

Decision Date

19 January 2016

Decision

Consent has been granted to **Bernard Jean Sabrier** ("the Applicant") to give effect to a transaction which will result in an overseas investment in sensitive land in the Northland region, being the Applicant's acquisition of a freehold interest in approximately 47.6970 hectares of land at Lot 3 Mataka Station, Purerua Pennisular, Bay of Islands ("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 Bernard Sabrier dated 15 December 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.

Act means the Overseas Investment Act 2005.

Application Letter means the application letter dated 28 September 2015.

Consent Holder means Bernard Jean Sabrier.

Investment means the acquisition of the Land.

Land means the freehold interest in approximately 47.6970 hectares of land at Lot 3 Mataka Station, Purerua Peninsula, Bay of Islands.

OIO means the Overseas Investment Office.

Purchasing Programme Consent means the original purchasing consent issued by the Overseas Investment Commission in 2002 in respect of the land at Mataka Station.

Residents Rules means the rules of Mataka Residents Association Incorporated.

Settlement Date means the date the acquisition of the Investment took place.

SPA means the sale and purchase agreement dated 17 August 2015 for sale of the Land to the Consent Holder.

Vendor means Laurent Pierre Esquier.

Special Conditions

When the transaction must be given effect to

1. The consent will lapse if the Investment has not been acquired by and transferred to the Consent Holder within 12 months of the date of consent.

Good character

2. The Consent Holder 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.

Donation guarantee

3. The Consent Holder must guarantee the Vendor's obligation under clause 20.0 of the SPA to make a donation of \$50,000.00 (**Donation**) to the Bay of Islands International Academy (previously called the Te Tii School) on the Settlement Date. The Consent Holder guarantees and undertakes that if the Vendor fails to make the Donation for any reason whatsoever on the Settlement Date, the Consent Holder will donate \$50,000.00 to the Bay of Islands International Academy within 1 month from the Settlement Date. The Consent Holder must provide written evidence to the OIO of payment of the donation (by either the Vendor or the Consent Holder) no later than two months from the Settlement Date.

Residents Rules

4. From the date of consent the Consent Holder must not exercise any vote in his capacity as an Owner or a Director (as those terms are defined in the Residents Rules) in favour of any resolution that would result in the Residents Rules being altered in such a way that:
 - (a) reduces the environmental and ecological obligations imposed on Owners under the Residents Rules; or
 - (b) which (in the OIO's opinion) departs from the requirements or intent of the original Purchasing Programme Consent.

Divestment

5. If in the opinion of the Overseas Investment Office condition 2, 3 or 4 is not complied with ("Non-Compliance"), the Consent Holder must dispose of the Investment as follows:
 - (a) The Consent Holder must, within six weeks of receiving notice from the OIO that in its opinion there has been Non-Compliance (the "Notice Date"):
 - (i) procure from an independent registered valuer, and provide to the OIO, a written market valuation of the Investment; and
 - (ii) appoint licensed real estate agents to actively market and appropriately advertise the Investment for sale on the open market; and

- (b) The Consent Holder must dispose of the Investment within eighteen months of the Notice Date to a third party who must not be an associate of the Consent Holder. If the Consent Holder has not disposed of the Investment at the expiry of the eighteen month period, the Consent Holder must offer the Investment for sale by auction or tender within a further three months (with no reserve price or minimum bid set for the auction or tender) and dispose of the Investment.
- (c) The Consent Holder must provide a written report to the OIO quarterly (by the last day of March, June, September and December) about the marketing activities undertaken and offers received for the Investment. The Consent Holder must also report at any other time if required by the OIO.
- (d) The Consent Holder must provide a written report to the OIO within two months of the Investment being disposed of, providing evidence that:
 - (i) the Consent Holder has disposed of the Investment (including copies of any sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor); and
 - (ii) the purchaser is not an associate of the Consent Holder.

Reporting to the OIO

- 6. The Consent Holder must notify the OIO 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 Settlement Date;
 - (b) 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 OIO in its function to monitor conditions of consent.
- 7. The Consent Holder must notify the OIO in writing within 20 working days if the Consent Holder:
 - (a) commits an offence or contravenes the law (whether convicted or not); or
 - (b) ceases to be of good character; or
 - (c) becomes aware of any other matter that reflects adversely on the Consent Holder's fitness to have the Investment; or
 - (d) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009; or
 - (e) ceases to be an overseas person; or
 - (f) disposes of the Investment.
- 8. If requested in writing by the OIO, the Consent Holder 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.



Cameron Pentecost
Senior Solicitor
Overseas Investment Office

Released under the Official Information Act 1982