

To: Hon Dr David Clark, Associate Minister of Finance
Hon Eugenie Sage, Minister for Land Information

**ASSESSMENT REPORT: Drylandcarbon One Limited
Partnership**

Date	7 October 2019	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference (Report reference)	201900348 Report Number 1470	Priority	High

Action Sought

Minister	Action	Suggested Deadline
Hon Eugenie Sage, Minister for Land Information	<ol style="list-style-type: none"> Review the attached report and decide whether to grant consent to the application Forward the report and attachments to the Associate Minister of Finance 	Consent sought by 22 November 2019 to allow for settlement by 29 November 2019
Hon Dr David Clark, Associate Minister of Finance	<ol style="list-style-type: none"> Review the attached report and decide whether to grant consent to the application Forward the report and attachments to the Overseas Investment Office 	Consent sought by 22 November 2019 to allow for settlement by 29 November 2019

LINZ Contacts

Name	Position	Contact number	First contact
Anneke Turton	Manager Applications	04 830 2513	<input checked="" type="checkbox"/>
Kirsty Hulena	Senior Solicitor-Applications	04 462 4490	<input type="checkbox"/>
Hana Siilata	Adviser		

Minister's office to complete

1 = Was not satisfactory						2 = Fell short of my expectations in some respects						3 = Met my expectations					
4 = Met and sometimes exceeded my expectations						5 = Greatly exceeded my expectations											
Overall Quality	<input type="checkbox"/>	1	<input type="checkbox"/>	2	<input type="checkbox"/>	3	<input type="checkbox"/>	4	<input type="checkbox"/>	5							
Comments																	
<input type="checkbox"/> Noted				<input type="checkbox"/> Seen				<input type="checkbox"/> Approved				<input type="checkbox"/> Overtaken by events					
<input type="checkbox"/> Withdrawn				<input type="checkbox"/> Not seen by Minister				<input type="checkbox"/> Referred to:									

ASSESSMENT REPORT: Drylandcarbon One Limited Partnership

Overview

Purpose

1. We seek Ministers' decision on the application by Drylandcarbon One Limited Partnership under the Overseas Investment Act 2005 (the **Act**) to acquire approximately 1,594.4614 hectares of land at 2775 Mangapoike Road, Wairoa, known as Te Puna Station.

Key information

Applicant	Drylandcarbon One Limited Partnership (New Zealand 59.6970%; Australia 14.3639%; United States 14.1321%; Europe 2.6446%; Asia Pacific 0.7025%; Netherlands 0.3719%; Various 6.6862%)
Vendors	Craigmore (Te Puna) Limited (Hong Kong 40.1131%; Germany 30.4664%; United Kingdom 13.88%; Finland 9.14%; USA 3.96%; New Zealand 2.3116%; Various 0.1046%)
Consideration	[s 9(2)(b)(i)]
Application type	Sensitive land - not residential (Benefit to New Zealand - S&I)
Relevant tests	Investor test (s16(2)(a)-(d) of the Act) Benefits test – substantial and identifiable benefits (s16(1)(c)(ii), s16A of the Act)

2. Please refer to the **A3 in Attachment 6** for overview tables summarising the application and the Overseas Investment Office's (**OIO's**) assessment.

Provisional recommendation

3. Our provisional recommendation is to **grant consent**. There is an issue that requires consideration by Ministers, being the conversion of farmland to forestry and its impact on the wider community which may impact on the consequential benefits provided by the investment and the benefit level accorded to the significant Government policy benefit factor (paragraphs 96-116).
4. If you agree to grant consent, we recommend that you make the determinations set out in paragraphs 5 to 9 below.

[s 9(2)(g)(ii)]

Anneke Turton
Acting Manager Applications (Overseas Investment Office)

Date: 7/10/19

Decision

5. I determine that:

5.1 the 'relevant overseas person' is (collectively):

ROP	Relationship
Drylandcarbon One Limited Partnership (Partnership)	The Applicant and entity undertaking the investment
Drylandcarbon GP One Limited (General Partner)	General Partner of the Partnership
Drylandcarbon One Management Limited (Management Limited)	Powers of the General Partner have been delegated to this entity

5.2 the 'individuals with control of the relevant overseas person' are:

IWC	Role
William [s 9(2)(a)] [redacted] Leckie	Shareholder in the General Partner; Limited Partner in the Partnership; Director of the General Partner; Director of Management
Stephan [s 9(2)(a)] [redacted] Deschamps	Member of Advisory Committee
Richard [s 9(2)] Norris	Member of Advisory Committee
Anthony [s 9(2)(a)] [redacted] Beverley	Shareholder in the General Partner; Limited Partner in the Partnership; Director of the General Partner; Director of Management
Jennifer [s 9(2)] Stephen	Member of Advisory Committee
Timothy [s 9(2)] McSweeney	Member of Advisory Committee
Michael [s 9(2)] Peterson	Member of Advisory Committee
Paul [s 9(2)] Foley	Member of Advisory Committee
Christopher [s 9(2)(a)] [redacted] Morrison	Shareholder in the General Partner; Limited Partner in the Partnership; Director of the General Partner; Director of Management

5.3 the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment;

5.4 the relevant overseas person has demonstrated financial commitment to the overseas investment;

5.5 all the individuals with control of the relevant overseas person are of good character; and

5.6 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 (which sections list certain persons not eligible for visas or entry permission under the Immigration Act); and

6. The investor test, as outlined in paragraph 5 above, has been met; and

Associate Minister of Finance	<input type="checkbox"/>	Minister for Land Information	<input checked="" type="checkbox"/>
Satisfied	<input type="checkbox"/>	Satisfied	<input checked="" type="checkbox"/>
Not Satisfied	<input type="checkbox"/>	Not Satisfied	<input type="checkbox"/>

7. In relation to the benefits test:

7.1 the criteria for consent in sections 16 and 16A have been met;

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

7.3 the benefit will be, or is likely to be, substantial and identifiable.

Associate Minister of Finance	<input type="checkbox"/>	Minister for Land Information	<input checked="" type="checkbox"/>
Satisfied	<input type="checkbox"/>	Satisfied	<input checked="" type="checkbox"/>
Not Satisfied	<input type="checkbox"/>	Not Satisfied	<input type="checkbox"/>

8. In relation to farm land advertising, that the criteria has been met, as set out in the Report.

Associate Minister of Finance	<input type="checkbox"/>	Minister for Land Information	<input checked="" type="checkbox"/>
Satisfied	<input type="checkbox"/>	Satisfied	<input checked="" type="checkbox"/>
Not Satisfied	<input type="checkbox"/>	Not Satisfied	<input type="checkbox"/>

9. Consent is granted to the investment in the form of the Proposed Decision in Attachment 1.

Associate Minister of Finance	<input type="checkbox"/>	Minister for Land Information	<input type="checkbox"/>
Grant consent subject to the conditions in the Proposed Decision	<input type="checkbox"/>	Grant consent subject to the conditions in the Proposed Decision	<input type="checkbox"/>
Grant consent with amended conditions provided on:	<input type="checkbox"/>	Grant consent with amended conditions provided on: <i>25/11/19 by email</i>	<input checked="" type="checkbox"/>
Consent declined	<input type="checkbox"/>	Consent declined	<input type="checkbox"/>

E M Sage

Hon Dr David Clark
Associate Minister of Finance
Date: / /

Hon Eugenie Sage
Minister for Land Information
Date: 25/11/19

5.6 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 (which sections list certain persons not eligible for visas or entry permission under the Immigration Act); and

6. The investor test, as outlined in paragraph 5 above, has been met; and

Associate Minister of Finance

Minister for Land Information

Satisfied

Satisfied

Not Satisfied

Not Satisfied

7. In relation to the benefits test:

7.1 the criteria for consent in sections 16 and 16A have been met;

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

7.3 the benefit will be, or is likely to be, substantial and identifiable.

Associate Minister of Finance

Minister for Land Information

Satisfied

Satisfied

Not Satisfied

Not Satisfied

8. In relation to farm land advertising, that the criteria has been met, as set out in the Report.

Associate Minister of Finance

Minister for Land Information

Satisfied

Satisfied

Not Satisfied

Not Satisfied

9. Consent is granted to the investment in the form of the Proposed Decision in Attachment 1.

Associate Minister of Finance

Minister for Land Information

Grant consent subject to the conditions in the Proposed Decision

Grant consent subject to the conditions in the Proposed Decision

Grant consent with amended conditions provided on: 25/11/19

Grant consent with amended conditions provided on:

Consent declined

Consent declined

Hon Dr David Clark
Associate Minister of Finance

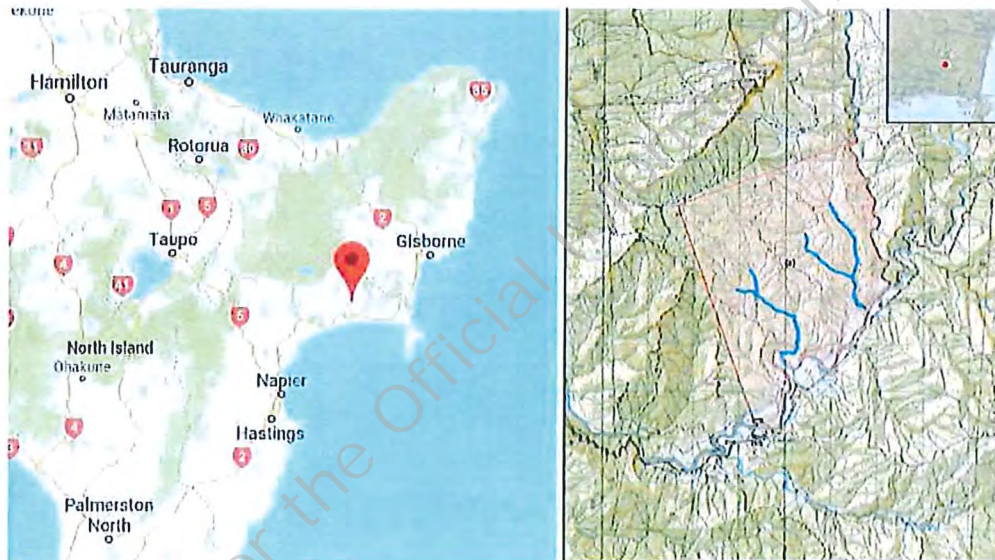
Date: 27/11/19

Hon Eugenie Sage
Minister for Land Information

Date: / /

Executive summary

10. Drylandcarbon One Limited Partnership (the **Applicant**) is seeking consent to acquire approximately 1,594.4614 hectares of land at 2775 Mangapoike Road, Wairoa, known as Te Puna Station (the **Station**).
11. The Station is currently run as a sheep and beef cattle farm with 111 hectares planted in radiata pine¹ and a further 80 hectares in manuka trees².
12. The Applicant intends to cease operating the Station as a sheep and beef cattle farm and to plant 1,150 hectares in permanent forest (approximately 1 million trees) to generate carbon credits for the New Zealand Emissions Trading Scheme (ETS). Ultimately it will transition this forest into an indigenous forest.
13. The Station is approximately 37 kilometres north of Wairoa township and can be seen in the maps below:



14. The Applicant is a limited partnership established for the purposes of developing a geographically diverse forestry portfolio. It has a 5 year establishment period in which it intends to acquire 20,000 hectares of land in New Zealand to plant in permanent forest (approximately 20 million trees).
15. The Applicant is seeking consent to acquire the Station under sections 16(1)(c)(ii) and 16A of the Act. This is because permanent forestry does not fall within the definition of "forestry activities", and accordingly, the Applicant cannot access the streamlined forestry pathways.
16. The benefits to New Zealand that may result from this investment include:

Strong weighting		<ul style="list-style-type: none"> • New Zealand oversight and participation
Moderate weighting		<ul style="list-style-type: none"> • Significant Government policy or strategy
Weak weighting		<ul style="list-style-type: none"> • Jobs • Additional capital for development • Consequential benefits

¹ Planted in 1994 and is expected to be harvested between 2023 and 2025

² Planted in 2016 pursuant to an Afforestation Agreement that was entered into as part of the Afforestation Grant Scheme then offered by the Ministry for Primary Industries. That scheme has been replaced with the One Billion Trees Fund.

