

Decision required under the Overseas
Investment Act 2005: Ernslaw One Limited

Date	7 October 2015
Security Level	Commercial: In Confidence
Priority	Medium
Case Number	201510041
Consent Required By	As soon as possible

Contact for Telephone Discussion

Name	Position	Telephone (wk)	Cellphone	First Contact
Samantha Naidoo	Team Manager	04 460 2795		
Phillip Anderson	Senior Solicitor	04 460 2775		✓

Annexures:

1. Report of the Overseas Investment Office on the proposed overseas investment ("Report").
2. Application for consent with supporting material ("Application").

Instructions:

3. The regulator must grant consent to this overseas investment if it is satisfied that all of the criteria in section 16 of the Overseas Investment Act 2005 ("the Act") are met. It must decline to grant consent if it is not satisfied that all of the criteria in section 16 are met. The regulator must not take into account any criteria or factors other than those identified in sections 16 and 17, and regulation 28 of the Overseas Investment Regulations 2005 ("the Regulations").
4. In the attached Report the Overseas Investment Office identifies each of the criteria and factors under sections 16 and 17, and regulation 28 that the regulator is required to consider in this case.

"Benefit to New Zealand criteria"

5. In this case, section 16 requires the regulator to decide, among other things, whether it is satisfied in relation to the following "benefit to New Zealand" criteria:
 - (a) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined under section 17 (section 16(1)(e)(ii)); and
 - (b) that benefit will be, or is likely to be, substantial and identifiable (section 16(1)(e)(iii)).
6. The application of the benefit to New Zealand criteria involves the exercise of judgement and is a high-level decision with significant policy content. This is apparent from the language and content of the factors that must be considered, many of which require a high degree of evaluative judgement, and are not capable of quantification or calculation.
7. In applying the benefit to New Zealand criteria, the regulator is required to consider each of the factors in section 17(2), determine which of the factors are relevant to the investment, and have regard to the relevant section 17(2) factors. The relative importance to be given to each factor is a matter to be determined by the regulator¹. In particular, the Act does not require economic factors to be given more weight than non-economic factors, or vice versa. It is a matter for the regulator, in carrying out its overall evaluation, to decide what weight to give to each factor.
8. The decision concerning whether the benefit to New Zealand, or any part of it or group of New Zealanders, is substantial and identifiable under section 16(1)(e)(iii), involves a collective assessment of the relevant factors.

¹ In this case, the Regulator is not required to treat the factors identified in paragraph 8 of the 8 December 2010 Directive Letter as being of high relative importance, as the overseas investment does **not** involve large areas of farm land.

Justice Miller's "with and without test"

Economic factors

9. The High Court in *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147 ("*Tiroa E*") requires the "economic benefit" factors in section 17(2)(a) to be assessed on the basis of a "counterfactual test". That is, the regulator must consider with respect to each section 17(2)(a) factor whether the overseas investment is likely to result in a benefit to New Zealand over and above any benefit that will or is likely to result even if the investment does not proceed. It is only the additional benefit from the overseas investment that is relevant when applying the "benefit to New Zealand" criteria.

Non-economic factors

10. Although the position is not free from doubt, the better view is that the same question – will this benefit be achieved even if the overseas investment does not occur – should be asked in relation to the other "non-economic" factors listed in section 17(2)(b)-(e). The High Court judgment suggested² that there could be a benefit in respect of the non-economic factors even if the same benefit would be achieved in the absence of the investment. But as the Court noted³, it is not easy to see how a benefit that will happen anyway could be regarded as substantial for the purposes of section 16(1)(e)(iii). We consider that the regulator should not treat benefits that are likely to be achieved in any event as contributing to the "substantial and identifiable benefit" criterion.

Regulation 28 factors

11. With regard to the factors in regulation 28 of the Overseas Investment Regulations 2005, Miller J noted that:

The criteria listed in reg 28 deal, for the most part, with benefits that only an overseas buyer could provide or what may be loosely described as strategic considerations, so they do not require a counterfactual analysis.⁴

12. Many of the factors in regulation 28 are incapable of having a counterfactual analysis applied to them. However, as recognised by Miller J, there are some factors that may require a counterfactual analysis. The Overseas Investment Office has applied a counterfactual analysis where appropriate.

Conditions

13. Conditions may be imposed on any consent that is granted, under section 25. The attached Report recommends some conditions that you may wish to consider imposing in this case.

Decision

14. The decision that you are required to make should be based on information available to you that you consider is sufficiently reliable for that purpose. The information that the Overseas Investment Office has taken into account in making its recommendation is summarised in the attached Report.

² *Tiroa E* at [36].

³ *Tiroa E* at [38].

⁴ *Tiroa E* at [36].

Decision:

15. I have determined that:

- (a) the 'relevant overseas person' is (collectively):
- **Ernslaw One Limited** (the Applicant);
 - the **Tiong Family** (the ultimate underlying owners of the Applicant);
 - **Tan Sri Sir Tiong Hiew King** (the founder of the Tiong Group who owns more than 25% of the Applicant).
- (b) the 'individuals with control of the relevant overseas person' are the directors of the Applicant (being **Thai King Tiong, Tiong Ik King** and **Chai Leng (Thomas) Song**) and **Sir Tiong Hiew King**.

16. I am satisfied that the criteria for consent in section 16 have been met:

- (a) the relevant overseas person has, or (if that person is not an individual) the individuals with control of the relevant overseas person collectively have, business experience and acumen relevant to the overseas investment; and
- (b) the relevant overseas person has demonstrated financial commitment to the overseas investment; and
- (c) the relevant overseas person is, or (if that person is not an individual) all the individuals with control of the relevant overseas person are, of good character; and
- (d) the relevant overseas person is not, or (if that person is not an individual) each individual with control of the relevant overseas person is not, an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009; and
- (e) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders) ; and
- (f) the benefit will be, or is likely to be, substantial and identifiable; and
- (g) the farm land or the securities to which the overseas investment relates have been offered for acquisition on the open market to persons who are not overseas persons in accordance with the procedure set out in regulations or that the overseas investment is exempt under section 20 of the Act.
17. Consent is granted to the Investment subject to the conditions in Appendix 1 of the Report.

s 9(2)(a) OIA

Samantha Naidoo - Team Manager

Date 9/10/15

Report of the Overseas Investment Office
on the application for consent by
Ernslaw One Limited
Case: 201510041

Contents

SUMMARY OF KEY INFORMATION	2
APPLICATION	2
APPLICANT.....	2
BACKGROUND TO THE INVESTMENT	4
OUTLINE OF THE INVESTMENT	4
RATIONALE FOR THE INVESTMENT	4
SENSITIVE LAND	5
ASSESSMENT PROCESS.....	6
COUNTERFACTUAL ANALYSIS.....	6
CRITERIA SET OUT IN SECTION 16.....	8
FACTORS SET OUT IN SECTION 17	11
THIRD PARTY SUBMISSIONS.....	19
APPENDIX 1 – CONDITIONS OF CONSENT	21
APPENDIX 2 – SENSITIVE LAND	25

