



To: Hon Stuart Nash

Hon Eugenie Sage, Minister for Land Information

ASSESSMENT REPORT: Ernslaw One Limited

Date	8 July 2020	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference (Report reference)	201720095/1431 MSOC - BRF 21-014	Priority	High

Action Sought

Minister	Action	Suggested Deadline
Hon Eugenie Sage, Minister for Land Information	1. Review the attached report and decide whether to grant consent to the application 2. Forward the report and attachments to Hon Stuart Nash	14 August 2020
Hon Stuart Nash	1. Review the attached report and decide whether to grant consent to the application 2. Forward the report and attachments to the Overseas Investment Office	14 August 2020

LINZ Contacts

Name	Position	Contact number	First contact
Michael Appleyard	Manager Applications (Residential and Forestry)	04 830 3880 022 038 2988	☒

Minister's office to complete

1 = Was not satisfactory 2 = Fell short of my expectations in some respects 3 = Met my expectations 4 = Met and sometimes exceeded my expectations 5 = Greatly exceeded my expectations					
Overall Quality	☐ 1	☐ 2	☐ 3	☐ 4	☐ 5
Comments					
☐ Noted ☐ Seen ☐ Approved ☐ Overtaken by events ☐ Withdrawn ☐ Not seen by Minister ☐ Referred to:					

ASSESSMENT REPORT: Ernslaw One Limited

Overview

Purpose

1. We seek Ministers' decision on the application by **Ernslaw One Limited** (the **Applicant**) under the Overseas Investment Act 2005 (the **Act**) to acquire a freehold interest in approximately 627ha (subject to final survey) of sensitive freehold land located in the Waihopai Valley in Marlborough (the **New Land**).

Key information

Applicant	Ernslaw One Limited (Malaysia 89.48%; Singapore 10.52%)
Vendors	Trustees of the Geoffrey Evans Family Trust (New Zealand 100%)
Consideration	\$950,000
Application type	Benefit to New Zealand (S&I) Sensitive land – Benefit to New Zealand substantial and identifiable pathway
Relevant tests	Investor Test (s16(1)(a)-(d) of the Act) Farmland advertising (s16(1)(f) of the Act) Benefits Test – substantial and identifiable benefits (s16(1)(e)(ii) and (iii)* of the Act) The contract for this transaction was entered prior to commencement of the Overseas Investment Amendment Act 2018, so the version of the Act and the regulations in force immediately before its commencement continue to apply. This application for consent was received (March 2018) prior to commencement (16 June 2020) of the Overseas Investment (Urgent Measures) Amendment Act 2020 and the transaction for which consent is required was also entered before commencement. Accordingly, the provisions of the Overseas Investment (Urgent Measures) Amendment Act 2020, including the 'national interest' assessment, do not apply.

2. Please refer to the **A3 in Attachment 6** for overview tables summarising the application and the Overseas Investment Office's (**OIO's**) assessment.
3. For completeness, this application was most recently submitted for decision to the Minister of Finance and Minister for Land Information on 23 April 2020. A joint decision was not made on the application at the time the Minister of Finance transferred his decision-making responsibilities to Hon Stuart Nash on 16 June 2020.
4. This application is now resubmitted to relevant decision-making Ministers for decision.

Provisional recommendation

5. Our provisional recommendation is to **grant consent**.
6. We note that the following issues have been the subject of six previous separate Ministerial briefings:

- the prosecution of Ernslaw One Limited in relation to environmental damage as a result of floods in the Tolaga Bay area;
 - allegations regarding the overseas' record of entities associated with the underlying owners;
 - the inability of the Applicant to provide all of the walking access recommended by the New Zealand Walking Access Commission;
 - a modified wildings pine consent condition.
7. These briefings are included in the **Bundle of Additional Documents** (Document 4).
8. If you agree to grant consent, we recommend that you make the determinations set out in paragraphs 7 to 11 below.

s 9(2)(a) OIA

Michael Appleyard

Manager Applications (Residential & Forestry - Overseas Investment Office)

Date: 8 / 07 / 2020

Decision

9. I determine that:
- the 'relevant overseas person' is (collectively):

ROP	Role
Ernslaw One Limited (Applicant)	applicant and new owner of the New Land
Oregon Group Limited (Oregon)	majority (95.24%) shareholder of the Applicant
Callander Group Limited (Callander)	majority (80%) shareholder of Oregon
Sir Tiong Hiew King	founder of the Tiong group and significant underlying owner of the Applicant
Dr Tiong Ik King	director of the Applicant, Oregon and Callander, and sole legal shareholder of Callander

- the 'individuals with control of the relevant overseas person' are (collectively):

IWC	Role
Dr Tiong Ik King	director of the Applicant, Neil Group companies, Oregon and Callander, and sole legal shareholder of Callander
Jack Lee Porus	new director of the Applicant and Neil Group companies
Chiong Hoo Tiong	new director of the Applicant and Neil Group companies
Chiong Yong Tiong	new director of the Applicant, Oregon and Neil Group companies
Sir Tiong Hiew King	founder of the Tiong Group and significant underlying owner of the Applicant

- the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment;
- the relevant overseas person has demonstrated financial commitment to the overseas investment;
- all the individuals with control of the relevant overseas person are of good character; and
- 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 (which sections list certain persons not eligible for visas or entry permission under the Immigration Act); and

10. I am satisfied that the investor test in section 16(1)(a)-(d), as outlined in paragraph 9 above, has been met; and

Hon Stuart Nash

Minister for Land Information

Agree

☐

Agree

☒

Disagree

☐

Disagree

☐

11. I am satisfied, in relation to the benefits test, that:

- the criteria for consent in section 16 have been met;
- the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
- the benefit will be, or is likely to be, substantial and identifiable.

Hon Stuart Nash

Minister for Land Information

Agree

☐

Agree

☐

Disagree

☐

Disagree

☒

12. I am satisfied, in relation to farm land advertising, that the criteria have been met as set out in the Report.

Hon Stuart Nash

Agree

☐

Disagree

☐

Minister for Land Information

Agree

☒

Disagree

☐

13. Consent is granted to the investment in the form of the Proposed Decision in Attachment 1.

Hon Stuart Nash

Grant consent subject to the conditions in the Proposed Decision

☐

Grant consent with amended conditions provided on:

☐

Consent declined

☐

Minister for Land Information

Grant consent subject to the conditions in the Proposed Decision

☐

Grant consent with amended conditions provided on:

☐

Consent declined

☒

E M Sage

Hon Stuart Nash

Date: / /

Hon Eugenie Sage

Minister for Land Information

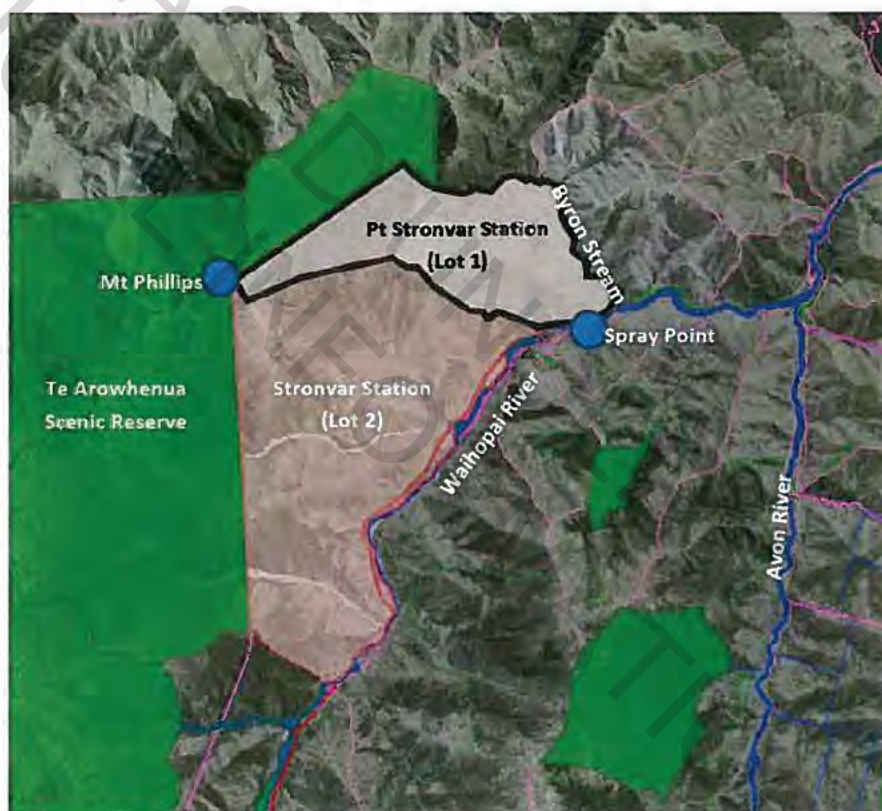
Date: 25 / 7 / 20

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Executive summary

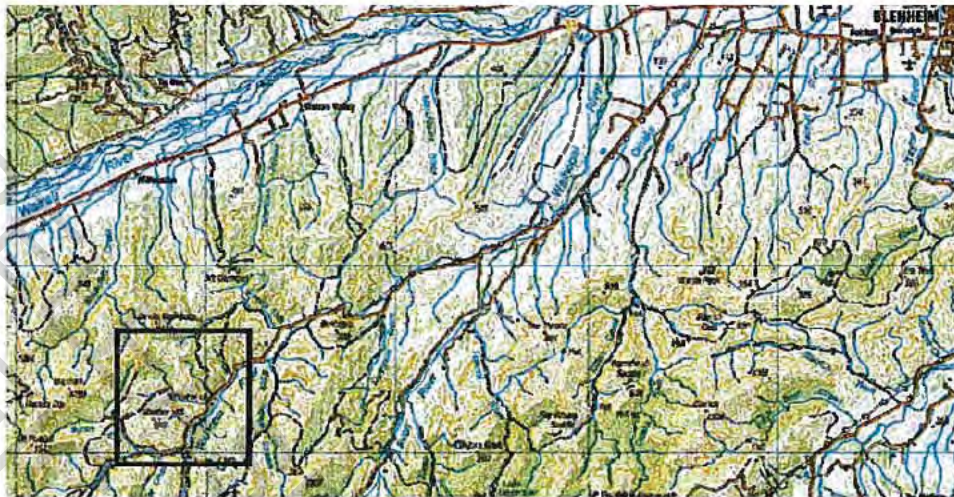
1. **Ernslaw One Limited** (the **Applicant**) seeks consent to acquire a freehold interest in approximately 627ha (subject to final survey) of land located in the Waihopai Valley in Marlborough, 60km southwest of Blenheim (the **New Land** or the **Investment**).
2. The New Land is intended to be subdivided out of Stronvar Station, an operational sheep and beef farm. The Vendors are the trustees of the Geoffrey Evans Family Trust, who are the current owners of Stronvar Station (the **Vendors**). The Vendors will retain the balance of Stronvar Station.
3. The parties consider the transaction to be a boundary adjustment between their neighbouring properties.
4. The New Land appears as Lot 1 in the following aerial photo:



Map 1: Part Stronvar Station Lot 1 (black outline) (subject to survey)

Source: www.wams.org.nz

5. The balance of Stronvar Station (not being sold) is shown as Lot 2 in the above photo.
6. The New Land is mostly steep land. The terrain rises from 420m above sea level on the edge of the Waihopai River to Mt Phillips, the highest point at 1540m.
7. The location of the Land (60km from Blenheim) is shown on the following map:



8. The New Land is currently owned by New Zealanders.
9. If consent is granted, the New Land will be subdivided from the northern part of the Vendors' existing title and amalgamated with adjoining forestry land already owned by the Applicant. The Applicant's land with which the New Land is to be amalgamated is shown marked red in the following photo:



10. Adjoining the existing Ernslaw One Ltd land marked in red above are additional parcels of forestry land owned by related Oregon Group company Timbergrow Limited.
11. Once amalgamated, the New Land will be converted to forestry and operated in conjunction with the Applicant group's existing adjoining forests.
12. The New Land is sensitive within the meaning of section 12(a) of the Act because:

- it is non-urban land that exceeds 5 hectares; and
 - it adjoins Te Arowhenua Scenic Reserve managed by DOC under the Reserves Act.
13. The consideration for the purchase of the New Land is \$950,000.
14. Guidance for applying the Act is set out in **Attachment 2**.

Benefits Test

15. The Applicant must satisfy the substantial and identifiable Benefit Test set out in s16(1)(e)(ii) and (iii).
16. The New Land is "rural land" as defined in the 2017 *Ministerial Directive Letter*. Therefore certain benefit factors are deemed to be of high importance. These factors are the creation of jobs, introduction of new technology/business skills, increased exports, increased processing of primary products and New Zealand participation.
17. We note also that, although the forestry directive in the *Ministerial Directive Letter* refers to existing (rather than new forest), the Government has signalled that it wishes to promote the New Zealand forestry industry, and in particular the domestic processing of timber products within New Zealand. This policy has been promoted through the creation of the new streamlined pathways for forestry investors, introduced shortly after this application was lodged.
18. We note that forestry acquisitions may now be applied for under the streamlined special forestry test pathway introduced in October 2018 provided the application meets the applicable requirements. Under that pathway, there is no consideration of the counterfactual and the Benefit Test factors considered in this report do not apply.
19. In terms of assessing the likely benefits, we have identified two possible counterfactuals:
- Most likely - the status quo (continued ownership by the Vendors and no afforestation); or
 - Less likely but possible in the medium to longer term - possible alternative afforestation by a competent and adequately funded alternative New Zealand purchaser - **ANZP** (though not using the subdivision resource consent which the Applicant is relying upon).
20. We have summarised the likely benefits from both of these possible counterfactuals, in the following table.

Benefit	Weighting	Analysis
Creation of jobs (high relative importance)	Low to Medium	Estimated to be the equivalent of two Full Time Equivalent positions over the life of the forest – existing farming jobs on Sironvar Station will not be reduced as at least the existing number will still be needed to farm the balance area of the Station which is not being sold (rather, the Vendors believe that the number will increase as the proceeds of the sale are used to further develop the farming operation on the balance). All forestry related jobs will therefore likely constitute a net gain over the status quo. In addition, indirect new jobs may be created for domestic processing, shipping and other related services. It is possible that alternative afforestation could be undertaken by a competent and adequately funded ANZP – if so, then it is likely equivalent jobs would arise, though this is less certain and could be delayed.
Increased export receipts (high relative importance)	Low to Medium	Estimated to be \$25m (approximately \$903k per year on average) once the forest is harvested compared to an estimated \$1.1m if the New Land remains used for sheep/beef farming over the period equal to the approximately 28 year life of the forest. It is noted though, as set out below, that the Applicant has a track record of providing a significant amount of timber to New Zealand timber processors. It is possible that alternative afforestation could be undertaken by a competent and adequately funded ANZP – if so, then it is likely equivalent increased export receipts would arise, though this is less certain and could be delayed.
Greater efficiencies and productivity	Medium	The new forest will be managed in conjunction with the Applicant's adjoining forest creating management efficiencies. Owning the New Land will assist the Applicant in its management of its adjoining forestry land, as the two properties will be managed as one. From an income per hectare perspective, the conversion to forestry will be a considerably more productive use of the New Land. It is possible that alternative afforestation could be undertaken by a competent and adequately funded ANZP. However, it is unlikely that an ANZP would own adjoining forests to create similar adjoining operation efficiencies. There will be no increased market competition or enhanced domestic services.
Introduction of development capital	Low	Initial investment for the preparation of the Land and establishment of the new forest is estimated at \$658,000. This development will be funded from New Zealand earnings which would otherwise be remitted to overseas shareholders. An ANZP is not likely to introduce equivalent capital from overseas but a similar amount of development funding would be applied, though this is less certain and could be delayed.
Increased processing of primary products (high relative importance)	Low	The Applicant is likely to supply new timber to domestic processors as it has a proven track record of doing so (it currently supplies approximately 42% of all of its harvested timber in New Zealand to domestic processors) – however, it is unable to commit to doing so at this time given harvesting of the new forest is at least 28 years away and therefore no consent condition can ensure this. It is possible that alternative afforestation could be undertaken by a competent and adequately funded ANZP – even so, given the shortage of timber currently being supplied to domestic processors, we consider that an ANZP is less likely to choose domestic supply over exporting.
Consequential	Medium	The Applicant has committed to undertake and fund both wilding pine and pest control. The Applicant will invest \$10,000 over each 5-year period over the life of the forest for wilding control plus a further initial budget of \$15,000 for pest control, with \$5,000 per annum being budgeted in subsequent years. The Applicant has also committed to obtaining FSC certification for the new forest which will ensure that it is managed in an internationally recognised manner. We consider that an ANZP unlikely to do the same given no previous owner has done so.