17. Guidance for applying the Act is set out in **Attachment 2**.

Farm to Forest conversions

18. Due to the recent media attention on farm to forestry conversions³, particularly in the Wairoa region, and the production of the BakerAg Report commissioned by Beef & Lamb NZ (included in the bundle) the OIO has consulted with the Ministry for Primary Industries (MPI) (including Te Uru Rakau) and the One Billion Trees Fund. [s 9(2)(g)(i)], [s 9(2)(ba)(i)] and the issues raised in the media are discussed further at paragraphs 105-116. However through use of the Wairoa District Council's online maps⁴ we have identified the Station as an area that is designated as suitable for primarily forestry rather than primarily cattle farming.

Timing

19. The Applicant requires a decision by 22 November 2019 to allow for settlement by the last working day of November 2019. When the application was submitted on 24 June 2019 the Applicant requested a decision date of 20 September 2019. The OIO advised the Applicant this date was unrealistic and the Applicant sought from and agreed with the Vendor an extension until 29 November 2019.
20. Processing days for the application to date are:

Quality Assurance	OIO Processing	Waiting for Applicant / Vendor	Third party consultation
7	11	10	42

³ <https://www.stuff.co.nz/business/farming/opinion/112812190/selling-sheep-and-beef-farms-to-forestry-is-a-threat-to-food-and-trade>
<https://www.stuff.co.nz/business/farming/112520475/farmer-uneasy-over-farm-to-forestry-conversion-plan>
<https://farmersweekly.co.nz/section/forestry/view/farm-land-needs-protection-too>
⁴ <https://data.wairoadc.govt.nz/maps/mapstore2-wairoadc/#/viewer/openlayers/103>

Applicant and investor test

21. This section describes the Applicant, and whether the investor test criteria in the Act are likely to be met.

Who is making the investment

22. The investment is being made by the Applicant which is a New Zealand limited partnership established to invest in permanent forestry for the purposes of generating carbon credits. The limited partners are:

- a) Z Energy;
- b) Contact Energy;
- c) Genesis Energy; and
- d) Air New Zealand

(together the **Investor Partners**)

Business Activities

23. This is the Applicant's first business venture together but is intended to be the first of a number as discussed at paragraph 14 above. The Applicant's partnership is intended to continue for 35 years, at the end of which the Investor Partners will decide whether to wind the partnership up or resolve to continue.

Overview of assessment: investor test

Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
Relevant overseas persons (ROP) and individuals with control (IWC) confirmed	ROP & IWC identified	ROP & IWC identified	Paragraphs 35-36 Section 15 of the Act.
Collectively have business experience and acumen relevant to the investment	Test met	The IWCs have experience relevant to the investment.	Paragraphs 37-40 Section 16(2)(a) of the Act.
ROP demonstrated financial commitment	Test met	The Applicant has demonstrated financial commitment by entering into the partnership agreement; raising capital commitments to proceed with the investment; and engaging professional advisers.	Section 16(2)(b) of the Act.
Good character	Test met	We are satisfied that the ROP/IWC are of good character.	Paragraphs 41-43 and Section 16(2)(c) of the Act.

Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
Not an individual of the kind ineligible for a visa or entry permission under ss 15 or 16 of the Immigration Act 2009	Test met	Statutory declarations provided confirming that each individual is not of the kind referred to in ss 15 or 16 of the Immigration Act. No additional assessment required.	Section 16(2)(d) of the Act.

Ownership and control of the Applicant

Who owns the Applicant

24. The Applicant is a New Zealand limited partnership. The **General Partner** of the partnership is Drylandcarbon GP One Limited.

Ownership of the General Partner

25. The General Partner is wholly owned by a holding company, DC One H1 Limited. DC One H 1 is owned as follows:

- a) 50% by Anthony [s 9(2)(a)] Beverly (a New Zealand citizen) [s 9(2)(a)] and
- b) 50% by **Pheasant Tail Holdings** Limited.

26. Pheasant Tail Holdings is owned 50% each by William [s 9(2)(a)] Leckie and Christopher [s 9(2)(a)] Morrison (both New Zealand citizens) [s 9(2)(a)]

Ownership of the Partnership

27. The Applicant has 7 limited partners-the Investor Partners and:

- a) Anthony [s 9(2)(a)] Beverly;
- b) William [s 9(2)(a)] Leckie; and
- c) Christopher [s 9(2)(a)] Morrison

all New Zealand citizens who collectively hold less than a 1% interest in the Partnership⁷.

28. The Investor Partners have the following interests in the Applicant:

Investor Partner	Interest in the Applicant	Overseas person or not
Z Energy	37.19%	overseas person ⁸
Contact Energy	16.53%	overseas person ⁹
Air New Zealand	20.66%	overseas person ¹⁰

⁵ [s 9(2)(a)]

⁶ [s 9(2)(a)]

⁷ Anthony Beverly will hold 0.2066% via a company named DC One H2 Limited and Christopher Morrison and William Leckie will hold 0.2066% jointly via a company called DC One H3 Limited.

⁸ 65% of its shares are owned by overseas persons.

⁹ 35% of its shares are owned by overseas persons.

¹⁰ 33% of its shares are held by overseas persons.

Investor Partner	Interest in the Applicant	Overseas person or not
Genesis Energy	25.21%	not an overseas person ¹¹

29. A detailed structure diagram of interests in the Partnership appears at **Attachment 3**.

Who controls the Applicant

30. The Applicant is controlled by the General Partner which has delegated its management duties, powers and control function to Drylandcarbon One Management Limited (**Management Limited**).
31. Management Limited is a New Zealand company owned and controlled in the same shares and by the same entities as the General Partner (see paragraphs 25-26 above).
32. Due to the delegation, Management Limited has the power to commit the Applicant to certain investments, provided it is within certain thresholds. This committee must approve any investment or series of related investments which would constitute more than 5% of the value of the partnership's committed capital.
33. In the case of the acquisition of the Station, Management Limited identified the investment, prepared a business case and presented it to an advisory committee which acts as consultant to the General Partner. This committee has 6 members:
- a) Paul [s 9(2)] Foley (independent chairman);
 - b) Michael [s 9(2)] Peterson (independent forestry management expert);
- together with an appointment from each of the investor Partners:
- c) Stephen [s 9(2)(a)] Deschamps (Air New Zealand);
 - d) Richard [s 9(2)] Norris (Z Energy);
 - e) Jennifer [s 9(2)] Stephen (Contact Energy); and
 - f) Timothy [s 9(2)] McSweeney (Genesis Energy)
- together the **Advisory Committee**.
34. Management will have responsibility for day to day management of the Applicant.
35. We have determined that the 'relevant overseas person' (**ROP**) is (collectively):

ROP	Relationship
Drylandcarbon GP One Limited (General Partner)	The Applicant and the General Partner of the Partnership
Drylandcarbon One Limited Partnership (Partnership)	The Applicant and the entity undertaking the investment
Drylandcarbon One Management Limited (Management)	Powers of the General Partner have been delegated to this entity

¹¹ Exemption granted by the OIO (201620072) from the definition of overseas person-expires in December 2020. However currently 86% of Genesis' shares are held by New Zealanders.

36. We have determined that the ‘individuals with control of the relevant overseas person’ (IWC) are:

IWC	Role
William [s 9(2)] [s 9(2)(a)] Leckie	Shareholder in the General Partner; Limited Partner in the Partnership; Director of the General Partner; Director of Management
Stephan [s 9(2)(a)] [s 9(2)] Deschamps	Member of Advisory Committee
Richard [s 9(2)] Norris	Member of Advisory Committee
Anthony [s 9(2)(a)] Beverley	Shareholder in the General Partner; Limited Partner in the Partnership; Director of the General Partner; Director of Management
Jennifer [s 9(2)] Stephen ¹²	Member of Advisory Committee
Timothy [s 9(2)] McSweeney	Member of Advisory Committee
Michael [s 9(2)] Peterson	Member of Advisory Committee
Paul [s 9(2)] Foley	Member of Advisory Committee
Christopher [s 9(2)] [s 9(2)] Morrison	Shareholder in the General Partner; Limited Partner in the Partnership; Director of the General Partner; Director of Management

Business experience and acumen

s16(2)(a).

The relevant overseas person, or the individuals with control of the relevant overseas person, must have business experience and acumen relevant to the overseas investment. There is considerable flexibility in determining what is relevant and more or less specific expertise may be required depending on the nature of the investment. Business experience and acumen that contributes to an investment's success may be treated as relevant even though the investor may have to supplement its experience and acumen by utilising the experience and acumen of others to ensure the investment succeeds.

37. In this case the investment can be described as the purchase of approximately 1,600 hectares of rural land on which the Applicant will plant a permanent forest.
38. We have reviewed the biographical information provided by the Applicant for each of the individuals with control and note that:
- collectively the individuals with control have extensive experience in investment management in particular property and farming related investments; and
 - accumulatively have experience in property management, property valuation, forestry and wood processing, accountancy and derivatives trading.
39. Further Anthony Beverly developed and owns a production forest company in Marlborough and he has also held a governance role with the Trustee for Schools Amalgamated Forest Trust.
40. Having regard to the above, we are satisfied that the individuals with control of the relevant overseas persons collectively have business experience and acumen relevant to the overseas investment.

¹² Should this application still be being considered after December 2019, Matthew [s 9(2)(a)] Cleland will be resuming his role in place of Jennifer [s 9(2)] Stephen.

Good character assessment

s16(2)(c).

The decision maker must be satisfied that the individuals with control are of good character. Section 19 of the Act specifies that the decision maker must take the following factors into account (without limitation):

- offences or contraventions of the law by A, or by any person in which A has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not);
- any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

41. The Applicant has provided a statutory declaration stating that the individuals with control are of good character, have not committed an offence or contravened the law as described above and know of no other matter that reflects adversely on their fitness to have the Investment. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957.

42. The Applicant has also disclosed some matters relating to two of the IWC's directorships of other companies:

a) [s 9(2)(ba)(i)]

[REDACTED]

b) [s 9(2)(ba)(i)]

[REDACTED]

43. We have also conducted open source background checks on the individuals with control and discovered an Employment Relations Authority Action against Provenocadmus. That entity was found not to have engaged in misleading or deceptive conduct and as such we do not consider it impacts on Mr Morrison's good character. After investigation of these matters we are satisfied that the individuals with control are of good character. Therefore, we are satisfied that all of the individuals with control are of good character.

Provisional conclusion – Investor test

44. Our provisional conclusion is that the investor test is met.

Investment and benefits test

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

Summary of the proposed transaction and the Investment Plan

The proposed transaction

46. The Applicant entered into a sale and purchase agreement to purchase the Station on 29 March 2019. The Applicant considers the Station is suitable for permanent forestry and its plans for carbon credit farming.