Summary of Key Information

Applicant	Ernslaw One Limited (Malaysia 100%)
Vendor	Kumeroa Station Trust (New Zealand 100%)
Consideration	\$5,400,000
Recommendation	Grant Consent

Application

1. For consent for the Applicant to give effect to an overseas investment in sensitive land, being the Applicant's acquisition of a freehold interest in approximately 1,264 hectares of land at 583 Otawahao Rd, Woodville (**Kumeroa Station**).
("the Investment")

Applicant

2. The Applicant is Ernslaw One Limited, a NZ company which is an overseas person under the Act.
3. The Applicant is the fourth largest forest owner in NZ, with forests located in the Coromandel, Gisborne, Ruapehu, Manawatu, Otago and Southland. The Applicant currently has a number of offices in NZ:



4. The Ernslaw Group has submitted at least 37 previous applications under the Act. While there is no land immediately adjoining the relevant land being acquired (Kumeroa Station) which is currently owned by the Applicant or any associated entity, the Applicant does own other forestry land in the Tararua District, being the Titoki Forest. The Applicant most recently gained consent to acquire freehold land interests in this area last year (Application 201410089).
5. The Applicant is owned by four shareholders, the largest of which is Oregon Group Limited (over 95%).

6. The ultimate beneficial owners of the Applicant and Oregon Group are Tiong Family members, whose nationality is Malaysian. The Tiong Family has been associated with more than 90 previous applications under the Act (mostly involving the Applicant, Timbergrow, Neil Construction, Oregon Group and Regal Salmon)*

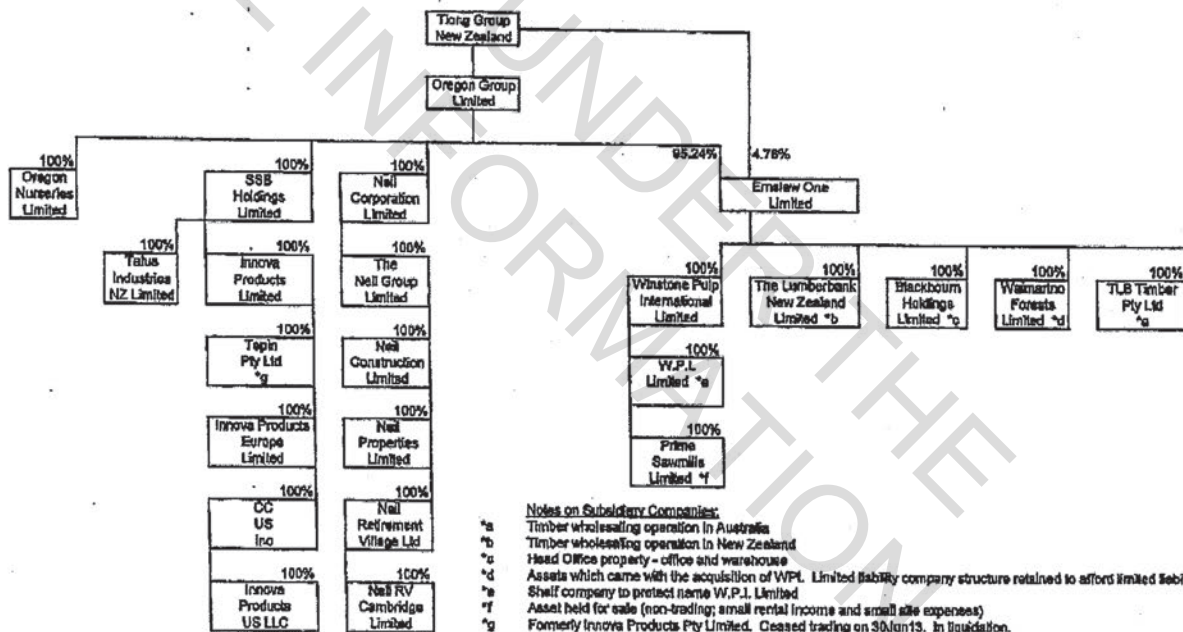
* The OIO sought further details as to whether any Tiong Family members held more than a 25% interest in the Applicant. The Applicant responded '*Tan Sri Sir Tiong Hiew King has a greater than 25% beneficial interest in the Applicant, all other Tiong family members hold less than a 25% beneficial interest*'. Sir Tiong Hiew King was the founder of the Tiong Group and *Forbes Magazine* ranks him as the 840th richest person in the world. He was knighted by Queen Elizabeth in 2009 in recognition of his services to commerce, community and charitable organisations.

Images for Tan Sri Datuk Tiong Hiew King

Report images



7. The underlying ownership of the Applicant is set out in the following diagram:



Notes:

1 Tiong Group New Zealand is not a legal entity. It is public persona only, comprising of:

	Oregon Group	Emalew One
Oregon Group Limited	N/A	95.24%
Callender Limited	80%	3.81%
Habacus Pty Ltd	0%	0.48%
Gold Palace Profits Limited	10%	0%
Shang Yang International Limited	10%	0.48%

2 All subsidiary companies are wholly owned.

3 As at 12 Jun 13

Background to the Investment

8. The Applicant is seeking consent to acquire Kumeroa Station, a 1,264ha sheep and beef farm located near Dannevirke. The Land is predominantly medium to steeper hill country. There are no substantial watercourses on the Land and the Station currently runs around 10,000 stock units.
9. The Vendors of the relevant Land are Peter & Alison Short, Terry Coffey and Stephen Lunn, trading as Kumeroa Station Trust.
10. The sale proceeds will be used to sustain an existing lifestyle block in the Waikato which the Trust already owns, so there will not be reinvestment in a substantial farming property of the same type which is being sold. Part of the reason for this is the retirement plans of the Settlers of the Trust, but the main reason is that the Settlers' son (who was initially farming the subject property) is not now able to pursue the running of the Station in the way that was originally intended.
11. The Vendor is not an overseas person for the purposes of the Act.