Previous investments	High	The Applicant has a proven track record of investing in New Zealand. The Applicant is the fourth largest forestry investor in New Zealand and employs hundreds of New Zealand workers (full-time and contractors) and has invested millions of dollars into New Zealand to date (see previous benefits section at paragraph 198 for details of employees, expenditure to date etc).
Advance Government Policy/Strategy	Low	The Investment will likely advance the <i>One Billion Trees</i> strategy amongst others. It is possible that alternative afforestation could be undertaken by a competent and adequately funded ANZP – if so, then it is likely that the <i>One Billion Trees</i> strategy would be equally advanced, though this is less certain and could be delayed.

21. We consider that the walking access factor also requires special consideration in this case. The New Zealand Walking Access Commission (**WAC**) sought a new access route up through the New Land to connect with the adjoining Conservation Park. This proved to be impossible as the *sale agreement* is conditional upon the parties reaching their own access agreement over the New Land. The Vendors have confirmed that no such agreement will be reached if any attempt is made to create the proposed new WAC route (as they believe this would jeopardise their enjoyment of the remainder of Stronvar Station).
22. As a result, we consider that there will **not** be adequate mechanisms in place to provide public walking access and that the Walking Access factor is therefore **not** met. This matter is further set out in **Attachment 3** (other benefit factors) and the **Bundle of Additional Documents** (Document 3).
23. It is noted however that walking access is just one of the benefit factors to be considered under the Benefits Test which applies to this investment. We also note that other new walking access mechanisms requested by WAC under this factor will be created.
24. As set out in the Counterfactual Analysis set out at paragraph 104 onwards, at this time, although finely balanced, we consider the most likely immediate counterfactual if the proposed transaction does not proceed is the status quo (retained ownership by the Vendors and continued use of the New Land as part of the Stronvar Station sheep and beef farming operation).
25. Under the status quo counterfactual, the Applicant has demonstrated benefits for three of the five factors that are of high relative importance under the *rural land directive*. In addition, further non-high importance benefits have been demonstrated.
26. We have also considered a possible alternative afforestation counterfactual. We consider this to be less likely than the status quo counterfactual and that any equivalent benefits likely to be created under this scenario are both less certain to occur at all or could be delayed.
27. Our overall assessment is that the overseas investment will, or is likely to, benefit New Zealand and that this is likely to be substantial and identifiable having regard to the *rural land directive* and current Government afforestation policies. We believe that this remains the case despite the Applicant's inability to create all of the new walking access route proposed by WAC.
28. Overall, we consider that these benefits satisfy the criteria in section 16(1)(e)(ii) and (iii).

Timing

29. Since the Application was first referred to Ministers in October 2018, various issues have arisen (most notably the decision by Gisborne District Council to prosecute several forestry companies (including the Applicant) following the Tolaga Bay Incident). This has resulted in a lengthy delay.
30. We have also recently been notified by the Applicant in March 2020 that in part due to the COVID-19 response they are planning their cash-flow carefully, and are continuing to seek a decision on this application as soon as practicable.

Applicant and Investor Test

31. This section describes the Applicant, and whether the Investor Test criteria in the Act are likely to be met.

Who is making the investment

32. The investment is being made by **Ernslaw One Limited** (the Applicant).
33. The Applicant is a company incorporated in New Zealand in 1990. The Applicant is an overseas person for the purposes of the Act.
34. The Applicant is a forestry and timber processing business operating in various locations throughout New Zealand. It is New Zealand's fourth largest private forest owner by area, with approximately 111,000ha of productive forest land. The most recent facts and figures released by the Forest Owners Association 2018/19 confirm this:

NZ Plantation Forest Ownership - Underlying Land Status

As at 31 December 2018

Firm/Entity	Underlying Land Status (Productive area (ha))				Total
	Freehold	Crown	Māori Inc.	Leasehold Other	
Hancock Natural Resource Group	85,246	9,549	66,682	31,185	192,662
Kaingaroa Timberlands	1,393		182,734		184,127
Rayonier/Matariki Forests	54,707	29,372	15,227	19,185	118,491
Ernslaw One Limited	59,442	41,862	7,705	2,046	111,055

35. The Applicant was formed in the 1990s when it purchased a number of state forests in the Coromandel, Southern North Island, and Otago. In the mid-1990's, the forest estate was expanded through the buying of farmland and establishing new plantation forests.
36. This growth occurred in three main areas, being Gisborne, the southern North Island and Otago-Southland. In 2008, Winstone Pulp International Ltd (**WPI**) was purchased, adding additional forests, a saw mill and a pulp mill.
37. The Ernslaw One company structure reflects its two significant activities, being forestry and wood processing. There is a structural separation, with all forestry related activities being conducted under the Ernslaw One company brand, and all timber processing related activities under the WPI brand.
38. The Applicant currently exports approximately 58% of its harvested timber, with the remaining 42% being supplied to domestic processors. Most recently, in terms of domestic volume, this amounted to 322,719 tonnes to mills in the North Island, and 60,518 tonnes to mills in the South Island. Of these amounts, 281,118 tonnes (73%) was supplied to the Applicant's own mills.

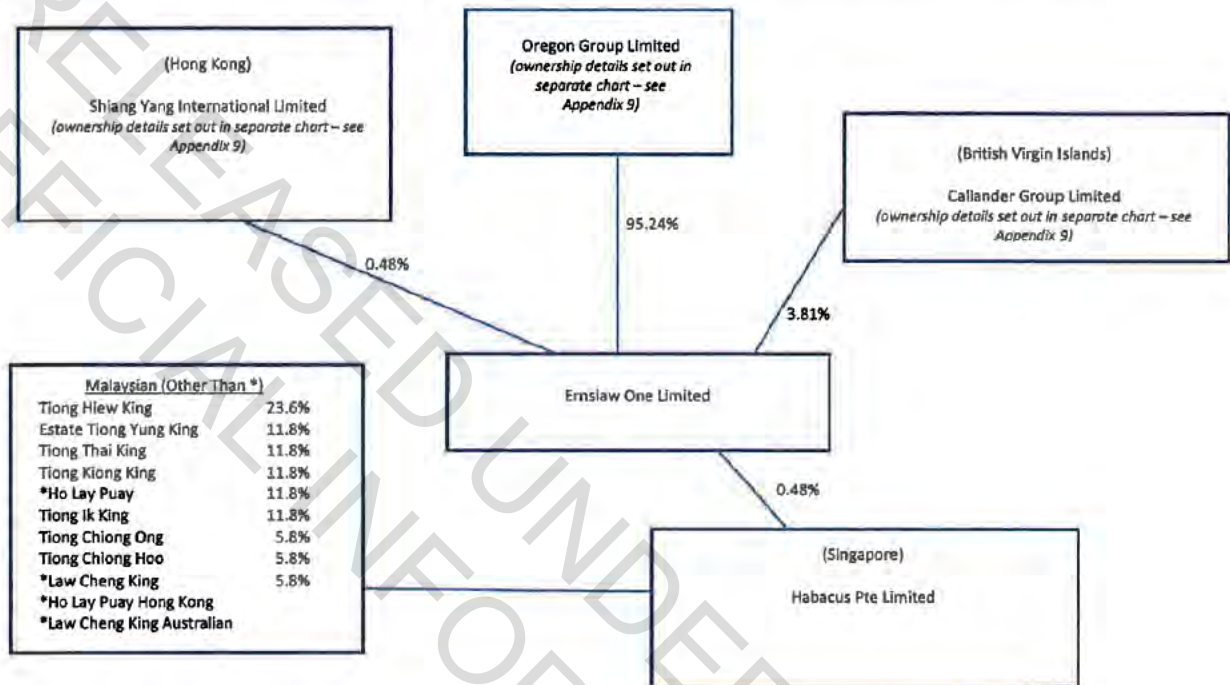
39. The Applicant currently has 62 full time New Zealand employees (plus it employs approximately 500 contractors in its timber operations). Labour for planting would be sourced from a combination of two local silviculture crews engaged by the Applicant regularly for forestry work in this region (being Nathan Gill and Graeme Dick).
40. The Applicant uses high quality radiata pine for its Marlborough forests, sourced either from high GF cuttings or seedlings sourced from Appleton's Nursery in Nelson. GF is a rating for growth and form of radiata pine seedlots, with more emphasis given to growth than to form. The higher the GF rating, the better the growth and form, which means on average there are more whorls of branches, and the branches are smaller.
41. A table setting out the Applicant's assessment of the benefits of the Oregon Group's prior investments in New Zealand is set out under the "Previous Investments" section below at paragraph 198.

Overview of assessment: Investor Test

Element of investor test	OIO assessment of strengths and weaknesses		Cross-references
	Risk Barometer	Summary	
Relevant overseas persons (ROP) and individuals with control (IWC) confirmed	ROP & IWC identified	ROP & IWC identified – note that one of those previously identified (Thomas Song) has since passed away. Note also that a number of directors have changed since the original recommendation report was lodged with Ministers. These changes are set out in Bundle of Additional Documents (Document 5)	Paras 57 and 62 Section 15
Collectively have business experience and acumen relevant to the investment	Test met	The IWCs have business experience that is relevant to the Investment, as the Applicant is NZ's fourth largest forestry owner and already operates forestry on adjoining land.	Paras 63 - 65 Section 16(1)(a)
ROP demonstrated financial commitment	Test met	The Applicant has demonstrated financial commitment by engaging professional advisers and undertaking due diligence. No additional assessment is required.	Section 16(1)(b)
Good character	Some concerns	Ministers have previously been separately briefed regarding some good character matters – as set out in Attachment 5 and in the Ministerial briefings set out in the Bundle of Additional Documents (Document 4). Ultimately, we do not consider that these matters prevent a finding of good character on the part of the individuals with control for reasons that are detailed later in this report at paragraph 66 - 73 and in Attachment 5 and in the Ministerial briefings set out in the Bundle of Additional Documents (Document 4).	Paras 66 - 73 and in the Ministerial briefings set out in the Bundle of Additional Documents (Document 4). Section 16(1)(c)
Not an individual of the kind ineligible for a visa or entry permission under ss 15 or 16 of the Immigration Act 2009	Test met	Statutory declarations have been provided confirming that each individual is not of the kind referred to in sections 15 or 16 of the Immigration Act. No additional assessment is required.	Section 16(1)(d)

Ownership and control of the Applicant

42. The Applicant is ultimately majority owned and controlled by the Tiong family from Malaysia.
43. The ownership structure is set out in the following diagram submitted by the Applicant:

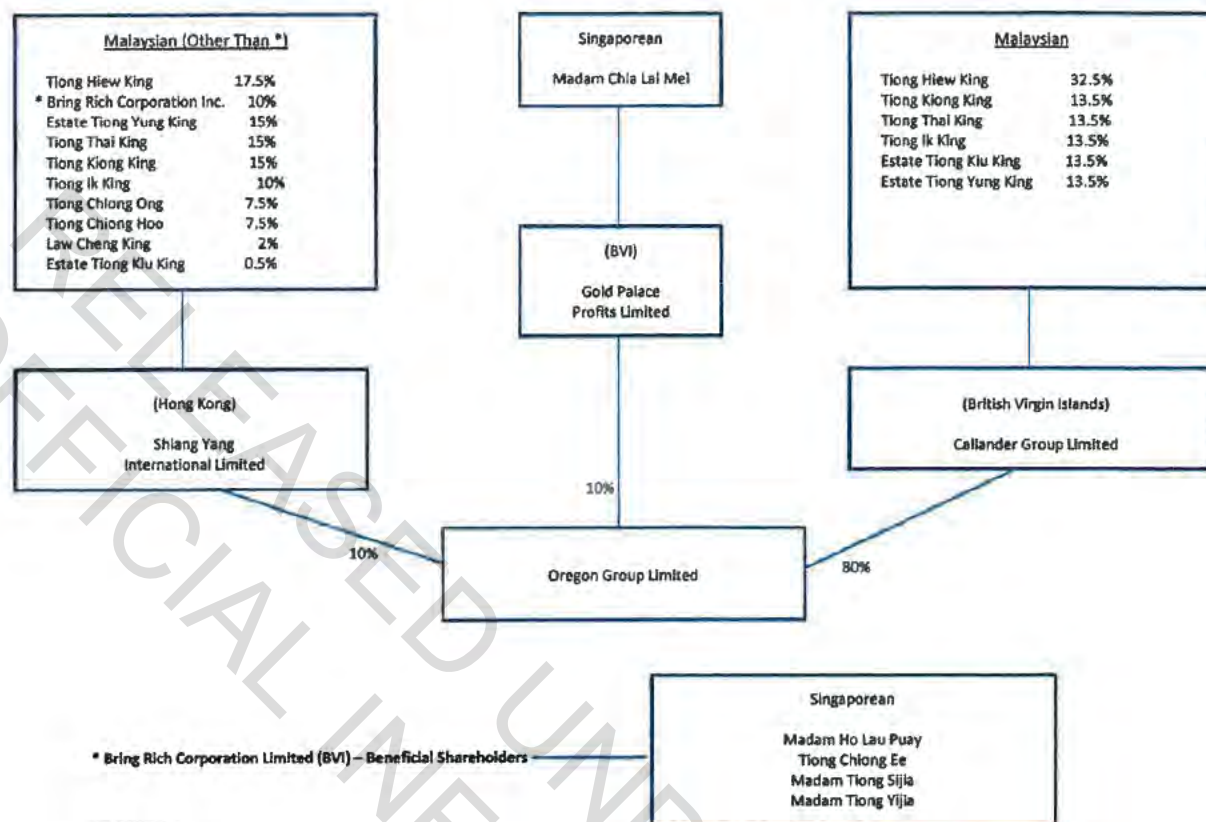


* Habacus Pte Limited – Beneficial Shareholders
141356-130-0018

44. Further details of the major underlying owners are set out below.

Oregon Group Limited

45. The Applicant is 95.24% owned by Oregon Group Limited (**Oregon**).
46. Oregon is a New Zealand company incorporated in 1992.
47. The Applicant has provided the following ownership structure diagram for Oregon:



2018-06-0001-001

Callander Group Limited

48. Oregon is in turn 80% owned by Callander Group Limited (**Callander**) which therefore has an indirect interest in approximately 76% of the Applicant.
49. Callander is a company incorporated in the British Virgin Islands.
50. The sole legal owner and director of Callander is Dr Tjong Ik King, who makes all decisions for Callander.
51. Dr Tjong Ik King holds the shares in Callander on trust for its beneficiaries (all of whom are Malaysian) in the following proportions:
 - Sir Tjong Hiew King - 32.5%
 - Tjong Kiong King - 13.5%
 - Tjong Thai King - 13.5%
 - Dr Tjong Ik King - 13.5%
 - Estate Tjong Kiu King - 13.5%
 - Estate Tjong Yung King - 13.5%

The Tjong Family

52. The Tjong Family is a high net worth Malaysian family which operates an international business with interests in many sectors (including media, forestry, palm oil plantations, aquaculture and property development).

