



## Memorandum

To: Simon Pope, Manager Enforcement

From: Will McGrath, Senior Solicitor Enforcement  
Jatin Mistry, Senior Investigator Enforcement

Date: 14 November 2022

File Ref: 202100494

Subject: **Administrative penalty of \$20,000 for retrospective consent application post-investigation**

For Your: **Approval**

### Summary

1. KSF Fund No One Pty Limited (**KSF**) as trustee of the Karreman Superannuation Fund No 1 and Karreman Racing Pty Limited seeks retrospective consent under the Overseas Investment Act 2005 (**the Act**) for the acquisition of approximately 6.7439 ha of land at 116 Redoubt Road, Cambridge, Waipa (**the Land**).
2. The land was acquired at auction on 4 June 2021 by Richard (**Rick**) s9(2)(a) Williams who acted as associates for KSF (an OSP), as the Land was to be later transferred to KSF following applying for and acquiring consent. The Land was settled in the name of Rick s9(2)(a) Williams on 10 September 2021.
3. The matter came to the attention of the OIO following a request for a pre-app meeting by Rick on 30 June 2021, which was referred to the Enforcement team as the ASP was not subject to consent under the Act. An investigation resulted.
4. The acquisition of the Land occurred with the participation of Daniel Wein, a lawyer and Director at Ellice Tanner Hart, who was on the phone to Mr Dirk (**Dick**) Karreman (an Australian citizen and OSP) during the bidding, and himself bid on the land. Rick signed the ASP on the day of the auction.
5. Mr Wein claims he Privacy Act 2020 - information deleted because inaccurate. was not aware at the time of the associate provisions of the Act. Either way, all parties advise that Mr Wein did not give any advice about the Act prior to the auction.
6. It is accepted for the present purposes that the breach of the Act by Rick s9(2)(a) Williams, KSF, and Mr Karreman, was inadvertent, and though consent was not obtained prior to signing the ASP, there was apparently an intention to apply for consent under the Act after the Land had been secured at auction.
7. We recommend an administrative penalty under the Act, which is set at \$20,000 pursuant to section 53 of the Act, and regulation 36 of the Overseas Investment Regulations.

## Facts – why retrospective consent required

8. Karreman Superannuation Fund No 1 is an Australian-registered Self-Managed Superannuation Fund, whose trustees and beneficiaries are Dick and his wife Anne. KSF is its trustee company, and is the entity to which the Land will be transferred.
9. Dick and Anne Karreman are both Australian citizens, and therefore overseas persons (as are KSF and Karreman Superannuation Fund No 1).
10. Rick is the General Manager of Oaks Stud (owned by Dick) in Cambridge, New Zealand, and has been a business associate of Dick's for over 20 years. Rick is a New Zealand citizen, but the transaction required consent under section 12 of the Act because he acted as an associate of Dick and KSF.
11. The Land is 'sensitive land' as it is more than 5 hectares of non-urban land.
12. The OI Applications team considers the application for consent under the Act meets the relevant criteria under the 'benefit to New Zealand' test, and intends to grant consent:
  - (a) retrospectively to Rick s9(2)(a) Williams' entry into and settling of the Land as an associate of Dick, KSF, and the Karreman Superannuation Fund No 1;
  - (b) to the proposed acquisition by KSF of the Land;
  - (c) to the proposed grant of a long-term lease of the Land to Karreman Racing Trust (a horse stud business owned by Dick and operated by Rick and Dick on a section neighbouring the Land).

## Associate behaviour

13. Rick and Dick have had a close business relationship for approximately 20 years. Rick is the general manager for the Oaks Stud, a horse breeding business owned by Dick. Rick advised that he and Dick have an understanding that, where opportunities arose, Dick would get first chance to purchase land/assets/business deals to ensure there is no conflict of interest given he is employed by Dick. If Dick was not interested, then Rick would be able to proceed.
14. We understand that Rick was called upon by Dick to enter into the ASP because the auction required an unconditional contract be signed, and Dick was unable to sign the contract to acquire the Land at auction without an OIA condition. The intention was for Rick to secure the land, and then before settlement for Dick or his company to apply to the OIO for consent under the Act. We also understand that if consent was unable to be obtained at this point that Rick would retain the land.
15. We consider that Rick acted as an associate of Dick's in signing the ASP for, and settling on, the Land, having acted on Dick's behalf in the transaction and/or participating in the overseas investment as a consequence of any arrangement or understanding with Dick.<sup>1</sup>
16. As such, should retrospective consent not be granted, we don't consider it is appropriate that Rick retain the land without some further enforcement action taken.

---

<sup>1</sup> Section 8(1)(b) and (d).

## Inadvertence of the breach

17. We are satisfied that the parties did not intend to entirely circumvent the Act. The parties intended eventually to apply for consent, and, indeed, sought a pre-application meeting with the OIO to discuss a potential application. We consider that this matter can appropriately be dealt with through obtaining retrospective consent.
18. The parties have been somewhat co-operative with the OIO, however we do have concerns about omissions in information, documents, and correspondence that ought to have been provided to us pursuant to notices under section 41 of the Act, and where persons involved in our investigation have changed their position on certain statements they made to us, particularly early on in our investigation.
19. We note that Dick has previously interacted with the OIO, and has sought (and obtained) consent under the Act in the past. Indeed, the intention was to seek consent for the transfer from Rick to Dick. However, they were unaware of the associate provisions which also meant that consent was required for Rick's initial acquisition.
20. The possibility of a retrospective application had not been conveyed to Dick until late in the course of our investigation, and, therefore, had not been pursued in any serious manner until then. Once a retrospective application had been discussed with the OIO, we did not consider there was good reason to prevent such an application.
21. We also consider that Daniel Wein's involvement may have indicated to Dick and Rick that their course of action was compliant with all relevant legislation (including the Act). Mr Wein should have been aware of the associate provisions of the Act, having advised on applications for consent in the past, and should therefore advised Rick and Dick (who he knew prior to the auction) of the issues with Rick's participation in the matter.

## Assessment of appropriate penalty – for transactions on or post 22 October 2018

22. In accordance with regulation 36 of the Overseas Investment Regulations 2005, the amount of the retrospective penalty is \$20,000. I do not consider that requiring the applicant to pay this amount would be unduly harsh or oppressive given the nature of, and the reason for, the retrospective application. I discuss those matters in further detail below.
  - (a) the asset consists of 6.74 ha of land, being sensitive non-urban land under the Act, and was acquired for a purchase price of \$1,850,000;
  - (b) the breach occurred partly due to the parties', and their legal advisor's, failure to consider the associate provisions of the Act;
  - (c) an administrative penalty will have a deterrent effect on Dick and his associated entities from entering into similar transactions in future without first considering the application of the Act;
  - (d) other entities associated with Dick have complied with the Act and have sought (and were granted) consent in the past, and Dick has not been subject to previous enforcement action;
  - (e) the applicant has co-operated somewhat with the OIO, which does not preclude the imposition of an administrative penalty.

## Recommendation

23. I recommend that the Regulator impose an administrative penalty of \$20,000. I do not consider the amount to be unduly harsh or oppressive having regard to the value of the consideration paid for the Shares, or the nature of, and the reasons for, the retrospective consent.

|  |
|--|
| <b>s9(2)(a)</b><br> |
|--|

Simon Pope  
Manager Enforcement

|           |                                     |
|-----------|-------------------------------------|
| Agree:    | <input checked="" type="checkbox"/> |
| Disagree: | <input type="checkbox"/>            |

Date: 

|            |
|------------|
| 14/11/2022 |
|------------|

Released under the Official Information Act 1982