Outline of the Investment

12. The parties entered a *Sale Agreement* to transfer the property on 2 March 2015.

Rationale for the Investment

13. The Applicant intends to acquire Kumeroa Station to develop it mostly into forestry. It is the Applicant's intention to plant most of the Station in pine forest as part of its forestry holdings.
14. The new Forest will form part of the Applicant's Titoki Forest which is 50km east of Dannevirke. Titoki Forest is approximately 6,800ha, and with the addition of the additional land, it will mean that in future these blocks will be able to be harvested on a sustainable yield basis. The advantages of this include consistency of employment for contractors/ employees, and of supply to customers and others involved in the supply chain in the forestry industry (such as mechanics and other incidental labourers). This consistency also means that forest owners are able to attract a higher calibre of contractors and employees. This in turn will help to reduce the highly publicised health and safety risks of the forestry industry, as more experienced contractors are better able to train new inductees to the industry when work is consistent and assured over a longer period. From the Applicant's perspective, there will also be greater efficiencies in overhead costs and per unit costs when the forestry holdings are greater within the same overall forest.
15. In addition, the Applicant also intends to subdivide off a section of the Station and to offer this for sale on the Open Market as a productive sheep/beef farming unit. It is likely that the area to be subdivided will be approximately 150ha, however the Applicant wishes to remain flexible and responsive to the market before finalising the likely area to be sold. At present two of the dwellings (comprising the main homestead and a cottage) will be included in the subdivided area. This should provide an opportunity for a new entrant into farming, as the level of investment required will be considerably less than trying to purchase a larger farm*.

* The OIO sought details as to how many stock units will likely be run on the retained farming area. The Applicant responded: *"We understand following recent discussions between our client, the real estate agent and prospective purchasers, that the most suitable area to be retained for farming is in the vicinity of 190ha. This revised area will include the homestead and cattle yards, which would otherwise have been removed, and is of a size which will allow 1500 – 1700 stock units to be carried. This will be a suitably productive unit for new entrants into farming"*.

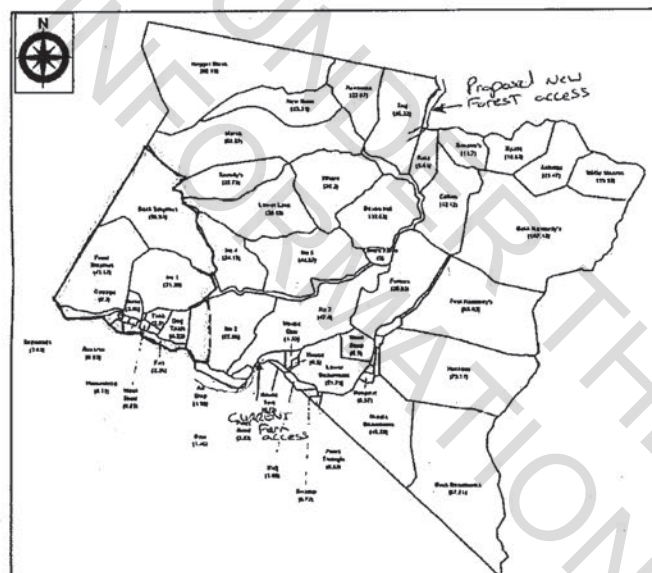
The OIO then queried what would happen if any required council subdivision consents etc (required to enable the subdivision to occur) were not forthcoming. The Applicant responded: *'Our client advises that the land intended to be subdivided is of a nature and quality whereby its highest and best use is for activities other than forestry. Accordingly, our client would not be intending to plant this area in trees in the event subdivision consent was not granted. The Applicant later confirmed that, regardless of whether subdivision took place, the better areas "would be put to use farming in the most sensible manner possible", either by a lessee or it would be farmed on behalf of the Applicant.*

The Applicant on 9 September then provided a very detailed analysis setting out the differences between the areas intended for retention for pastoral farming as compared to that to be forested. This examined the historic stocking rates of the areas, soil types, contour etc. The Station originally consisted of two separate blocks, the Morrison and Speedy blocks. The latter carried a stocking rate of 8.8su/ha, compared to Morrison with just 6.86. The retained land is all from the old Speedy block which has superior soil, higher natural fertility etc and lies at a lower altitude than the land to be planted.

Areas intended to be planted in forestry are of higher altitude and considerably steeper contour, hence generally colder, windier climate conditions. It generally features poorer soil stability than the land intended to be retained in farming, as shown graphically by erosion following storms in 2004. Tree planting improves soil stability and that is a factor to be taken into account in determining preferable land use.

The agent's assessment for the land proposed to be retained in pastoral use is 9.0su/ha which is similar to neighbouring properties farmed at 10su/ha (which the agent considers to be over stocked).

16. The proposed area to be subdivided appears on the following diagram outlined in red:



17. The Applicant's proposal to subdivide the most productive parts of the farm and offer them back on the Open Market preserves the best aspects of the farmland, while at the same time reducing the initial outlay required by a purchaser, thereby opening the market for a greater number of potential NZ buyers.

Sensitive Land

18. The Applicant is acquiring sensitive land. See Appendix 2.

Assessment Process

19. We have sought sufficient information from the Applicant for us to be assured about the accuracy of the information supplied and have sought sufficient evidence from the Applicant for us to be able to judge whether the criteria and factors that apply are met.
20. We did not consider it necessary to seek input from third parties in order to verify the information or evidence gathered.
21. We have determined that:
 - (a) the 'relevant overseas person' is (collectively):
 - **Ernslaw One Limited** (the Applicant);
 - the **Tiong Family** (the ultimate underlying owners of the Applicant);
 - **Sir Tiong Hiew King** (the founder of the Tiong Group who owns more than 25% of the Applicant).
 - (b) the 'individuals with control of the relevant overseas person' are the directors of the Applicant (being **Thai King Tiong, Tiong Ik King** and **Chai Leng (Thomas) Song**) and **Sir Tiong Hiew King**.
22. As a result of this transaction the relevant overseas person will **not** own or control farm land that is more than ten times the average farm size for the principal farming activity (sheep and beef farming) that is proposed to be carried out. Therefore, in accordance with directions from Ministers, we have not treated the following factors as being of high relative importance:⁵
 - (a) sections 17(2)(a)(i) to 17(2)(a)(vi), the "economic benefit" factors;
 - (b) regulation 28(i), the "economic interests" factor; and
 - (c) regulation 28(j), the "oversight and participation by New Zealanders" or "mitigating" factor.

Counterfactual Analysis

23. In *Tiroa E*, the Court made specific reference to the counterfactual assessment to be made. Miller J recognised that the statute's perspective is forward looking and that, "if it is to isolate the economic benefits attributable to the overseas investment, the counterfactual must similarly be forward looking, requiring that the OIO ask what will happen if the investment is not made".⁶ Miller J also suggested that the "status quo may serve as the counterfactual under s 17(2)(a) only if Ministers think it likely that in the hands of another owner or owners, the farms will remain in their present state".⁷
24. The OIO believes that the most likely counterfactual if the investment does not proceed is that a **well funded alternative NZ purchaser is likely to eventually purchase the Station but will continue to use it entirely for sheep/beef farming**. The OIO believes that any such **alternative NZ purchaser is unlikely to undertake a similar Business Plan** to that proposed by the Applicant (which involves **dividing the Land so that it is used for both sheep/beef farming and forestry**) for the reasons set out below. Accordingly, the OIO believes that equivalent benefits to those set out below under the individual benefit factors are unlikely to arise without the overseas investment.

