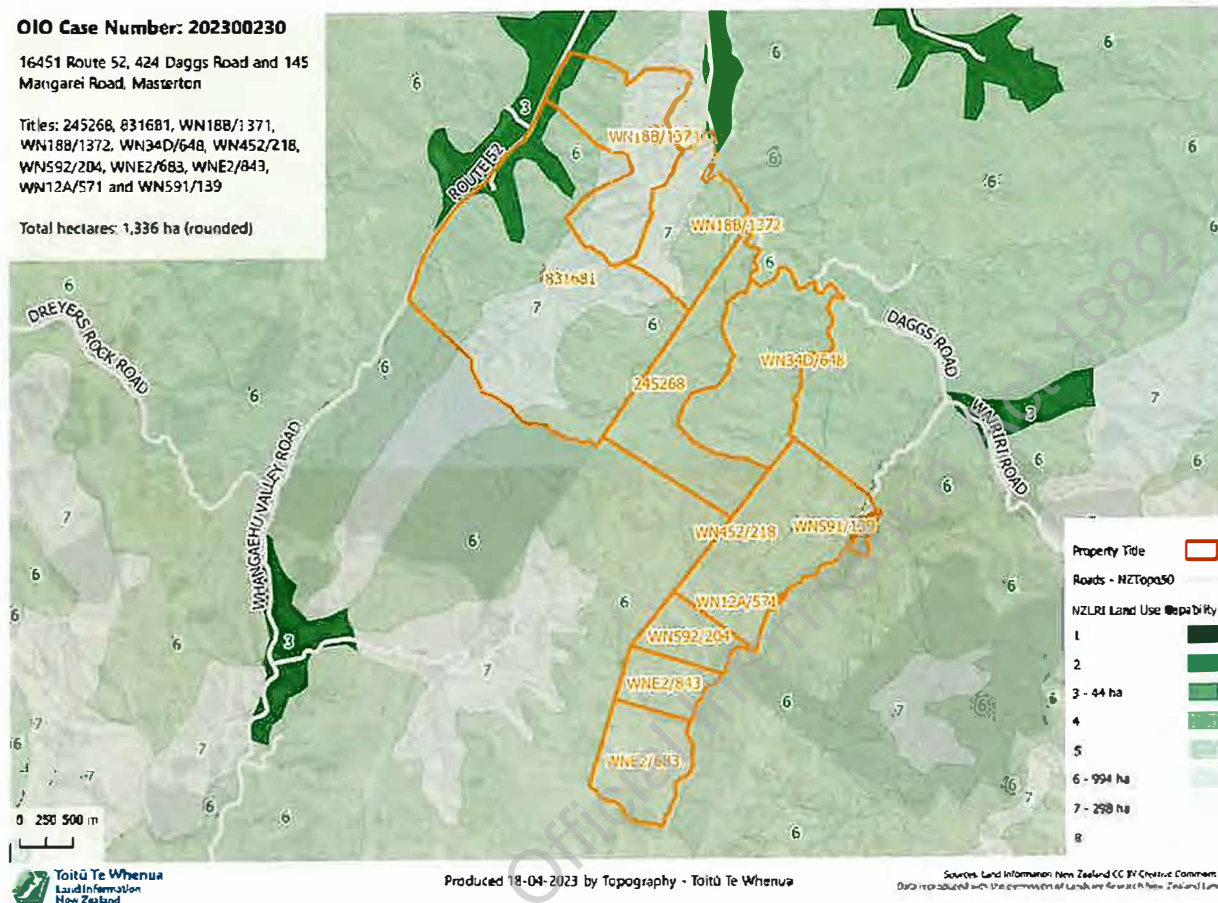
ATTACHMENT 3 – LUC MAP

OIO Case Number: 202300230

16451 Route 52, 424 Daggs Road and 145 Mangarei Road, Masterton

Titles: 245268, 831681, WN188/1371, WN188/1372, WN34D/648, WN452/218, WN592/204, WNE2/683, WNE2/843, WN12A/571 and WN591/139

Total hectares: 1,336 ha (rounded)



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ATTACHMENT 4 – OTHER BENEFIT FACTORS

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

We considered that the factors below were either not relevant to the investment, or the benefit to New Zealand was not likely or sufficient to be relied on for the purposes of our assessment.

Factor	Reason not relevant or insufficient
Historic heritage	Not relevant
Oversight or participation by New Zealanders	Not relevant – Ownership is reducing from 100% New Zealand to 100% overseas ownership
Consequential benefits	Insufficient benefit
Extraction of water for bottling / human consumption	Not relevant

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