

## **Agreement on outcome of an investigation of contraventions of the Overseas Investment Act 2005**

The Chief Executive of Land Information New Zealand

**(Regulator)**

New Forests Asset Management Pty Limited

**(Manager)**

Wairarapa Estate Limited

**(Investor)**

3 October  
~~September~~ 2016



Agreement dated

3 October

~~September~~ 2016

## 1 Parties

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**The Chief Executive of Land Information New Zealand**, being the Chief Executive of the department designated as the regulating department by the Minister of Finance.

**(Regulator)**

**New Forests Asset Management Pty Limited** (ACN 114 545 283), a limited liability company incorporated in Australia, having its registered office at North Sydney, New South Wales, Australia.

**(Manager)**

**Wairarapa Estate Limited**, a limited liability company incorporated in New Zealand, having its registered office at Level 13, 34 Shortland Street, Auckland, New Zealand.

**(Investor)**

## 2 Interpretation

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2.1 In this Agreement:

- (a) **Act** means the Overseas Investment Act 2005.
- (b) **Investigation** means the Regulator's investigation into the relationship of FGHL, the Manager and the Investor in terms of the acquisition of the Properties by FGHL and on-sale to the Investor.
- (c) **Investments** means the Investor's interest with and interest in, together with FGHL, eight forestry blocks in the Wairarapa region which involve the Properties between July 2013 and April 2016.
- (d) **FGHL** means Forest Growth Holdings Limited, a limited liability company incorporated in New Zealand, having its registered office at McIntyre Dick & Partners, 160 Spey Street, Invercargill, New Zealand.
- (e) **Properties** means the land described in computer freehold registers 39D/617, 44C/972, 45D/587, 45D/588, 45D/589, 45D/590, 45D/591, 45D/630, 4B/644, 44B/645, 44B/646, 44B/649, 44B/650, 52B/574, 52D/621, 157177, 482871, 595318, 905/96, A2/659, 618100, 618101, 618102, 618105, 649044, 20D/1186, 26C/362, and 26C/363 (all Wellington Registry).
- (f) **Summary of Facts** means the summary of facts in Schedule 1 of this Agreement.

## 3 Introduction

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3.1 The Regulator has investigated suspected contraventions of the Act in relation to the relationship between the Investor and FGHL and FGHL's purchase of the Properties.



- 3.2 This Agreement records the background to the Investigation, a summary of the findings reached by the Regulator, and the means by which the Investigation is to be resolved.
- 3.3 This Agreement may be made public by the Regulator (including on the Regulator's website).

## **4 Background**

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### **The investments**

- 4.1 Since 2013, the Manager on behalf of the Investor has cooperated with FGHL to make the Investments. The Investments are detailed in the summary of facts.

### **The investigation**

- 4.2 The Regulator commenced the Investigation in April 2016.

### **Regulator's position**

- 4.3 The Regulator has completed its Investigation into the circumstances surrounding the Investments and concluded that It has sufficient evidence to prove on the balance of probabilities that the Investor has contravened the Act.
- 4.4 The Regulator considers that the evidence is consistent with the Investors contraventions being inadvertent.

### **The Investors position**

- 4.5 The Manager, on behalf of the Investor, has cooperated with the Investigation and has agreed to resolve the matter by acknowledging and accepting the Regulator's conclusion that the Investor has contravened the Act as outlined in the Summary of Facts

### **Settlement**

- 4.6 Following discussions between the Regulator and the Manager, the Regulator has concluded, based upon the Solicitor-General's Prosecution Guidelines and Land Information New Zealand's Prosecution Policy, that it would be in the public interest to resolve the issues arising from the Investigation on the terms set out below.
- 4.7 In reaching the terms of this settlement, the Regulator has considered the:
- (a) nature of the factual issues involved in the case;
  - (b) nature of the Investor's behaviour, including its co-operation with the Regulator;
  - (c) Manager's cooperation with the Investigation; and
  - (d) size of the Investment.

## 5 Terms of settlement

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5.1 The Regulator and the Investor have agreed to resolve the issues between them arising from the Investigation on the following terms:

(a) The Investor:

- (i) will accept the Regulator's conclusion that the Investor has contravened section 42 of the Act as set out in the Summary of Facts;
- (ii) must make a Donation on the terms set out in clause 6 below; and
- (iii) not later than 28 October 2016, pay to the Regulator \$20,000 plus GST towards the Regulator's actual and estimated further costs in relation to the Investigation.