⁵ Ministerial Directive letter date 8 December 2010, paras 4-12.

⁶ *Tiroa E* at [37].

⁷ *Tiroa E* at [42].

25. Despite being extensively advertised on the Open Market for more than a year, nobody apart from the Applicant has been willing to pay a price considered acceptable by the Vendor. Two other offers were received as a result of the advertising and the OIO sought further details of these two offers. The Applicant responded: *The details of the two other offers made for the property are as follows:*
 - (a) On 18 August 2014 an offer was made by Mr Tony Gibb. This offer was for farming purposes for an amount of \$4,400,000.00 which included the land and buildings with an option to purchase some livestock at valuation. This offer was made verbally with instructions by the purchaser not to commit the offer to writing. The offer was declined by the vendors due to the purchase price being below their expectations and the requirement for an earlier settlement date which did not allow the vendors to profit from the progeny born in spring 2014. The purchaser likewise declined to proceed further with negotiations given the disparity in purchase price expectations.
 - (b) On 22 February 2015 an offer was made by Mount View Farms Limited. This offer was for farming purposes for an amount of \$5,750,000.00, committed to in writing, and included the land and buildings plus certain livestock, effectively therefore as a going concern. In considering the offer the vendors estimated the value of the livestock contained in the offer using herd scheme values as at 19 December 2014 giving an amount of \$1,183,082.00. This gave rise to an offer for the land and buildings of \$4,566,918.00. This offer accordingly was declined by the vendors due to the purchase price being below their expectations and a proposed March settlement date not being satisfactory to them. Further negotiations however did ensue with regard to the amount of livestock to be included although ultimately an agreement was never reached and negotiations ended on or about 3 March 2015.
26. In the case of both offers, the intended use was to continue sheep/beef farming and the price offered for the Land (not including the stock in the second offer) was several hundreds of thousands of dollars less than that offered by the Applicant (which has offered \$5.4m).
27. Kumeroa Station is predominantly medium to steeper hill country with a variety of soil types. As stated above, the Applicant in September 2015 provided a detailed analysis of the different soil type, contours etc of the land.
28. The Applicant is primarily a forestry investor but has an unusual plan in this case to subdivide off the area most suitable for farming, which will allow farmers to acquire that area at a price which will be considerably less than that required to purchase the entire property. This is likely to increase the number of potential NZ farmers able to acquire that portion given the greatly reduced purchase price. Even if a formal subdivision is not possible, the Applicant has indicated that it will not plant this better area (and will instead have it farmed under some other leasing/grazing arrangement which is likely to be beneficial to local farmers).
29. No other forestry company has made an offer for the Station to date. The Applicant is motivated to undertake the conversion/subdivision as it will fit within the Applicant's existing forestry estate in the Tararua District which will allow shared efficiencies etc which a new entrant into the forestry industry in the District could not benefit from.
30. In summary, the proposed investment will result in the retention of an area of the better pastoral land for farming, with the remainder being planted in forest, thereby achieving the Highest Better Use for each area. In addition to the economic and other benefits listed below, the Applicant intends to build a new road to access the plantation which will result in enhanced roading for local residents of the area. Without the investment, it is most likely that all of the Station will continue to be used for pastoral farming (most likely by the Vendor in the foreseeable future) and none of the new benefits resulting from the proposed forestry conversion will otherwise arise.

Criteria set out in section 16

31. s16(1)(a) Overseas Investment Act 2005

Does the relevant overseas person, or (if that person is not an individual) do the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to that overseas investment?	✓
---	---

The OIO is satisfied that the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment. The Applicant is currently the fourth largest forestry operator in NZ and already operates in the Tararua Area (and the individuals with control have satisfied this criterion repeatedly under previous applications).

32. s16(1)(b) Overseas Investment Act 2005

Has the relevant overseas person demonstrated financial commitment to the overseas investment?	✓
---	---

The OIO is satisfied that the relevant overseas person has demonstrated financial commitment to the overseas investment. The Applicant has demonstrated its financial commitment to the investment by entering into the *Sale Agreement* for this investment. It has committed to payment of the Application fee together with associated legal fees and disbursements and stands ready to pay the deposit of \$540,000 as soon as the *Agreement* becomes unconditional.

33. s16(1)(c) Overseas Investment Act 2005

Is the relevant overseas person, or (if that person is not an individual) are all the individuals with control of the relevant overseas person, of good character?	✓
---	---

The decision maker must be satisfied that the individuals with control are of good character. Section 19 of the Act specifies that the decision-maker must take the following factors into account (without limitation) in assessing whether a person is of good character:

- offences or contraventions of the law by the person, or by any person in which the person has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not); and
- any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

The Applicant has recently provided a statutory declaration stating that the individuals with control are of good character, have not committed an offence or contravened the law as described above and know of no other matter that reflects adversely on their fitness to have the Investment. The OIO is satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957. The OIO has also conducted open source background checks on the individuals with control and found nothing relevant to this criterion. The Applicant has also been the subject of ongoing post-consent monitoring as a result of previous recent applications and there have been no compliance issues to date

Therefore, the OIO is satisfied that the individuals with control are of good character.

34. s16(1)(d) Overseas Investment Act 2005

Is the relevant overseas person, or (if that person is not an individual) is each individual with control of the relevant overseas person, not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009?	✓
--	---

Section 15 of the Immigration Act specifies that certain convicted or deported persons are not eligible for a visa or permission to enter or be in New Zealand. Section 16 provides a power to deny a visa or permission to enter New Zealand for other specified reasons, such as if the individual is likely to be a threat or risk to security or public order.

The Applicant has provided a statutory declaration stating that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009. The OIO is satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957. The OIO has also conducted open source background checks on those individuals and found nothing relevant to this criterion.

Therefore, the OIO is satisfied that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.

35. s16(1)(e)(ii) Overseas Investment Act 2005

Will the overseas investment benefit, or is it likely to benefit, New Zealand (or any part of it or group of New Zealanders)?	✓
--	---

The proposed overseas investment will or is likely to benefit New Zealand (or any part of it or group of New Zealanders) having regard to the following factors:

Overseas Investment Act 2005

- 17(2)(a)(i) – Creation of jobs
- 17(2)(a)(iv) – Greater efficiency and enhanced domestic services
- 17(2)(a)(v) – Additional investment for development purposes

Overseas Investment Regulations 2005

- 28(e) – Previous investments
- 28(f) – Advance Govt strategy

36. s16(1)(e)(iii) Overseas Investment Act 2005

Will the benefit be, or is the benefit likely to be, substantial and identifiable?	✓
---	---

OIO Assessment:

The OIO is satisfied that the benefits of the investment are likely to be substantial and identifiable. The proposed investment will result in the conversion of the more marginal and less pastorally productive areas on Kumeroa Station into forestry managed by one of NZ's largest forestry operators. The retention of the better pastoral land for farming will ensure that the different areas will be put to their best possible use to ensure each is used as efficiently and productively as possible. As a result, the investment is likely to result in the creation of jobs, greater efficiency and enhanced domestic services (a new road for local users) and additional investment for development purposes.

