

# Assessment Report

## 201810082 – NS Norway Holding AS - investigation into closure of Tasman Mill and compliance with Special Condition 1

### Key information

<b>Incident date</b>	10 June 2021
<b>Triage date</b>	16 June 2021
<b>Assessment date</b>	7 December 2021
<b>Incident officer</b>	Andre Baldock
<b>Assessment team</b>	Andre Baldock

### Summary

1. On 31 August 2018, NS Norway Holding AS (**NS Norway**) was granted consent to acquire Norske Skog AS – whose New Zealand based subsidiaries include Norske Skog Tasman Limited – which has interests in approximately 380 hectares of sensitive land including the Tasman pulp and paper mill in Kawerau.
2. Special Condition 1 required NS Norway to continue operating the mill on an on-going basis and specified that if NS Norway stopped operating the mill then Standard Condition 6 will apply and the OIO may require NS Norway to dispose of the Land.
3. NS Norway confirmed it decided, the week of 7 June 2021, to cease operating the mill – at which point it technically breached Special Condition 1 and triggered Standard Condition 6.
4. In July 2021, NS Norway told us it had no intention of retaining the land **s9(2)(b)(ii)**  
**s9(2)(b)(i)**
5. NS Norway have provided another update:
  - (a) **s9(2)(b)(i)**
  - (b) **s9(2)(b)(ii)**
  - (c) **s9(2)(b)(ii)**
6. I have previously discussed the case with **s9(2)(a)** and **s9(2)(a)** and everyone agreed that even though NS Norway has begun the sale process we should still formally require NS Norway to dispose of the Land pursuant to Standard Condition 6:
  - (a) focusing on periodic reporting and disposal of the Land within **s9(2)(b)(i)** of our notice pursuant to SC(3) – and working with NS Norway on timeframes and a process if it cannot be sold within the **s9(2)(b)(ii)**

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- (b) not requiring NS Norway to value the land (SC6(1)) or market the land via a real estate agent (SC6(2)) given the particular characteristics of the land and assets and the involvement of advisors with expertise in dealing with such assets.

## Recommendation

- 7. I recommend that we give NS Norway written notice requiring them to dispose of the Land – pursuant to Standard Condition 6 - which requires them to dispose of the Land within s9(2)(b)(ii) (to a third party who is not an associate).
- 8. Given the complex nature of the Land and the mill related activities – I recommend that we do not require NS Norway to value the land (SC6(1)) or instruct a licensed real estate agent (SC6(2)).

## Asset concerned

- 9. NS Norway has the following interests in sensitive land in New Zealand (**the Land**):
  - (a) a freehold interest in approximately 351 hectares of land at:
    - (i) Fletcher Avenue, Kawerau
    - (ii) 2805 State Highway No. 30
    - (iii) 188, 217, 225, 228, 250, 261, and 261A Hogg Road
    - (iv) 118A Onepu Spring Road, Kawerau
  - (b) a leasehold interest in approximately 28 hectares of land off Onepu Springs Road, Kawerau.
- 10. The Land has commercial forests, a paper mill (the Tasman pulp and paper mill) and logyard, conservation areas and publicly accessible areas.

## Person/s concerned

- 11. NS Norway Holding AS is a special purpose vehicle established by Oceanwood Capital Management Limited, which manages and advises certain funds that hold existing investments in Norske Skog AS.
- 12. Oceanwood is an investment banking group headquartered in the United Kingdom, which manages a number of funds on behalf of institutional investors.
- 13. Norske Skog AS is an international newsprint and magazine paper producer that has been operating for about 50 years. At the time consent was granted, the company was in financial distress and its parent company, Norske Skog Holding AS was in bankruptcy. NS Norway Holding AS was the successful bidder in a public auction.
- 14. Norske Skog AS has New Zealand based subsidiaries, including Norske Skog Tasman Limited – which has interests in approximately 380 hectares of sensitive land including the Tasman pulp and paper mill in Kawerau.

## Brief summary of information reviewed/inquiries made since triage

- 15. On 14 June 2021, I sought information from NS Norway (via Mayne Wetherell) concerning its plans for the operation of the Tasman mill, and if it intended to cease operating the mill, its plans for the Land.
- 16. Mayne Wetherell confirmed and/or stated that:

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- (a) NS Norway made the decision to cease operating the mill the week of 7 June 2021 (and it was not possible nor appropriate to advise the OIO in advance of the decision)
  - (b) NS Norway has engaged Buddle Findlay to advise re closing the mill and disposing of the Land
  - (c) a process is already underway to realise the assets, including disposal of the Land – and NS Norway has no intention to continue to hold the Land long term
  - (d) its understanding is that there are **s9(2)(b)(ii)** and that discussions may have been advanced already and we may have heard from them already/or will do in the near term
  - (e) in its view it may not be necessary to activate the Standard Condition 6 disposal process
  - (f) NS Norway/Buddle Findlay will provide us with further information about its plans for the Land and any disposal plans it is considering.
17. On 1 December 2021, NS Norway (via Buddle Findlay) provided an update concerning the sale process and negotiations with potential purchasers:<sup>1</sup>
- (a) most of the staff at the Kawerau Mill have now been made redundant with only a small number remaining for security and maintenance purposes
  - (b) **s9(2)(b)(ii)**
  - (c) **s9(2)(b)(ii)**
  - (d) **s9(2)(b)(ii)**
  - (e) **s9(2)(b)(ii)**
  - (f) It remains NS Norway's intention to complete a sale of the land and remaining assets as soon as possible (subject to any regulatory approvals required) and it is continuing to work diligently to achieve this objective. As we have previously discussed, the site is not a simple asset to sell given the nature of the interrelationships that exist with other neighbouring landowners on the wider Kawerau industrial site.