(b) The Regulator will:

- (i) formally warn the Investor and the Managers about the roles they played in the Investments;
- (ii) acknowledge that the contravention of the Act by the Investor and Managers appears to have been inadvertent; and
- (iii) close its investigation of the Manager and the Investor on the basis set out in clause 7.

## 6 Donation

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6.1 In this clause, **Donation** means a gift of an amount that gives rise to a post-tax detriment of not less than \$80,000 to a charitable or public purpose or purposes.

6.2 The Investor must, on or before 28 October 2016 make the Donation.

6.3 The charitable purpose or purposes must be consistent with one or more of the factors set out in section 17 of the Act or regulation 28 of the Overseas Investment Regulations 2005. By way of example, the Donation may be applied to:

- (a) educational purposes that promote job opportunities in New Zealand or a part of New Zealand; or
- (b) purposes that are beneficial to the community, such as conservation or education projects that improve or enhance significant habitats of indigenous flora or fauna.

6.4 The Investor must obtain the approval of the Regulator as to manner in which the Donation will be paid and the purposes to which the Donation will be applied, before making the Donation. The Regulator must not unreasonably withhold its approval.



- 6.5 The Investor must ensure the approved donee or donees, within 14 days of the Donation being made, provides written confirmation to the Regulator:
- (a) of the amount of the Donation; and
  - (b) that the donee intends to apply the Donation for the purposes approved.

## **7 Closure of investigation**

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- 7.1 In this clause, **Closure Date** means the latest of the following dates:
- (a) The date on which the donation is made under clause 6; or
  - (b) The date on which the contribution to the Regulator's costs is paid under clause 5.
- 7.2 On the Closure Date, the Regulator will close the Investigation as it relates to the Manager and Investor's involvement in the Investment.

## **8 Public statements**

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- 8.1 Subject to clauses 8.2 and 8.3, the parties may make public statements in relation to the content of the settlement on or after the Closure Date. The parties agree that any public statements relating to the Investigation will be made in good faith and be consistent with the spirit and intent of this Agreement.
- 8.2 Except as required by law, the Manager and the Investor agree that they will not make any public comment in relation to this Agreement or the Investigation until after the Regulator has issued a media release notifying the public of this settlement.
- 8.3 The Parties agree to provide an emailed copy of their initial written media statement to the other party at least 24 hours in advance of their release to allow the other party the opportunity to comment. No party will be obliged to accept the comments of another party, but will in good faith consider the comments.

## **9 Entire agreement**

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- 9.1 This Agreement constitutes the entire understanding and agreement between the parties in relation to the Investigation, and fully supersedes any and all prior agreements, arrangements, representations or understandings (whether orally or in writing) between the parties pertaining to the Investigation.
- 9.2 The parties agree that this Agreement is in full and final settlement of all claims and proceedings that the Regulator has, or may have, in respect of the Investigation.
- 9.3 The parties represent and agree that they are each voluntarily entering into this Agreement having received independent legal advice.

## 10 Miscellaneous matters

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- 10.1 This Agreement will be governed by, and construed in accordance with, the laws of New Zealand.
- 10.2 No amendment to this Agreement will be effective unless it is in writing and signed by all of the parties.
- 10.3 Any delay by the Regulator in acting upon any breach of this Agreement will not operate by way of waiver.
- 10.4 The parties may enter this Agreement by signing any number of counterparts, each of which will be treated as an original. All of the counterparts taken together will constitute a single document. A party may execute this Agreement by one signatory executing one counterpart and another signatory executing a different counterpart. A party's delivery of a signed facsimile or pdf counterpart of this Agreement will have the same legal effect as that party's delivery of a single original counterpart.

## Execution

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**Signed by Kirsty Catherine Millard**  
for and on behalf of **The Chief**  
**Executive of Land Information New**  
**Zealand** in the presence of:



Kirsty Catherine Millard

Witness to signature:



Signature of witness

Simon Mark Espie

Name of witness

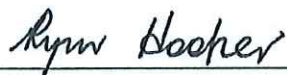
Solicitor

Occupation

Wellington.