Without the investment, the status quo is likely to remain (and the whole farm area will remain pastorally farmed for the reasons set out in the Counterfactual Analysis above) and there is little likelihood that any of the additional benefits set out under the individual factors below will otherwise arise.

37. s16(1)(f) Overseas Investment Act 2005

Has the farm land, or have the farm land securities, been offered for acquisition on the open market to persons who are not overseas persons, in accordance with the Overseas Investment Regulations 2005?	✓
---	---

The OIO is satisfied that the farm land has been offered for acquisition on the Open Market to persons who are not overseas persons in accordance with the Overseas Investment Regulations 2005.

The Land has been advertised on the Open Market for sale for a period well in excess of 20 working days. The Land was advertised by For Farms (NZ) Limited as an exclusive (sole agency) from September 2013. This sole agency expired on 30 March 2014, at which time the agency became a general agency. The Vendor then listed the property with Bayleys Real Estate (September 2014) and Professionals Real Estate (December 2014). Advertising included:

- newspaper advertisements in the *Farmers Weekly* (national publication - 9 advertisements in July, October 2013, March, July, November and December 2014), the *Dominion Post* (2 advertisements), *Hawkes Bay Today* (4 advertisements) and *Country-Wide* (national publication -1 advertisement);
- on the internet websites www.forfarms.co.nz, www.nzfarms.co.nz, www.trademe.co.nz from 22 October 2013 to the present day;
- a Kumeroa Station *Information Brochure* was emailed and posted to more than 250 inquirers;
- at Central District Field Days on 13 March 2014 to 15 March 2014;
- at the Dannevirke A&P Show on 7 February 2015;

Factors Set Out in section 17

38. s17(2)(a)(i) Overseas Investment Act 2005

Will the overseas investment result in, or is it likely to result in, the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost?

✓

It is difficult to compare ongoing pastoral farming jobs (which are reasonably constant from year to year) which are replaced by ongoing forestry jobs (which tend to occur in bursts as the forest is established, is periodically tended (thinned, pruned etc) and is then harvested).

However, in this case, the proposed development will result in an ongoing mix of both pastoral and forestry jobs, and will also create significant short term forestry development job opportunities which would otherwise be unlikely to arise. The investment will therefore optimise the employment capacity of the different areas of the Land.

The Vendor employs 2 full time staff on the farm currently and uses short term contract labour for shearing, docking and other variable farm work from time to time. In response to a query from the OIO, the Vendor provided the following estimate of labour:

Labour Hours

Main Shearing	360MH
Lamb Shearing	360MH
2 nd Shearing	360MH
Hogget Shearing	144MH
Main Crutching	160MH
Other Crutching/Dagging	64MH
Fencer – general	2340MH
Shepherd/Stockman	1560MH
Total Annual Man Hours	5348MH
FTE equivalent	2340MH
2.285 ~ say 2.3 (FTE)	

MH = Man Hours

The Applicant stated 'Set out is the Vendor's estimate of FTEs engaged in the farming use of the land (continued solely as a farm over the entire property). As the proposed conversion to forestry engages labour intensively for various activities such as planting and establishment of the forest, it is difficult to compare the land uses directly in terms of FTEs over a long period of time.

The Applicant notes that under its proposed combined uses of the land (ie part to continue for farming use and part for forestry), the estimate of 1 FTE on the smaller farm lot will continue. The Applicant's estimates for the years to June 2018 under the proposed forestry use are as follows:

	FTE permanent	FTE contractor	Total
2015/2016	0.3	0.7	1
2016/2017	0.5	6	6.5
2017/2018	0.5	6	6.5

Added to the above is the 1 FTE continuing for the farming part of the proposed use for the years in question'.

Conversion jobs over the next few years (2015-2018) include road construction, planting and release spraying.

Without the overseas investment, equivalent forest establishment development is unlikely to occur as the status quo (pastoral farming over all of the Land) is likely to continue, given there has been no interest shown in the Land by other forestry operators.

39. s17(2)(a)(ii) Overseas Investment Act 2005

Will the overseas investment result in, or is it likely to result in, the introduction into New Zealand of new technology or business skills?	x
--	----------

40. s17(2)(a)(iii) Overseas Investment Act 2005

Will the overseas investment result in, or is it likely to result in, increased export receipts for New Zealand exporters?	Not Relevant
---	---------------------

The OIO can not be satisfied that the overseas investment is likely to result in increased export receipts for NZ exporters due to the difficulties comparing export receipts from forestry as opposed to pastoral farming.

In response to a request from the OIO, the Vendor provided a table of the following recent earnings from the Station over the past three years:

	2013	2014	2015
Sheep sales \$	272397	293775	180694
Cattle sales \$	317115	99651	253022
Wool sales \$	100831	129230	117450
Total \$	690343	522656	551166

If these earnings remain constant over the planned 28 year life of the new forest, and the best year (2013) is used as an average figure (\$690K), then total receipts over that 28 period would be around \$19.3m.

The Applicant has estimated that the new forest will generate gross export earnings of \$93m based on current prices. This is calculated on the basis of a clearfell harvest at age 28 from 1,000ha stocked and 672m³/h and does not include the earnings which will be derived from the retained pastoral area.

Although these figures would suggest that greater export earnings will follow conversion, this assumes that pastoral and forestry markets and potential earnings will remain reasonably constant over the following two or three decades – which may not be the case (for example, there have been dramatic changes in the dairy industry over the last few years).

41. s17(2)(a)(iv) Overseas Investment Act 2005

Will the overseas investment result in, or is it likely to result in, added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand?	✓
---	----------

The OIO is satisfied that the investment will likely result in greater efficiencies, as the new forest is incorporated into the Tiong Group's existing forestry operation in the Taranaki Region. The investment may also lift the overall productive capacity of the Station (though the OIO is not certain that this will be so given the difficulties of comparing forestry vs pastoral productivity) and will also enhance domestic services through the creation of better road conditions for local road users.

Without the overseas investment, the OIO believes that the Land will continue to remain a sheep/beef farm and none of the forestry related efficiency, productivity or enhanced domestic service benefits are likely to arise. The retention of some of the best land for pastoral farming is likely to ensure that there is an overall net gain, as both pastoral and forestry users make best use of areas within the Station best suited to their respective industries.

Greater efficiency

The Land suits the requirements of the Applicant due to its proximity to other land that it has acquired in this region, and the commercial benefits to be obtained from combining management and operational support in managing these forestry blocks together.