The current situation

47. The Station has:
- approximately 9,500 stock units, with a current stocking ratio is 61% sheep and 39% cattle;
 - 80 hectares planted in high UMF manuka trees; and
 - 111 hectares of planted forestry (radiata pine) expected to be harvested between 2023-2025.
48. While consent is only sought for the 1,594 hectares the Station consists of, the total current farmed area is 1,643 hectares due to what are known as 'give and take' areas. Give and take land occurs when terrain may be too steep to put a fence on the legal boundary, so a fence is erected on an area somewhere within the legal boundary which means a neighbouring farmer may get an extra area to farm its cattle and vice versa in other areas. These areas do not confer legal title and are merely for convenience. The Applicant will not be able to participate in the give and take areas after acquisition of the Station.
49. The table below shows detail of the give and take areas:

STATION AREA	AREA (HA)
Titled Area	1594.46
"Give" Areas	14.19
"Take" Areas	63.28
Total managed area	1643.55ha

The Vendor

50. The Vendor is Craigmore (Te Puna) Limited, a New Zealand company but an overseas person, which acquired the Station as part of a transaction which required consent in 2012¹³.
51. The Vendor is selling the Station because it no longer aligns with its business strategy as it is too far away from its other assets.

Investment plan

52. The Partnership was established for the purposes of developing a geographically diverse forestry portfolio. It has a 5 year establishment period in which it intends to acquire 20,000 hectares of land to plant in permanent forest (approximately 20 million trees). The Partnership will use this forestry portfolio to generate carbon credits under the ETS. The Applicant expects that over the life of the forest approximately 1.1 million distributable NZU's¹⁴ will be generated.
53. The Partnership intends to purchase or license marginal, unproductive and erosion-prone land to develop its portfolio. It considers this land is best suited for a forestry

¹³ Case 201210007

¹⁴ The primary unit of trade in the ETS is the New Zealand Unit (NZU), also called a carbon credit.

portfolio which it intends to largely be made up of permanent forest but may also include some production forest.

54. The Partnership has a term of 35 years and it expects towards the end of, and following this term, the permanent forest will be transitioned to an indigenous permanent forest. To make this transition easier the Partnership will plant the Station with wide riparian setbacks so those areas can revert to indigenous forest over time. The Applicant will also not plant certain areas and will leave them to revert to native forest as some areas of the Station are too erosion prone to plant.

Suitability of the Station

55. The Applicant has assessed that 1,150 hectares is suitable for conversion¹⁵. Certain unplanted areas will be allowed to revert to native forest. The Applicant considers that conversion of the Station to permanent forest is a better use of the land than farming due to its steepness and erosion susceptibility. It states that access tracks pose an "increasing health and safety risk" due to their steepness and how slippery they become when wet. Parts of the Station are only accessible by horse.

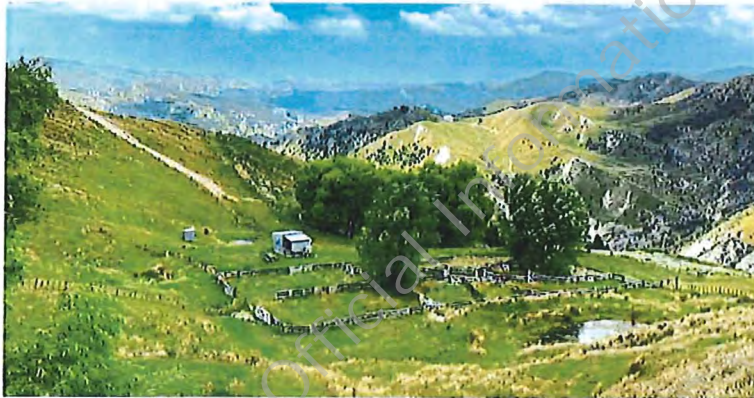


Figure 1-aerial view of the Station from advertising materials



Figure 2- aerial view of the Station from advertising materials

56. The Applicant does not consider the Station is suitable for rotation forestry¹⁶ due to issues with access and the topography. The Applicant submits 80% of the Station is classified as red or orange zone under the Erosion Susceptibility Classification in the National Environmental Standards, which it claims means that parts of the Station is at high to very high risk of erosion. The Applicant claims that farming on the Station

¹⁵ Balance of land either already planted in forestry, will be used as productive pasture for grazing, not suitable for planting due to topography and land occupied by buildings or roading etc.

¹⁶ Rotation forestry is the planning of plantations based on the rotation periods so that you have an equal volume of harvest sustainably

has accelerated this erosion and stopping farming on the Station will slow the rate of erosion. The Applicant states permanent forest will stabilise the land, reduce soil loss and improve the quality of waterways on the Station.

57. Due to the above the Applicant considers the best use of the Station is as permanent forest which it states will help stabilise the land. Further the land will not need to be accessed as regularly as for cattle farming.
58. The table below shows the current versus intended uses of the Station:

2775 Mangapoike Road, Wairoa		
Land use	Current (ha)	Proposed (ha)
Farmed area	1,259	67
Estimated Net Stocked Area (permanent forest)	0	1,150
22 year old Radiata Forest (subject to forestry right)	111	111
Manuka plantation (Third Party supply)	80	80
Retired land (comprising land for indigenous regeneration or other non-plantable land such as gullies, slips, and waterways, that will be left to regenerate into native bush)	144	186
Total	1,594	1,594

Species used

59. The trees planted on the Station are likely to be radiata pine however the Applicant indicates it is working with its forestry adviser to identify other species that may be suitable for certain areas.
60. The Applicant refers to Professor Euan Mason from the University of Canterbury who considers that indigenous vegetation grows too slowly for New Zealand to meet its emission targets¹⁷. Professor Mason considers that for every 10 hectare of exotic species such as radiata pine that 1 hectare of native plant stand to "act as seed sources for gradual succession" to native forest.
61. The Applicant submits that between the 80 hectares of planted manuka and the approximately 186 hectares of land that will be retired to revert to native forest, these areas equate to 23% of the planted exotic areas and is therefore consistent with Professor Masons advice.
62. The 111 hectares existing radiata pine will be harvested in 2023-2025 and at that time the Applicant will evaluate whether this land can also be planted in permanent forestry for generating carbon credits. It may be that this land will not be eligible under the ETS (as a replanted forest), if not the Applicant may either plant in manuka or allow to revert to native bush.
63. The Applicant intends to leave the existing manuka plantation in place for the lifetime of the permanent forest on the Station.

¹⁷ <https://www.stuff.co.nz/environment/climate-news/115098780/carbon-dioxidecapturing-pine-forests-could-be-nurseries-for-native-stands>

64. The Applicant submits it hopes to establish a research and development function to find ways to improve restoration of exotic forests to native forests over time.

Emissions Trading Scheme

65. The New Zealand Emissions Trading Scheme (ETS) is the Government's main tool for reducing greenhouse gas emissions. The Labour Party's climate change manifesto states that Labour intends to restore the ETS so that it is credible and well-functioning. Each of the Investor Partners are registered participants in ETS.

Resource consents

66. No resource consent is required for conversion to forestry as permanent forests are not caught by National Environmental Standards. The Applicant has also obtained a certificate of compliance from the Hawkes Bay Regional Council confirming conversion to permanent forestry is permitted.

Timeline for conversion

67. The Applicant intends to start planting trees in April 2020 if consent is granted, with planting completed in 2021. Until planting begins, the Applicant will grant a short-term lease back to the Vendor over the parts of the Station suitable for grazing.

Rural Land Directive

68. The rural land directive applies to this investment as the Station is currently farmland. The forest land directive does not apply as the existing principal use of the Station is not forestry.

Farmland advertising

s16(1)(f) of the Act.

The Regulations require farm land or farm land securities to be offered for acquisition on the open market to non-overseas persons for at least 20 working days (or longer if the advertisement states or implies that offers will be accepted for that longer period). The purpose of such advertising is to ensure non-overseas persons have reasonable notice that they are available for acquisition. The Regulations do not require that the vendor accept any alternative offer made by a non-overseas person.

69. The Station was advertised by Bayleys using both online and print advertising between 21 January and 20 March 2019.
70. We have reviewed the advertising of the Station and are satisfied that it complies with the advertising procedure set out in the Regulations.

(Counterfactual) What is likely to happen without the investment

As a result of *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147 ("*Tiroa E*"), the OIO and relevant Ministers must apply a "counterfactual test" when assessing whether an overseas investment will or is likely to benefit New Zealand. This test, which was described by the Court as a "with and without" test, requires a comparison of what is likely to happen with the investment, and what is likely to happen without the investment (the counterfactual)

71. If the Applicant did not purchase the Station we consider the Station will likely be sold to an Alternative New Zealand Purchaser (ANZP) who would continue to run the Station as a sheep and beef cattle farm (in much the same manner as the Vendor).
72. There are two key questions to determine what is likely to occur without the Investment:

- (a) who is likely to own the Land? and
- (b) what is the likely use of the Land?

Who is likely to own the land?

73. The Vendor has indicated that if consent is not granted to this application it will continue to market the Station for sale until it is sold. Further we are aware the underbidder on the Station was an ANZP. As such the Applicant has submitted the counterfactual is sale of the Station to an ANZP and we agree with this analysis.

What is the likely use of the land?

74. During the sales process one forestry operator expressed interest in the Station but ultimately did not submit a tender. The Applicant understands this party was a rotation forestry operator and as discussed above at paragraph 55, the Applicant considers the Station is not suitable for rotation forestry due to the topography of the land and access. The Applicant submits this operator likely reached the same conclusion.
75. The only tender other than the Applicants was from another sheep and beef farming operator. Given that parts of the Station are erosion prone, they may be planted.
76. We consider that if consent is not granted to the Applicant, the Station would likely be sold to an ANZP who would continue to operate the Station as a sheep and beef cattle farm and may plant the most erosion prone areas of the Station. The Station has been run as a farm for a number of years and was marketed for sale as such - the advertising for the Station stated that it had "an excellent farming climate".

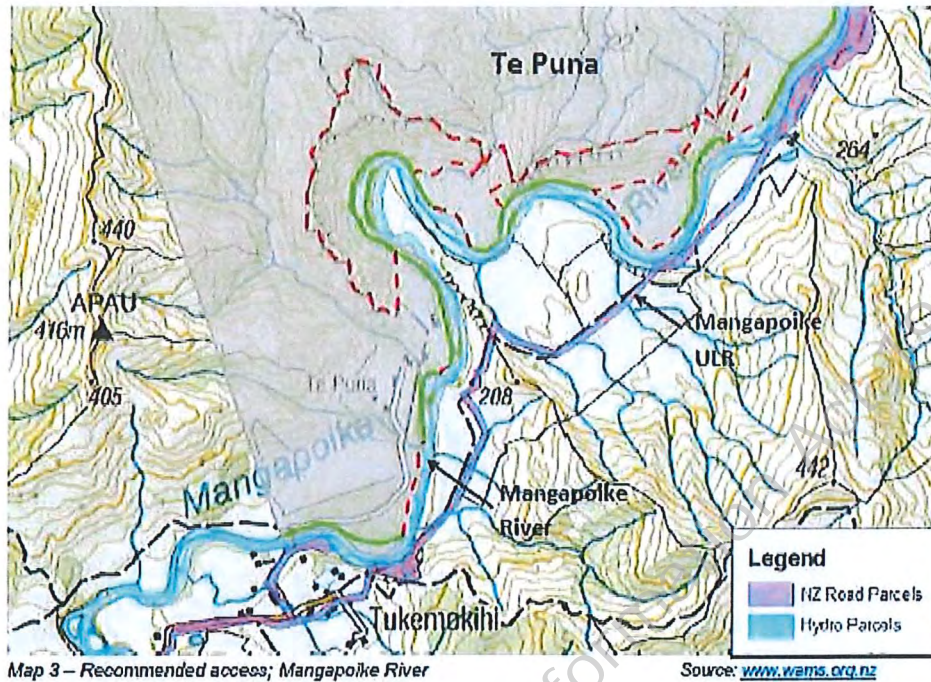
Consultation and submissions about the investment

Consultation with Department of Conservation

77. The Vendor had consulted with the Department of Conservation (**DOC**) as part of its consent conditions when acquiring the Station (case 201220039). We contacted DOC to confirm that no additional protections were required on the Station since their previous letter to the Vendor. DOC have advised the OIO no additional protections are required.

