Decision required under the Overseas Investment Act 2005: New Zealand Forestry Industries Limited

Date	25 July 2019
Security Level	Commercial: In Confidence
Priority	High
Case Number	201720128
Decision Required By	Prior to 31 July 2019. The vendor is in voluntary liquidation. This date is the final date for assets to be sold as part of that process.

Contact for Telephone Discussion

Name	Position	Telephone	Cellphone	First Contact
Michael Appleyard	Manager Applications (Residential and Forestry)	04 830 3880		✓
[redacted]	Senior Solicitor	04 830 3958		

Executive Summary:

1. This application is part of a set of three applications made by Issoria Offshore Limited (**Issoria**), relating to NZFI Holdings (Singapore) Pte. Ltd. (**NZFI Sing**), the Underwood, Hakahaka, and the Whataroa Forests, case numbers 201900014, 201720128, and 201900257.

2. Issoria's intended investment sequence is:

   (a) acquire NZFI Sing and an indirect interest in Underwood Forest; and
   (b) settle transactions by NZFI Sing's wholly-owned subsidiary for:
      (i) an indirect interest in Hakahaka Forest; and
      (ii) an indirect interest in Whataroa Forest.

3. This report relates to the transaction for Hakahaka Forest.

Applicant

4. Issoria Offshore Limited as trustee of the Issoria Trust (**Applicant**) seeks consent on behalf of New Zealand Forestry Industries Limited (**NZFI**).

5. If the Applicant's acquisition of NZFI Holdings (Singapore) Pte. Ltd is successful, the Applicant will be ultimately wholly-owned and controlled by Peter de Putron.

6. Mr de Putron is a high net-worth individual, based in Jersey, who is a fund manager for Bell Rock Capital Management LLP. Mr de Putron invests in a range of asset classes around the world in his personal and professional capacities.

Investment

7. The Applicant's investment is acquiring an indirect interest in approximately 71.2812 hectares of sensitive land at Hakahaka Bay, Port Underwood, Marlborough (**Land**).

8. The Land contains 56% pine tree cover (40 ha of 71 ha) and the Applicant intends to increase this to 70-77%, depending on topography (50 to 55 ha of 70 ha). Land area unsuitable for commercial forestry will be regenerated with manuka trees, expected to be less than 10 hectares.

9. The Land does not contain any dwellings or buildings and does not include residential land.

Special forestry test

10. We have assessed the application against the requirements of the special forestry test and note:

    (a) The Land will be used nearly exclusively for forestry activities;

    (b) The trees will be replanted two years following harvest;

    (c) There are no existing arrangements or existing conditions of consent;

    (d) The Land does not include any residential land or any dwellings and will not be used for any residential purposes;

    (e) There are no existing arrangements that must be maintained or implemented and there are no log supply contracts to honour; and

    (f) The Land does not contain any special land.

11. We are satisfied that the requirements of the special forestry test are met.

Recommendation

12. We recommend consent is **granted**.

Instructions

13. Please see **Appendix 2** for instructions on how to make a decision and guidance on the criteria for consent.

Decision:

14. I have determined that:

(a) the '**relevant overseas person**' is (collectively):

Person	Relationship
Issoria Offshore Limited (**Issoria**)	Entity with ultimate control / ownership
Peter Nicholas de Putron	Individual with ultimate control / ownership
New Zealand Forestry Industries Limited (**NZFI**)	Entity making the acquisition

(b) the '**individuals with control of the relevant overseas person**' are:

Director	Issoria	NZFI
Peter de Putron	✓	
Raymond Trevor Hine		✓
Randolph Edward Casmir Van der Burgh		✓

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

(a) the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment; and

(b) the relevant overseas person has demonstrated financial commitment to the overseas investment; and

(c) all the individuals with control of the relevant overseas person are of good character; and

(d) each individual with control of the relevant overseas person is not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009; and

(e) the benefit to New Zealand test is met (by way of meeting the criteria in the special test relating to forestry activities).

16. Consent is granted to the overseas investment in the form of the Proposed Decision in **Appendix 1**.

[s 9(2)(a)] [redacted]

Michael Appleyard – Manager Applications (Residential and Forestry)

Date 25/7/2019.

Report of the Overseas Investment Office on the application for consent by New Zealand Forestry Industries Limited Case: 201720128

Contents

What is the Investment?

