

Decision Date

30 November 2016

Decision

Consent has been granted to Philibert Jean Gaspard Laurent Frick to give effect to an overseas investment in sensitive land, being the acquisition of a freehold interest in approximately 20.7640 hectares of land at Lot 18, Mataka Station, Northland.

Only the named consent holder may give effect to the investment, not a subsidiary of the consent holder, a trust, or other entity.

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 Philibert Jean Gaspard Laurent Frick dated 29 November 2016 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 30 June 2016.

Consent Holder means Philibert Jean Gaspard Laurent Frick.

Inspector means a person appointed by the Regulator to undertake an Inspection on the Regulator's behalf.

Inspection means a visit to a property by an Inspector for the purpose of monitoring these conditions.

Investment means the acquisition of land at Mataka Station.

Land means the land contained in the Land Certificate that accompanied the Application Letter.

OIO means the Overseas Investment Office.

Regulations means the Overseas Investment Regulations 2005.

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

Giving effect to the transaction

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.
2. 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 Investment took place. If settlement 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 Land;
 - (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.

Good character etc

3. 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.

Reporting to the OIO

4. The Consent Holder must notify the OIO in writing within 20 working days if the Consent Holder or disposes of the Land.
5. If requested in writing by the Overseas Investment Office, 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.

Donations

6. The Consent Holder must donate the sum of \$115,000, pledged in the Application for and as set out in Appendix 2, as follows:
 - (a) To the Bay of Islands Academy and the Kaikohekohe Education Trust:
 - \$16,500 each in the first year
 - \$13,000 each in the second year; and
 - \$15,000 each in the third year
 - (b) To the Makata Station Residents' Association for pest control purposes:
 - \$14,500 in the first year; and
 - \$11,500 in the second year.

7. The Consent Holder must report in writing to the OIO annually by 30 June each year with the final report being in 2019, regarding compliance with condition 6 and provide evidence that payment was made, and report on what the funding was used for.

Inspection for the purposes of monitoring these conditions

8. The Consent Holder must allow an Inspector to conduct an Inspection, provided that the Consent Holder has been given at least two working days notice of the Inspection.
9. For the purpose of conducting the Inspection, the Consent Holder must allow an Inspector to:
 - (a) gather information and provide that information to the OIO;
 - (b) enter any building on the Land other than a dwelling;
 - (c) remain for as long as is reasonably required to conduct the Inspection;
 - (d) conduct surveys, inquiries, tests, and measurements;
 - (e) take photographs and video recordings; and
 - (f) do all other things that are reasonably necessary to enable an Inspector to carry out an Inspection.
10. The Consent Holder must take all reasonable steps to facilitate an Inspection, including:
 - (a) directing its employees or agents to permit an Inspector to conduct an Inspection; and
 - (b) being available, or requiring its agents or employees to be available at all reasonable times during an Inspection to facilitate access by an Inspector onto and across the Land, including providing transport across the Land if reasonably required.
11. For the avoidance of doubt:
 - (a) an Inspector will not inspect, copy or take documents during an Inspection, unless the Consent Holder or an employee or agent of the consent holder agrees to the document being inspected, copied or taken;
 - (b) a Consent Holder, its employees, and agents are not required to answer an Inspector's questions, but may do so if they wish.

Disposal Process

12. If in the opinion of the OIO any of conditions 3, 6 or 7 are 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 NZ 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.
 - (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.

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.

Released under the Official Information Act 1982