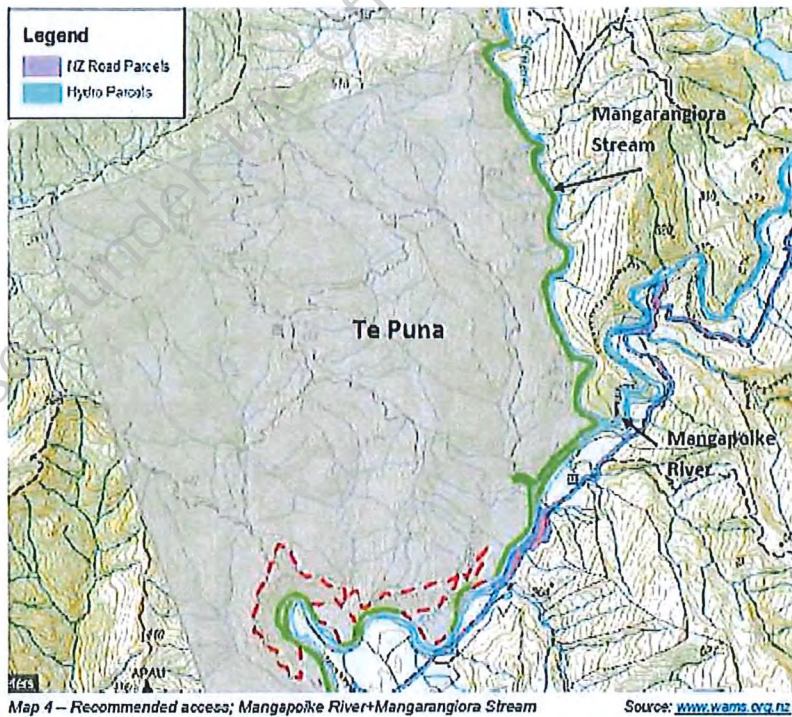
Consultation with Walking Access Commission

78. The OIO consulted with the Walking Access Commission (**WAC**) who undertook a site visit, consulted with the current Farm Manager and provided us with a report (included in the bundle) (**WAC Report**).
79. The WAC Report recommended the creation of:
- a) a walkway (under the Walking Access Act 2008) as delineated in red dashed lines in Figures 3 & 4 below; and
 - b) esplanade strip to be registered against the titles (pursuant to section 235 of the Resource Management Act 1991), along the banks of the Mangapoike River and Mangarangiara Stream as delineated in green lines on Figures 3 & 4 below.



Walkway shown as a red dashed line
 Esplanade strip shown as a green line

Figure 3-topographic map of part of the Station



Walkway shown as a red dashed line
 Esplanade strip shown as a green line

Figure 4-topographic map of part of the Station

80. WAC states most of the Station has a fairly steep gradient and practical access along some sections of the Mangapoike River bank is not possible. Therefore, in addition to securing access along the banks of the River, practical walking access, by way of a registered public access instrument, along the river terraces where steep banks prevent practical access adjacent to the river, would provide continuous legal access.
81. There is currently no legal access to the Mangarangiora Stream. WAC considers securing public access, by way of esplanade strips, along the banks of for recreational purposes to be desirable. The purpose of securing access along the river would therefore be to provide for water borne activity such as kayaking, rafting or walking when conditions allowed.

The Applicants comment on WAC proposals

82. The Applicant is not prepared to implement the proposed walkway because it has been working with the current farm manager on the Station and intends to enter into an agreement with him to allow him and his family to continue to live at the Station and establish his own farming operation on certain parts of the Station through a subdivision or lease. The area to be utilised for this is expected to be between 114 and 135 hectares, although the exact area is yet to be mapped.
83. The Applicant has advised that the proposed walkway and esplanade reserve proposed by WAC would go right through the middle of the area of land that would be the subject of a subdivision or lease to the farm manager. [s 9(2)(a)]
84. The Applicant considers that a walkway combined with the proposed esplanade strips would compromise the farm manager's interest in remaining on the land (or indeed any other prospective small farming operation). The Applicant considers it finds itself in a difficult position, being unable to commit to both an agreement with the farm manager to allow him to continue to occupy the property, whilst also establishing the walkway and esplanade recommended by the WAC. The Applicant does not consider that it is reasonable to implement the recommended walkway.
85. The Applicant considers that the esplanade areas are impassable at the eastern end. It also states that the public road immediately before the Station's entry point goes through the neighbour's yards and stock handling areas, which has been gated off with unlocked gates when the Applicants have visited the property. This also makes it unclear whether public access to the property is feasible, practicable, or reasonable.
86. The Applicant has stated it would be prepared to accept a condition that relates to further consultation regarding the proposed esplanade strips but would be reluctant to be required to implement any WAC recommendations that would compromise the attractiveness of a farming operation on the relevant part of the property.

Consultation with Ministry for Primary Industries (MPI) and Te Uru Rakau

87. Please see paragraph 18.

Third Party Submissions

88. One third party submission was received from Dave Read of Waiau Station:
I am writing to ask you to block the proposal to plant the whole of Te Puna Station and the subsequent loss of another local family. I understand that there is a New Zealand under bidder, who will continue to farm on the station, while planting the

most erosion prone land. This would support existing employment in our region: contractors, casual workers & the local meat works in addition to a farm manager living on the property. The loss of this station to an overseas owner who will not support the local economy is not in New Zealand's best interest.

Regards,

Dave Read

89. The Applicant has advised it is in discussions with the Farm Manager and this is discussed further at paragraphs 82-83 and paragraph 124. Discussion of the impact on the local economy is discussed at paragraphs 106-110.

Released under the Official Information Act 1982

Overview of assessment: investment and benefit test

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Oversight and participation by New Zealanders	New Zealanders will have a significant level of oversight and participation in the investment. Applicant has delegated substantially all of its management duties, powers and control functions to Management Limited which will have the power to commit the Partnership to future investments. Management Limited is owned and controlled by New Zealand citizens. All IWC are New Zealand citizens		Strong weighting	New Zealanders will have a significant level of oversight and participation in the investment.	-	Paragraphs 92-96 reg28(j)
Advance significant government policy or strategy	Conversion of the Station to permanent forest will align with the Government's Climate Change policy and One Billion Trees strategy	A small amount of planting may occur which would align with the Government's Climate Change policy and One Billion Trees strategy, albeit on a significantly smaller scale. The Station will continue to operate as a beef and sheep farm.	Moderate weighting	Conversion of the Station will assist the Government with achieving the One Billion trees planted target and meeting its greenhouse emissions targets. Possibly a small effect on regional development from the conversion of the Station.	<u>Condition</u> the planting of at least 95,000 trees on at least 1,150 hectares of land on the Station.	Paragraphs 97-117 reg28(f)

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Job opportunities	The Applicant will create 9.88 FTE over the counterfactual in Year 1-2 of the investment and an average of 0.7 FTE a year over the counterfactual in the first 10 years of the investment.	2.12 FTE employed on the Station, 2 of which are permanent full time roles.	Low weighting	A small increase in FTE will be created for the first 10 years of the investment, although we note that none of these are permanent roles.	<u>Condition:</u> The creation of at least 11 FTE in Year 1-2 of the investment <u>Report:</u> the number of FTE created each year and their roles and salary/wage.	Paragraphs 118-131 s17(2)(a)(i)
Additional investment for development purposes	Conversion of the Station to permanent forestry will result in approximately [s 9(2)] being introduced into New Zealand for development, with a small amount of that sourced from New Zealand debt	Minimal capital investment	Low weighting	The investment will result in a relatively small amount of net capital investment for development being introduced into New Zealand.	<u>Condition:</u> introduce and spend of at least [s 9(2)] on the conversion of the Station to permanent forest by 31 December 2022. <u>Report:</u> on the amounts spent and what the monies have been spent on.	Paragraphs 132-139 s17(2)(a)(v)
Offer to sell seabed / foreshore / riverbed to the Crown	The Vendor has offered to sell the special land to the Crown.	The special land would not be offered to the Crown.	Low weighting	The Crown will have the ability to acquire the special land on the Station if it chooses to do so.	The Applicant will be <u>conditioned</u> to sell the special land to the Crown should the Crown agree to accept the offer of the special land. As the Crown is involved in this transaction there are no reporting requirements.	Paragraphs 140-144 s17(2)(f)

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Consequential benefits	Conversion of the Station to permanent forest is a more sustainable land use	The Station would continue to be farmed, with a small amount of planting.	Low weighting	Permanent forestry is a more appropriate use of the Station than cattle farming.	-	Paragraphs 145-151 reg28(a)

Released under the Official Information Act 2002

90. The section below sets out our discussion in relation to factors under which we consider the proposed investment is likely to result in benefit to New Zealand.
91. Factors that we considered were either not relevant to the investment, or the benefit to New Zealand was not sufficient enough to be relied on, are discussed in 0.

Oversight and participation by New Zealanders

There are three key elements to this factor (reg28(j) of the Regulations):

- There must be persons who are not overseas persons (**New Zealanders**);
- The New Zealanders must be likely to be able to **oversee or participate** in the overseas investment or any relevant overseas person;
- The **overseeing or participation** must be in the **overseas investment or any relevant overseas person**.

This factor is relevant to all overseas investments in sensitive land.

92. We consider that the investment will be owned and controlled by New Zealanders.
93. The Investor Partners are all NZX listed and the Applicant is ultimately 60% beneficially owned by New Zealanders.
94. The Applicant submits that it has delegated substantially all of its management duties, powers and control functions to Management Limited which will have the power to commit the Partnership to future investments. Management Limited is owned and controlled by its directors (Anthony Beverly, William Leckie and Christopher Morrison) who are all New Zealand citizens. These individuals also hold a small interest in the Partnership.
95. Further the Partnership's partnership agreement identifies Anthony Beverly and William Leckie as key persons and no new investments can be made without their involvement in Management. The Applicant submits Management is therefore owned and controlled by New Zealanders. All of the IWC are also all New Zealand citizens.

Our Assessment

96. We consider that the delegation to Management, a company owned and controlled by New Zealanders, confers on it a significant level of control over the Partnership. The Applicant also has a relatively high level of New Zealand ownership. As such we consider this benefit should be given **strong weighting**.

Advance significant government policy or strategy

There are three key elements to this factor (reg 28(f) of the Regulations):

- The overseas investment must give effect to or advance a specific Government policy or strategy.
- The Government policy or strategy must be significant.
- The effect or advancement that is likely to result from the overseas investment must be additional to that which is likely to occur without the overseas investment.