Applicant	**Issoria Offshore Limited on behalf of New Zealand Forestry Industries Limited** (United Kingdom, 100%)
Vendor	**Marlborough Country Limited (in liquidation)** (New Zealand, 100%)
Consideration	$850,000
Application Type	Special forestry test
Recommendation	Grant consent

Description of the Investment

1. The Applicant seeks consent to acquire an indirect interest in approximately 71.2812 hectares of sensitive land at Hakahaka Bay, Port Underwood, Marlborough (**Land**).

Vendors

2. The Vendor is Marlborough Country Limited (in liquidation). Its liquidators, Price Waterhouse Coopers, are selling the property in order to realise the only asset of the company.

Sensitive assets

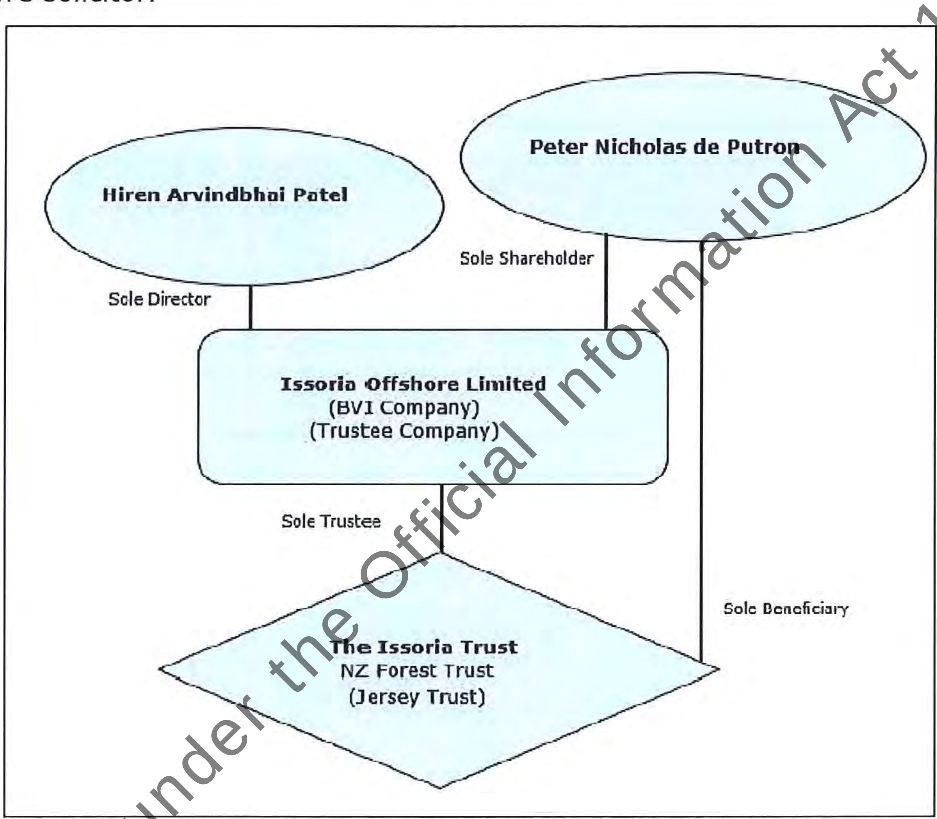
3. The Land is sensitive as non-urban land exceeding 5 hectares and as land that adjoins a land type on the section 37 list (see **Appendix 3**).

Who is making the Investment

Applicant

Who the Applicant is

4. As set out in the diagram below, the Applicant is Issoria Offshore Limited, a trustee company incorporated in the British Virgin Islands and wholly owned by Peter de Putron. The Applicant's sole director is Hiren Arvindbhai Patel, who is Peter de Putron's solicitor.



5. The Applicant is the sole trustee of the Issoria Trust, settled in Jersey. That trust was set up for this forestry acquisition. The sole beneficiary of the Issoria Trust is Peter de Putron.

6. The Applicant will make this acquisition through New Zealand Forestry Industries Limited which, at the time of acquiring Hakahaka, will be owned by the Applicant – see the report for case 201900014.

Who owns and controls the Applicant

7. The Applicant and Issoria Trust and ultimately owned by Peter de Putron. Hiren Patel, as Peter de Putron's solicitor, is subject to instruction. Peter de Putron therefore has sole ownership and effective control over all entities depicted.

8. Peter de Putron provided the funds for this transaction, can approve significant capital and expentiure, and is responsible for approving the acquisition and divestment of NZFI Sing's shares.

