

Decision Date

25 June 2015

Decision

Consent has been granted to **Kahukura Limited**, or a 100% subsidiary of **Kahukura Limited** ("the Applicant"), giving effect to a transaction which will result in:

- (a) An overseas investment in sensitive land, being the Applicant's acquisition of a freehold interest in approximately 20.0200 hectares of land at Lot 10 Mataka Station, Rangihoua Road, Kerikeri.

("the Investment")

Consent is granted subject to the following conditions:

Statutory Conditions of Consent

Section 28 of the Overseas Investment Act 2005 ("the Act") provides that it is a condition of every consent, whether or not it is stated in the consent, that:

- (a) the information provided by each applicant to the Overseas Investment Office or the relevant Ministers in connection with the application was correct at the time it was provided; and
- (b) each consent holder must comply with the representations and plans made or submitted in support of the application and notified by the Overseas Investment Office as having been taken into account when the consent was granted, unless compliance should reasonably be excused.

For the purposes of section 28(1)(b), the representations and plans made or submitted in support of the application and taken into account when consent was granted are those contained in the correspondence listed in the statutory declaration of François Pierre Michel Dotta dated 17 June 2015 and in all attachments annexed to that correspondence.

Special Conditions

Interpretation

Any term or expression that is defined in the Overseas Investment Act 2005 and used, but not defined, in this consent has the same meaning as in the Overseas Investment Act 2005:

Academy means the Bay of Islands International Academy, being a school located near the Land;

Act means the Overseas Investment Act 2005;

Applicant means Kahukura Limited, a company incorporated in the British Virgin Islands on 30 October 2014;

Individuals with Control means:

- (a) Francois Pierre Michel Dotta;
- (b) the trustees of the Trust;
- (c) the individuals that have the right to control the appointment or removal of the trustees of the Trust; or
- (d) the individuals that have the right to amend or control the amendment of the Trust's trust deed; or
- (e) the individuals that have a beneficial interest in or entitlement to 25% or more of the Trust's trust property; or
- (f) the individuals who constitute the governing body of, or have a 25% or more ownership or control interest in, a person that:
 - (i) is a trustee of the trust; or
 - (ii) has the right to control the appointment or removal of the trustees of the Trust; or
 - (iii) has the right to amend or control the amendment of the Trust's trust deed; or
 - (iv) has a beneficial interest in or entitlement to 25% or more of the Trust's trust property.

Land means the land situated at Lot 10 Mataka Station, Rangihoua Road, Kerikeri, as contained in Certificate of Title 190763; and

Trust means The Largo Winch Trust, a trust established by deed dated 6 August 2014.

Conditions

1. The consent will lapse if the Investment has not been acquired by and transferred to the Applicant within twelve months of the date of consent.
2. The Applicant must notify the Overseas Investment Office in writing as soon as practicable, and no later than twelve months from the date of consent, whether settlement of the acquisition of the Investment took place. If settlement of the acquisition of the Investment did take place, the notice must include:
 - (a) the date of settlement;
 - (b) the final consideration paid (plus GST, if any);
 - (c) the structure by which the acquisition was made, and who acquired the Investment;
 - (d) where applicable, copies of transfer documents and settlement statements; and
 - (e) any other information that would aid the Overseas Investment Office in its function to monitor conditions of consent.
3. The Applicant, or the individuals with control of the Applicant, must:
 - (a) continue to be of good character; and
 - (b) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.

4. The Applicant must notify the Overseas Investment Office in writing within 20 working days if:
 - (a) the Applicant, or (if the Applicant is not an individual) any individual with control of the Applicant:
 - (i) ceases to be of good character; or
 - (ii) commits an offence or contravenes the law (whether convicted or not); or
 - (iii) becomes aware of any other matter that reflects adversely on the Applicant's fitness to have the Investment; or
 - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
 - (b) any person in which the Applicant, or any individual with control of the Applicant has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the law (whether convicted or not); or
 - (c) the Applicant:
 - (i) ceases to be an overseas person; or
 - (ii) disposes of the Investment.
5. The Applicant must donate at least \$50,000 to the Academy by making annual payments of \$10,000 a year to the Bay of Islands International Academy for five years from the date of consent (as such donation is described in the email from Chapman Tripp to the Overseas Investment Office dated 14 May 2015).
6. The Applicant must undertake the additional planting (costing approximately \$4,000), as such planting is described in paragraph 8.2(b)(i) of the Applicant's application letter dated 28 January 2015.
7. The Applicant must not transfer or appropriate the Land, or any interest in it, to an overseas person beneficiary of the Trust other than Francois Pierre Michel Dotta, Michel Andre Jean Dotta and the children of Francois Pierre Michel Dotta unless that overseas person beneficiary first obtains consent under the Act.
8. The Applicant must report in writing annually to the Overseas Investment Office detailing progress of the following:
 - (a) the Applicant's compliance with conditions 5 and 6;
 - (b) evidence of the donations to the Academy; and
 - (c) any new job opportunities created by the Applicant in New Zealand as a result of the Investment;
9. The first report referred to in condition 8 is due on 1 November 2016 and the final report is due on 1 November 2021.
10. If requested in writing by the Overseas Investment Office, the Applicant must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
 - (a) the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent was granted; or
 - (b) the conditions of this consent.

Monitoring Conditions of Consent

For the purpose of monitoring conditions of consent, the Overseas Investment Office may, under section 38 of the Act, require the consent holder to provide information or documents, or both, that are specified in the notice. Under section 40 of the Act, the Overseas Investment Office may also require a consent holder to provide a statutory declaration verifying the extent to which the consent holder has complied with the conditions of consent, and, if the consent holder is in breach of a condition or conditions, the reasons for the breach and the steps the consent holder intends to take to remedy the breach.

Sanctions

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

General

A reference to the "Overseas Investment Office" in this Notice includes a reference to the regulator (as defined by the Act). A reference to the Applicant includes a reference to the consent holder.



Tyne Schofield
Senior Solicitor
Overseas Investment Office

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