53. The Tiong family has been associated with more than 90 previous applications under the Act. Most of these have involved the Applicant, Timbergrow Limited, Oregon Group Limited, Neil Construction Limited and The New Zealand King Salmon Co Limited.
54. The largest single underlying beneficial owner of Oregon is Sir Tiong Hiew King with 32.5% (no other beneficial owner has more than 13.5%) which converts to an indirect interest of just under 25% of the Applicant.
55. Sir Tiong Hiew King was the founder of the Tiong Group and *Forbes Magazine* ranks him as one of the richest individuals in the world. He was knighted by Queen Elizabeth II in 2009 in recognition of his services to commerce, community and charitable organisations.
56. The Applicant is also associated with forestry company Timbergrow Limited and the two companies share some management resources in New Zealand. Timbergrow Limited owns two further blocks of forestry land adjoining the forest land already owned by the Applicant (known as **Wether Hill**) which itself adjoins the New Land.
57. We have determined that the 'relevant overseas person' (ROP) is (collectively):

ROP	Role
Ernslaw One Limited (Applicant)	applicant and new owner of the New Land
Oregon Group Limited (Oregon)	majority (95.24%) shareholder of the Applicant
Callander Group Limited (Callander)	majority (80%) shareholder of Oregon
Sir Tiong Hiew King	founder of the Tiong group and significant underlying owner of the Applicant
Dr Tiong Ik King	director of the Applicant, Oregon and Callander, and sole legal shareholder of Callander

58. When this application was originally presented, the directors of the Applicant were Thomas Song, Dr Tiong Ik King and Tiong Thai King.
59. Thomas Song passed away in 2019 and the Applicant now has four directors (another director has also been replaced). These changes are set out in the **Bundle of Additional Documents** (Document 5).
60. These directors are now:
- Dr Ik King Tiong;
 - Jack Lee Porus (new);
 - Chiong Hoo Tiong (new);
 - Chiong Yong Tiong (new).
61. All three of the new directors were individuals with control in recent Neil Construction Group standing consent application 201900072 which was granted consent in September 2019.
62. We have now determined that the 'individuals with control of the relevant overseas person' (IWC) are:

IWC	Role
Dr Tiong Ik King	director of the Applicant, Neil Group companies, Oregon and Callander, and sole legal shareholder of Callander
Jack Lee Porus	new director of the Applicant and Neil Group companies
Chiong Hoo Tiong	new director of the Applicant and Neil Group companies
Chiong Yong Tiong	new director of the Applicant, Oregon and Neil Group companies
Sir Tiong Hiew King	founder of the Tiong Group and significant underlying owner of the Applicant

Business experience and acumen

s16(1)(a) and 18(1)(a) of the Act.

The relevant overseas person, or the individuals with control of the relevant overseas person, must have business experience and acumen relevant to the overseas investment. There is considerable flexibility in determining what is relevant and more or less specific expertise may be required depending on the nature of the investment. Business experience and acumen that contributes to an investment's success may be treated as relevant even though the investor may have to supplement its experience and acumen by utilising the experience and acumen of others to ensure the investment succeeds.

63. In this case, the Investment can be described as the acquisition of hill country farmland and its conversion to commercial plantation forest.
64. We note that:
 - the Applicant has carried out numerous acquisitions of this kind in the past and has successfully demonstrated that it can undertake successful forestry conversions, including on a much larger scale than the current investment;
 - the Applicant has developed and continues to manage forestry land adjoining the New Land and has relevant experience in conditions relevant to the area in which the New Land is located;
 - the Applicant's South Island Regional manager, Phil de la Mare, is responsible for the day to day management of the Investment. Mr de la Mare has more than 40 years' experience in the New Zealand forestry industry. The Applicant also has many senior employees who have been with the company for a long time.
65. Having regard to the above, we are satisfied that the IWC collectively have business experience and acumen relevant to the overseas investment.

Good character assessment

s16(1)(c) and 18(1)(c) of the Act.

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):

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

66. Five previous briefings to Ministers, all of which include discussion regarding potential good character (amongst other) matters, are set out in the **Bundle of Additional Documents** (Document 4).
67. An additional separate summary of good character issues is attached as **Attachment 5**, including extracts from previous assessment reports.

68. The Applicant was (February 2017) granted consent to acquire different land in the same Waihopai Valley. At that time, an extensive good character check was made and various allegations considered. The OIO and Ministers concluded at that time that these matters did not disqualify the individuals with control from being considered of good character.
69. Further searches have been undertaken for the period since and nothing new has been identified of concern, with the exception of the **Tolaga Bay Incident**. In late 2018 (after this application was first referred to Ministers) the Applicant was notified that it faced prosecution by the Gisborne District Council due to the damage to nearby land caused by the washing down of forestry debris during severe floods. These prosecution proceedings are ongoing at this time, and are considered in the **Bundle of Additional Documents** (Document 4 - briefings 4-6) and **Attachment 5**.
70. In addition, during the course of processing on 21 September 2018, a media article was published which included various allegations against the Applicant. Notes prepared for Ministers in response to this appear in briefing 3 in the **Bundle of Additional Documents** (Document 4).
71. The Applicant has submitted that (with regard to the current individuals with control):
- Dr Tiong Ik King has been a director of the Applicant since its incorporation in New Zealand and he has never committed offences or contraventions of the Law;
 - the Applicant has a consistent record of delivering benefits to New Zealand. It has adopted policies that place it at the forefront of companies within the forestry industry effecting positive environmental changes, and health and safety outcomes.
72. The Applicant has also provided a statutory declaration stating that the IWC are of good character, that they 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. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957.
73. For the reasons set out above, and as further detailed in the **Bundle of Additional Documents** (Document 4) and **Attachment 5**, overall, we are satisfied that the IWC remain of good character.

Provisional conclusion – Investor Test

74. Our provisional conclusion is that the Investor Test is met.

Investment and Benefits Test

75. This section describes the proposed investment, and our assessment of whether it is likely to meet the benefit criteria in the Act.

Summary of the proposed transaction

Vendors

76. The Vendors are the trustees of the Geoffrey Evans Family Trust (the **Vendors**). The Vendors are not overseas persons under the Act.

77. The Vendors use the New Land as part of a sheep and beef farm known as Stronvar Station. The Vendors lease the farm to a company owned by a son of the principal trustees (David Evans - who operates the farm through Stronvar Station Limited).
78. The Vendors currently also run hunting safaris on Stronvar Station.
79. Recent capital expenditure on the balance of Stronvar Station includes the renovation of a wool shed and shearing quarters at a cost of approximately \$30,000, and the construction of new roads, rebuilding fences and the establishment of QE II Trust covenant areas at a cost of approximately \$100,000.
80. The sale to the Applicant will raise capital which will provide funds for a succession plan for the beneficiaries of the Geoffrey Evans Family Trust. This plan includes the purchase and development of other land in Marlborough for conversion into a vineyard to produce grapes.
81. The proposed sale will also provide capital to allow development of the balance of Stronvar Station. This will likely result in increased production and improved profitability. The development includes diversifying into deer farming, which will require investment in new handling facilities and deer fencing. The Vendors plan to deer fence 400 to 500ha, which would increase current carrying capacity from 3,000 stock units to 3,800 to 4,000 stock units.

The proposed transaction

82. The Applicant and Vendors entered into a *Sale & Purchase Agreement (ASP)* for the Land on 28 September 2017. The ASP is conditional on consent under the Act being obtained.
83. The date for obtaining OIO consent has now long since passed (being June 2018) and either party is entitled to terminate the ASP at any time. Although almost two years has since passed, neither party has decided to terminate at this time.
84. The ASP is also conditional upon David Evans and the Applicant reaching an access agreement over the New Land. The Vendors have advised that no such agreement will be reached if any attempt is made to create a new proposed WAC public access route to the adjoining conservation land and that the ASP would be cancelled accordingly. A letter from the Vendors outlining their position is attached in the **Bundle of Additional Documents** (Document 03). This matter is further discussed under the Walking Access factor in **Attachment 3**.
85. The Applicant is acquiring the New Land for \$950,000. The consideration for the purchase will be paid for from cash reserves of the Applicant.

Overview of Investment Plan

86. The Applicant intends to convert approximately two thirds of the New Land, which is steep and relatively unproductive in terms of its existing traditional sheep/beef farming use, into a new forest.
87. The New Land has very low productivity for farming purposes due to the steep nature of the terrain that it principally comprises, and access is difficult.
88. Part of the New Land adjoins the Waihopai River. In addition, several unnamed tributaries of the Waihopai River and strips of Byron Stream meander in and out of the New Land. None of these waterways constitute special land under the Act.

89. To the south, the New Land will share a ridgeline boundary with the balance of Stronvar Station (Lot 2). This extends from near Spray Point on the Waihopai River westwards to the summit of Mt Phillips in Te Arowhenua Scenic Reserve on the southwest boundary.
90. Te Arowhenua Scenic Reserve is managed by the Department of Conservation (DOC) as part of the Leatham Conservation Area which extends west to the Wairau Valley and connects with a vast tract of public conservation land including Molesworth Recreation Reserve to the south and Nelson Lakes National Park to the west. Public access to the Reserve is limited though the Vendors have stated that there are frequent helicopter trips into the area.
91. The head of the Waihopai Valley is a traditional high-country sheep and cattle farming area with scattered forestry blocks extending down the Valley towards the Wairau River. Several hunting safari businesses are based in the Waihopai and adjoining Avon Valleys, and a member of the Vendor family runs guided hunting trips in the area.
92. The gross area of the New Land is approximately 627ha (subject to final survey). Of this, approximately 400ha will be plantable. The balance of the New Land is not plantable for various reasons (being too high, scrub covered etc).
93. The New Land is currently mostly vegetation free apart from some high-altitude native trees (which will be retained by the Applicant) and an area of exotic hardwood. The indigenous species are at high altitude and will be retained, but the exotic hardwood will be replaced with radiata pine.
94. A recent study of the land by the biodiversity officer of the Marlborough District Council concluded that there were **no** significant ecological areas on the New Land. There are though small areas of regenerating native vegetation on the New Land. The maximum area is approximately 5-10ha of the total area of 627ha. Species include stunted beech trees, kanuka and manuka. These areas will remain outside of the area to be planted in forestry.
95. Areas of the New Land appear in the following photographs:



96. There is a problem with wilding pine spread on the New Land. The Applicant will obtain Forest Stewardship Council (FSC) certification for the New Land, clear wilding pines and undertake pest control to ensure that the New Land is managed in an environmentally sustainable manner. FSC is a stringent certification system and is supported by the major ENGOs, World Wildlife fund for Nature and Greenpeace, plus Forest & Bird in New Zealand. Under the revised *NZ National FSC Standard*, the Applicant will be required to undertake a broad range of ecological and environmental measures on the Land. The process of starting FSC certification is scheduled to occur within a year.
97. The New Land will be amalgamated with adjoining forestry land (Wether Hill) already owned by the Applicant and the combined areas will be managed as one, along with additional land owned by associated Tiong Group company Timbergrow which in turn adjoins Wether Hill.

98. If consent is granted, planting is scheduled to be undertaken during the winter following acquisition. Labour for planting would be sourced from a combination of two local silviculture crews engaged by the Applicant regularly for forestry work in Marlborough.
99. The Applicant intends to plant radiata pine, sourced either from high GF* cuttings or seedlings sourced from Appleton's Nursery in Nelson.

* GF is a rating for growth and form of radiata pine seed-lots, with more emphasis given to growth than to form. The higher the GF rating, the better the growth and form, which means on average there are more whorls of branches, and the branches are smaller.

Farmland advertising - s16(1)(f) of the Act

The Regulations require farm land or farm land securities to be offered for acquisition on the open market to non-overseas persons for at least 20 working days (or longer if the advertisement states or implies that offers will be accepted for that longer period). The purpose of such advertising is to ensure non-overseas persons have reasonable notice that they are available for acquisition. The Regulations do not require that the vendor accept any alternative offer made by a non-overseas person.

100. The Regulations require farm land or farm land securities to be offered for acquisition on the open market to non-overseas persons for at least 20 working days (or longer if the advertisement states or implies that that offers will be accepted for that longer period).
101. The purpose of such advertising is to ensure non-overseas persons have reasonable notice that they are available for acquisition.
102. The Regulations do not require that the vendors accept any alternative offer made by a non-overseas person.
103. We have reviewed the advertising (which included listings on *TradeMe* and the *Marlborough Express* (8 copies between December 2017 and February 2018) of the relevant land and are satisfied that it complies with the advertising procedure set out in the Regulations.

What is likely to happen without the Investment (Counterfactual)

104. To establish the appropriate counterfactual in this case, the OIO has considered what the likely state of affairs would be without the Investment.
105. The counterfactual comprises two closely linked queries. Without the Investment:
 - who will most likely own the New Land; and
 - what will be the most likely use of the New Land under alternative ownership.

Who will likely own the assets if the Investment does not proceed

106. We consider that there are two possible likely owners of the New Land if the proposed investment does not proceed – either:
 - most likely - continued ownership by the Vendors (their stated intention) or,
 - less likely but possibly in the medium to longer term - ownership or use of an equivalent area to the New Land by an alternative forestry operator ANZP, depending upon whether an alternative equivalent subdivision is permitted or some other method of afforestation is available (such as a forestry right).

Continued ownership by the Vendors – the status quo

107. We consider retention of the land by the Vendors and the status quo would be the most likely counterfactual in the immediate future at this time.

108. The Vendors have stated:

If the proposed investment does not proceed, the Vendor will continue to farm the land in question without proceeding with the proposed boundary adjustment/subdivision. The Vendor would have to consider afforestation of the land. However it does not have the skills, capital or the desire to complete this.

109. We consider that such retention (continued ownership by the Vendors) is a realistic and likely possibility as:

- the Vendors are not selling all of their land (they consider the transaction a boundary adjustment) – rather, they are retaining the balance of Stronvar Station and they wish to reserve access rights over the New Land;
- the Vendors have chosen not to cancel the current agreement with the Applicant despite having had the option to do so for almost two years. The Application states:

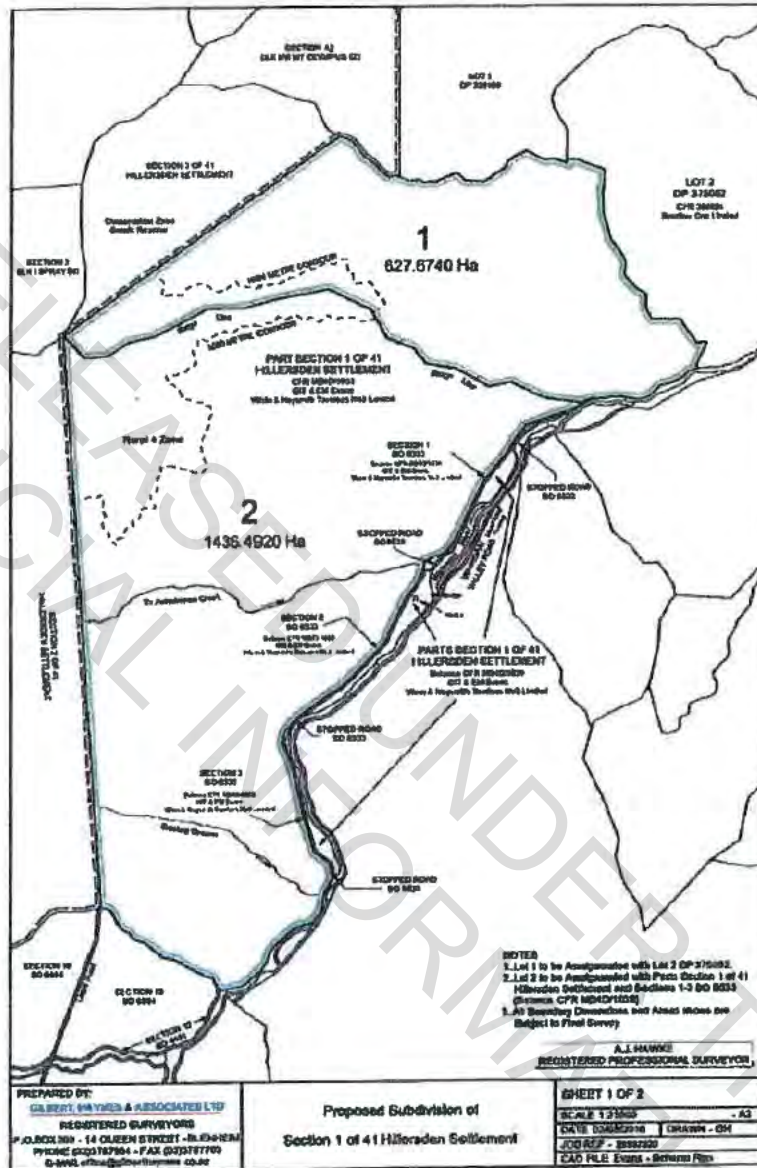
"Consent is required by 29 June 2018. If consent has not been granted by that date, the Vendor is entitled to cancel the ASP".