97. We consider that the planting of the Land as permanent forest will advance the Government's One Billion Trees programme and Climate Change policy, both of which are significant. It is also likely to affect regional development.
98. The Applicant has claimed its development plans for the Station accords with:
- a) The One Billion Trees programme; and
 - b) Climate Change policy.

One Billion Trees

99. The Government has a goal to plant One Billion Trees in a 10 year period between 2018 and 2027. The Applicant submits the Ministry for Primary Industries (**MPI**) has

stated 500 million trees are on track to be delivered at current planting rates which must increase to meet the Government's stated goal¹⁸.

100. The Applicant claims it will plant approximately 1 million trees on the Station. The Applicant considers planting on marginal and erosion-prone land such as the Station accords with this policy.

Counterfactual

101. The Station would continue as a sheep and beef farm with little, if any, further planting taking place on the Land.

Climate Change policy

102. The Applicant claims combatting climate change is a major Government policy. The proposed Climate Change Response (Zero Carbon) Amendment Bill (**Bill**) has passed its first reading in Parliament and is currently before the Select Committee. The Bill sets out new greenhouse gas emission reduction targets, resulting in reduction of greenhouse gases to net zero by 2050¹⁹.
103. The Applicant considers conversion of the Station will give effect to what is a significant Government policy and will give effect to New Zealand's obligations under the Paris Agreement. The Paris Agreement's central aim is to strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius. Additionally, the agreement aims to strengthen the ability of countries to deal with the impacts of climate change.

Counterfactual

104. Continuing to run the Station as a cattle farm will not give effect to this policy and is likely to lead to continued production of greenhouse gases.

Regional Development

105. The Applicant states that for each investment it makes as part of its acquisition plans, it will try to ensure as far as is possible that it adds value to the local community. With the acquisition of the Station, the Applicant considers that aside from providing employment and revenue for the region, it will also provide economic benefits to various suppliers in the region by:
- a) acquiring seedlings from local nurseries;
 - b) acquiring chemicals and spray equipment for weed control from local suppliers;
 - c) purchasing fuel and servicing for vehicles from local stations and mechanics;
 - d) using local accommodation for staff and local restaurants and cafes for staff meals.
106. The OIO raised the recent media attention on farming to forestry conversions, particularly those in the Wairoa region with the Applicant's lawyer and referred them to the BakerAg report commissioned by Beef & Lamb NZ (**BakerAG Report**) so that the Applicant could provide comment.
107. The BakerAg Report concluded that sheep and beef farming has greater community benefits than forestry and stated that if all 189 sheep and beef farms covering 132,000 hectares in Wairoa were converted to forestry, 700 local jobs would be lost, the equivalent of one job in five, and the local economy would have \$23.5 million less money spent in it each year. It went on to state that 7 farms in Wairoa had been

¹⁸ <https://www.teururakau.govt.nz/dmsdocument/31860-guide-to-the-one-billion-trees-programme-2018>

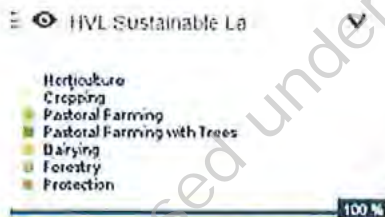
¹⁹ Except for biogenic methane which must be reduced to within 24-47% of 2017 levels by 2050.

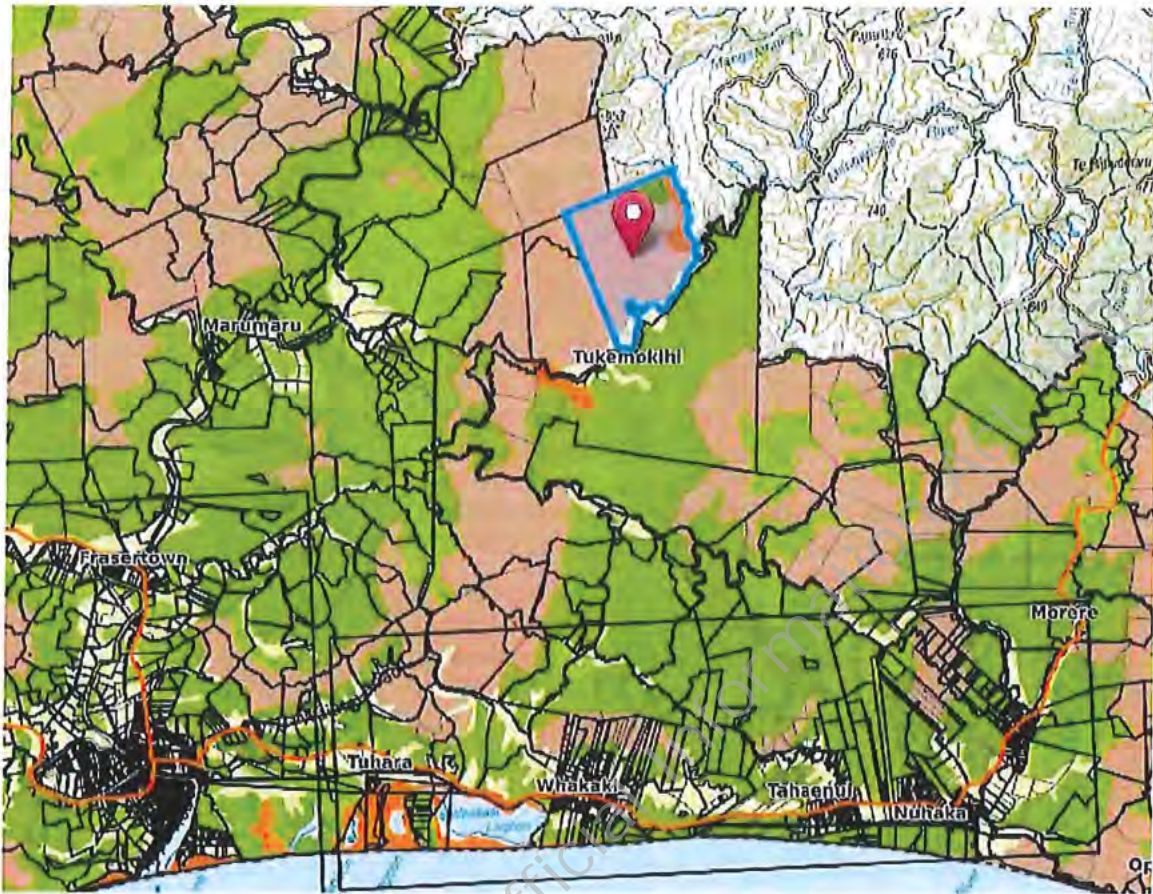
sold for forestry conversion in the previous two years, removing 8,486 hectares of farmland from the region.

108. The Applicant believes the conclusions reached in the BakerAg Report are not applicable regarding this investment and the conclusions reached in it should not be given any weight. The BakerAg report assumes an average carbon farm would stock 300 stems per hectare, the Applicant claims that in order to achieve carbon regeneration an initial stocking rate of 1,000-1,200 stems per hectare are required (thinned down to 500 stems per hectare) and as such many of its conclusions are incorrect. The Applicant submits the BakerAg Report underestimates the actual costs involved in establishing a carbon farm.
109. The Applicant is engaging with the Wairoa and Hawkes Bay communities to help them understand the Applicant's model for developing permanent forests. It submits it wrote to a range of industry stakeholders in June 2019 inviting them to meet with the Applicant to discuss its approach. [s 9(2)(ba)(i)]
110. The Applicant is also considering an aggregation model where smaller parcels of land from different owners with a minimum threshold of 100 hectares could be pooled together and planted in permanent forestry.

Counterfactual

111. There is likely to be a small amount of additional regional development created as a result of the Station continuing to be run as a sheep and beef cattle farm by an ANZP due to purchase of farm materials, fuel for farm equipment etc.
112. Te Uru Rakau referred us to the Wairoa District Councils (WDC) online sustainability map. These maps show the most suitable uses for areas in the region. When the Station's position is overlaid on the map of the region, it can be seen that the WDC map designates the vast majority of the Station as suitable for forestry as opposed to cattle farming. This can be seen in the map and its key below (the Station outlined in blue):





Our Assessment

113. We consider that the development of 1,150 hectares of permanent forest on the Station will give effect to:
- a) the One Billion Trees programme which we consider is a significant strategy of the coalition Government. Continued cattle farming on the Station would not advance this policy. [s 9(2)(ba)(i)]
[REDACTED] and
 - b) the Government's climate change goals which we consider are a significant policy of the coalition Government. Continued cattle farming on the Station would not advance this policy.
114. We do not currently consider regional development is likely to occur as a result of this investment. The conversion to permanent forest creates a short term minimal increase in employment, none of which is permanent so there will not be workers permanently residing and spending in the region, nor does it inject a large amount of development capital into the region. While the aggregation method does seem to be an idea with possible merit, nothing has been finalised and as such we do not consider the Applicant has evidenced the benefits this investment will provide to the regions development over and above what a cattle farm might.
115. Further Craig Little has publicly expressed his concerns over farm to forestry conversions in the Wairoa region ²⁰ and the Applicant has not provided any

²⁰ <https://www.odt.co.nz/rural-life/rural-life-other/impact-selling-farmland-forestry-could-be-catastrophic>

evidence that he was in support of the Applicant's business model or this particular application.

116. There seems to be some concern over farm to forestry conversions [s 9(2)(g)(i)], [s 9(2)(ba)(i)]



117. Taking all the above into account we consider that the benefit likely to occur from the investments advancement of the One Billion Trees programme and the Government's climate change policy, taking into account any effect on regional development provided by the investment is of **moderate weighting**.

Job opportunities

There are three key elements to this factor (s17(2)(a)(i) of the Act):

- The "new job opportunities" must be new, or if existing jobs are being "retained", the existing jobs would or might otherwise be lost if the investment does not proceed;
- The new job opportunities or retained jobs must be in New Zealand;
- The new job opportunities or retained jobs that are likely to result from the overseas investment must be additional to those which are likely to occur without the overseas investment.

118. We consider that the conversion of the Station is likely to result in a small net increase in the number of jobs on the Station over the first 10 years of the investment.
119. The Applicant considers the nature of permanent forestry means the labour requirements are more intensive at the start of the investment, but that the conversion of the Station will result in an increase in full time equivalent roles (FTE) although these roles are temporary in nature.
120. The tables in the paragraph below shows the FTE the Applicant considers will be created as a result of the change in use of the Station over the life cycle of the permanent forest. Note the full-time equivalent referred to in the table below does not refer to the number of individuals employed on the Station undertaking that role. Rather the Applicant has reached these figures by calculating the hours required to do that task per week on average calculated over a year. A job which is for at least 30 hours per week, on average over a year is 1 full time equivalent role or FTE.
121. **Years 1-2 of the investment**

Role	Full time equivalent role (FTE) ²¹
[s 9(2)(b)(ii)]	1
[s 9(2)(b)(ii)]	6.7
[s 9(2)(b)(ii)]	0.2

²¹ <https://www.linz.govt.nz/overseas-investment/applying-for-consent-purchase-new-zealand-assets/preparing-your-application-oi/benefit-new-zealand-test/creation-new-job-opportunities-or-retention-existing-jobs>

Role	Full time equivalent role (FTE) ²¹
[s 9(2)(b)(ii)]	0.6
[s 9(2)(b)(ii)]	0.3
[s 9(2)(b)(ii)]	0.3
[s 9(2)(b)(ii)]	2.5
[s 9(2)(b)(ii)]	0.5
Total	12.1

Year 5 of the investment

Role	FTE
[s 9(2)(b)(ii)] [s 9(2)(b)(ii)]	0.2
Total	0.2

Year 10 of the investment

Role	FTE
[s 9(2)(b)(ii)] [s 9(2)(b)(ii)]	3.3
[s 9(2)(b)(ii)] [s 9(2)(b)(ii)]	0.2
Total	3.5

122. The Applicant also states there will be additional ongoing work over the life of the investment which will require staff. We assume the Applicant is referring to jobs created in Years 3-4 and 6-9 of the investment where otherwise it appears no jobs are created.