The new Forest will form part of the Applicant's Titoki Forest which is 50km east of Dannevirke. Titoki Forest is approximately 6,800ha and with the addition of the additional land, it will mean that in future these blocks will be able to be harvested on a sustainable yield basis. This will enable a reduction in overhead costs and dollar/unit costs thereby enhancing the ongoing viability of other overseas investments by the Applicant. The total area of approximately 8,000ha will allow a constant harvest rotation over a 20 year period without the 5-10 year downturn that may occur on a smaller block, thereby giving greater productivity.

The advantages of this are many, including consistency of employment for contractors/employees and of supply to customers and others involved in the supply chain in the forestry industry (such as mechanics and other incidental labourers). This consistency means that forest owners are able to attract a much higher calibre of contractors and employees.

Greater productivity

The OIO is not satisfied that the conversion to forestry and retention of some pastoral land will likely lead to greater productivity (given the difficulties in comparing forestry and pastoral productivity).

Enhanced domestic services

The Applicant intends to form a new road on the northern side of the subdivided block to connect with Otepe Road. This will mean that heavy traffic will not need to travel along Otawhao Road (currently the only access route to the property), which is narrow and winding. The use of Otepe road will also reduce the need for the local authority to upgrade Otawhao Road and its many bridges.

Added market competition

The investment will not result in added market competition.

42. s17(2)(a)(v) Overseas Investment Act 2005

Will the overseas investment result in, or is it likely to result in, the introduction into New Zealand of additional investment for development purposes?

✓

The OIO is satisfied that the overseas investment is likely to result in the introduction into NZ of additional investment for development purposes. In order to meet the requirements of this factor the Investment must be 'additional investment', 'introduced into New Zealand' and be for 'development purposes'. More particularly, the investment must:

- occur after the initial acquisition and be additional to the purchase price;
- be funded in the form of foreign direct investment (including retained earnings); and
- have the effect of increasing the productive capacity of the assets being acquired.

The OIO sought an overall figure for the proposed development and the Applicant responded "*The Applicant estimates the total for development capital introduced to June 2018 as being \$1,548,000*". The Applicant will be funding the acquisition and planting of trees on the Land as set out in the Table below:

Work plan	Cost	man hours
July 2015 to June 2016		
Purchase seed	\$95,000	0
Construct roads	\$200,000	1280
Subdivide off 150ha	\$30,000	0
Remove other house	\$0	0
Scrub cutting	\$2,000	4
	\$327,000	

July 2016 to June 2017

Purchase seed	\$95,000	0
Construct roads	\$200,000	1280
Planting	\$225,000	4800
Purchase seedlings	\$100,000	0
Cartage	\$14,500	64
release spraying	\$85,000	4800
chemical	\$22,500	0
supervision	\$16,000	320
	\$758,000	

July 2017 to June 2018

Planting	\$225,000	4800
Purchase seedlings	\$100,000	0
Cartage	\$14,500	64
release spraying	\$85,000	4800
chemical	\$22,500	0
supervision	\$16,000	320
	\$463,000	

July 2018- June 2025

Trees grow Ernslaw staff member deals with any hunting or stakeholder issues an

July 2025- June 2026

Structural thinning	\$375,000	8000
---------------------	-----------	------

July 2026- June 2027

Structural thinning	\$375,000	8000
---------------------	-----------	------

The OIO also sought evidence that this additional investment would be introduced into NZ, either in the form of introduced capital or retained earnings. The Applicant responded: *"As the Applicant is a subsidiary of Oregon Group Limited, it is the parent company that holds a debt facility with a consortium of banks, presently comprising HSBC and Bank of New Zealand. There is a funding line available to the Applicant to facilitate developments of the kind in question."*

We refer you to the balance sheet of Oregon Group Ltd set out in the financial statements submitted with the application in question. We note that retained earnings shown in the balance sheet of the parent company have increased between 2013 and 2014, in terms of both the parent entity and the consolidated group. We also draw attention to the notes to the financial statements on page 29 of the attachment to the application, which sets out summaries of the amounts invested in new forests, forest development expenditure and incidental roading expenses for the forests.

The majority shareholder Callander Limited has advanced \$28,832,560 as an unsecured loan to the parent in support of its activities in New Zealand. While this is not attributed solely to the Applicant's activities, the history of financial investment on the part of the Applicant and its shareholders demonstrates that development activity will be funded by a combination of retained earnings and bank funding to the extent required.

Without the overseas investment, it is unlikely that equivalent additional investment for development purposes will be applied to the Station. This development capital is intended to maximise both forestry and pastoral productive capacity from different areas of the Station. The existing farm is well established and does not require significant additional investment in order to continue its current level of operation and there has been no indication that an alternative purchaser is interested in undertaking a similar costly forestry conversion and subdivision of the Station.

43. s17(2)(a)(vi) Overseas Investment Act 2005

Will the overseas investment result in, or is it likely to result in, increased processing in New Zealand of New Zealand's primary products?	Not Relevant
---	---------------------

The OIO does not believe that it is possible to meaningfully compare how much timber is likely to be processed in NZ upon harvest as opposed to sheep/beef produce processed annually over the same period (given the forestry investment period will span decades, during which time changing markets are likely to determine how much of either type of produce is processed in NZ). However, given the Tiong Group exports much of its timber (and the Applicant has claimed the Increased Exports factor), the OIO believe that this factor is not met.

44. s17(2)(b) Overseas Investment Act 2005

Are there, or will there be, adequate mechanisms in place for protecting or enhancing existing areas of significant indigenous vegetation and significant habitats of indigenous fauna?	Not Relevant
--	---------------------

The OIO is satisfied that there will be adequate mechanisms in place for protecting or enhancing existing areas of significant indigenous vegetation and significant habitats of indigenous fauna but, as there is no certainty that anything new will be created, this factor is not met. A proposed condition of consent will require the Applicant to consult with the Department of Conservation to ensure that any reasonable additional ecological mechanisms are put in place for this and the following factor.

45. s17(2)(c) Overseas Investment Act 2005

Are there, or will there be, adequate mechanisms in place for protecting or enhancing existing areas of significant habitats of trout, salmon, protected wildlife and game, and providing, protecting or improving walking access to those habitats?	Not Relevant
---	---------------------

46. s17(2)(d) Overseas Investment Act 2005

Are there, or will there be, adequate mechanisms in place for protecting or enhancing historic heritage within the relevant land?	Not Relevant
--	---------------------

47. s17(2)(e) Overseas Investment Act 2005

Are there, or will there be, adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land, or a relevant part of that land, by the public or any section of the public?	Not Relevant
--	---------------------

The OIO is satisfied that there will be adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land, or a relevant part of that land, by the public or any section of the public but, as there is no certainty that anything new will be created, this factor is not met. A proposed condition of consent will require the Applicant to grant reasonable public walking access and to consult with the NZ Walking Access Commission with regard to whether any reasonable additional access should be put in place.