We consider the fact that they haven't chosen to exercise this termination option provides further support to their stated intention of retaining the New Land at this time, at least in the immediate future;

- the current subdivision resource consent requires the New Land to be amalgamated with the Applicant's adjoining land and the agreement is considered a boundary adjustment. It is not clear whether an alternative subdivision resource consent would be forthcoming, or how long it would take, or whether some other afforestation mechanism was feasible. The current amalgamation condition is considered in detail below.

Ownership of an equivalent area by an alternative forestry operator

110. Generally though, regardless of the stated intention of a Vendor, there is a rebuttable presumption that, without the overseas investment, sensitive land would be acquired by a competent and adequately funded ANZP.
111. This case though is an unusual situation as the current subdivision as depicted on the scheme plan provided can only proceed if the New Land is amalgamated with adjoining land owned by the Applicant. This is due to a compulsory amalgamation condition which has been imposed by the local council as part of its subdivision consent under the Resource Management Act 1991 – being RS U160987.
112. As evidenced by the amalgamation condition, the proposed subdivision is a boundary adjustment between two continuing neighbours. Consequently, without the proposed investment, the New Land could not be created in its existing proposed form utilising the existing proposed subdivision scheme plan and consent.
113. The existing subdivision consent is depicted on the following proposed subdivision scheme plan:



114. The amalgamation condition appears in the "Notes" at bottom right of the Scheme Plan above.
115. The amalgamation condition is also reflected in the ASP as follows:

Further Terms of Sale

19 Subdivision

19.1 The Purchaser acknowledges that the Property is being purchased subject to the terms of the Resource Consent obtained by the Vendor under U160987 from Marlborough District Council ("Resource Consent"). The Resource Consent requires the Property to be amalgamated with the land owned by the Purchaser at Lot 2 DP 375662. As soon as practicable following satisfaction of the conditions in this Agreement, the Vendor and the Purchaser will both sign such documents as are required to put into effect the amalgamation conditions in the Resource Consent, and transfer the Property to the Purchaser as part of that process. The Vendor must ensure that all of the requirements of the Resource Consent are satisfied.

116. Consequently, for an alternative owner to effect a similar subdivision, at the very least, a different or modified resource consent would be required.
117. Even so, as required by the Act and as set out in the farm land advertising section above, the Vendors advertised approximately 627ha for sale subject to final survey and subdivision consent being obtained. This advertising resulted in 24 enquiries and it is clear that there is underlying interest in the advertised land.
118. We consider that this high number of enquiries would suggest that some kind of sale to an ANZP forestry investor could certainly be possible in the medium to longer term (through either an alternative subdivision or using some other method not requiring freehold ownership - such as a forestry right) though this would depend upon the willingness of the Vendors to sell.
119. We note that one potential ANZP wrote to Ministers stating that a comparable "back-up offer" had been made. This ANZP stated:
- "we are actively seeking to acquire property for carbon sinks, at market values, and are interested in this property"*
- "My main point was to highlight that we, as resident NZ's, are/have been seeking land for planting forestry on – this property in question we have a back-up offer on that is comparable to the one submitted by the overseas entity and is being reviewed by the OIO".*

When we sought permission to refer this to the Applicant, the response was:

"No this was for your interest only so you were aware NZ interest existed outside of those from overseas entities"

We consider that it is possible that this particular ANZP may be seeking a permanent carbon sink forest (as a number of carbon investors have signalled to us) rather than a commercial pine rotation forest such as that planned by the Applicant. It is also difficult for us to give this undue weight given we are prevented from seeking the Applicant's comment on it. In any case, there is a rebuttable presumption that there is potential alternative ANZP interest.

120. To date however, the Vendors have given no indication that they are considering an alternative offer or that a lesser form of ownership would be acceptable to them, and we note that that all advertisements referred to a subdivision (there was never any indication that some other kind of ownership arrangement such as a forestry right was available).
121. Even so, we have addressed both possible counterfactuals in our assessment of the individual benefit factors below – though we consider the status quo counterfactual to be most likely in the foreseeable future for the reasons set out above.

Likely land use

122. We have considered both possible counterfactuals in our assessment of the individual benefit factors below. We have determined that there are two likely possible land uses if the investment does not proceed:

Continued farming as part of Stronvar Station

123. As stated above, the Vendors have stated that they will retain the New Land as part of Stronvar Station if the proposed sale does not proceed, and that they would be unlikely to carry out afforestation themselves.
124. If that was to occur, none of the new forestry benefits would eventuate and all would be net benefits.

Afforestation of an area equivalent to the New Land

125. As stated above, we consider that afforestation is possible by an alternative forestry investor - though this is less certain and is dependent upon the Vendors' willingness to sell and a successful alternative resource consent process.
126. In the event that some kind of alternative afforestation was undertaken, the level of benefit likely to result from some of the benefit factors would disappear or be reduced (given equivalent benefits would likely arise) though we consider that this would be less certain and could be delayed.

Conclusion

127. We have considered the benefits from each of the two counterfactual possibilities in our assessment of the benefits below.

Consultation and submissions about the Investment

Consultation with New Zealand Walking Access Commission

128. We undertook consultation with the New Zealand Walking Access Commission and with the Vendors regarding proposed walking access. Details of this consultation appear in the analysis of the walking access factor set out in the **Bundle of Additional Documents** (Document 03).
129. We undertook consultation with the Gisborne District Council as set out in the Ministerial briefings in the **Bundle of Additional Documents** (Document 4).
130. We undertook consultation with Crown Law with regard to one aspect of this application.

Submissions

131. We received no formal third-party submissions in this case. However, as set out above in paragraph 119, Ministers were contacted regarding a potential back up offer, and this is outlined further in the third party submission section below.

Rural Land Directive

132. This Investment involves the acquisition of 'rural land' being land that is non-urban and over 5 hectares in size (excluding any associated land), but excludes 'forest land'. Therefore, in accordance with directions from Ministers, we have treated the following factors as being of high relative importance:

- the "jobs" factors (section 17(2)(a)(i));
- the "new technology or business skills" factor (section 17(2)(a)(ii));
- the "increased export receipts" factor (section 17(2)(a)(iii));
- the "increased processing of primary products" factor (section 17(2)(a)(iv));
- the "oversight and participation by New Zealanders" factor (regulation 28(j)).

Overview of assessment: Investment and Benefits Test

133. The section below sets out our discussion in relation to factors under which we consider the proposed investment is likely to result in benefit to New Zealand.
134. Factors that we considered were either not relevant to the Investment, or the benefit to New Zealand was not sufficient enough to be relied on, are discussed in **Attachment 3**. **Attachment 3** also includes a detailed discussion of the Walking Access factor.
135. The following table summarises the likely benefits from the proposed transaction.

Benefit	Rating	Analysis	Condition	Reference
Creation of jobs (high relative importance)	Low to Medium	Estimated to be the equivalent of two Full Time Equivalent positions over the life of the forest – existing farming jobs on Stronvar Station will not be reduced as at least the existing number will still be needed to farm the balance area of the Station which is not being sold (rather, the Vendors believe that the number will increase as the proceeds of the sale are used to further develop the farming operation on the balance). All forestry related jobs will therefore likely constitute a net gain over the status quo. In addition, indirect new jobs may be created for domestic processing, shipping and other related services. It is possible that alternative afforestation could be undertaken by a competent and adequately funded ANZP – if so, then it is likely equivalent jobs would arise, though this is less certain and could be delayed.	Special condition 1 will require the new forest to be established which will result in the creation of the new jobs.	Paragraphs 136 - 146 Section 17(2)(a)(i)
Increased export receipts (high relative importance)	Low to Medium	Estimated to be \$25m (approximately \$903k per year on average) once the forest is harvested compared to an estimated \$1.1m if the New Land remains used for sheep/beef farming over the period equal to the approximately 28 year life of the forest. It is noted though, as set out below, that the Applicant has a track record of providing a significant amount of timber to New Zealand timber processors. It is possible that alternative afforestation could be undertaken by a competent and adequately funded ANZP – if so, then it is likely equivalent increased export receipts would arise, though this is less certain and could be delayed.	Special condition 1 will require the new forest to be established which will result in the increased export receipts.	Paragraphs 147 - 155 Section 17(2)(a)(iii)
Greater efficiencies and productivity	Medium	The new forest will be managed in conjunction with the Applicant's adjoining forest creating management efficiencies. Owning the New Land will assist the Applicant in its management of its adjoining forestry land, as the two properties will be managed as one. From an income per hectare perspective, the conversion to forestry will be a considerably more productive use of the New Land. It is possible that alternative afforestation could be undertaken by a competent and adequately funded ANZP. However, it is unlikely that an ANZP would own adjoining forests to create similar adjoining operation efficiencies There will be no increased market competition or enhanced domestic services	Special condition 1 will require the new forest to be established which will result in the greater productivity and efficiencies.	Paragraphs 156 - 166 Section 17(2)(a)(iv)

Introduction of development capital	Low	Initial investment for the preparation of the Land and establishment of the new forest is estimated at \$658,000. This development will be funded from New Zealand earnings which would otherwise be remitted to overseas shareholders. An ANZP not likely to introduce equivalent capital from overseas but a similar amount of development funding would be applied, though this is less certain and could be delayed.	Special condition 1 will require the new forest to be established which will result in the introduction of development capital.	Paragraphs 167 - 173 Section 17(2)(a)(v)
Increased processing of primary products (high relative importance)	Low	The Applicant is likely to supply new timber to domestic processors as it has a proven track record of doing so (it currently supplies approximately 42% of all of its harvested timber in New Zealand to domestic processors) – however, it is unable to commit to doing so at this time given harvesting of the new forest is at least 28 years away and therefore no consent condition can ensure this. It is possible that alternative afforestation could be undertaken by a competent and adequately funded ANZP. Even so, given the shortage of timber currently being supplied to domestic processors, we consider that an ANZP is less likely to choose domestic supply over exporting.	As it will be approximately 25-27 years before the new trees are harvested, we don't consider a condition requiring a proportion to be domestically processed to be appropriate.	Paragraphs 174 - 184 Section 17(2)(a)(vi)
Consequential	Medium	The Applicant has committed to undertake and fund both wilding pine and pest control. The Applicant will invest \$10,000 over each 5-year period over the life of the forest for wilding control plus a further initial budget of \$15,000 for pest control, with \$5,000 per annum being budgeted in subsequent years. The Applicant has also committed to obtaining FSC certification for the new forest which will ensure that it is managed in an internationally recognised manner. We consider that an ANZP unlikely to do the same given no previous owner has done so.	Special condition 2 will require the investment of the funds for wilding and pest control. Special condition 3 will require the Applicant to seek FSC certification for the new forest.	Paragraphs 185 - 197 Regulation 28(a)
Previous investments	High	The Applicant has a proven track record of investing in New Zealand. It is the fourth largest forestry investor in New Zealand and employs hundreds of New Zealand workers (full-time and contractors) and has invested millions of dollars into New Zealand to date (see previous benefits section at paragraph 198 for details of employees, expenditure to date etc)		Paragraphs 198 - 204 Regulation 28(e)
Advance Government Policy/Strategy	Low	The Investment will likely advance the <i>One Billion Trees</i> strategy amongst others. It is possible that alternative afforestation could be undertaken by a competent and adequately funded ANZP – if so, then it is likely that the <i>One Billion Trees</i> strategy would be equally advanced, though this is less certain and could be delayed.	Special condition 1 will require the new forest to be established.	Paragraphs 205 - 218 Regulation 28(f)

Creation of Jobs – s17(2)(a)(i) - high relative importance

There are three key elements to this factor:

- The "new job opportunities" must be **new**, or if existing jobs are being "retained", the existing jobs **would or might** otherwise be lost if the investment does not proceed;
- The new job opportunities or retained jobs must be **in New Zealand**;
- The new job opportunities or retained jobs that are **likely to result** from the overseas investment must be **additional** to those which are likely to occur **without the overseas investment**.

Existing jobs unaffected and additional farming jobs likely

136. Stronvar Station currently supports the equivalent of 1.5 Full Time Equivalents (FTE) - though 0.5 of this is currently unpaid.
137. Despite the loss of the New Land, the Vendors have confirmed that the remaining balance of the Station will still require at least 1 FTE. The Vendors further confirm that the proposed development on the remainder of Stronvar Station (to be funded by the purchase price from the Applicant) will mean increased productivity, and is likely to require more staff both during and after the development phase.
138. The Vendors estimate that at least 2 new farming FTEs would be required as a result of development funded by the sale of the New Land.

Creation of new direct forestry jobs (direct)

139. The Applicant estimates the conversion of the New Land to forestry will likely result in the creation of the equivalent of approximately 2 new direct forestry jobs per year over the life of the forest (from preparation to harvest). The Applicant engages local contractors to carry out this work.
140. The expected new jobs are set out in the following table:

Land preparation phase	
Description	Person years required
Upgrade existing roads and tracks (8.7km) plus new road (2.1km) Installation of battery culvert over Byron's creek Signs/Weeds/Fence up-grade/Maintenance Share of the new boundary deer fence Pest Control Kill Spray Sycamore (30ha) Kill Spray Bracken (100ha) Patch burning (50ha) Contract supervision	1.25
Forest establishment phase	
Planting (400ha) Releasing (400ha) Contract supervision/QC	6.0
Forest Maintenance phase	
Boron Fertilizer (400ha) after three years Pest control (\$5000 per year over 28 year life of forest) Wilding removal (every five years – five times during life of forest)	1.5
Harvesting	
9 person harvest crew @60,000t/annum 3 logging truck drivers for 3.7 year Harvest planner/supervisor 4.0 years Harvest road establishment and ongoing maintenance	49.0
Total estimated person years required over the life of the Forest (28 years)	57.75
Average number of FTEs per year over the life of the Forest	2.0

141. In addition, Ernslaw expects to spend a further \$107,000 per year on management expenses which will support further employment.

New Indirect jobs

142. The investment may also result in indirect jobs such as domestic processing, shipping and related services.

Counterfactuals

143. In the case of the status quo, the Vendors have stated that they are not in a position to undertake an equivalent conversion of the New Land to forestry in the foreseeable future. Consequently, all of the new forestry related jobs will constitute a net gain over the status quo – and it is likely that existing farming jobs will increase too as stated above.

144. However, as stated in the Counterfactual Analysis above, it is possible that alternative afforestation could take place, in which case equivalent jobs are likely to be created and no additional jobs will be created, though this is less certain and could be delayed.

Our Assessment

145. A proposed condition of consent will require the Applicant to complete the conversion of the New Land to forestry by 31 December 2022. If the Applicant fails to do so, a further disposal condition will require it to sell the New Land. This will ensure that the jobs listed above will be created in the immediate future (planting is expected to begin next winter).
146. Though finely balanced, we are **satisfied that this factor is met** - given the certainty that the Applicant will complete the conversion in the immediate future (as opposed to the possibility that alternative afforestation might take place) and that this must create a significant net increase over the existing number of Stronvar Station farming jobs given existing jobs will remain at least as many as currently.