123. We note the Applicant has not converted these roles into FTE, we presume given the low level of FTE that would be created. These are shown in the table below:

Role	Term
[s 9(2)(b)(ii)]	1 month per year
[s 9(2)(b)(ii)]	2 weeks per year
[s 9(2)(b)(ii)]	1 month per year
[s 9(2)(b)(ii)]	2 weeks per year

Farm Manager

124. The Station currently employs a Farm Manager who has expressed a desire to remain in the valley area. The Applicant is exploring subdividing an area of the Station and selling it to him or alternatively leasing him an area of land. The area of the Station under consideration for this is the area the new home was built on which would provide him with a family home and a small pastoral farming block. The Applicant is also considering engaging the Farm Manager in a short term security and maintenance role. However none of this has been confirmed by the Applicant as likely to proceed as at the date of writing this report.
125. Overall the Applicant states that the increase in FTE when averaged over the first 10 years of the investment equates to at least maintaining the current 2.12 FTE up to a net increase of 0.7 FTE.

Counterfactual

126. The Vendor currently employs 2.12 FTE, 2 of which are full time permanent employee's and 0.12 are contractors.
127. The Applicant submits that in Years 1-2 of the investment 9.98 FTE will be created over the counterfactual which it considers a significant increase in the short to medium term. The Applicant also submits these FTE are FTE of a higher value with a higher average wage than the national average.
128. We consider that under the counterfactual the current level of employment on the Station would remain the same ie 2.12 FTE, 2 of which are permanent full time roles.
129. An ANZP may also plant the most erosion prone areas of the Station which may increase the contractor FTE from 0.12.

Our Assessment

130. While we acknowledge that in the short term a large number of FTE will be created, these FTE are only created for a relatively short period of time in the context of the term of the investment, nor are they permanent full time roles. The Applicant itself states that over the first 10 years of the investment a maximum of 0.7 FTE per annum will be created. Over the long term (after the first 10 years of the investment) we consider it is likely that beef and sheep farming will create more FTE. In the context of the size of the land being acquired and the likely minimal increase in FTE created by the investment we consider this benefit to be of **very low weighting**.

Recommended conditions

131. Given the fluctuating number of FTE required for the investment we would recommend conditioning jobs for Years 1-2 of the investment only. As such we would recommend conditioning the creation of at least 11 FTE in Years 1-2 of the investment.

Additional investment for development purposes

There are four key elements to this factor (s17(2)(a)(v) of the Act):

- The investment must be **additional investment**.
- The additional investment must be **introduced into New Zealand**.
- The additional investment must be **for development purposes**.
- The additional investment that is **likely to result from the overseas investment must be additional to that which is likely to occur without the overseas investment**.

132. We consider that the conversion of the Station to permanent forestry will result in additional capital for development being introduced into New Zealand.

133. The Applicant submits the costs of converting the Station to permanent forestry will be approximately [s 9(2)(b)(ii)] as shown in the table below:

Development	Completion date (assuming planting in 2020)	Approximate cost
Land preparation	2020	[s 9(2)(b)]
Seedling deposit	2020	[s 9(2)(b)]
Fencing	2021	[s 9(2)(b)]
Remaining seedlings	2021	[s 9(2)(b)]
Planting	2021	[s 9(2)(b)]
Quality control and management	2021	[s 9(2)(b)]
Planting tracks	2021	[s 9(2)(b)]
Pest control	2021	[s 9(2)(b)]
Weed control and release	2022	[s 9(2)(b)]
Total forest establishment costs		[s 9(2)(b)(ii)]

134. The Applicant also refers to an "additional [s 9(2)(b)] on other establishment costs" but does not detail what these costs relate to.
135. The Applicant states the monies will come from a combination of cash, debt (both New Zealand and overseas) and retained earnings. The Applicant is unable to advise the percentage of funding that will come from New Zealand funded debt²² but anticipates it will be "relatively small".

Counterfactual

136. The Applicant considers an ANZP is likely to spend similar amounts to the Vendor on capital expenditure. In the last 2 years the Vendor has spent approximately [s 9(2)(b)] on capital expenditure, however the Applicant submits this is not usual expenditure as it included construction of a house on the Station.
137. We consider that an ANZP would likely need to spend funds on development on the Station but these are likely to relate to maintenance of existing developments rather than undertaking new developments. However an ANZP may undertake planting of the most erosion prone areas of the Station, so there could be capital outlay in this regard.

Our Assessment

138. We consider that the Applicant's conversion of the Station to permanent forestry will result in approximately [s 9(2)(b)(ii)] being introduced into New Zealand for development, with a small amount of that sourced from New Zealand debt. When considering this expenditure in relation to the size of the Station and taking into

²² Overseas funded debt still qualifying as introduced into New Zealand for the purposes of this factor.

account some capital will be sourced from New Zealand debt, we consider the resulting benefit is of **low weighting**.

Recommended conditions

139. We recommend conditioning the Applicant to introduce and spend at least [REDACTED] on the conversion to permanent forestry by 31 December 2022. [REDACTED] s 9(2)(b)

Offer to sell seabed / foreshore / riverbed to the Crown

"Offer to sell foreshore, seabed, riverbed, or lakebed to the Crown" (s17(2)(f) of the Act)

140. The Station includes the bed of the Mangapoike River and the bed of the Mangarangiora Stream and other unnamed rivers.
141. In accordance with the Overseas Investment Regulations 2005 ("**Regulations**"), the special land has been offered to the Crown for nil consideration.
142. The special land process generally involves two steps at this stage. Firstly, the Vendor offers the Special Land to the Crown. Secondly, the Crown determines whether or not it wishes to acquire the Special Land and, if it does, arranges to progress the acquisition. We note 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).
143. The Vendor and Applicant have executed an agreement for sale and purchase relating to the Special Land described above (the **Special Land Agreement**). The Special Land Agreement is conditional on the OIO granting consent and will not be executed by the Crown unless a determination is made by the Crown to acquire the Special Land. We will forward a separate report in due course regarding whether the Crown should acquire the Special Land.
144. In the interim, we recommend that a consent condition be imposed requiring the Applicant to deal with the Crown in accordance with the Regulations, including requiring the Applicant to be bound by any arrangement that the Vendor entered into with the Crown in relation to the Special Land (preserving the Crown's position). The proposed consent conditions are set out in **Attachment 1**. Provided this is done, we are **satisfied** that this requirement is met and the benefit is created is of **low weighting**.

Consequential benefits

There are three key elements to this factor (reg28(a) of the Regulations):

- There must be a **consequential benefit to New Zealand**.
- The benefit must not have been considered under another factor, it must be **another** consequential benefit.
- The consequential benefit that is **likely to result from the overseas investment** must be **additional** to that which is likely to occur **without the overseas investment**.

145. We consider that the conversion of the Station to permanent forest is likely to lead to a more sustainable land use.
146. The Applicant has made a number of claims under this factor discussed below.

Sustainable land use

147. The Applicant converting the Station from farming to forestry is a more sustainable land use as discussed at paragraphs 55-56. It submits this conversion will make a material contribution to stabilising the land, reducing soil loss and improving sediment control and therefore water quality.

Counterfactual

148. Continuing to farm the Station is unlikely to be as sustainable a land use as a conversion to forestry. The land is unlikely to be able to stabilise to the same extent as a forestry use, which will likely lead to continued soil loss and poor water quality.

Our Assessment

149. We consider that the conversion of the Station to permanent forestry is likely to be a more sustainable land use than continued cattle farming. According to the WDC map at paragraph 142 above, the Station is largely preferable for forestry rather than cattle farming. We consider the benefit to be of **low weighting**.

Research and development

150. The Applicant claims it hopes to establish a research and development group to assist with improving carbon farming techniques. However the Applicant has not provided any details on these plans and as such the OIO is unable to assess whether any benefit would occur.

New Zealand Emissions Target reduction

151. The Applicant considers the conversion of the Station to permanent forest and the resulting carbon credits generated aligns with the Government's emission reduction targets. While we consider there is benefit to this we have considered this under the 'advance significant government policy or strategy' factor.

Provisional conclusion – benefits test

152. In order for consent to be granted, the Applicant must demonstrate:
- that the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
 - that the benefit will be, or is likely to be, substantial and identifiable.
153. We have assessed the benefit likely to result from this Investment in accordance with the rural land directive contained in the Ministerial Directive Letter.
154. We have undertaken our assessment having regard to the characteristics of the land and the nature of the interest being acquired (reflecting the proportional nature of the benefit test). Here the Applicant is acquiring approximately 1,594.4614 hectares of land at 2775 Mangapoike Road, Wairoa, currently run as a sheep and beef cattle farm.

Ministerial discretion

155. Determining whether the investment is likely to result in substantial and identifiable benefit is ultimately a matter to be decided by Ministers and involves the exercise of Ministerial judgement. Ministers also have discretion under section 17(1)(c) of the Act to determine the relative importance to be given to each relevant factor (or part).

Rural land directive

156. In relation to rural land, the Ministerial Directive Letter states:

"The primary sector, and the rural land it is based on, forms a particularly important part of the New Zealand economy.

The Act acknowledges the privilege associated with the ownership or control of rural land is greater than for non-rural land by requiring the benefits resulting from the overseas investment to be substantial and identifiable (a higher threshold).

The merits of overseas investment in the primary sector can be less compelling given that we are already world leaders in this area. The Government is therefore concerned to ensure that the benefits from overseas investments in rural land are genuinely substantial and identifiable."

157. The Ministerial Directive Letter provides that the following factors will generally be of high relative importance:
- a) the 'jobs' factor;
 - b) the 'new technology or business skills' factor;
 - c) the 'increased exports receipts' factor;
 - d) the 'increased processing of primary products' factor; and
 - e) the 'oversight and participation by New Zealanders' factor.
158. We do not consider that any other factor should be given high relative importance in the context of this Investment.

Provisional conclusion

159. After careful consideration of the application, we are satisfied that the Investment is likely to result in the benefits outlined in the table at paragraph 5 of the executive summary and Attachment 9.
160. Our provisional view is that the Applicant has met the benefits test. On balance, we consider that, taking into account the size and nature of the Land and the interests being acquired, the Investment is likely to result in substantial and identifiable benefit to New Zealand. In this regard, we note:
- a) the significant level of oversight and participation in the investment by New Zealand citizens, given the Applicants 60% New Zealand ownership, the control of Management Limited by New Zealand citizens and all IWC of the investment being New Zealand citizens;
 - b) advancement of the Government's climate change policy and One Billion trees strategy through the planting of permanent forest for the generation of carbon credit. However this need to be weighed against any potential effects to regional development;
 - c) the creation of an average of 0.7 FTE over the counterfactual in the first 10 years of the investment;
 - d) introduction of capital for investment in the amount of [s 9(2)(b)(i)] and
 - e) more sustainable use of the Station land.
161. Overall, when examined together, we consider that the benefits of the investment are likely to be substantial and identifiable.
162. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and to paragraphs 5 to 8 of this Assessment Report to record your decision.

