



To: Hon Dr Megan Woods, Associate Minister of Finance
Hon Damien O'Connor, Minister for Land Information

ASSESSMENT REPORT: Kauri Forestry LP

Date	17 July 2023	Classification	IN CONFIDENCE: Commercially sensitive
LINZ reference	202300321 BRF 24-007	Deadline	1 August 2023

Purpose

We seek your decision on an application for an exemption from the farm land offer criterion under section 20 of the Overseas Investment Act 2005 (**Act**).

Action sought

1. Review this report and consult with each other as desired.
2. Determine whether to grant the exemption as set out in **Attachment 1**.
3. Indicate your decision on pages 3 – 4.

Land Information New Zealand Toitū Te Whenua Contacts

Name	Position	Contact	First contact
Anneke Turton	Manager Applications	04 830 2513	<input checked="" type="checkbox"/>
Emma Kelly	Principal Advisor	04 462 4469	<input type="checkbox"/>

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A. Summary

4. Kauri Forestry LP (**Applicant**) has applied for an exemption from the requirement to offer an interest in farm land for acquisition by New Zealanders on the open market for approximately 272 hectares of land at 599 Longbush Road, Martinborough contained within Record of Title 1126545 (**Title**).
5. The Applicant seeks an exemption on the basis that it will be holding the land on trust for Roderick William Cameron and Tod Hamish Lewis Barrell as trustees of the Remcam Trust (**Vendor**) pending the completion of a subdivision of the Title. The parties have entered into a unique agreement through which the Vendor can settle the sale of part of the Title to the Applicant, while retaining access to and beneficial ownership in the land that is the subject of this application.
6. The 272 hectares of land will only be temporarily transferred to an overseas person and will return to New Zealand ownership for use as farm land following the subdivision.
7. For the reasons set out in this report, our recommendation is to **grant the exemption** in respect of the Land.
8. Section 20(9) of the Act requires us to publish your decision and the reasons for your decision on our website. Accordingly, we also recommend that you **adopt the reasons** set out in **Attachment 1**. If you do not agree with the reasons, or do not agree to grant an exemption in respect of the Land, then we recommend that you seek further advice about how to best document and publish your reasons.

Key Information

Applicant	Kauri Forestry LP Switzerland (71.76%), Germany (28.24%)
Vendor	Roderick William Cameron and Tod Hamish Lewis Barrell as trustees of the Remcam Trust New Zealand (100%)
Land	Approximately 272 hectares at 599 Longbush Road, Martinborough, contained in Record of Title 1126545.
Application Type	Farm land offer criterion exemption
Relevant Test	Section 20
Recommendation	Grant exemption for the Land for the reasons set out in Attachment 1

Assessment timeframe requirements

9. The Overseas Investment Regulations 2005 (**Regulations**) specify that the total assessment timeframe for this application is 60 working days. This consists of 30 days for applications for exemption plus a 30-working day extension because the decision was called in by the Minister for Land Information.¹
10. This application is currently on day 43, therefore a decision is required by 1 August 2023 to enable the decision to be communicated to the Applicant.

¹ Clause 7(e) of Schedule 5 (Time frames relating to applications) of the Regulations.

B. Decision

Decision about whether or not to grant an exemption to the farm land offer criterion

11. Grant or decline to grant the Exemption for the Land:

Hon Dr Megan Woods

Hon Damien O'Connor

Grant

Decline

Grant

Decline

12. If you agree to grant the Exemption for the Land, agree to the reasons for your decision as set out in **Attachment 1**:

Hon Dr Megan Woods

Hon Damien O'Connor

Agree

Disagree

Agree

Disagree




Hon Dr Megan Woods

Date:



Hon Damien O'Connor

Date:

