

Our Ref: 201510017

13 July 2018

New Forests Asset Management Pty Limited
37 Galway St
AUCKLAND 1010

Wairarapa Estate Limited
37 Galway St
AUCKLAND 1010

Forest Growth Holdings Limited
101 Esk Street
INVERCARGILL

BY EMAIL

To whom it may concern

Formal warning in respect of a breach of the Overseas Investment Act 2005

1. In response to two complaints received from members of the public, we have investigated the purchase of 13 blocks of forestry land in the Wairarapa region between April 2014 and May 2016 by Forest Growth Holdings Limited (**FGHL**).
2. The investigation relates to whether FGHL was an associate of Wairarapa Estates Limited (**WEL**), an investment company managed by Australian fund manager New Forests Asset Management Pty Limited (**New Forests**).
3. We have concluded our investigation into the actions of FGHL and WEL by entering into settlement agreements and issuing formal warning letters to them. This letter is the formal warning letter issued in accordance with the settlement agreements.

Background

Term sheet

4. The 13 transactions followed a term sheet agreed between New Forests and FGHL in August 2013.
5. The Term Sheet sets out:
 - ...the principal commercial terms of co-operation proposed between New Forests and FGHL (together the "Parties") in order for the Parties to agree the key terms and criteria for potential acquisition of certain Forestry Assets that have been or may be amalgamated by FGHL.
6. The Term Sheet provided that:
 - (a) New Forests would provide FGHL with information about its investment criteria;
 - (b) FGHL would acquire forest assets (land and trees) in the southern North Island;

- (c) FGHL would bundle the trees and sell them to WEL at a price determined by an agreed valuation model, using a specific discount rate;
 - (d) WEL would pay rent to FGHL of a specific percentage of the value of land (as established by a land valuation) per annum; and
 - (e) After FGHL has secured the land, WEL would then look to buy the land from FGHL for the amount set by the land valuation, conditional on obtaining consent under the Overseas Investment Act at a later date.
7. We consider that the term sheet was given effect according to its terms, including the sale of the land to WEL.
8. FGHL and WEL took legal advice before entering into the term sheet.

Purchase of the 13 forestry blocks by FGHL and grant of forestry rights to WEL

9. FGHL acquired the forestry blocks between April 2014 and May 2016. We consider that FGHL would not have acquired the forestry blocks but for the Term Sheet and the expectation of on-sale to a New Forests investment company.
10. On or shortly after the purchase of each forestry block, FGHL granted a forestry right to WEL.

On-sale of the first eight forestry blocks to WEL

11. On 25 September 2014, WEL offered to purchase the land under the first eight forestry blocks from FGHL. This offer was declined by FGHL, which instead decided to offer the land for sale by tender.
12. The tender opened on 13 October 2014 with bids to be made by 14 November 2014. There was little or no genuine interest in the land, other than from WEL.
13. WEL's bid for the land was the same amount used to calculate the rent under the forestry rights. No other bids were received. WEL's bid was accepted by FGHL.
14. WEL was granted consent to acquire the land on 18 February 2016.

On-sale of the remaining five forestry blocks to WEL

15. On 29 October 2016, FGHL offered the remaining five forestry blocks for sale by tender.
16. WEL's bid for the land was the same amount used to calculate the rent under the forestry rights. WEL's bid was accepted by FGHL.

Our position

17. We consider that there is sufficient evidence to prove that FGHL and WEL have contravened the Act:
- (a) FGHL contravened the Act by acquiring land without consent, in its capacity as an associate of WEL; and
 - (b) WEL was a party to FGHL's contravention of the Act.
18. However, we also consider that the evidence is consistent with FGHL, New Forests' and WEL's statements that were acting on legal advice and did not intend to contravene the Act.
19. The contraventions of the Act arose from the associate relationship between FGHL and New Forests. We consider that:

- (a) FGHL acted jointly or in concert with New Forests and WEL in relation to the purchase of the forestry blocks; and
 - (b) FGHL participated in the purchase of the forestry blocks as a consequence of any arrangement or understanding with New Forests and WEL.
20. After weighing all of the relevant matters we have concluded our investigation into FGHL and WEL's involvement in the matters referred to above by entering into settlement agreements with FGHL and WEL and by issuing formal warning letters to FGHL and WEL.
21. Among other things, the settlement agreement with WEL involved WEL making:
- (a) a \$20,000 contribution to the cost of our investigation;
 - (b) a \$10,000 donation to the Tinui Parish ANZAC Trust for the upkeep of the Tinui ANZAC Walkway; and
 - (c) a \$70,000 donation to the New Zealand Institute of Forestry Foundation to fund scholarships.
22. Among other things, the settlement agreement with FGHL involved FGHL making:
- (a) a \$20,000 contribution to the cost of our investigation; and
 - (b) a \$30,000 donation to the New Zealand Institute of Forestry Foundation to fund scholarships.

Warning

23. We are formally warning you, as the parties involved in the arrangement, that overseas investors must obtain consent before acquiring sensitive land, and must not use associates to avoid or delay the need for consent. Care is needed when discussing and progressing investments in relation to New Zealand sensitive assets to ensure the associate provisions in the Act are not triggered.
24. While we will not be taking any further action against you at this time, we will take this warning into account if any company control by New Forests breaches the Act in the future. We may draw this warning to the attention of a court in any subsequent proceedings brought by us against you.

Public information

25. We intend to publish a copy of this warning letter on our website.

Yours sincerely



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