List of Attachments

1. Proposed Decision
2. Guidance for applying the Act
3. Applicant's Structure Diagram
4. Other Benefit Factors
5. Sensitive Land Details
6. A3 Overview Table

List of other documents in the Bundle

- A. Application
- B. Investment Plan (Appendix 1 of the Application)
- C. BakerAG Report
- D. WAC Report
- E. DOC Letter

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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: 27 November 2019

The following people have been given the following consent:

Case	201900348
Consent	Drylandcarbon One Limited Partnership may acquire the Land subject to the Conditions set out below.
Consent holder/s	Drylandcarbon One Limited Partnership and Drylandcarbon One GP Limited We will also refer to each Consent holder and the Consent holders together as you .
Land	Approximately 1,594.4614 hectares of land located at 2775 Mangapoike Road, Wairoa contained in Record of Title GS5A/26 being (Hawkes Bay)
Timeframe	You have until 30 November 2020 to acquire the Land.

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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 the Overseas Investment Office as OIO, us or we.

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: Planting	
<p>You must:</p> <ul style="list-style-type: none">a) plant no more than 1,065 hectares in exotic species;b) plant no less than an average of 880 exotic trees per hectare planted; andc) allow and/or encourage no less than 271 hectares of the Land to regenerate into indigenous vegetation and indigenous forest cover, with no exotic forest planting to occur on this part of the Land. <p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	<p>By 30 November 2022</p> <p>At all times</p>
Special condition 2: Jobs	
You must ensure that over the course of Year 1 and Year 2 of planting combined, the equivalent of at least 11 FTE are employed on the Land	During Year 1 and Year 2 of planting referred to at Special condition 1 above

Special condition 3: Introduction of capital for investment	
<p>You must introduce at least [s 9(2)(b)(n)] on planting permanent forest on the Land.</p> <p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	<p>By 31 December 2022</p>
Special condition 4: Special Land	
<p>Should the Crown decide to accept the offer of Special Land, you must, upon becoming the registered proprietor of the Land, adopt and be bound by any offer or agreement that the Vendor has made or entered into with the Crown in relation to the Special Land that forms part of the Land.</p> <p>If the relevant Ministers make a decision to waive the offer of Special Land in accordance with Regulation 15(1), this special condition will be deemed to have been complied with.</p> <p>If the Crown decides to accept the offer of Special Land within the timeframe as set out in the Special Land Agreement, you must:-</p> <ol style="list-style-type: none"> 1. deal with the Crown in accordance with the requirements of the Act as if you were the party making the initial offer of the Special Land to the Crown; 2. transfer the Special Land to the Crown on terms acceptable to the Crown as outlined in the Special Land Agreement. <p>The Crown reserves the right to caveat the Land until completion of survey under the Special Land Agreement.</p> <p>You will be responsible for all of your own costs incurred as a result of the transfer of the Special Land.</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>Within 10 working days of being requested to do so by the Crown.</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> <ul style="list-style-type: none"> a) 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 b) 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> <ul 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> <ul 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. <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, (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, (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 of good character	
<p>You and the Individuals Who Control You:</p> <ul style="list-style-type: none"> 1. must continue to be of good character, and 2. must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009. In summary, these sections describe convicted or deported people who are not eligible for visa or entry permission to enter or be in New Zealand and people who are considered likely to commit an offence or to be a threat or risk to security, public order or the public interest. <p>The Individuals Who Control You are individuals who:</p>	<p>At all times</p>

<ul style="list-style-type: none"> (a) are members of your governing body, (b) directly or indirectly, own or control 25% or more of you or of a person who itself owns or controls 25% or more of you, and (c) are members of the governing body of the people referred to in paragraph (b) above. 	
Standard condition 5: tell us about changes that affect you, the people who control you, or people you control	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <ol style="list-style-type: none"> 1. You, any Individual Who Controls You, or any person in which you or any individual who controls you hold (or at the time of the offence held) a 25% or more ownership or control interest commits an offence or contravenes the law anywhere in the world. This applies whether or not you or they were convicted of the offence. In particular, please tell us about any offences or contraventions that you are charged with or sued over and any investigation by enforcement or regulatory agencies or professional standard bodies. 2. An Individual Who Controls You ceases to be of good character; commits an offence or contravenes the law (whether they were convicted or not); becomes aware of any other matter that reflects adversely on their fitness to have the Land; or becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (see standard condition 4). 3. You cease to be an overseas person or dispose of all or any part of the Land. 4. You, any Individual Who Controls You, or any person in which you or any Individual Who Controls You hold (or at the time of the event held) a 25% or more ownership or control interest: <ul style="list-style-type: none"> (a) becomes bankrupt or insolvent (b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or (c) becomes subject to any form of external administration. 	<p>Within 20 working days after the change</p>

Standard condition 6: dispose of the Land if you do not comply with key special conditions

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.

We may also require you to execute a security deed before you may acquire the Land. The security deed:

1. must be in the form we require,
2. must be executed and delivered to us before you acquire the Land,
3. gives us power to appoint a receiver to dispose of the Land if you do not do that as required by this standard condition 6,
4. will provide, among other things, that if we appoint a receiver, the receiver may dispose of the Land, deduct his or her costs from the proceeds of sale, and pay the remainder to you.

If all or part of this standard condition 6 applies to a special condition, we have said so in that condition.

We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:

Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.

Within six weeks of the date of our notice.

Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.

Within six weeks of the date of our notice.

Dispose of the Land: dispose of the Land to a third party who is not your associate.

Within six months of our notice.

Offer without reserve: if you have not disposed of the Land within six months of our notice, offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.

Within nine months of our notice.

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.

<p>Report disposal to us: send us, in writing, evidence:</p> <ul style="list-style-type: none">(a) that you have disposed of the Land,(b) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor),(c) the purchaser is not your associate.	<p>Within one month after the Land has been disposed of.</p>
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Reporting conditions

We need information from you about how your Investment Plan is tracking so we can monitor your progress against the Conditions and so we can measure the benefits you have brought to New Zealand through your investment.

Every year, you must lodge an **annual report**. It must:

1. be sent to **oiomonitoring@linz.govt.nz** by these dates:
 - (a) Year one: 30 January 2021
 - (b) Year two: 30 January 2022
 - (c) Year three: 30 January 2023
 - (d) Year four: 30 January 2024
 - (e) Year five: 30 January 2025
2. contain information about:
 - (a) your progress in implementing the special conditions, and
 - (b) the number of trees planted, the varietal of trees planted and the areas planted;
 - (c) the number of jobs created and the job titles and approximate wages or salaries of the jobs created;
 - (d) the amount spent on the conversion of the Station and what the monies have been spent on;
3. follow the format of the template annual report published on our website at:
https://www.linz.govt.nz/system/files_force/media/doc/oiio_annual-report-template_20180322.docx?download=1
4. If requested in writing by the OIO, 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 content was granted or
 - (b) the conditions of this consent.

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ATTACHMENT 2- GUIDANCE FOR APPLYING THE ACT

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

“Benefit to New Zealand criteria”

3. 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 s16(1)(c)(ii), s16A); and
 - b) that benefit will be, or is likely to be, substantial and identifiable (section 16(1)(c)(ii), s16A).
4. 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.
5. 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.
6. 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 16A(1)(b), involves a collective assessment of the relevant factors.

Justice Miller’s “with and without test”

Economic factors

7. The High Court in *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147 (“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

8. 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 suggested²³ 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 noted²⁴, it is not easy to see how a benefit that will happen anyway could be regarded as substantial for the purposes of section 16A(1)(c). 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

9. With regard to the factors in regulation 28 of the Overseas Investment Regulations 2005, Miller J noted that:
10. 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.²⁵
11. 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.

“Rural Land” Directive

12. The overseas investment involves the acquisition of ‘rural land’ being land that is non-urban and over 5 hectares in size (excluding any associated land), but excludes ‘forest land’. Therefore, in accordance with directions from Ministers, we have treated the following factors as being of high relative importance:²⁶
 - c) the “jobs” factor (section 17(2)(a)(i));
 - d) the “new technology or business skills” factor (section 17(2)(a)(ii));
 - e) the “increased exports receipts” factor (section 17(2)(a)(iii));
 - f) the “increased processing of primary products” factor (section 17(2)(a)(vi)); and
 - g) the “oversight and participation by New Zealanders” factor (regulation 28(j)).

Conditions

13. Conditions may be imposed on any consent that is granted, under section 25(A). The attached Report recommends some conditions that Ministers may wish to consider imposing in this case.
14. 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.

²³ *Tiroa E* at [36].

²⁴ *Tiroa E* at [38].

²⁵ *Tiroa E* at [36].

²⁶ Ministerial Directive letter date 28 November 2017, paras 13-17.

Decision

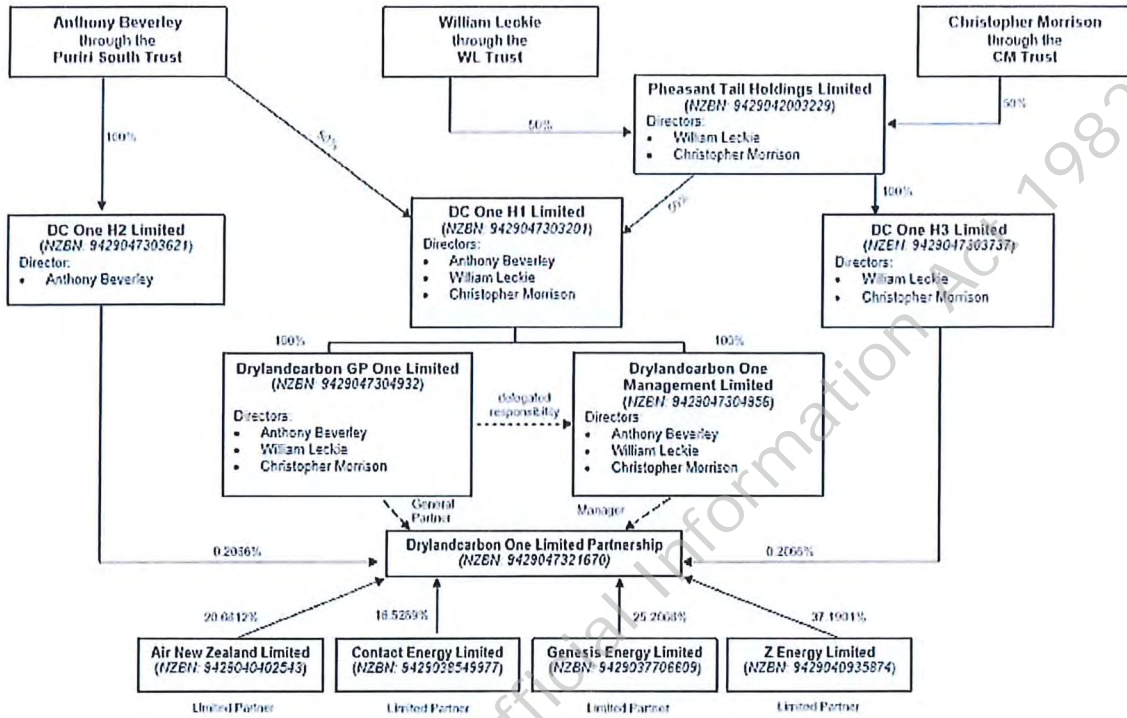
15. The decision that you are required to make should be based on information available to you that you consider is sufficiently reliable for that purpose. The information that the Overseas Investment Office has taken into account in making its recommendation is summarised in the attached Report.
16. 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.
17. If required, staff from the Overseas Investment Office are available to brief you on the Office's recommendations.