9. Mr de Putron is a high net-worth individual, based in Jersey, who is a fund manager for Bell Rock Capital Management LLP. Mr de Putron invests in a range of asset classes around the world in his personal and professional capacities.

Investment entities for Hakahaka

10. Following Issoria's acquisition of NZFI Sing, NZFI Sing and NZFI's existing directors will remain to keep the existing management structure and to retain continuity of experience and competency with the relevant assets and industry sector.

11. Noted below, Hakahaka Forest is a 'bolt on' forest, 6.45% the size of the adjacent Underwood Forest together with which it will be operated. We have accordingly taken a targeted relevant overseas person and individuals with control selection to focus on the ultimate owner / controller and the directors of the acquiring entity.

Relevant Overseas Person

12. In this investment context, we have determined that the 'relevant overseas person' is (collectively):

Person	**Relationship**
Issoria Offshore Limited ("**Issoria**")	Entity with ultimate control / ownership
Peter de Putron	Individual with ultimate control / ownership
New Zealand Forestry Industries Limited ("**NZFI**")	Entity making the acquisition

Individuals with Control

13. We have determined that the 'individuals with control of the relevant overseas person' are:

Director	**Issoria**	**NZFI**
Peter de Putron	✓	
Raymond Trevor Hine		✓
Randolph Edward Casmir Van der Burgh		✓

Investment Plan

14. Mr de Putron's overarching investment intention is to build a forestry-based investment portfolio of at least two rotations (at least 50 years).

15. This plan includes acquiring multiple forests for diversified revenue streams, investment in research and development for hybrid pine tree species, and investing in downstream manufacturing to develop higher value timber products, principally for structural use.

16. Hakahaka is adjacent to Underwood Forest, described as a "bolt on" forest, being 6.45% of Underwood Forest's size.

17. NZFI intends to acquire Hakahaka to integrate it with the existing adjoining forest at Underwood. Upon the first harvest at Hakahaka, NZFI will take steps to fully plant Hakahaka for a second rotation that will be integrated with its wider long-term plans for Underwood.

18. Hakahaka is currently used for forestry with approximately 40 hectares planted with pinus radiata. The trees are 33 years old and are ready to be harvested. Approximately 30 hectares of the land is currently unutilised and is currently covered in scrub.

19. NZFI intends to increase the forest area to approximately 50 to 55 hectares as set out in the table below. Due to the topography of the land, it is impractical to plant all the unutilised land.

Hakahaka Bay, Tumbledown Bay Road, Port Underwood, Marlborough Sounds		
Land Use	**Current (hectares)**	**Proposed (hectares)**
Pinus Radiata	40 hectares	50 -55 hectares
Unutilised land (scrub)	31 hectares	16 – 21 hectares
Total	71 hectares	71 hectares

Does the Applicant meet the Investor Test criteria?

Business Experience s16(2)(a)

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.

20. In this case, the Investment can be described as the acquisition of a small forestry block, adjacent to an existing commercial forestry operation. The investment will be operated under the day-to-day management of a commercial forestry manager.

21. We have reviewed the biographical information for each of the individuals with control and note the following:

Peter de Putron

22. Mr de Putron:

    (a) is a fund manager and investor, and has over 20 years experience; and

    (b) holds a BA (Engineering Science) from Oxford University and an MBA in Finance and Entrepreneurial Management from Wharton Business School at the University of Pennsylvania.

Raymond Hine

23. Mr Hine, a New Zealand citizen, holds degrees in pure and applied mathematics, and civil engineering.

24. He has more than 35 years experience in the oil and gas sector, project management, and general management for start-up, joint venture, and mature companies in sectors including oil and gas, logistics and infrastructure, and forestry.

25. In terms of forestry experience, he has been a director of NZFI for many years and been a general manager for a subsidiary of Carter Holt Harvey.

Randolph Van der Burgh

26. Mr Van der Burgh:

    (a) has a degree in commerce and is a member of Chartered Accountants Australia and New Zealand; and

    (b) has extensive experience in corporate finance, mergers & acquisitions, restructures, and international tax planning and management through positions as partner of Ernst & Young New Zealand and Australia and an employee with the firm for 20 years.

Our assessment and view

27. With reference to the experience and credentials outlined above, **we are satisfied** the individuals with control collectively have business experience and acumen relevant to this investment, being acquiring a small adjoining forestry block to run together with Underwood Forest under Merrill & Ring New Zealand's day-to-day management.