25/7/23

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C. Background

13. The Applicant has applied for an exemption from the requirement in section 16(1)(f) of the Act to offer a farm land or section 12 interest for acquisition by New Zealanders on the open market.
14. The Applicant holds a standing consent for overseas investments in sensitive land for the purpose of forestry activities (**Standing Consent**).²
15. The Applicant has entered into a sale and purchase agreement to acquire approximately 487 hectares of farm land at 599 Longbush Road, Martinborough contained in the Title.³ Under the agreement, the Applicant will acquire all 487 hectares of land and arrange for the subdivision of approximately 215 hectares of land which they will retain for the purpose of production forestry under their Standing Consent (**Proposed Forestry Land**). Once the subdivision is complete the Applicant will transfer the new title for the remaining approximately 272 hectares of land (**Subdivided Land**) back to the Vendor for use as farm land.
16. The Proposed Forestry Land, which the Applicant intends to retain for forestry, has been advertised. This application for exemption relates only to the Subdivided Land which will revert back to the Vendor following the subdivision.
17. The Applicant submits that an exemption should be granted because the Subdivided Land is not genuinely for sale as it will revert back to the New Zealand Vendor for the purpose of farming activities. Other New Zealanders are therefore not missing out on a fair opportunity to acquire an interest in the Subdivided Land.

D. Application of the Act

18. Section 20 provides that the Minister may exempt a person or transaction from:
 - the requirement that farm land or farm land securities be offered to New Zealanders (s 20(1)(a)),
 - the requirement that such offers be on the open market (s 20(2)(a)), or
 - any other requirement in the Regulations about how farm land must be advertised (s 20(2)(b)).
19. All decisions under section 20(1)(a) and section 20(2) have been delegated to LINZ.⁴
20. You may only grant an exemption from the requirement to offer farm land to New Zealanders under section 20(1)(a) if you consider that:⁵
 - (a) the overseas investment need not meet the farm land offer criterion by reason of:
 - (i) the circumstances relating to the particular overseas investment or interest being acquired, or
 - (ii) the nature of the land (for example, its productive capacity),
 - (b) there are circumstances that mean that it is necessary, appropriate, or desirable to provide an exemption, and

² Application 201810211 granted March 2021, expiry 31 March 2024.

³ The Applicant has advised that Record of Title 777359 comprises a total of 526.6069 ha, but that an area of 39.9249 ha (Lots 1 & 3 DP 466405) will be subdivided prior to settlement of the sale and purchase agreement. We understand that the 39.9249 ha will be retained by the Vendor and will not be held 'on trust' by the Applicant.

⁴ See Table A, row 1, of the Ministerial Delegation Letter (24 November 2021).

⁵ Section 20(1)(a) and (3).

- (c) the extent of the exemption is not broader than is reasonably necessary to address those circumstances.
21. For exemptions under section 20(2)(a) and (b), only the criteria in paragraph 20(b) and 20(c) must be met.
22. In considering whether a proposed exemption meets the applicable criteria, you must have regard to the purpose of the Act set out in section 3.⁶ This includes acknowledging that it is "a privilege for overseas persons to own or control interests in sensitive New Zealand assets by –
- (a) requiring overseas investments in those assets, before being made, to meet criteria for consent; and
 - (b) imposing conditions on those overseas investments."
23. You may also have regard to any other factors that seem relevant in the circumstances.⁷

E. Applicant and proposed exemption

Applicant

24. The Applicant was established in February 2018 and is part of the Craigmore Sustainables Group. The Applicant obtains finance through capital contributions from limited partner investors.
25. The Applicant is an overseas person for the purposes of the Act as all the limited partnership interests are held by overseas persons. There are three limited partners:

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

26. [REDACTED]

⁶ Section 20(4)(a).

⁷ Section 20(4)(b).

Land

27. An aerial photo of the land, showing the approximate boundary of Record of Title 1126545 is below at figure 1. An outline of the proposed subdivision is also below at Figure 2, with the Proposed Forestry Land outlined in pink.



Figure 1: Aerial photo of land

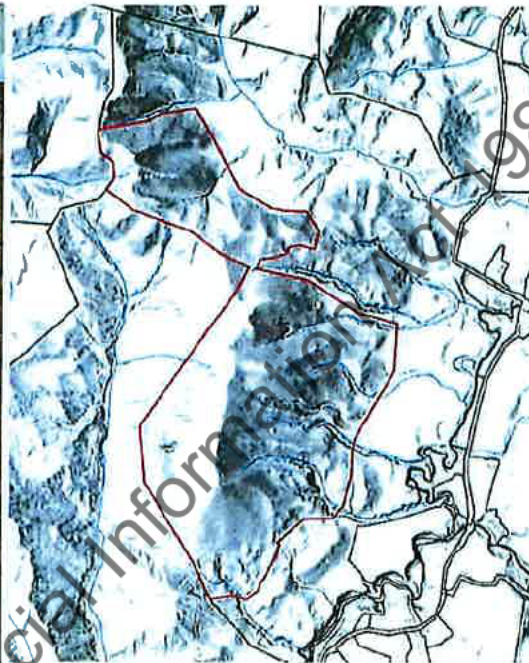


Figure 2: Proposed Subdivision

28. The Subdivided Land is farm land because it is currently used to farm livestock.⁸ The Vendor will continue to have access to the Subdivided Land prior to and after settlement to continue farming activities. The Applicant has also agreed to allow access to the Proposed Forestry Land after settlement to the Vendor's beneficiaries and a neighbouring land owner for recreational activities.⁹