## Assessment

18. On the basis of the information currently available:

<sup>1</sup> Email from Peter Owles (Buddle Findlay) to Andre Baldock, dated 1 December 2021. <https://linzone/id:A4740413>



Question	Y/N	Basis for answer
Does there appear to have been a breach of the Rules?	Y	Special Condition 1 required NS Norway to continue to operate the mill on an ongoing basis; and specified that if NS Norway stopped operating the mill then Standard Condition 6 will apply and the OIO may require NS Norway to dispose of the Land.  NS Norway has confirmed its decision to cease operating the mill. It is now technically in breach of the condition.
Does the Incident fall within the OIO's Enforcement Criteria?	Y	There is widespread interest in the ownership of the mill and the associated Land – and interest in what happens next.
Is there any reason to qualify, amend or add to the answer to Triage questions?	N	

## Recommendation

Based on my review of the information, I recommend:

Recommendation	Tick	Basis for answer
You decide you have reason to suspect that there has been a breach of the Act or an offence under the Act has been committed	Y	As noted above, NS Norway is now technically in breach of Special Condition 1 given its decision to cease operating the mill.  However, it is worth noting that this situation was always seen as a possible outcome given the financial/operating difficulties and circumstances that lead to NS Norway taking ownership of the mill and Land.
The Incident progress to Investigation Stage 1	N	
No further action be taken and the Incident be closed	N	
An Enforcement Tool be deployed [link to Enforcement Approach] and then the Incident be closed	Y	Special Condition 1 provides that if NS Norway ceases operating the mill, then Standard Condition 6 will apply and the OIO may require NS Norway to dispose of the Land.  I recommend that we give NS Norway written notice requiring them to dispose of the Land – pursuant to Standard Condition 6.  Standard Condition 6 requires them to dispose of the Land within <b>s9(2)(b)(ii)</b> of the notice (to a third party who is not an associate).

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Recommendation	Tick	Basis for answer
		<p>Given the complex nature of the Land and the mill related activities – I recommend that we do not require NS Norway to value the land (SC6(1)) or instruct a licensed real estate agent (SC6(2)).</p> <p>I note that Mayne Wetherell suggested a disposal notice is not necessary and stated that discussions with potential purchasers were already underway.</p> <p>However, in my view, giving NS Norway written notice under Standard Condition 6 ensures the OIO disposal process formally begins – and preserves our position.</p>

s9(2)(a)

~~Pedro Morgan~~ / Sarah Scott  
Principal Advisor Enforcement

Agree:

Disagree:

Amend as marked:

Date: 7-12-21

s9(2)(a)

Simon Pope  
Manager Enforcement

Agree:

Disagree:

Amend as marked:

Date: 7-12-21

### Notes/guidance for Investigation Team

Matters to be considered	Notes
Enforcement tool to be deployed and Implementation person or matter to be closed?	
<b>Otherwise</b>	
Investigation team members	
Lead Investigator (note responsible for setting strategy meeting and devising Investigation Plan)	

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Track I or Track II Investigation	
Date of First Advisory Group (note ordinarily 30 working days for Track II and 20 working days for Track I Investigation)	
Comments/Guidance on Investigation	

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## Attachment 1 – Consent Conditions (extracts)

You must comply with the following **special conditions**. These apply specifically to this Consent and were considerations that particularly influenced us to give consent:

Details	Required date
<b>Special condition 1: Continue to operate the Tasman mill</b>	
You must continue to operate the Tasman mill on the Land. If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.	On-going

<b>Standard condition 6: dispose of the Land if you do not comply with key Special conditions</b>	
<p>Some of the special conditions were key to the decision to give consent. If we consider you have failed to comply with one of those Special conditions in a material way we may require you to dispose of the Land.</p> <p>We may also require you to execute a security deed before you may acquire the Land. The security deed:</p> <ol style="list-style-type: none"><li>1. must be in the form we require,</li><li>2. must be executed and delivered to us before you acquire the Land,</li><li>3. gives us power to appoint a receiver to dispose of the Land if you do not do that as required by this Standard condition 6,</li><li>4. will provide, among other things, that if we appoint a receiver, the receiver may dispose of the Land, deduct his or her costs from the proceeds of sale, and pay the remainder to you.</li></ol> <p>If all or part of this Standard condition 6 applies to a Special condition, we have said so in that condition.</p> <p>We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:</p>	

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1. <b>Value the Land:</b> obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.	<b>s9(2)(b)(ii)</b>
2. <b>Market the Land:</b> instruct a licensed real estate agent to actively market the Land for sale on the open market.	
3. <b>Dispose of the Land:</b> dispose of the Land to a third party who is not your associate.	
4. <b>Offer without reserve:</b> offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.	
5. <b>Report to us about marketing:</b> tell us in writing about marketing activities undertaken and offers received for the Land.	
6. <b>Report disposal to us:</b> send us, in writing, evidence: (a) that you have disposed of the Land, (b) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor), (c) the purchaser is not your associate.	

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