Increased export receipts – s17(2)(a)(iii) - high relative importance

There are two key elements to this factor:

- **Export receipts** must be likely to be **increased**.
- The increased export receipts that are **likely to result** from the overseas investment must be **additional** to those which are likely to occur **without the overseas investment**.

147. The New Land is steep terrain, and is not productive for farming. It is estimated to have a carrying capacity of just 350 to 400 stock units (**SU**).
148. A recent *Beef+Lamb New Zealand* farm survey estimates that wool and sheep meat on an average Marlborough Hill Country farm generates annual revenue of \$106.97 per SU – forecast for the 2017/18 year. So for 400 SU's this is approximately \$42,788 per annum or approximately \$1.18m after 28 years if all the produce is exported.
149. The Applicant intends to plant approximately 400ha of new forestry which is expected to be harvested after 28 years. This in turn is expected to produce 220,000t of timber. Based on current prices, this is expected to generate export earnings of \$25.3m if all of the timber was exported (being approximately \$903k on average per year) – many times more than the approximate \$1.1m maximum for traditional farming exports earned off the New Land over the same period.
150. We note that the Applicant is an established timber exporter and has existing supply channels to international export markets. The Applicant currently exports approximately 58% of its New Zealand timber and it is reasonable to assume that it will continue to export significant quantities. The Applicant exports its timber directly, usually to China or India at this time.

Counterfactual

151. In the case of the Vendors, they have stated that they are not in a position to undertake an equivalent conversion of the New Land to forestry in the foreseeable future.
152. Consequently, the increase in export receipts will constitute a net gain over the status quo.
153. However, as stated in the Counterfactual Analysis above, it is possible that alternative afforestation could take place, in which case equivalent export receipts are likely to be created and no additional export receipts will be created, though this is less certain and could be delayed.

Our Assessment

154. A proposed condition of consent will require the Applicant to complete the conversion by 31 December 2022. If the Applicant fails to do so, a further disposal condition will require it to sell the New Land. This will ensure that the timber required to increase exports is generated as soon as possible.
155. Though finely balanced, **we are satisfied that this factor is met** given the certainty that the Applicant will undertake the conversion (as opposed to the possibility of alternative afforestation) and that this must create a net increase in exports compared to what is likely to be generated off the New Land if it remains used for marginal sheep and beef farming.

Added market competition, greater efficiency or productivity, enhanced domestic services – s17(2)(a)(iv)

There are three key elements to this factor (s17(2)(a)(iv) of the Act):

- The overseas investment must be likely to result in one or more of:
 - (i) **added market competition;**
 - (ii) **greater efficiency or productivity; or**
 - (iii) **enhanced domestic services.**
- The added market competition, greater efficiency or productivity, or enhanced domestic services must occur **in NZ.**
- The added market competition, greater efficiency or productivity, or enhanced domestic services that **is likely to result** from the overseas investment must be **additional** to that which is likely to occur without the overseas investment.

156. The Applicant has submitted that the proposed investment will enhance the ongoing viability of its previous investments into the Marlborough forestry sector. From the information provided, we consider that this is evidence of greater efficiency.
157. Owning the New Land will assist the Applicant in its management of its adjoining forestry land (Wether Hill), as the two properties will be managed as one. The New Land will be accessed via Wether Hill, and there will be efficiencies in managing the two properties together in terms of scheduled contract work, more efficient use of roading and accessways and ultimately in scheduling harvesting.
158. As a result of its existing operations in Marlborough, the Applicant and its associated companies already have operational management structures in place and will be able to extend opportunities for existing employees and contractors. Existing management personnel will deal with supervision and management of the investment, alongside the Applicant's existing forests.
159. In addition, there will be a greater mix of aging of the forests managed by the Applicant, so that harvesting can be better managed among the relevant forests. This in turn provides security for the Applicant's employees and a more regular production of timber for harvesting.
160. It is also noted that from an income per hectare perspective, the conversion to forestry will be a considerably more productive use of the New Land.

Counterfactual

161. In the case of the Vendors, they have stated that they are not in a position to undertake an equivalent conversion of the New Land to forestry in the foreseeable future.
162. Consequently, the greater productivity and efficiency gains will constitute a net gain over the status quo.

163. As stated in the Counterfactual Analysis above, it is possible that alternative afforestation could take place. However, it is unlikely that an ANZP would create adjoining property efficiencies given there are no other private neighbours to the New Land who could create these, except the Vendors and the Applicant. It is possible that equivalent greater productivity could occur, though this is less certain and could be delayed.

Our assessment

164. A proposed condition of consent will require the Applicant to complete the conversion by 31 December 2022. If the Applicant fails to do so, a further disposal condition will require it to sell the New Land. This will ensure that the greater efficiencies and productivity gains will be created as soon as possible.
165. Though finely balanced, **we are satisfied that this factor is met** given the certainty that the Applicant will undertake the conversion (as opposed to the possibility of alternative afforestation) and that this must result in greater efficiency and productivity gains.
166. For completeness, we do not consider that the investment will likely result in added market competition or enhanced domestic services.

Additional investment for development purposes – s17(2)(a)(v)

There are four key elements to this factor (s17(2)(a)(v) of the Act):

- The investment must be **additional investment**.
- The additional investment must be **introduced into New Zealand**.
- The additional investment must be **for development purposes**.
- The additional investment that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

167. The Applicant intends to convert approximately 400ha into forestry within two years of acquisition. Given the New Land being converted is marginal traditional farmland, this will improve the productive capacity of the New Land as it will become considerably more productive in terms of revenue.
168. Initial investment for the preparation of the Land and establishment of the new forest is estimated at \$658,000. This development will be funded from New Zealand earnings which would otherwise be remitted to overseas shareholders.

Counterfactual

169. In the case of the Vendors, they have stated that they are not in a position to undertake an equivalent conversion of the New Land to forestry in the foreseeable future.
170. Consequently, the development expenditure proposed by the Applicant will constitute a net gain over the status quo.
171. However, as stated in the Counterfactual Analysis above, it is possible (though less certain) that alternative afforestation could take place, in which case an equivalent expenditure is likely to be undertaken, though this is unlikely to be introduced into New Zealand.

Our assessment

172. A proposed condition of consent will require the Applicant to complete the conversion by 31 December 2022. If the Applicant fails to do so, a further disposal condition will require it to sell the New Land. This will ensure that the capital for development purposes will be introduced as soon as possible.
173. Though finely balanced, **we are satisfied that this factor is met** given the certainty that the Applicant will undertake the conversion (as opposed to the possibility of alternative afforestation) and that this will result in the introduction of capital for development purposes.

Increased processing of primary products – s17(2)(a)(vi) – high relative importance

There are four key elements to this factor:

- Processing of primary products must be likely to increase.
- The increased processing of primary products must occur **in New Zealand**.
- The increased processing must be of **New Zealand's primary products**.
- The increased processing that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

174. Subject to prices relevant at time of harvest, it is likely that a significant portion of the trees available from the New Land will likely be sent to processing facilities in New Zealand. The Applicant already intends to send some log grades from adjoining forests managed or owned by the Applicant to Timberlink Limited (based in Blenheim) for processing once harvesting commences in 3-4 years' time.
175. The Applicant is not willing to commercially bind itself to supplying a certain percentage of timber from the forest to domestic processors, as the options that will be available to it in 28 years' time are far too variable. There are too many unknown factors over this timeframe, including what processing facilities will be available at that time, and the nature of local demand as opposed to export.
176. However, the Applicant has a track record of providing timber to domestic processors in New Zealand as set out in the following table:

Current Export/Domestic supply by Applicant		
	Export	Domestic
NZ Total	58%	42%

177. In terms of actual volumes, for the 10 months ended 30 April 2018 the Applicant supplied 322,719 tonnes to domestic mills in the North Island, and 60,518 tonnes to domestic mills in the South Island. Of these amounts, 73% was supplied to the Applicant's own mills, and the balance to other domestic mills.
178. The Applicant has a pulp mill at Ohakune which has anticipated input of 190,209 tonnes woodchip plus 308,202 tonnes round logs for the financial year ended 30 June 2019. The Applicant also has one sawmill at Tangiwai near Ohakune with anticipated input of 270,187 tons of sawlogs for the financial year ended 30 June 2019.

Counterfactual

179. It is difficult to quantify the difference between domestic processing of sheep/beef products (from stock likely to be grazed on the New Land under the status quo counterfactual) compared to domestic processing of timber, given these are completely different processes. However, we note that in *Tiroa E*, Justice Miller (then Judge) remarked that "*the Act does not require benefits to be quantified*" and, in a more general sense, "*the weighing of economic benefits among themselves does not require calculation but ministerial judgement*".

* *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147 at [39].

180. In the case of the Vendors, they have stated that they are not in a position to undertake an equivalent conversion of the New Land to forestry in the foreseeable future. Therefore, no new timber will become available for domestic processing under this counterfactual.
181. In the case of alternative afforestation, we consider such an investor is just as likely to look to export a greater amount (even all) of any timber grown – though it is impossible to determine what export and domestic prices will be in 28 years' time. However, we consider it more likely that the Applicant will supply to domestic processors than most timber producers given the industry-wide shortage of suppliers at this time.

Assessment

182. We note that there is ongoing concern regarding the availability of timber for New Zealand domestic processors in the face of high export prices. That being the case, we consider that there must be a reasonable possibility that an alternative forestry operator would not necessarily provide timber from any new forest to domestic processors.
183. Given the Applicant has a current track record of committing just under half of its timber to New Zealand processors, including to its own New Zealand processing facilities, we consider an increase in the processing of timber in New Zealand is more likely than if an ANZP undertook a similar conversion.
184. Although finely balanced, **we are satisfied that this factor is met** given the Applicant's track record of supplying timber for domestic processing in New Zealand.

Consequential benefits – r28(a)

There are three key elements to this factor:

- There must be a **consequential benefit to New Zealand**.
- The benefit must not have been considered under another factor, it must be **another** consequential benefit.
- The consequential benefit that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

185. We consider that the proposed investment will likely result in various consequential benefits which are unlikely to arise under the likely counterfactuals.

Pest and wilding control

186. *Pinus contorta*, also known as lodgepole pine, is a containment control pest plant in the Marlborough District Council's *Regional Pest Management Strategy*. It is considered a high-risk species that spreads vigorously from individual plants or plantations into ungrazed native grasslands and scrublands due to its wind-blown seeds.

187. There are areas close to the New Land where *pinus contorta* is growing unchecked. The Applicant submits that its acquisition of the New Land will control the spread of growth by establishing a canopy of *radiata* pine forest downwind. *Contorta* will not grow under a canopy and the establishment of a plantation forest will act as an effective barrier to further spread. This will adjoin existing barriers of plantation forest established by the Applicant further east, creating a significant overall barrier against the spread of this unwanted species.
188. Further, situated on part of the land is a former Catchment Board/ Forestry Research area (containment control area), which is a major source of pests such as conifers. The proposal by the Applicant to plant a forest will create a forest buffer zone between this containment control area and the adjoining productive grazing land, which is owned by the Vendors.
189. The Applicant will actively undertake wilding pine removal and has committed to a budget of \$10,000 over each 5-year period over the life of the forest, in which to carry out this work.
190. Following a request for further conditions from Ministers, the Applicant has also committed to take all reasonable steps to minimise the risk of natural regeneration of exotic tree species (wildings) outside of the planted area, including through the selection of sites for planting. We note that the Applicant was unable to agree to further conditions as:

Our client's forestry team has deliberated over the new expanded conditions. Its response is that taking into consideration the small size of the subject land as a forestry block and its current poor and highly infested state, that the new expanded conditions will render it not viable as a commercial venture, and will expose our client to high risk of project failure. Our client is cognisant of its position as an overseas person owning land in New Zealand and it endeavours to be an excellent corporate citizen, however it respectfully requests OIO to grant consent on the basis of the previous conditions.

A further response from the Applicant seeking an amendment to the current proposed condition is set out in the **Bundle of Additional Documents** (Document 5).

191. In addition to wilding pine control measures, the Applicant will undertake pest control, on an ongoing basis. The initial budget for this is \$15,000, recognising that the greatest resource is required in the early phases of pest control on the land, with \$5,000 per annum being budgeted in subsequent years. These figures are based on the Applicant's knowledge of pest control requirements in this area and its current experience on adjoining forestry land.

QE II support

192. In addition, the Vendors have stated that they intend to use some of the sale proceeds for the ongoing management of a QE II Trust covenant area located on the balance of Stronvar Station.

FSC Certification

193. The Applicant will also commit to bringing the New Land under Forest Stewardship Council (FSC) certified environmental and forest management systems. FSC is a stringent certification system and is supported by the major ENGOs, World Wildlife fund for Nature and Greenpeace, plus Forest & Bird in New Zealand. Under the revised NZ National FSC Standard, the Applicant will be required to undertake a broad range of ecological and environmental measures on the New Land. The process of starting FSC certification is scheduled to occur in 2020 (subject to timing of settlement).

Counterfactual

194. The Applicant has submitted that without the investment, there is unlikely to be any control of the spread of *pinus contorta* on the New Land and further into surrounding land in the Waihopai Valley. The Vendors have insufficient grazing stock on this part of Stronvar Station to control the spread of wildings.
195. However, even if alternative afforestation did eventually occur, it is unlikely that an alternative forest investor would commit a budget of \$10,000 over each 5-year period to remove wilding pines – as this will not likely increase the profitability of the forest in any way and no previous owner has done so. Equally, there is no guarantee that an equivalent amount as proposed by the Applicant would be devoted to pest control. Likewise, there is no certainty that any alternative owner would manage the Land in accordance with environmental standards set by the Forest Stewardship Council.

Assessment

196. A proposed condition of consent will require the Applicant to undertake the expenditure on wilding pines, pest control etc. If the Applicant fails to do so, a further disposal condition will require it to sell the New Land. This will ensure that the consequential benefits will be created as soon as possible.
197. Consequently, **we are satisfied that this factor is met** given there are clear consequential benefits which would otherwise unlikely arise without the overseas investment.

Previous investments – r28(e)

There are two key elements to this factor (reg28(e) of the Regulations):

- The relevant overseas person must have **previously undertaken investments**;
- The previous investments must have been, or are, of **benefit to New Zealand**.

198. The Applicant has previously undertaken extensive investments that have been, or are, of benefit to New Zealand.
199. The Applicant is currently the fourth largest forestry owning company in New Zealand and has acquired or established many forests throughout New Zealand and these have resulted in significant employment and other opportunities for New Zealanders.
200. The Ernslaw Group in turn is part of the Oregon Group of companies, which share the same underlying common ownership. The Oregon Group has provided a letter setting out the benefits of its previous investments into New Zealand, a copy of which is included in the **Bundle of Additional Documents** (Document 4 - briefing 6). This letter includes the following table:

Oregon Group FY 2019 Summary						
Oregon Group Division	Oregon Shareholding %	External Revenue (\$)	Expenditure in NZ (\$)	Estimated Expenditure in Regions (\$)	Employee's FTE	Contractors FTE
Errislaw One	95%	225,944,977	150,834,909	145,000,000	62	500
Winstone Pulp	100%	199,532,694	170,681,117	158,000,000	250	-
Neil Group	100%	159,334,082	125,591,537	-	95	350
Innova Products	100%	6,897,850	5,317,125	5,000,000	8	-
King Salmon	40%	172,600,000	142,630,000	130,000,000	545	-
Lumberbank NZ	100%	8,627,240	8,949,537	1,000,000	10	-
Total		772,936,844	604,004,225	438,000,000	970	850
% of Revenue			78.1%	56.8%		

201. This table shows that it has expended approximately \$604 million into New Zealand to date and that it has 970 full time workers at this time, plus many more contractors.
202. The Applicant has also invested in an ecological venture that has been recognised as unique and innovative among forestry owners in New Zealand, involving the stocking of fire-fighting ponds with fresh water crayfish, a species on the Department of Conservation's threatened species list. An article on this innovation appears at:
<https://www.newsroom.co.nz/@living-room/2017/08/29/45024/sustainable-nz-crayfish-venture-wins-accolades>
203. The Applicant has been the recipient of recent environmental awards from three separate Regional Councils – Waikato (for work in the Coromandel), Otago (for innovation in stream crossings at Naseby) and in Southland (for ecological restoration work including the re-establishment of freshwater crayfish).