Exemption requested

29. The Applicant is requesting an exemption from the requirement in s 16(1)(f) of the Act to offer the interest in farm land for acquisition by New Zealanders on the open market. The Applicant has requested an exemption in relation to the transfer of the Subdivided Land to the Applicant pending completion of the subdivision.
30. If the requested exemption is not granted, the Vendor will need to advertise the Subdivided Land on the open market. That advertisement would not be genuine given the Vendor's clear intention to retain the land. Alternatively, the parties will not be able to settle the sale until after the subdivision is complete. This would mean a delay in the Vendor receiving money which they wish to reinvest back into the land, and a delay in planting the Proposed Forestry Land.

⁸ The Applicant has not provided specific details in relation to the current state of the land as this is not required for this exemption application.

⁹ Access is permitted for horse-riding, walking, and biking.

F. Are the criteria for exemption met?

31. You must be satisfied that the overseas investment need not meet the farm land offer criterion by reason of the circumstances relating to the overseas investment or interest or the nature of the land.

Subdivided Land held on trust for Vendor

32. The Applicant and Vendor have entered into a sale and purchase agreement in relation to the Proposed Forestry Land. The Agreement is conditional on the Vendor subdividing the Title into two new titles of approximately 215 hectares and 272 hectares (**Subdivision**).
33. Due to foreseen delays in the subdivision process, the parties have agreed that if the Subdivision is not complete by the settlement date, the Vendor will transfer the Title in full to the Applicant. The Applicant must then hold the Subdivided Land on trust for the Vendor pending completion of the Subdivision.
34. The sale and purchase agreement between the parties contains extensive conditions relating to the Subdivided Land and ensures that the Vendor retains access for the purpose of farming activities and ensures that the Land will revert back to the Vendor as soon as possible. The Vendor will register a caveat on the Title after settlement to confirm their beneficial interest in the Subdivided Land.
35. As a result of the parties' unique agreement, there is no genuine opportunity for other New Zealanders to purchase the Subdivided Land. Even if the Title was advertised in full, the Vendor has confirmed they will not accept any offer to purchase the Title if they cannot retain the Subdivided Land.
36. LINZ consider that New Zealanders are not missing out on a genuine opportunity to acquire farm land for farming activities as a result of the circumstances of the investment.

Third party submission

37. LINZ received a third party submission in relation to this application from a neighbouring property owner (**Neighbour**). The Neighbour is part of a property syndicate which expressed interest in the Proposed Forestry Land when it was advertised in January 2023. The Neighbour advised that the syndicate intended to present an offer to purchase the Proposed Forestry Land, however did not do so due to a concern regarding access to the Proposed Forestry Land. The Neighbour has since advised that if the whole Title was advertised, including the Subdivided Land, then access would not have been an issue and *"it is very likely that the syndicate would have made an offer to purchase all of the land."*
38. The Applicant advises that from its perspective, the Neighbour had ample opportunity to present an offer for the Proposed Forestry Land and chose not to do so. The Applicant also advises that an access issue was never raised with it.
39. LINZ do not consider that this third party submission affects the outcome of this application as the Subdivided Land is not genuinely available for purchase by third parties. It will only transfer to the Applicant because of the parties' unique agreement for sale and purchase.

Is the exemption necessary, appropriate, or desirable?

40. You must consider the circumstances are such that it is necessary, appropriate, or desirable to provide an exemption.
41. For the reasons set out above, LINZ considers that the circumstances of the investment are such that it is appropriate or desirable to grant an exemption.