Financial Commitment s16(2)(b)

The financial commitment criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the overseas investment.

28. The 'financial commitment' criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the Investment (intentions are not sufficient).

29. In this case we are satisfied that the relevant overseas person has demonstrated financial commitment by:

    (a) Engaging advisers (lawyers, accountants, and forest management consultants)

    (b) entering into a sale and purchase agreement for Hakahaka; and

    (c) paying a non-refundable deposit for Hakahaka on 26 October 2018.

Good Character s16(2)(c)

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): (a) 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): (b) any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

30. The individuals with control has provided statutory declarations stating that they are of good character, have not committed an offence or contravened the law as described above and know of no other matter that reflects adversely on their fitness to have the Investment. We are satisfied that the statutory declaration can be relied on as they comply with the requirements of the Oaths and Declarations Act 1957.

31. We have also conducted open source background checks on the individuals with control and found one relevant matter.

32. That matter is outlined in the report for case 201900014. It related to a political donation made by UK based company in which Mr de Putron has an interest.

33. Decision-makers have reviewed and formed the view that this matter does not affect Mr de Putron's fitness to have this investment. We do not recommend this matter is re-considered in this decision.

34. No other matters were found or disclosed relating to the individuals with control for this investment.

View

35. **We are satisfied** that the individuals with control are of good character.

Immigration Act s16(1)(d)

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

36. The individuals with control have provided statutory declarations stating that they are not individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009. We are satisfied that the statutory declarations can be relied on as they comply with the requirements of the Oaths and Declarations Act 1957. We have also conducted open source background checks on those individuals and found nothing relevant to this criterion.

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

Does the Investment meet the special forestry test?

Special test relating to forestry activities – section 16A(4)

The benefit to New Zealand test is met if relevant Ministers are satisfied that the relevant land is likely to be used for forestry activities, the land does not include residential land and is not likely to be used for any residential purposes, that any requirements in regulations are likely to be met, that harvested crops of trees are replanted, and if special has been offered back to the Crown in accordance with regulations. These criteria are set out in detail below.

Forestry activities – section 16A(4)(a)

Will the relevant land be, or be likely to be, used exclusively, or nearly exclusively, for forestry activities? Forestry activities is defined in section 16A(9) to mean maintaining, harvesting, or establishing a crop of trees.

View

38. We are **satisfied** that the Land is likely to be used nearly exclusively for forestry activities.

Land use

39. As set out in the investment plan, the Land will be planted in additional forest to the extent it is able to be.

40. Of the 71 hectares, currently 40 hectares are planted in pine and ready for harvest. These will be harvested and replanted. A further 10-15 hectares, subject to topography, will be planted in additional pine, taking total forest cover from 56% to between 70-77%.

41. Land area unsuitable for commercial forestry will be regenerated with manuka trees, expected to be less than 10 hectares. It is possible that local bee keepers may use the Manuka areas. The Applicant is also considering the potential for the Manuka to be used as a source of Manuka oil. Any bee keeping/Manuka oil activities will be undertaken by third parties and not the Applicant.

42. We consider the proposed Manuka planting is a minor and ancillary use of the land. It does not affect the nearly exclusive use of the Land for forestry activities.

Conditions

43. We have proposed a general consent condition requiring the Applicant to continue to use the Land exclusively or nearly exclusively for forestry activities.

Residential land – section 16A(4)(b)

Is the relevant residential only land or does the relevant land include residential land? If so, does the residential land adjoin other non-residential land within the relevant land?

44. The Applicant has confirmed, by way of a sensitive land certificate, that the Land does not contain any residential land.

Residential purposes – section 16A(4)(c)

Will the relevant land be, or be likely to be, used for residential purposes or will it be held for future use for any residential purposes? "Residential purposes" <u>excludes</u> where: (a) accommodation is being provided for the purpose only of supporting forestry activities being carried out on the relevant land; and (b) all buildings being used for that accommodation are located on land on which some or all of those forestry activities are being carried out or on land that adjoins land on which some or all of those forestry activities are being carried out.

View

45. We are satisfied that that the relevant land is not likely to be used for residential purposes and therefore that this criterion is **met**.

46. The land does not contain any dwellings or buildings and the applicant does not propose to construct any.

47. We have proposed a general consent condition requiring the Applicant to continue to not use the Land for residential purposes.