48. s17(2)(f) Overseas Investment Act 2005

Has any foreshore, seabed, riverbed, or lakebed been offered to the Crown?	Not Relevant
---	---------------------

49. r28(a) Overseas Investment Regulations 2005

Will the overseas investment result in, or is it likely to result in, other consequential benefits to New Zealand (whether tangible or intangible benefits (such as, for example, additional investments in New Zealand or sponsorship of community projects))?	x
--	----------

50. r28(b) Overseas Investment Regulations 2005

Is the relevant overseas person a key person in a key industry of a country with which New Zealand will, or is likely to, benefit from having improved relations?	Not Relevant
--	---------------------

51. r28(c) Overseas Investment Regulations 2005

Will refusal adversely affect, or likely adversely affect, New Zealand's image overseas or its trade or international relations, or result in New Zealand breaching any of its international obligations?	x
--	----------

The OIO accepts that it is possible that refusal could adversely affect NZ's image overseas given the Applicant is already one of the largest forestry operators in NZ and the investment is intended to enhance its existing substantial NZ forestry investments (and is similar to a number of previously successful applications). However, the OIO does not believe that this is likely provided any such refusal is due to the Application failing to meet the requirements of the Act.

Refusal is unlikely to adversely affect NZ's trade or international relations, or result in NZ breaching any of its international obligations.

52. r28(d) Overseas Investment Regulations 2005

Will granting the application for consent result in, or is it likely to result in, the owner of the relevant land undertaking other significant investment in New Zealand?	x
---	----------

53. r28(e) Overseas Investment Regulations 2005

Has the relevant overseas person previously undertaken investments that have been, or are, of benefit to New Zealand?	✓
--	----------

The OIO is satisfied that the relevant overseas person has previously undertaken investments that have been or are of benefit to NZ.

The Applicant has previously undertaken investments that have been, or are, of benefit to NZ. The Applicant is currently the fourth largest forestry owning company in NZ and has acquired and/or established many forests throughout NZ, and these have resulted in many employment and other opportunities for New Zealanders.

54. r28(f) Overseas Investment Regulations 2005

Will the overseas investment give effect to or advance, or is it likely to give effect to or advance, a significant Government policy or strategy?	✓
---	----------

The OIO is satisfied that the conversion of the most suitable land on the Station to forestry will result in afforestation benefits which continue to be promoted by the Government (see for example the Ministry for the Environment's website at <https://www.climatechange.govt.nz/emissions-trading-scheme/participating/forestry/>).

55. r28(g) Overseas Investment Regulations 2005

Will the overseas investment enhance, or is it likely to enhance, the ongoing viability of other overseas investments undertaken by the relevant overseas person?	Not Relevant
--	---------------------

56. r28(h) Overseas Investment Regulations 2005

Will the overseas investment assist, or is it likely to assist, New Zealand to maintain New Zealand control of strategically important infrastructure on sensitive land?	Not Relevant
---	---------------------

57. r28(i) Overseas Investment Regulations 2005

Will New Zealand's economic interests be adequately promoted by the overseas investment?	x
---	----------

The OIO's overall assessment of this factor is that the overseas investment will adequately promote New Zealand's economic interests, but that any promotion is likely to be minor and not sufficient to satisfy this factor.

The 'Economic Interests' factor is relevant to all overseas investments in sensitive land. The factor has a broader focus than the economic factors already discussed and concerns the effect of the overseas investment on the wider New Zealand economy.

In assessing this factor, the OIO has considered the four matters referred to in regulation 28(i). These four matters are examples that can be taken into account in assessing whether New Zealand's economic interests are adequately promoted by the overseas investment.

Whether New Zealand will become a more reliable supplier of primary products in the future

The size of the forestry investment in this case is unlikely to make any material difference to the reliable supply of forestry primary products by NZ.

Whether New Zealand's ability to supply the global economy with a product that forms an important part of New Zealand's export earnings will be less likely to be controlled by a single overseas person or its associates

While the OIO considers that forestry forms an important part of New Zealand's export earnings, the overseas investment is unlikely to have any material impact on the makeup of the forestry industry, given the large number of major forestry growers in NZ. As such, the overseas investment is unlikely to increase the diversity of ownership within the forestry industry or reduce the likelihood of forestry being controlled by a single overseas person or its associates given the Applicant is already the fourth largest forestry owner in NZ.

Whether New Zealand's strategic and security interests are or will be enhanced

The overseas investment is unlikely to have any material effect on New Zealand's strategic and security interests

Whether New Zealand's key economic capacity is or will be improved

The investment will ensure that the different areas of Kumeroa Station are fully developed and used for their best possible purpose which, in a small way, should improve NZ's key economic capacity. However, this improvement is so small that it will not of itself be sufficient to satisfy this factor.

58. r28(j) Overseas Investment Regulations 2005

To what extent will New Zealanders be, or are likely to be, able to oversee or participate in the overseas investment and any relevant overseas person?	x
--	----------

The 'Oversight and Participation by New Zealanders' factor is relevant to all overseas investments in sensitive land. The factor applies to oversight and participation in the overseas investment or relevant overseas person at an ownership or control level.

Overall, although some of the matters in regulation 28(j)(i)-(iv) are met, the OIO considers that New Zealanders are unlikely to have any meaningful ownership or participation in the Investment or relevant overseas person.

Matters in regulation 28(j)(i)-(vi)

The OIO has also considered the six matters referred to in regulation 28(j). These matters are examples that can be taken into account in assessing this factor.

Whether there is or will be any requirement that 1 or more New Zealanders must be part of a relevant overseas person's governing body

The Applicant has not advised the OIO of any requirement that one or more New Zealanders be part of the relevant overseas person's governing bodies. The Applicant does have one NZ resident director but none of the three directors are NZ citizens.

Whether a relevant overseas person is or will be incorporated in New Zealand

The Applicant is incorporated in New Zealand (but its parent bodies are not).

Whether a relevant overseas person has or will have its head office or principal place of business in New Zealand

The Applicant currently has offices in Auckland, Gisborne, Bulls and Tapanui.

Whether a relevant overseas person is or will be a party to a listing agreement with NZX Limited or any other registered exchange that operates a securities market in New Zealand

The relevant overseas person is not a party to any such listing agreement.

The extent to which New Zealanders have or will have any partial ownership or controlling stake in the overseas investment or relevant overseas person

None.

The extent to which ownership or control of the overseas investment or of a relevant overseas person is or will be dispersed amongst a number of non-associated overseas persons

The Applicant is ultimately beneficially owned by the Tiong Family and is therefore closely held by a number of associated overseas persons.