Conclusion

204. **We are satisfied** that the relevant overseas person has previously undertaken investments that have been, or are, of benefit to New Zealand.

Advance significant government policy or strategy – r28(f)

There are three key elements to this factor:

- The overseas investment **must give effect to or advance** a specific **Government policy or strategy**.
- The Government policy or strategy must be **significant**.
- The effect or advancement that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

One Billion Trees programme

205. The Government's *One Billion Trees* programme has the goal of planting one billion trees over ten years through both new planting and replanting. This programme is one of the Government's forestry-related strategies which the *Ministerial Directive Letter* notes the Government wishes to encourage the advancement of.
206. We understand that the objectives of the policy include to:
- promote regional economic growth;
 - provide jobs and opportunities for Māori to utilise their land and other resources;
 - help meet New Zealand's climate change commitments;
 - support more sustainable use of land, water and other natural resources; and
 - build a more resilient forestry and wood processing industry.

207. In order for the *One Billion Trees* programme to be successful, it is reliant on New Zealand continuing to have a viable, sustainable and economic forestry industry at all levels including nurseries, plantations and processing operations.

Role of overseas investment in advancing the One Billion Trees strategy

208. Ensuring high quality overseas investment is crucial to achieving the *One Billion Trees* programme. Research suggests that up to 70 per cent of plantation forest trees are in overseas ownership therefore overseas capital will be important to helping the Government advance this strategy.
209. Not all overseas investment in forestry advances the *One Billion Trees* programme. When assessing whether an investment advances the programme it is a matter of weighing up whether it advances or detracts from the programme's objectives.
210. We consider that the establishment of a new forestry operation by an overseas person will advance the *One Billion Trees* programme.
211. One of the objectives of the programme is helping New Zealand meet its climate change targets. This includes the goal of becoming carbon neutral by 2050. Forestry operations help meet these targets through carbon sequestration.
212. Overseas investment into the forestry industry can help ensure that the forestry industry continues to be viable and economic in New Zealand. It helps encourage forestry investors to continue to invest in their operations by ensuring that there is a continued market for forestry land.
213. We consider that the Investment is also unlikely to have any detrimental effect on the other objectives of the *One Billion Trees* programme.
214. Therefore we consider that the *One Billion Trees* programme will be advanced by this Investment.

Counterfactual

215. In the case of the Vendors, they have stated that they are not in a position to undertake an equivalent conversion of the New Land to forestry in the foreseeable future. Therefore, the *One Billion Tree* programme will not be advanced under the status quo.
216. In the case of alternative afforestation, the programme would be equally advanced though this is less certain and could be delayed.

Assessment

217. A proposed condition of consent will require the Applicant to complete the conversion by 31 December 2022. If the Applicant fails to do so, a further disposal condition will require it to sell the New Land. This will ensure that the *One Billion Trees* programme will be advanced as soon as possible.
218. Though finely balanced, **we are satisfied that this factor is met** given the certainty that the Applicant will undertake the conversion (as opposed to the possibility of alternative afforestation) and that this will result in the advancement of the *One Billion Tree* programme.

Provisional conclusion – Benefits Test

219. In order for consent to be granted, the Applicant must demonstrate:

- (a) that the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
 - (b) that the benefit will be, or is likely to be, substantial and identifiable.
220. We have assessed the benefit likely to result from this Investment in accordance with the rural land directive contained in the *Ministerial Directive Letter*.
221. We have undertaken our assessment having regard to the characteristics of the land and the nature of the interest being acquired (reflecting the proportional nature of the benefit test), noting that here the Applicant is acquiring approximately 627ha (subject to final survey) of marginal hill farming land for conversion to forestry to be incorporated into the Applicant's existing adjoining forest.

Ministerial discretion

222. Determining whether the investment is likely to result in substantial and identifiable benefit is ultimately a matter to be decided by Ministers and involves the exercise of Ministerial judgement. Ministers also have discretion to determine the relative importance to be given to each relevant factor (or part).

Rural Land directive

223. In relation to rural land, the *Ministerial Directive Letter* states:

Overseas investments in rural land

- 13. The primary sector, and the rural land¹ it is based on, forms a particularly important part of the New Zealand economy.
- 14. The Act acknowledges that the privilege associated with the ownership or control of rural land is greater than for non-rural land by requiring the benefits resulting from the overseas investment to be substantial and identifiable (a higher threshold).
- 15. The merits of overseas investment in the primary sector can be less compelling given that we are already world leaders in this area. The Government is therefore concerned to ensure that the benefits from overseas investments in rural land are genuinely substantial and identifiable.

¹ For the purposes of this directive letter, 'rural land' means land that is non-urban and over 5 hectares in size (excluding any associated land), but excludes 'forest land' as defined below.

² For the purposes of this directive letter, 'forest land' means land that is non-urban and over 5 hectares in size (excluding any associated land), where the existing principal use of the land is forestry.

224. The *Ministerial Directive Letter* provides that the following factors will generally be of high relative importance for rural land:
- (a) the 'jobs' factor;
 - (b) the 'new technology or business skills' factor;
 - (c) the 'increased exports receipts' factor;
 - (d) the 'increased processing of primary products' factor; and
 - (e) the 'oversight and participation by New Zealanders' factor.
225. We do not consider that any other factor should be given high relative importance in the context of this Investment.

226. The *Ministerial Directive Letter* also expressly considers forestry investments but this refers to existing, rather than new, forestry:

Overseas investments in forest land

18. The Government recognises that overseas investment in the forestry sector, and the associated downstream processing industries, has the potential to add significant value to the overall economy and the environment.
19. The Government wishes to encourage an increase in the value added processing of raw products and the advancement of its forestry-related strategies. The Minister therefore directs the regulator that the following factors will generally be of high relative importance for overseas investments in 'forest land'² (the forest land directive):
- 19.1. The 'increased processing of primary products' factor (section 17(2)(a)(vi)); and
- 19.2. The 'advance significant Government policy or strategy' factor (regulation 28(f)).
20. The Minister would generally expect the regulator to impose specific conditions of consent on overseas investors whose investment plan involves processing in New Zealand. These could include, where appropriate, a condition requiring the overseas investor to enter into a supply arrangement with a local processor. Conditions imposed on overseas investments in forest land may need to be imposed for longer periods given the often long-term nature of such investments.

Provisional conclusion

227. We are satisfied that the Investment is likely to result in the benefits as stated above.
228. The Applicant has demonstrated benefits for three of five factors with high relative importance. We have given those benefits either low to medium (jobs and exports) or low weighting (increased processing).
229. Further benefits have been demonstrated in the form of additional investment for development purposes, consequential benefits, previous investment (high), Government strategy/policy and greater efficiency & productivity.
230. Our overall assessment is that the overseas investment will, or is likely to, benefit New Zealand and that this benefit is substantial and identifiable within the context of this investment (being an investment in marginal hill land) and having regard to the *rural land directive*. We believe that this remains the case despite the Applicant's inability to create the new walking access route proposed by WAC as discussed in detail below.

Provisional recommendation

231. Our provisional recommendation is to **grant consent**, as we consider that the Investor Test, farm land advertising and the Benefits Test have been met.
232. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and to paragraphs 7-11 of this Assessment Report to record your decision.

List of Attachments

1. Proposed Decision
2. Guidance for applying the Act
3. Other benefit factors
4. Sensitive land
5. Good character analysis
6. Overview table

List of other documents in the Bundle (includes some not previously provided)

1. Application (*Page 1 of the Bundle*)
2. Investment Plan (*Page 21 of the Bundle*)
3. Walking Access documentation (*Page 39 of the Bundle*)
 - (1) Report from NZ Walking Access Commission
 - (2) OIO analysis of NZ Walking Access Commission submission
 - (3) Letter from Vendor re NZ Walking Access Commission submission
4. Copies of prior Ministerial briefings (six) (*Page 62 of the Bundle*)
5. Email from Applicant confirming new directors and request to Ministers that special condition relating to wilding pines be modified (*Page 105 of the Bundle*)

List of other documents available upon request (includes some not previously provided)

1. Good Character declaration (September 2018)
2. True and correct declaration (September 2018)
3. (a) OIO letter to Applicant requesting further information (June 2018)
(b) Response from Applicant to OIO letter (June 2018)
4. Various articles from Greenpeace, Oakland Institute and others alleging wrongdoings involving Tiong related companies overseas (dating from 2004 to the present).
5. Tolaga Bay prosecution documentation (2019)

ATTACHMENT 1 – PROPOSED DECISION

Consent for Overseas Person to Acquire Sensitive New Zealand Land

Read this consent carefully – you must comply with all the conditions. If you do not, you may be required to dispose of the land and/or be subject to fines or other penalties.

Consent

Decision date: [date]

The following people have been given the following **consent**:

Case	201720095
Consent	Ernslaw One Limited may acquire the Land subject to the Conditions set out below.
Consent holder	Ernslaw One Limited We will also refer to the Consent holder as you .
Land	means a freehold interest in approximately 627.6740 hectares subject to survey being part of Stronvar Station located at 4614 Waihopai Valley Road in Marlborough (being part of the land comprised in computer freehold register MB4D/1039 (Marlborough))
Timeframe	You have until 1 August 2021 to acquire the Land.

Conditions

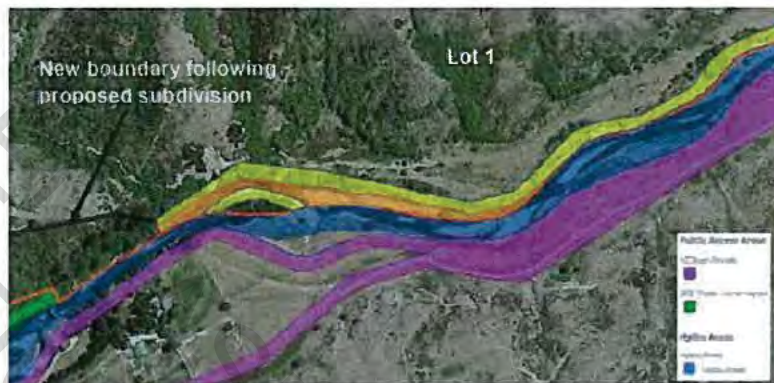
Your Consent is subject to the Special conditions, Standard conditions and Reporting conditions (**Conditions**) set out below. You must comply with them all. Be aware that if you do not comply with the Conditions you may be subject to fines or other penalties, and you may also be required to dispose of the Land.

In the Consent and the conditions, we refer to the Overseas Investment Office as OIO, us or we.

Special conditions

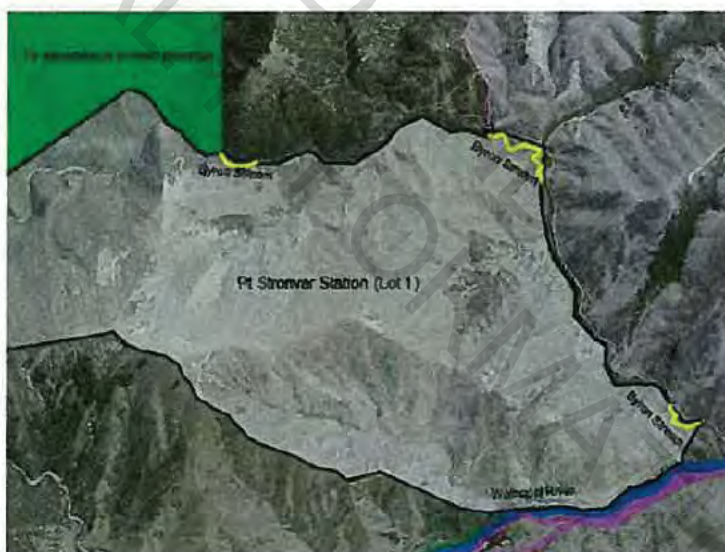
You must comply with the following **special conditions**. These apply specifically to this Consent and were considerations that particularly influenced us to give consent:

Details	Required date
Special condition 1: Forest establishment	
You must convert the Land to forestry and plant approximately 400ha of the Land into radiata pine. If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.	Planting to be completed by 31 December 2023.
Special condition 2: Wilding pine and pest control programmes	
You must take all reasonable steps to minimise the risk of natural regeneration of exotic tree species (wildings) outside the planted area including the selection of sites for planting. You must expend the following sums on the wildings and pest control programmes: • \$10,000 on wildings control over each 5-year period for the life of the new forest; • \$15,000 for initial pest control followed by \$5,000 per annum; If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.	To be commenced by 31 December 2022.
Special condition 3: FSC Certification	
You must obtain and maintain Forest Stewardship Council (FSC) certification for the forest management on the Land, and comply in all material respects with the FSC policies and regulations at all times. In the event that FSC certification cannot be obtained due to circumstances outside your control, then you will at all times manage the Land in accordance with the ten principles underpinned by the FSC.	To be obtained by 31 December 2022.
Special condition 4: Walking access	
You must register an easement strip instrument approved by the New Zealand Walking Access Commission (for the land along the banks of the Waihopai River and Byron Creek where these adjoin or pass over the Land as depicted in yellow on the following maps 4 and 5 of the Commission's report dated July 2018):	By 31 December 2022.



Map 4: Parts of bed of river to transfer to Crown (orange) and recommended esplanade strips (yellow) adjoining the Walhopai River

Source: www.wams.org.nz



Map 5: Recommended esplanade strips alongside Byron Stream (shown yellow)

Source: www.wams.org.nz

If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.

Standard conditions

You must also comply with the **standard conditions** set out below. These apply to all overseas people who are given consent to acquire sensitive New Zealand land, including you:

Details	Required date
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Standard condition 1: acquire the Land	
You must acquire the Land: 1. by the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Land, and 2. using the acquisition, ownership and control structure you described in your application. Note, only you – the named Consent holder – may acquire the Land, not your subsidiary, trust or other entity.	You have until 1 August 2021 to acquire the Land.
Standard condition 2: tell us when you acquire the Land	
You must tell us in writing when you have acquired the Land. Include details of: 1. the date you acquired the Land (Settlement); 2. consideration paid (plus GST if any); 3. the structure by which the acquisition was made and who acquired the Land; and 4. copies of any transfer documents and Settlement statements.	As soon as you can, and no later than two months after Settlement
Standard condition 3: allow us to inspect the Land	
Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions. We will give you at least two weeks' written notice if we want to do this. You must then: 1. Allow a person we appoint (Inspector) to: a. enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (Inspection); b. remain there as long as is reasonably required to conduct the inspection; c. gather information; d. conduct surveys, inquiries, tests and measurements; e. take photographs and video records; and	At all times

f. do all other things reasonably necessary to carry out the Inspection. 2. Take all reasonable steps to facilitate an Inspection including: a. directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection; b. being available, or requiring your employees, agents, tenants or other occupiers to be available, at all reasonable times during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required. During an Inspection: a) we will not compel you and your employees, agents, tenants or other occupiers to answer our questions or to let us look at, copy or take away documents; b) our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection.	
Standard condition 4: remain of good character	
You and the Individuals Who Control You: 1. must continue to be of good character, and 2. must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009. In summary, these sections describe convicted or deported people who are not eligible for visa or entry permission to enter or be in New Zealand and people who are considered likely to commit an offence or to prevent a threat or risk to security, public order or the public interest. The Individuals Who Control You are individuals who: a) are members of your governing body; b) directly or indirectly, own or control 25% or more of you or of a person who itself owns or controls 25% or more of you; and c) are members of the governing body of the people referred to in paragraph (b) above; d) includes, for the avoidance of doubt:	At all times

i. Sir Tiong Hiew King and the members of the governing body of: ii. Ernslaw One Limited; iii. Oregon Group Limited; iv. Callander Group Limited.	
Standard condition 5: tell us about changes that affect you, the people who control you, or people you control	
You must tell us in writing if any of the following events happens to any of the Consent holders: 1. You, any Individual Who Controls You, or any person in which you or any individual who controls you hold (or at the time of the offence held) a 25% or more ownership or control interest commits an offence or contravenes the law anywhere in the world. This applies whether or not you or they were convicted of the offence. In particular, please tell us about any offences or contraventions that you are charged with or sued over and any investigation by enforcement or regulatory agencies or professional standard bodies. 2. An Individual Who Controls You ceases to be of good character; commits an offence or contravenes the law (whether they were convicted or not); becomes aware of any other matter that reflects adversely on their fitness to have the Land; or becomes an individual of the kind referred to in <u>section 15</u> or <u>16</u> of the Immigration Act 2009 (see standard condition 4). 3. You cease to be an overseas person or dispose of all or any part of the Land. 4. You, any Individual Who Controls You, or any person in which you or any Individual Who Controls You hold (or at the time of the event held) a 25% or more ownership or control interest: a. becomes bankrupt or insolvent; b. has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed; or c. becomes subject to any form of external administration.	Within 20 working days after the change

Standard condition 6: dispose of the Land if you do not comply with key Special conditions	
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. If all or part of this Standard condition 6 applies to a Special condition, we have said so in that condition. We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:	
1. Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.	Within six weeks of the date of our notice.
2. Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.	Within six weeks of the date of our notice.
3. Dispose of the Land: dispose of the Land to a third party who is not your associate.	Within six months of our notice.
4. Offer without reserve: offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.	Within nine months of our notice.
5. Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.	By the last day of every March, June, September and December after our notice or at any other time we require.
6. Report disposal to us: 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.	Within one month after the Land has been disposed of.