The extent of the exemption

42. An exemption must not be broader than reasonably necessary to address the particular circumstances.
43. We consider the exemption requested by the applicant is appropriate or desirable in the circumstances as:
 - (a) The exemption is limited to the Subdivided Land which will be held on trust for the Vendor and will return to New Zealand ownership following subdivision;
 - (b) The exemption only applies to the Applicant as the purchaser of Record of Title 777359;
 - (c) The exemption is limited to 12 months from the date the exemption is granted to allow sufficient time for settlement to occur; and
 - (d) The Applicant is required to sell the land for farming purposes within three years of settlement under special condition 13 of the Standing Consent.

Purpose of the Act

44. The purpose of the Act is to acknowledge that it is a privilege for an overseas person to own or control sensitive interest in sensitive New Zealand assets by requiring overseas investments in those assets, before being made, to meet criteria for consent; and imposing conditions on those overseas investments. One of those criteria is the farm land advertising requirement, the purpose of which is to give New Zealanders an opportunity to acquire farm land.
45. In this case, the Subdivided Land is not genuinely for sale and will remain beneficially owned by the New Zealand Vendor. The parties have agreed to allow the settlement of the sale of the Proposed Forestry Land to the Applicant without the delay of the pending subdivision. This allows the Applicant to commence its investment as early as possible, and releases capital for the Vendor to use towards expanding the farming activities on the Subdivided Land.
46. LINZ considers that the exemption is broadly consistent with the purpose of the Act because it is appropriate or desirable in the circumstances and is no broader than reasonably necessary.

Other factors

47. You may have regard to any other factors that seem relevant in the circumstances. LINZ have not identified any relevant factors for this application other than the ones already discussed above.

G. Conclusion

48. We consider that the criteria for granting a farm land advertising exemption met and therefore our recommendation is to **grant the exemption**.

[s 9(2)(a)]

Anneke Turton

Manager Applications (Overseas Investment - LINZ)

Date: 13 July 2023

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ATTACHMENT 1 – The Proposed Exemption

Exemption from the farm land offer criterion

Read this decision carefully - you must comply with all the conditions. If you do not, we may revoke your exemption.

Notice of Decision Case: 202300321

1. Decision Date

[DATE] July 2023

2. Interpretation

- (1) In this notice, unless the context otherwise requires—

Act means the Overseas Investment Act 2005.

Exemption means the exemption in paragraph 4.

Exemption Holder means Kauri Forestry LP

Land means approximately 272 hectares of land contained in Record of Title 1126545

Qualifying Transaction means the acquisition the Land by the Exemption Holder

LINZ means Toitū Te Whenua Land Information New Zealand.

Regulations means the Overseas Investment Regulations 2005.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this Exemption has the same meaning as in the Act or the Regulations (as the case may be).

3. Duration of the Exemption

The Exemption Holder must acquire the Land by [12 months from the Decision Date].

4. Exemption from farm land offer criterion under the Act

- (1) The requirement in section 16(1)(f) of the Act does not apply in respect of an application for consent under the Act for a Qualifying Transaction

5. Amendment or revocation of the Exemption

The Exemption and conditions of the Exemption may at any time be amended or revoked by LINZ.

6. Sanctions

The Act provides for civil and criminal sanctions for breaching the Act, failing to comply with conditions of exemption and failing to provide information required by LINZ. LINZ has an obligation to investigate and act upon alleged and suspected breaches of the Act.

7. Reasons for Exemption

The purpose of the requirement to advertise farm land is to give New Zealanders an opportunity to try to acquire farm land.

An exemption from this requirement may be granted if the decision maker considers that the overseas investment need not meet this requirement by reason of the circumstances relating to the particular overseas investment or section 12 interest or the nature of the land to which the section 12 interest relates.

An exemption may only be granted if there are circumstances that mean that it is necessary, appropriate, or desirable to provide an exemption, and the extent of the exemption is not broader than is reasonably necessary to address those circumstances.

In this case, an exemption is appropriate and desirable as:

- the Land will be held on trust for the New Zealand Vendor pending completion of the subdivision of the Record of Title.
- the Vendor does not have any intention of permanently divesting their ownership of the Land.
- The transfer of the Land to the Applicant is a temporary measure. New Zealanders will not permanently lose the opportunity to acquire the Land as it will revert to New Zealand ownership once the subdivision is complete.

The relevant Ministers consider the extent of the Exemption is not broader than is reasonably necessary as it is limited to the specific and unique transaction; that it only applies for a limited period; and the transfer is temporary only.

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