Third Party Submissions

59. No third party submissions were received.

Appendix 1 – Conditions of Consent

Consent is granted subject to the following conditions:

1. The consent will lapse if the Investment has not been acquired by and transferred to the Applicant within twelve months of the date of consent.
2. The Applicant 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 date of settlement;
 - (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.
3. The Applicant, or the individuals with control of the Applicant, 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.
4. The Applicant must notify the OIO in writing within 20 working days if:
 - (a) the Applicant, or (if the Applicant is not an individual) any individual with control of the Applicant:
 - (i) ceases to be of good character; or
 - (ii) commits an offence or contravenes the law (whether convicted or not); or
 - (iii) becomes aware of any other matter that reflects adversely on the Applicant's fitness to have the Investment; or
 - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
 - (b) any person in which the Applicant, or any individual with control of the Applicant has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the law (whether convicted or not); or
 - (c) the Applicant:
 - (i) ceases to be an overseas person; or
 - (ii) disposes of the Investment.

Development Condition

5. Unless varied with the agreement of the Overseas Investment Office, the Applicant must implement the proposed development of the forest (including the new road referred to therein) as set out in paragraph 8.5 of the Application and as shown in the table in Appendix 13 as follows:

Work plan	Cost	man hours
July 2015 to June 2016		
Purchase seed	\$95,000	0
Construct roads	\$200,000	1280
Subdivide off 150ha	\$30,000	0
Remove other house	\$0	0
Scrub cutting	\$2,000	4
	\$327,000	
July 2016 to June 2017		
Purchase seed	\$95,000	0
Construct roads	\$200,000	1280
Planting	\$225,000	4800
Purchase seedlings	\$100,000	0
Cartage	\$14,500	64
release spraying	\$85,000	4800
chemical	\$22,500	0
supervision	\$16,000	320
	\$758,000	
July 2017 to June 2018		
Planting	\$225,000	4800
Purchase seedlings	\$100,000	0
Cartage	\$14,500	64
release spraying	\$85,000	4800
chemical	\$22,500	0
supervision	\$16,000	320
	\$463,000	
July 2018- June 2025		
Trees grow Ernslaw staff member deals with any hunting or stakeholder issues an		
July 2025- June 2026		
Structural thinning	\$375,000	8000
July 2026- June 2027		
Structural thinning	\$375,000	8000

Retention of Farming Area

- Unless varied with the agreement of the Overseas Investment Office, the Applicant must continue to farm (or subdivide and sell) the proposed subdivision area referred to in paragraph 6 of the Application and in the Applicant's correspondence to the OIO dated 15 and 16 July 2015.

Ecological Condition

7. The Applicant must consult with the Department of Conservation ("DOC") to determine what the Applicant can reasonably do (having regard to the proposed use of the relevant land) to protect or enhance any existing areas of significant indigenous vegetation or significant habitats of indigenous fauna on the relevant land (such as the registration of new instruments) ("Environmental Protection"). The Applicant must:
 - (a) Write to the Statutory Land Management National Advisor of DOC (Conservation House, 18-32 Manners Street, Te Aro, Wellington 6011) within 30 working days from the date of settlement, advising that the Applicant wishes to consult about Environmental Protection and enclose:
 - (i) a copy of the Public Decision Summary for this consent and any environmental consultant reports prepared in relation to this application; and
 - (ii) a copy of this condition together with information identifying and describing the relevant land including aerial photographs, maps and Certificate(s) of Title;
 - (b) Implement any Environmental Protection recommended by DOC ("DOC Recommendation") within two years from DOC making the DOC Recommendation, or such other timeframe as mutually agreed between the Applicant and DOC. The cost of any Environmental Protection shall be borne by the Applicant.
 - (c) The Applicant must provide to the OIO a copy of any letter sent to DOC under condition 7(a) within 20 working days from the date of sending.

Walking Access Conditions

8. The Applicant must consult with the New Zealand Walking Access Commission ("WAC") to determine what the Applicant can reasonably do (having regard to the proposed use of the relevant land) to provide, protect or improve public walking access over the relevant land or part of that land (such as the registration of new instruments) ("Walking Access"). The Applicant must:
 - (a) Write to the Operations Manager at WAC (PO Box 12348, Thorndon, Wellington 6144), within 30 working days from the date of settlement advising that the Applicant wishes to consult about Walking Access and enclose:
 - (i) a copy of the Public Decision Summary for this consent; and
 - (ii) a copy of this condition together with information identifying and describing the relevant land including aerial photographs, maps and Certificate(s) of Title;
 - (b) Implement any Walking Access recommended by WAC ("WAC Recommendation") within two years from WAC making the WAC Recommendation, or such other timeframe as mutually agreed between the Applicant and WAC. The cost of any Walking Access shall be borne by the Applicant.
 - (c) Applicant must provide to the OIO a copy of the letter sent to WAC under condition 8(a) within 20 working days from the date of sending.
9. The Applicant must:
 - (a) grant any reasonable requests from the public for access over the Land where the proposed access is by foot and no operational, safety or fire considerations arise;

(b) appoint a person as the point of contact for any public walking access requests; and

(c) erect a notice or sign containing contact details of the contact person and stating that any request for access must be directed to that contact person, to be displayed at the entrances to the Land in a manner that ensures, as far as is reasonably practicable, that it attracts the attention of persons who may wish to access the property by foot.

10. Should a dispute or difference arise between the Applicant and WAC or the Applicant and DOC in relation to conditions 7 or 8 ("Dispute"), then the Applicant must:

(a) Endeavor to resolve the Dispute by mediation;

(b) If the Dispute is not resolved through mediation within 60 working days from the Dispute arising, endeavor to have:

(i) the Dispute referred to and finally resolved in arbitration in Wellington, New Zealand;

(ii) the tribunal consist of a sole arbitrator appointed by agreement between the parties or, if the parties cannot agree, by the President of the New Zealand Law Society; and

(iii) the arbitral proceedings conducted in accordance with the Arbitration Act 1996 or any other statutory provision then relating to arbitration;

(c) Share the cost of any arbitration and/or mediation equally with WAC or DOC as the case may be; and

(d) Provide a copy of any award made by the arbitrator to the Overseas Investment Office within 15 working days of the award being made.

Reporting condition

11. The Applicant must report in writing to the OIO for three years (on an annual basis on 1 September, the first report being due on 1 September 2016) as to the progress of the proposed development, including details of the Applicant's compliance with conditions 5, 6, 7 and 8.

12. If requested in writing by the Overseas Investment Office, the Applicant 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.

Appendix 2 – Sensitive Land

1. 583 Otawhao Rd, Woodville – **KUMEROA STATION**

Land Interest	Freehold Interest (1264.7315 hectares)
CTs	HB157/192, HBD3/846, HBD3/847, HBD3/848, HBD3/849, HBD3/850, HBG4/604, HBP2/1027, HBP2/1028 (Hawkes Bay)
Sensitivity	Is more than 5 hectares of non-urban land