Good character criterion

18. Section 16(2)(c) of the Act requires that Ministers be satisfied that the relevant overseas person or, (if that person is not an individual) all the individuals with control of the relevant overseas persons are of good character.
19. The term "good character" is not defined in the Act. The majority of the Select Committee reporting back on the Bill in 2005 confirmed that the "good character" test was needed as it is important to ensure that all persons investing in New Zealand are people unlikely to act inappropriately and bring New Zealand into disrepute.
20. When undertaking the good character assessment, Ministers must be satisfied that the character of all the individuals with control of the relevant overseas person is sufficient so that they should be granted the privilege of owning or controlling sensitive New Zealand assets.
21. The good character test is applicable to individuals, not entities such as body corporates. However, where the investment is to be carried out by a body corporate, the character of the relevant individuals who control the body corporate will need to be considered. Where an offence or contravention is committed by a person to which an individual had a 25% or more ownership or control interest, this is a mandatory consideration. Where the individual's interest in the person is less than this, there generally must be other grounds to reasonably infer participation by the individual in the alleged wrongdoing.
22. Section 19(1) of the Act states that the following factors must be taken into account (without limitation) in assessing whether or not a person is of good character:
 - a) offences or contraventions of the law by the person, or by any person in which the individual has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not):
 - b) any other matter that reflects adversely on the person's fitness to have the particular overseas investment.
23. All relevant matters must be weighted up before making a decision that an individual is of good character. If the decision-maker wishes to rely on a matter to which the applicant has not had an opportunity to respond, then such an opportunity to respond needs to be given to the applicant.
24. How much weight should be given to a particular matter depends on a number of factors, including how closely linked the particular matter is with the investment being made. While submissions on weighting given by the relevant overseas person or individual with control may be considered, the ultimate decision as to the weighting to be given to relevant matters is for the decision-makers.
25. Matters which might be relevant include:

- a) Credible allegations of offending or contraventions of the law (assessing whether the allegation is sufficiently linked to an individual with control or relevant overseas person);
 - b) Investigations, prosecutions or other enforcement action by regulatory or professional bodies;
 - c) Track record in New Zealand.
26. Matters which are unlikely to be relevant include:
- a) Adverse information that does not relate to an individual with control (for example, offences or contraventions by a relevant overseas person which occurred before the particular individual became involved with the relevant overseas person);
 - b) Where the decision maker is satisfied that allegations about a relevant overseas person or individual with control have been fully investigated by the relevant regulatory or other authority and the person or individual has been cleared of any wrongdoing;
 - c) Adverse information that does not impact on the character of a relevant overseas person or individual with control.
27. Briefly, some of the things we consider when weighing up "good character" include:
- a) connection to the Individuals with Control (IWCs) or Relevant Overseas Person (ROP): we assess the level of control between any of the IWCs of the ROP and the particular matter. For example, a breach of safety rules by an employee of subsidiary company where the company was fined would likely have a low (or no) connection with an IWC who an executive director of the parent company was, whereas an executive decision by a company to illegally collude with a competitor would likely have a high connection with that IWC.
 - b) relevance to this investment: we assess how relevant the particular matter is to the nature of this particular investment. For example, a dangerous driving conviction by an IWC would have low relevance in connection with the acquisition of a dairy farm, whereas a conviction for discharging farm effluent into a waterway would have a high relevance to the acquisition of a dairy farm.
 - c) what actions, if any, were taken to remedy the situation and reduce the chances of it reoccurring.
28. The onus is on the applicants to satisfy the decision maker that all the individuals with control are of good character.
29. If the decision maker has doubts about the character of an individual with control which result in it not being satisfied that the test for good character has been met, then the application for consent must be declined.

ATTACHMENT 3 – APPLICANTS STRUCTURE DIAGRAM



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ATTACHMENT 4 - OTHER BENEFIT FACTORS

The table below lists other factors in the Act and regulations 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 purposes of our assessment.

Factor	Reason not relevant or insufficient
New technology or business skills – s17(2)(a)(ii)	The Applicant has indicated it hopes to establish a research and development function to improve the science behind and methods and techniques to improve carbon farming and permanent forest restoration. However, these are not concrete plans and the Applicant has not made any detailed claims in this regard and as such we are unable to assess any benefit that may be created if they were to occur.
Increased export receipts – s17(2)(a)(iii)	The investment will not result in an increase in export receipts.
Added market competition, increased productivity, efficiency, and enhanced domestic services – s17(2)(a)(iv)	The investment will not provide added market competition, increased productivity and efficiency or enhance domestic services.
Increased processing of primary products – s17(2)(a)(vi)	The investment will not involve an increase in the processing of primary products (noting this is permanent forest and the harvesting of the current forest on the Land would occur anyway).
Walking Access-s17(2)(a)	The Applicant does not intend to undertake WAC's recommendations for providing walking access.
Indigenous vegetation/fauna – s17(2)(b)	The Vendor had consulted with the Department of Conservation (DOC) as part of its consent conditions when acquiring the Station (case 201220039). We contacted DOC to confirm that no additional protections were required on the Station since their previous letter to the Vendor (in bundle). DOC have advised the OIO no additional protections are required.
Trout, salmon, wildlife and game – s17(2)(c)	As for the benefit factor above, DOC confirmed no additional protections were required.
Historic heritage – 17(2)(d)	The Applicant and Vendor, and from our review, are not aware of any areas of historic heritage on the Station.
Key person in a key industry – reg 28(b)	The investment will not involve a key person in a key industry.
Affect image, trade or international relations – reg 28(c)	The Applicant considers a refusal to grant consent may indicate New Zealand does not take its commitments under the Paris Agreement seriously. However a well-reasoned decision is unlikely to affect New Zealand's image, trade or international relations.
Owner to undertake other significant investment – reg 28(d)	The Vendor is not planning to undertake any other significant investment as a result of this investment.
Previous investments – reg 28(e)	While the Investor Partners have made investments in New Zealand previously, the Applicant is a new entity and has not yet made any other investments in New Zealand.
Enhance the viability of other investments – r28(g)	The Applicant does not have any other investments acquisition of the Station will enhance the viability of.

Factor	Reason not relevant or insufficient
Strategically important infrastructure – reg 28(h)	There is no strategically important infrastructure on the Station.
Economic interests – reg 28(i)	This investment will not affect New Zealand's economic interests.

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ATTACHMENT 5 - SENSITIVE LAND DETAILS

2775 Mangapoike Road, Wairoa

Land Interest	Freehold Interest (approximately 1594.4614 hectares)
Record(s) of Title	GS5A/26 (Hawkes Bay)
Sensitivity	Is more than 5 hectares of non-urban land

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ATTACHMENT 6 - OVERVIEW TABLES FOR DRYLAND CARBON 201900348

	<p>Application</p> <p>Drylandcarbon One Limited Partnership and Drylandcarbon GP One Limited seek consent to acquire approximately 1,594.4614 hectares of land at 2775 Mangapoike Road, Wairoa, known as Te Puna Station.</p> <p>The Vendor is Craigmere (Te Puna) Limited,</p> <p>The Applicant intends to plant approximately 1,080 hectares of the Station in permanent forest.</p>	<p>Provisional recommendation</p> <ul style="list-style-type: none"> • Our provisional recommendation is to grant consent. • Relevant tests for this transaction: <ul style="list-style-type: none"> ○ Investor Test ○ Benefits test – substantial and identifiable benefits <p>Factors for Ministers to particularly consider:</p> <p>We consider this application to be finely balanced. There are two issues, in particular, that require consideration by Ministers:</p> <ul style="list-style-type: none"> • whether the investment meets the substantial and identifiable benefit threshold for rural land; and • the benefit of farming to forestry conversions in the Wairoa region.
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Overview of assessment: investor test

Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
Relevant overseas persons (ROP) and individuals with control (IWC) confirmed	ROP & IWC identified	ROP & IWC identified	Paragraphs 35-36 Section 15 of the Act.
Collectively have business experience and acumen relevant to the investment	Test met	The IWCs have experience relevant to the investment.	Paragraphs 37-40 Section 16(2)(a) of the Act.
ROP demonstrated financial commitment	Test met	The Applicant has demonstrated financial commitment by entering into the partnership agreement; raising capital commitments to proceed with the investment; and engaging professional advisers.	Section 16(2)(b) of the Act.
Good character	Test met	We are satisfied that the ROP/IWC are of good character.	Paragraphs 41-42 and Error! Reference source not found. Section 16(2)(c) of the Act.

Overview of assessment: investment and benefit test

Relevant benefit factors	Applicant's claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions and reporting requirements	Cross refs
			Indicative strength	Summary		
Oversight and participation by New Zealanders	New Zealanders will have a significant level of oversight and participation in the investment. Applicant has delegated substantially all of its management duties, powers and control functions to Management Limited which will have the power to commit the Partnership to future investments. Management Limited is owned and controlled by New Zealand citizens. All IWC are New Zealand citizens		Strong weighting	New Zealanders will have a significant level of oversight and participation in the investment.		Paragraphs 92-96 reg28(j)
Advance significant government policy or strategy	Conversion of the Station to permanent forest will align with the Government's Climate Change policy and One Billion Trees strategy	A small amount of planting may occur which would align with the Government's Climate Change policy and One Billion Trees strategy, albeit on a significantly smaller scale.	Moderate weighting	Conversion of the Station will assist the Government with achieving the One Billion trees planted target and meeting its greenhouse emissions targets. Possibly a small regional benefit from conversion of the Station.	Condition: the planting of at least 95,000 trees on at least 1,150 hectares of land on the Station.	Paragraphs 97-117 reg28(f)
Job opportunities	The Applicant will create 9.88 FTE over the counterfactual in Year 1-2 of the investment and an average of 0.7 FTE a year over the counterfactual in the first 10 years of the investment.	2.12 FTE employed on the Station, 2 of which are permanent full time roles.	Low weighting	A small increase in FTE will be created by the investment, although we note that none of these are permanent roles.	Condition: The creation of at least 11 FTE in Year 1-2 of the investment Report: the number of FTE created each year and their roles and salary/wage.	Paragraphs 118-131 s17(2)(a)(i)
Additional investment for development purposes	Conversion of the Station to permanent forestry will result in approximately \$ being introduced into New Zealand for development, with a small amount of that sourced from New Zealand debt	Minimal capital investment	Low weighting	The investment will result in a relatively small amount of net capital investment for development being introduced into New Zealand.	Condition: spend of at least \$ on the conversion of the Station to permanent forest by 31 December 2022. Report: on the amounts spent and what the monies have been spent on.	Paragraphs 132-139 s17(2)(a)(v)
Offer to sell seabed / foreshore / riverbed to the Crown	The Vendor has offered to sell the special land to the Crown.	The special land would not be offered to the Crown.	Low weighting	The Crown will have the ability to acquire the special land on the Station if it chooses to do so.	The Applicant will be conditioned to sell the special land to the Crown should the Crown agree to accept the offer of the special land. As the Crown is involved in this transaction there are no reporting requirements.	Paragraphs 140-144 s17(2)(f)
Consequential benefits	Conversion of the Station to permanent forest is a more sustainable land use	The Station would continue to be farmed, with a small amount of planting.	Low weighting	Permanent forestry is a more appropriate use of the Station than cattle farming.	-	Paragraphs 145-151 reg28(a)