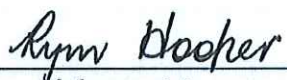
City/town of residence

**Signed** for and on behalf of **New Forests Asset Management Pty Limited** by:

  
\_\_\_\_\_  
Director  
Name Kym Hooper

  
\_\_\_\_\_  
~~Director~~/Company Secretary  
Name Gavin Le Roux

**Signed** for and on behalf of **Wairarapa Estate Limited** by:

  
\_\_\_\_\_  
Director  
Name Kym Hooper

  
\_\_\_\_\_  
Director/~~Company Secretary~~  
Name Gavin Le Roux



## **Summary of facts**

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### **1 Background**

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- 1.1 The Manager manages forest investments for institutional investors and at all material times (including prior to the incorporation of the Investor) acted on behalf of the Investor in respect of all material matters set out herein. The Investor is a holding company which owns forest assets on behalf of a fund managed by the Manager. The Manager and the Investor are overseas persons.
- 1.2 FGHL is a New Zealand company owned by two New Zealand based forestry businesses: IFS Forestry Group Limited and Invercargill City Holdings Limited. FGHL is not an overseas person but can be considered to be an associate of New Forests and WEL.
- 1.3 A number of forestry block investments made by FGHL and the Investor (in the case of the Investor, either itself or through the Manager) in Wairarapa contravened the Act.
- 1.4 The essence of the contraventions, outlined in further detail below, is that:
  - (a) The forestry blocks were sensitive land;
  - (b) The Manager and the Investor were overseas persons;
  - (c) as an associate of an overseas person, FGHL required consent to acquire the forestry blocks, but did not obtain it; and
  - (d) The Manager and the Investor were parties to FGHL's contravention of the Act through their associate relationship.

### **2 Associate relationship**

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- 2.1 FGHL was an associate of the Manager and the Investor as:
  - (a) FGHL acted jointly or in concert with the Manager and the Investor in relation to the purchase of forestry land; and
  - (b) FGHL participated in the purchase of forestry land as a consequence of any arrangement or understanding with the Manager and the Investor ;
- 2.2 The associate relationship arose from an agreement (described as a 'term sheet') entered into by FGHL and the Manager on 22 August 2013 whereby FGHL would acquire and aggregate assets and, which following their aggregation might be offered to the Investor.
- 2.3 The term sheet provided that:
  - (a) FGHL and the Manager would co-operate on a non-exclusive basis, and under no obligation, in respect of the acquisition of forestry assets (forestry land and forestry rights) in Wairarapa;



- (b) FGHL would acquire and amalgamate forestry assets, and when the aggregated forests assets were large enough, would offer to sell them to the Investor;
  - (c) The Investor would consider the purchase of the amalgamated forests on the forestry land through forestry rights, with the term sheet indicating the price using a defined methodology that would likely interest the Investor;
  - (d) The term sheet also outlined that the Investor was interested in buying the land at a certain value, but stated that it did not provide a binding obligation on the Investor to buy the land from FGHL nor FGHL to sell the land to the Investor.
- 2.4 The mechanism for indicating what price the Investor might pay for the forestry rights and the forestry land was provided in the term sheet. The mechanism was prescriptive and predictable, meaning that FGHL could estimate before acquiring a forestry block the amount that the Investor might pay to acquire the forestry rights and forestry land.
- 2.5 While the Manager entered into the term sheet, and the Investor acquired the forestry land, in good faith and in the belief their actions were not in breach of the Act, they inadvertently contravened the associate provisions under the Act.

### 3 Investments by FGHL and the Investor

- 3.1 In accordance with the arrangement set out in the term sheet FGHL and the Investor made the following investments in sensitive land.

Forest	Area (ha)	Purchase by FGHL	Sale of forestry right to WEL	Sale of land to WEL
Lands End	116.3168	04-Apr-14	15-Jul-14	23-Mar-16
Dunolly	601.3256	30-Apr-14		
Hawkins	177.9763	20-Jun-14		
Ruakokopatuna	259.8789	30-Jun-14		
Glenburn	2030.3997	15-Jul-14		
Ngahape	276.7936	29-Aug-14	12-Sep-14	
Woodford	162.7793			
Kaiwhata Pines	215.8444	10-Oct-14	22-Oct-14	
Beehive	168.3417	31-Mar-15	02-Jun-15	Land still owned by FGHL
Tinui	190.2000			
Flat Pt	154.7010	30-Jun-15	23-Mar-16	
Craigle Lea	1670.0542	31-May-16	31-May-16	
Erindale	879.7649		10-Jun-16	