Reporting conditions

We need information from you about how your Investment Plan is tracking so we can monitor your progress against the Conditions and so we can measure the benefits you have brought to New Zealand through your investment.

You must lodge the **following reports**. These must:

1. be sent to **oiomonitoring@linz.govt.nz** by these dates:
 - (a) Report one: 1 August 2021;
 - (b) Report two: 1 August 2023;
 - (c) Report three: 1 August 2025.
2. contain information about your progress in implementing the special conditions, and in particular expenditure to date on:
 - the establishment and management of the forest and the cost of doing so;
 - pest and wilding pine control undertaken to date and the cost of doing so;
 - progress with obtaining FSC certification;
 - an estimate of new full time equivalent (including contractor) jobs created on the Land;
 - progress with registering the esplanade strips referred to in condition 4;
 - any other benefits arising from the overseas investment.
3. follow the format of the template annual report published on our website at:
<https://www.linz.govt.nz/overseas-investment/enforcement/how-we-take-action>

ATTACHMENT 2 - GUIDANCE FOR APPLYING THE ACT

1. You* must grant consent to this overseas investment if you are satisfied that all of the applicable criteria in the Overseas Investment Act 2005 (**Act**) and the Overseas Investment Regulations 2005 (**Regs**) are met. You must decline to grant consent if you are not satisfied that all of the applicable criteria are met. You must not take into account any criteria or factors other than those identified as applying to this application in the table below.

* 'You' here refers to the decision-maker, being the relevant Minister(s) for a Ministerial application or the delegated decision-maker for a delegated application

2. The type of application you are considering is an application under the Sensitive land – substantial and identifiable benefits test pathway.
3. The contract for this transaction was entered prior to the commencement of the Overseas Investment Amendment Act 2018 (**Amendment Act**), so the version of the Overseas Investment Act and the Overseas Investment Regulations in force immediately before its commencement continue to apply to this application as if the Amendment Act had not been enacted.
4. This application for consent was received (March 2018) prior to commencement (16 June 2020) of the Overseas Investment (Urgent Measures) Amendment Act 2020 and the transaction for which consent is required was also entered before commencement. Accordingly, the provisions of the Overseas Investment (Urgent Measures) Amendment Act 2020, including the 'national interest' assessment, do not apply.
5. The following table sets out the criteria and factors that apply to this application:

Pathway	Criteria and factors (pre-October 2018)
Investor Test	section 16(1)(a – d)
Farm land advertising	section 16(1)(f)
Benefits Test	section 16(1)(e)(ii) and (iii)

6. In the attached Report the Overseas Investment Office identifies each of the criteria and factors under sections 16, 17 and regulation 28 that Ministers are required to consider in this case.
7. Following is guidance in relation only to the criteria and factors that apply to this application.

Investor test – good character criterion

8. You must be satisfied that the relevant overseas person or (if that person is not an individual) all the individuals with control of the relevant overseas persons are of good character.
9. The term "good character" is not defined in the Act. The majority of the Select Committee reporting back on the Bill in 2005 confirmed that the "good character" test was needed as it is important to ensure that all persons investing in New Zealand are people unlikely to act inappropriately and bring New Zealand into disrepute.
10. When undertaking the good character assessment, you must be satisfied that the character of all the individuals with control of the relevant overseas person is sufficient so that they should be granted the privilege of owning or controlling sensitive New Zealand assets.

11. The good character test is applicable to individuals, not entities such as body corporates. However, where the investment is to be carried out by a body corporate, the character of the relevant individuals who control the body corporate will need to be considered. Where an offence or contravention is committed by a body corporate to which an individual had a 25% or more ownership or control interest, this is a mandatory consideration. Where the individual's interest in the body corporate is less than this, there generally must be other grounds to reasonably infer participation by the individual in the alleged wrongdoing.
12. Section 19(1) of the Act states that the following factors must be taken into account (without limitation) in assessing whether or not a person is of good character:
 - (a) offences or contraventions of the law by the person, or by any person in which the individual has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not);
 - (b) any other matter that reflects adversely on the person's fitness to have the particular overseas investment.
13. All relevant matters must be weighed up before you make a decision that an individual is of good character. If you wish to rely on a matter to which the applicant has not had an opportunity to respond, then such an opportunity to respond needs to be given in order to meet the requirements of natural justice.
14. How much weight should be given to a particular matter depends on a number of factors, including how closely linked the particular matter is with the investment being made. While submissions on weighting given by the relevant overseas person or individual with control may be considered, the ultimate decision as to the weighting to be given to relevant matters is for you.
15. Matters which might be relevant include:
 - (a) Credible allegations of offending or contraventions of the law (assessing whether the allegation is sufficiently linked to an individual with control or relevant overseas person);
 - (b) Investigations, prosecutions or other enforcement action by regulatory or professional bodies;
 - (c) Track record in New Zealand.
16. Matters which are unlikely to be relevant include:
 - (a) Adverse information that does not relate to an individual with control (for example, offences or contraventions by a relevant overseas person which occurred before the particular individual became involved with the relevant overseas person);
 - (b) Where the decision maker is satisfied that allegations about a relevant overseas person or individual with control have been fully investigated by the relevant regulatory or other authority and the person or individual has been cleared of any wrongdoing;
 - (c) Adverse information that does not impact on the character of a relevant overseas person or individual with control.
17. Briefly, some of the things we consider when weighing up "good character" include:

- (a) the seriousness of the matter, which may include considerations of: what the matter was and the level of actual or potential harm; whether the matter was established by a relevant regulator or the Court and attributed to an Individual with Control (IWC) or Relevant Overseas Person (ROP); what the penalty or other sanction was (if any); whether the matter was a one-off event or repeated breaches, including a pattern of non-compliance across a range of regulatory regimes; whether what occurred was inadvertent, negligent, reckless or deliberate; whether what occurred was legal in New Zealand but illegal in the jurisdiction in which it occurred, in which case we consider the culture and context of that country;
 - (b) if a matter is an allegation, the credibility of the allegation including the reliability of the source and credibility of the information raised. Generally, if an allegation is reported in a number of sources and is not simply 'copy and pasted' it is likely to be regarded as having credibility;
 - (c) connection to the IWC or ROP: we assess the level of control between any of the IWCs of the ROP and the particular matter. For example, a breach of safety rules by an employee of subsidiary company where the company was fined would likely have a low (or no) connection with an IWC who was an executive director of the parent company, whereas an executive decision by a company to illegally collude with a competitor would likely have a high connection with that IWC.
 - (d) relevance to this investment: we assess how relevant the particular matter is to the nature of this particular investment. For example, a dangerous driving conviction by an IWC would have low relevance in connection with the acquisition of a dairy farm, whereas a conviction for discharging farm effluent into a waterway would have a high relevance to the acquisition of a dairy farm.
 - (e) what actions, if any, were taken to remedy the situation and reduce the chances of it reoccurring.
18. The onus is on the applicants to satisfy the decision maker that all the individuals with control are of good character.
19. If you have doubts about the character of an individual with control which result in it not being satisfied that the test for good character has been met, then the application for consent must be declined.

Justice Miller's "with and without test"

Economic factors

20. 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, Ministers 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

21. 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 suggested* 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 noted**, 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 Ministers should not treat benefits that are likely to be achieved in any event as contributing to the “substantial and identifiable benefit” criterion.

*Tiroa E at [36]. **Tiroa E at [38].

Regulation 28 factors

22. 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.*

*Tiroa E at [36].

23. 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.

“Rural Land” Directive

24. The overseas investment involves the acquisition of ‘rural land’ being land that is non-urban and over 5 hectares in size (excluding any associated land), but excludes ‘forest land’. Therefore, in accordance with directions from Ministers, we have treated the following factors as being of high relative importance:
- (a) the “jobs” factor (section 17(2)(a)(i));
 - (b) the “new technology or business skills” factor (section 17(2)(a)(ii));
 - (c) the “increased exports receipts” factor (section 17(2)(a)(iii));
 - (d) the “increased processing of primary products” factor (section 17(2)(a)(vi)); and
 - (e) the “oversight and participation by New Zealanders” factor (regulation 28(j)).

Conditions

25. Conditions may be imposed on any consent that is granted, under section 25 of the Act. The attached Report recommends some conditions that you may wish to consider imposing in this case.
26. If you wish to make any changes to the conditions of consent, those changes should be discussed with the Overseas Investment Office, and the other Minister, before being finalised.

Decision

27. 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.
28. If your decision differs from the assessment and recommendation in our report, and your decision is to grant the application because, in the exercise of your discretion, you are satisfied the criteria in section 16 are met, please inform the Overseas Investment Office. We will then request a statutory declaration from the applicant regarding the truth and correctness of the application and material supplied in subsequent correspondence. We will also provide you with a proposed decision notice and proposed consent conditions for your consideration.
29. If your decision differs from the assessment and recommendation in our report, and your decision is to decline the application because, in the exercise of your discretion, you are not satisfied the criteria in section 16 are met, please provide separate reasons for your decision in writing. Those reasons should cross-reference any relevant background information and legal provisions contained in our report, then set out a summary of why you have reached the position you have reached.
30. If you propose to disagree with the decision of the other Minister, you should discuss your proposed decision with the Overseas Investment Office and the other Minister.
31. If required, staff members from the Overseas Investment Office are available to brief you on the Office's recommendations.

ATTACHMENT 3 – OTHER BENEFIT FACTORS

1. The table below lists other factors in the Act and regulations for assessing the benefit of overseas investments.
2. Given the advice received from the New Zealand Walking Access Commission (WAC), we have included a detailed analysis of the Walking Access factor setting out why we consider that this factor is not met.
3. Submissions from WAC, the Vendors, and our analysis of the submissions are set out in the **Bundle of Additional Documents** (Document 3(1-3)).

Walking access– s17(2)(e)

There are four key elements to this factor:

- There must be **adequate mechanisms** in place or proposed to **provide, protect or improve walking access**.
- The walking access must be over the **relevant land**.
- The walking access must be **available to the public** or any section of the public.
- The provision, protection or improvement of walking access that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

4. Currently, there is no public access over the New Land (which forms part of Stronvar Station).
5. We note that the New Land is being created as a result of a subdivision under the Resource Management Act, which provided an opportunity for the territorial authority to impose new access arrangements. In this case, no new access arrangements were required. In terms of esplanade protection, the relevant resource consent read:
~~18. Due to the remote location and large lots involved, esplanade provisions for the remainder of the property were considered unnecessary.~~
6. However the OIO consulted WAC which advised that the New Land is strategically important due to its location towards the head of the Waihopai Valley, where there is strong demand for public access to public conservation land but few opportunities. WAC advises that practical, secure and enduring public walking access is necessary for the public to reach these areas.
7. WAC then made four recommendations as set out in the following table:

That a new esplanade strip be created alongside the 1km stretch of the Waihopai River adjoining the New Land.	The Applicant has agreed to create.
That new esplanade strips be created alongside small sections of Byron Stream which meanders in and out of the New Land.	The Applicant has agreed to create.
That the bed of the Waihopai River within the New Land be transferred to the Crown.	WAC later advised that this recommendation was no longer required as they were now satisfied that the Waihopai River was already Crown owned.
That a new access route be created through the New Land to the adjoining conservation land.	This proved contractually impossible due to a condition in the ASP and the parties' unwillingness to comply.

8. The Applicant has therefore agreed to two of the three eventual WAC recommendations but has advised that one (the new access route) is outside of its ability to create due to the conditional ASP (the Vendors will not sell the New Land if such access is required).

9. The overseas investment will therefore result in the creation of some new public walking access over the New Land but will not result in all of the new access mechanisms recommended by WAC.

Counterfactual assessment and conclusion

10. We consider that there is little likelihood that the two proposals agreed to by the Applicant would otherwise likely arise under the likely counterfactuals.
11. No previous New Zealand owner has created any such esplanade strips and it seems unlikely that this would be volunteered by any future owner as it would be both costly and of no advantage to such an owner. Furthermore, as stated above, the current subdivision consent does not require the creation of any new access arrangements. We therefore consider it unlikely that the new access route proposed by WAC would otherwise be created.
12. However, given the recommendation of WAC that an additional public access track be formed, and given its very high importance to WAC, we consider that **there will not be adequate mechanisms** in place in terms of public walking access and therefore benefit to New Zealand is unlikely to arise with regard to this factor.

Other factors

13. We considered that the factors below were either not relevant, or the benefit to New Zealand was not likely or sufficient to be relied on for purposes of our assessment.

Factor	Reason not relevant or insufficient
New technology or business skills – section 17(2)(a)(ii) (high relative importance factor)	Not Met. The Applicant already operates multiple forests in New Zealand and therefore will not be introducing any new technology or business skills at this time.
Indigenous vegetation/fauna – section 17(2)(b)	Not relevant. As part of the recent subdivision consent process, the New Land was inspected by the Marlborough District Council's biodiversity officer who concluded that there was nothing significant on the New Land. There is approximately 5-10ha of regenerating native vegetation on the Land but this lies outside of the area to be planted and will remain unaffected by the new forest. We have no other reason to consider that this is an area of significant indigenous vegetation.
Trout, salmon, wildlife and game – section 17(2)(c)	Not relevant. There are no significant habitats of trout, salmon, wildlife or specified game on the New Land.
Historic heritage – section 17(2)(d)	Not relevant. The New Land does not contain any historic heritage.
Special land – section 17(2)(f)	Not relevant. The Land Status certifier has certified that there are no waterways in the relevant land which are over 3m in average width.
Key person in a key industry – section 28(b)	The Applicant submits, and we agree, that this factor is not relevant .
Affect image, trade or international relations – section 28(c)	The Applicant submits, and we agree, that this factor is not relevant .
Owner to undertake other significant investment – section 28(d)	The Applicant has not claimed this benefit. However, the Vendors have stated their intention to use the sale proceeds to invest in additional land to be converted to vineyard, and to convert approximately 400ha of the balance of Stronvar Station for deer farming at a cost of \$200,000.
Enhanced viability – section 28(g)	Not relevant. The Applicant claimed this factor. However, we believe that the evidence provided related more to greater efficiencies and will not be double counted for the purposes of this factor.
Strategically important infrastructure – section 28(h)	Not relevant. The New Land does not contain strategically important infrastructure.
Economic interests – section 28(i)	Not met. We consider that the scale of the Investment is small in the context of New Zealand's forestry holdings as a whole and that the Investment is unlikely to have an identifiable impact on New Zealand's key economic capacity.