Existing arrangements – regulation 29(2)(a)

Will any existing arrangement in respect of the relevant land, or any part of the relevant land, that is for 1 or more specified purposes will be implemented and maintained, or will continue to be implemented and maintained? What do conditions of an existing consent (if any) require to be done, or prohibit from being done, in respect of the relevant land, or any part of the relevant land, for 1 or more specified purposes? Will these continue to be done or not to be done?

48. The Applicant advises that there are no existing arrangements to be maintained and implemented. There are no existing conditions of consent.

49. The Applicant has reviewed:
    (a) the Proposed Marlborough Environment Plan;
    (b) Vendor representations;
    (c) Records of title for the Land;
    (d) Sensitive land certificate;
    (e) the Heritage New Zealand website; and
    (f) the New Zealand Archaeological Association website;

50. Our review process also did not identify any existing arrangements on the Land. On this basis, we are satisfied that this criterion is **met**.

51. It is noted that the proposed consent conditions require the applicant to implement and maintain any existing arrangements on the Land *whether or not* they have been identified in the application.

Existing consent conditions – regulation 29(2)(b)

What do existing conditions of a consent require to be done, or prohibit from being done, in respect of the relevant land, or any part of the relevant land, for 1 or more specified purposes? Will these continue to be done or not to be done?

52. The Land is not subject to an existing consent.

Log supply obligations – regulation 29(2)(c)

Will logs be supplied or continue to be supplied as required by any existing supply obligation (so long as the obligation remains in place?

53. The Vendor advises there are no log supply contracts that relate to the Land.

Replanting crops – section 16A(4)(e)

Whenever a crop of trees is harvested on the relevant land, will or is it likely that a new crop will be established on the relevant land to replace the crop that is harvested?

54. The Applicant advises:
    (a) the trees located at Hakahaka will be replanted after harvesting. In terms of timing, as the trees are currently 33 years old and ready for harvesting, harvesting will take place as soon as settlement occurs.
    (b) Replanting will take place as soon as possible following harvesting. The Applicant intends to replant the trees immediately following harvesting.
55. The Applicant suggests that a consent condition that requires the replanting to occur within three years of harvesting to accommodate:
    (a) Limited planting season - planting can only occur in the winter of each year commencing in June;
    (b) Seedling availability - there may be seedling availability issues and seedlings need to be ordered by the September prior to planting; and
    (c) Labour issues - labour shortages for planting trees have been widely reported recently.
56. We are satisfied that the Applicant will replant the Land after harvest and that this criterion is **met**.
57. The proposed consent conditions include a requirement that the Land be replanted within 2 years of harvest, consistent with industry standard.

Special land – section 16A(4)(f)

If the land contains special land, has that special land been offered to the Crown in accordance with regulations? Special land means foreshore or seabed or a bed of a river or lake.

58. The Applicant has confirmed, by way of a sensitive land certificate, that the Land does not contain any special land.

Third Party Submissions

59. No third party submissions were received.

Appendices

Appendix 1 - Proposed Decision

1. Appendix filed separately. See document with Objective ID A3677225.

Appendix 2 - Guidance for applying the Act

1. The regulator must grant consent to this overseas investment if it is satisfied that all of the relevant criteria in sections 16 and 16A(4) of the Overseas Investment Act 2005 ("the Act") are met.
2. It must decline to grant consent if it is not satisfied that all of the relevant criteria in sections 16 and 16A(4) are met. The regulator must not take into account any criteria or factors other than those identified in sections 16 and 16A(4), and regulation 29 of the Overseas Investment Regulations 2005 ("the Regulations").
3. In the attached Report the Overseas Investment Office identifies each of the relevant criteria under sections 16 and 16A(4), and regulation 29 that the regulator is required to consider in this case.

Conditions

4. Under section 16C(4), certain mandatory conditions must be imposed on any consent granted under section 16A(4).
5. Additional conditions may be imposed on any consent that is granted, under section 25A.
6. The attached Report sets out the mandatory conditions and recommends some additional conditions that you may wish to consider imposing in this case.

Decision

7. 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.

Appendix 3 - Sensitive Land

1. Hakahaka Forest, Tumbledown Bay Road, Port Underwood

Land Interest	**Freehold Interest** (approximately 71.2812 hectares)
RTs	233770 (Marlborough)
Sensitivity	Is more than 5 hectares of non-urban land
	Adjoins land listed as sensitive by the regulator under section 37