Factor	Reason not relevant or insufficient
Oversight and participation by New Zealanders –section 28(j) (high relative importance factor)	Not met. The ownership and control of the investment will remain with the shareholders of the Applicant, which are ultimately owned by overseas persons. We do note that the Applicant has provided training and opportunities for advancement within its organisation to numerous New Zealanders.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

ATTACHMENT 4 – SENSITIVE LAND

1. Part Stronvar Station, Waihopai Valley

Land Interest	Freehold Interest (approximately 627.674 hectares)
Record(s) of Title	Part of MB4D/1039 (Marlborough)
Sensitivities	Is more than 5 hectares of non-urban land Adjoins land that is over 0.4 hectares and is a scientific, scenic, historic, or nature reserve under the Reserves Act 1977 that is administered by the Department of Conservation

ATTACHMENT 5 - GOOD CHARACTER SEARCHES AND ANALYSIS

1. We have provided previous information to Ministers relating to good character in separate earlier briefings in relation to this application (**Application**). That information is set out within the briefings replicated in the **Bundle of Additional Documents** (Document 4).
2. As part of the application, several matters were disclosed about the Applicant and several of the individuals with control in their capacity as directors or owners of Rimbunan Hijau Group ("RH Group"). We also carried out standard open-source checks.
3. As stated below, these matters have mostly been considered previously by the OIO and previous Ministers though some new articles relating to the same matters have been released since. Copies of these articles are available upon request.
4. The purpose of this Appendix is to outline the relevant matters, the Applicant's comments on these and our assessment of the good character criterion as it applies to the Application (section 16(1)(c) of the Act).
5. For the purpose of this Application, the individuals with control of the relevant overseas person are set out in the report. We have assessed each of the allegations and consider that, for the reasons set out below, the allegations do not prevent a finding that the individuals with control of the relevant overseas person are of good character.
6. We consider that the individuals with control in this case are now:

IWC	Role
Dr Tiong Ik King	director of the Applicant, Neil Group companies, Oregon and Callander, and sole legal shareholder of Callander
Jack Lee Porus	new director of the Applicant and Neil Group companies
Chiong Hoo Tiong	new director of the Applicant and Neil Group companies
Chiong Yong Tiong	new director of the Applicant, Oregon and Neil Group companies
Sir Tiong Hiew King	founder of the Tiong Group and significant underlying owner of the Applicant

7. The table below summarises the various allegations:
 - (a) our assessment of the connection to the IWCs is shown as the first coloured bar on the table;
 - (b) our assessment of the relevance to this investment is shown as the second coloured bar on the table;
 - (c) our ultimate assessment of the risk of each matter is shown as the third coloured bar on the table.

Matter	Summary of disclosure or search finding	Connection to IWC/ROP	Relevance to this investment	Ultimate assessment of risk
1. Rimbunan Hijau Group allegations	See more detailed assessment below	Medium	Low See below – the Applicant maintains that it has always acted in accordance with the laws applicable to the nations involved and that it has undertaken additional measures to alleviate concerns. See further discussion below	Low These matters have been considered previously in multiple applications and we continue to consider that they do not prevent a finding of good character on the part of the Applicant.
2. Tolaga Bay Incident	See more detailed assessment below	Low	Low See below and Bundle of Additional Documents (Document 4 - briefings 4 to 6) – the Applicant maintains that the damage was unforeseeable and it acted in accordance with common local industry practice. See further discussion below	Medium These matters have been considered separately and we continue to consider that they do not prevent a finding of good character on the part of the Applicant.

Rimbunan Hijau Group – environmental concerns

8. The following extracts are reproduced from the good character appendix to a prior application by the Applicant (for which consent was granted in March 2017):

Two of the individuals with control of the overseas person, Dr. Tiong Ik King and Mr. Tiong Thai King, are the brothers of Mr Tiong Hiew King (also an individual with control), who founded Rimbunan Hijau Group ("RH Group") in the mid-1970s.*

Criticisms have been made about RH Group, which is a large Malaysian company present in more than fifteen countries, and is involved in many sectors including media, forestry, oil palm plantations, aquaculture, biotechnology, mining, oil and gas, plastic manufacturing, real estate and insurance services.

These criticisms have been made or promulgated by groups campaigning about the degradation of the environment or human rights, particularly in Papua New Guinea, and the Malaysian state of Sarawak (Borneo). These groups include Greenpeace, the Rainforest Action Network, PKR (Sarawak), Papua New Guinea Mine Watch, Sarawak Report and the Oakland Institute

These groups have claimed that:

- (a) RH Group has derived large wealth from timber concessions and land used for oil palm plantations in Sarawak, while the indigenous people living there have remained poor, and the animal and plants they depend on have been destroyed without compensation.
- (b) Domination of the media and political offices by the Tiong family has resulted in their favourable treatment and the blocking of their opponents.

We have also become aware of a 2015 report by the Oakland Institute, an independent policy think tank in Oakland, California: "The Great Timber Heist – The Logging Industry in Papua New Guinea".

*The report looks at the increase of illegal logging in PNG and on RH Group's complex structure through subsidiaries registered in tax havens that allow it to 'evade' tax**.*

* Note that (as at March 2020) Tiong Thai King is no longer an IWC as he is no longer a director.

** These allegations were raised again in a media article on 21 September 2018 which referred to an updated Oakland Institute report. Copies of the latest media article and updated Oakland report are available upon request. We consider that the matters referred to are effectively the same as those previously responded by the Applicant and previously considered by the OIO as set out above and below. An updated report relating to Sarawak was released in March 2020 but we again consider that this largely covers the same matters.

Electoral Laws Breach

In 2016 an election watchdog filed a report with the Malaysian Electoral Commission accusing candidates of breaching electoral laws in the lead up to an election in May. Tiong Thai King is named as one of the candidates alleged to have committed offences.*

Amongst the allegations are claims that the candidates misappropriated government funds and property for personal use, bribing voters and placing campaign materials within 50 metres of polling stations.

* Note that (as at March 2020) Tiong Thai King is no longer an IWC as he is no longer a director.

Our analysis of the individuals with control of the relevant overseas person's character

We have given careful consideration to the allegations. We initially became aware of these allegations through our open source searches of the relevant overseas person and its individuals with control in relation to its previous applications and an updated search as part of the current applications. We sought comment from the Applicant in relation to these matters.

The Applicant has stated, in regard to these allegations:

- (a) *In relation to the allegations made against Tiong Thai King, these are strongly denied. He has never been the subject of proceedings in relation to these allegations, nor have the reports ever been substantiated or supported, either by information provided or by any other reputable source. They remain unsubstantiated media allegations by an outlet that is known to have its own political agenda.*
- (b) *Similarly in relation to the activities of the wider Rimbanan Hijau Group, the companies involved assert that they have always operated within the laws of the countries in which they have interests. The media allegations against them are part of a campaign to tarnish their reputation for motives which are often themselves subject to question.*

Our analysis of the individuals with control of the relevant overseas person's character

While these allegations are serious, we are not aware of any actions that have been taken by any authority or proceedings taken by private persons against the individuals with control or the related entities.

The individuals with control have also been operating in New Zealand, through the various entities they control, for many years. During this time they have received more than 90 consents and have complied with their OIO conditions of consent.

For the reasons set out below, we consider that the above allegations do not prevent a finding that the individuals with control of the relevant overseas persons are and remain of good character:

- (a) *We are not aware of any action that has been taken by a regulatory body or private person in relation to these allegations.*
- (b) *We are not aware of any evidence (other than that referred in the allegations themselves) that supports or refutes the allegations.*
- (c) *We are not able to independently verify the allegations.*
- (d) *We are not aware of any evidence that the individuals with control of the relevant overseas person were directly involved with any of the incidents which were the subject of these allegations.*
- (e) *We have not identified any specific information or evidence that gives grounds to believe that any individual with control of the relevant overseas person committed an offence or contravened the law or had a 25% or more interest in an entity which has committed an offence or contravened the law (which is relevant to s19(1)(a) of the Act).*
- (f) *We have not identified any specific allegations or other matter which relates to the individuals with control of the relevant overseas person's fitness to hold this investment.*

- (g) *The Tiong family has been investing in New Zealand for over 20 years. During this time it has complied with its OIO conditions of consent.*
- (h) *Having regard to the above, we consider that we can rely on the individuals with control of the relevant overseas person's good character statutory declaration and be satisfied that they are of good character. We note that the conditions proposed in Appendix 1 include a requirement that the Individual with Control (as defined in the conditions) continue to be of good character and not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.*

Further Investigations since the prior application

- 9. The OIO has conducted further open source checks for the period since the previous consent was granted.
- 10. This search revealed further web articles regarding the same logging activities of RH Group in Papua New Guinea and Sarawak which were previously considered in the extracts above.
- 11. The Applicant has submitted as follows:

The companies operating in Papua New Guinea do so in accordance with the laws of that country. Payment of tax by large corporations is the current subject of discussion and debate on a world-wide scale, and includes companies in many other industries.

Some of the companies that are subject to similar allegations are Google and Apple. This subject reflects as much on the countries affected and the laws which permit them to operate in a certain way, as the companies involved.

We also note that Rimbunan Hijau companies now practice sustainable forest management. They have launched a reforestation program to plant trees, and maintain a strict management system pertaining to logging, requiring the reforestation of deforested lands in order to restore ecological equilibrium where this has been threatened.

The company has also contributed significantly not only to the local economy in Malaysia, but has a program of enrichment in local communities that it supports. It provides donations to local schools and hospitals and financial assistance to youth.

None of the allegations made in the media reports has any bearing on the Applicant's activities in New Zealand. The Applicant is an excellent corporate citizen in this country and contributes benefits to New Zealand that are referred to in greater detail in the application.

- 12. In terms of its New Zealand operations, the Applicant states:

The New Zealand entities and individuals with control of the Applicant have always operated in New Zealand to the highest ethical and environmental standards. These companies have a proud twenty-seven year history in this country of providing stable employment to many New Zealanders, and investing significant capital in numerous developments, (refer to further information provided in paragraphs 36 and 37 of the Investment Plan of the application).

In recent times the Applicant has been the recipient of environmental awards from three separate Regional Councils – Waikato (for work on the Coromandel), Otago (for innovation in stream crossings at Naseby) and in Southland (for ecological restoration work including re-establishment of Koura (freshwater crayfish)).

- 13. As stated in **Bundle of Additional Documents** (Document 4 - briefing 1):

Our assessment of the good character criterion includes assessing the disclosures made by the applicant and conducting an open source search on the relevant individuals with control. Our assessment is conducted on a risk-based and proportionate approach (as directed by the Ministerial Directive Letter).

As part of this assessment, we also consider the track record of the particular investor, or the individuals with control of that investor, including their track record in New Zealand. We have received legal advice in 2013 that it is always possible for the OIO to go further with its inquiries but that resources available to it must place a sensible limit on such inquiries.

We have conducted our assessment of the good character criterion in regard to Ermslaw's application in accordance with the above approach.

We have undertaken extensive open source searches on the individuals with control and provided the Ministers with all information discovered in these searches.

Ermslaw has been investing in New Zealand since the 1990s and is New Zealand's fourth largest forestry operator. Ermslaw has been the recipient of environmental awards from three Regional Councils during this time.

As part of our assessment of the good character criterion we have taken into account Ermslaw's track record in New Zealand, the nature of the matters found and/or disclosed (being allegations), Ermslaw's response to the allegations and the relatively small nature of this particular forestry investment. We have also taken into account previous decisions by Ministers in regard to this applicant based on the information that is currently available and the legal risk associated with taking a different view on this criterion on the basis of the same information.

Tolaga Bay – environmental concerns

14. As set out in detail in briefing 6 in **Bundle of Additional Documents** (Document 4), we considered whether the ongoing prosecution of the Applicant following the Tolaga Bay Incident could impact on our assessment as to the good character of the IWC.

15. We concluded that:

The unresolved nature of this matter creates a degree of uncertainty.

On-going Court proceedings do not provide evidence of wrong doing and does not conclusively shed light, one way or another, on whether the criterion is met. Whether or not the section 16(1)(c) (good character) criterion is met requires an exercise of Ministerial judgement and is ultimately a decision for the Ministers.

The good character test is applicable to individuals, not entities such as the Applicant. An offence or contravention committed by a company is a mandatory consideration if an individual with control for the purpose of this application had a 25% or more ownership or control interest in the company at the time of the offence or contravention.

While we understand the individuals with control for this application were directors of the Applicant at the time of the alleged offending, this matter is still before the Courts and no decision has yet been made.

*We note, however, that GDC has confirmed that **no** individual directors have been charged under the prosecutions.*

To date, we are not aware of the Applicant wilfully acting in bad faith, or that the Applicant was unusually negligent as a forest owner or manager. Rather, we note that the Applicant is one of ten forestry companies being prosecuted for similar actions by the GDC – suggesting that its actions were standard industry practice (poor though this may have been) in the area at the time.

We are also satisfied that the Applicant has already taken significant (and costly) steps to mitigate the damage, and to reduce the likelihood of similar disasters in the future. We also note that, despite being one of the largest forestry operators in New Zealand, this is the first time it has been prosecuted in New Zealand for an incident of this nature. We also note that the Applicant has received three environmental awards from New Zealand regional councils.

Conclusion

16. For the reasons set out above, we continue to be satisfied that the individuals with control of the relevant overseas persons are of good character.

17. Having regard to the above, we are satisfied that the statutory declaration provided by the Applicant, can be relied on. We are accordingly satisfied that the individuals with control are of good character.
18. We note that the conditions proposed in **Appendix 1** include a requirement that the Individuals with Control (as defined in the conditions) continue to be of good character.

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ATTACHMENT 6 - OVERVIEW TAI



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ng the Tolaga Bay Incident.

	Cross-references
to the IWC is set out in the	Paras 57 and 62 Section 15.
ment – the Applicant is the ining land.	Paras 63 - 64 Section 16(1)(a)
g professional advisers.	Section 16(1)(b)
acter issues – Bundle of	Paras 66 - 73 and Bundle of Additional Documents (Document 4) and Attachment 5 .
ood character on the part eport and in Bundle of	Section 16(1)(c)
ot of the kind referred to	Section 16(1)(d).

Overview of assessment: Investment a

Benefit	Rating			Reference
Creation of jobs (high relative importance)	Low to Medium	Estimated to Stronvar Sta Station which used to furth gain over the In addition, in It is possible likely equival	forest to be established new jobs.	Paragraphs 136 - 146 Section 17(2)(a)(i)
Increased export receipts (high relative importance)	Low to Medium	Estimated to \$1.1m if the forest. It is n New Zealand It is possible likely equiva	forest to be established receipts.	Paragraphs 147 - 155 Section 17(2)(a)(iii)
Greater efficiencies and productivity	Medium	The new for Owning the managed as From an inc Land. It is possible unlikely that There will be	forest to be established ity and efficiencies.	Paragraphs 156 - 166 Section 17(2)(a)(iv)
Introduction of development capital	Low	Initial invest development An ANZP no applied, thoi	forest to be established development capital.	Paragraphs 167 - 173 Section 17(2)(a)(v)
Increased processing of primary products (high relative importance)	Low	The Applica supplies app commit to d condition ca It is possible the shortage domestic su	before the new trees are n requiring a proportion appropriate	Paragraphs 174 - 184 Section 17(2)(a)(vi)
Consequential	Medium	The Applica The Applica budget of \$ The Applica international We conside	stment of the funds for licant to seek FSC	Paragraphs 185 - 197 Regulation 28(a)
Previous investments	High	The Applica and employ Zealand to		Paragraphs 198 - 204 Regulation 28(e)
Advance Government Policy/Strategy	Low	The invest It is possibl likely that tr	forest to be established	Paragraphs 205 - 218 Regulation 28(f)