



Office of Hon Bill English

MP for Clutha-Southland
Deputy Prime Minister

Minister of Finance
Minister for Infrastructure

- 8 DEC 2010

Colin MacDonald
Chief Executive
Land Information New Zealand
Private Box 5501
WELLINGTON 6145

Dear Sir

Ministerial Directive Letter

1. This Ministerial directive letter is made pursuant to section 34 of the Overseas Investment Act 2005 (the Act) and directs you as the regulator about:
 - a. the Government's general policy approach to overseas investment in particular sensitive New Zealand assets;
 - b. the relative importance of different criteria or factors in relation to particular assets;
 - c. the level of monitoring required in relation to the conditions of consent;
 - d. the powers of the regulator, with regard to compliance with, and enforcement of conditions of consent;
 - e. the criteria for including reserves, public parks, or other sensitive areas on the list required to be kept by you as regulator by section 37;
 - f. the intention to reside in New Zealand indefinitely under section 16(1)(e)(i) of the Act;
 - g. the acquisition of special land; and
 - h. other matters relating to your functions, powers or duties.

The Government's general policy approach to overseas investment in sensitive New Zealand assets

2. The Government's overall policy approach to overseas investment in sensitive New Zealand assets is to achieve a balance between ensuring those assets are adequately protected while facilitating overseas investment that provides benefits to New Zealand. While the Government acknowledges the purpose of the Act and the consent regime it establishes, the Government wishes to minimise, any unnecessary delays or administrative costs in the consent process. The Government's general policy approach is to enable those investments that meet

the statutory criteria for consent to proceed, by ensuring that they are not hindered by administrative issues and that the regulator's resources are used efficiently.

3. The Government considers that the benefits of foreign investment can accrue over the long term and for some investments in sensitive land, substantial and identifiable benefits may not occur for a number of years. The Government thus directs the regulator, when considering the factors set out in section 17(2) of the Act, to give equal weight to longer term benefits as to any immediate benefits.

Factors considered of high relative importance for investments in particular types of sensitive land

Context

4. The land-based primary sector forms a particularly important part of the New Zealand economy, reflected by its contribution to exports and Gross Domestic Product. The Government has two specific concerns about overseas investment in the land-based primary sector. The first concern relates to overseas investment in vertically-integrated firms which involve production, processing and distribution of products from the land-based primary sector on a large scale. The second concern relates to the aggregation of farm land by overseas investors which may not be beneficial to New Zealand's economic interests, for example, in relation to New Zealand's ability to:
 - a. be a reliable supplier of primary products in the future;
 - b. supply a product to the global economy that forms an important part of New Zealand's export earnings; and
 - c. protect strategic and security interests.
5. The Government has introduced two new factors into the Overseas Investment Regulations 2005 (the Regulations) to respond to these concerns: the 'economic interests' factor and the 'mitigating' factor.

High importance factors

6. The Government acknowledges that each application for consent for an overseas investment in sensitive land must be considered on a case-by-case basis and, if section 16(1)(e)(ii) applies, assessed against each of the factors in section 17(2) and in the regulations for relevance to the overseas investment.
7. The decision maker may determine the relative importance to be given to each relevant factor when determining whether an investment will, or is likely to, benefit New Zealand (or any part of it, or group of New Zealanders) and (where applicable) whether the benefit will be or is likely to be substantial and identifiable.
8. Given the importance of the land-based primary sector to the New Zealand economy, the Government directs the regulator that the factors outlined below are of high relative importance to the determination of whether overseas investment in 'large' areas of "farm land" (as defined by the Act) will, or is likely

to, benefit New Zealand (or any part of it, or group of New Zealanders) and whether that benefit will be, or is likely to be, substantial and identifiable:

- a. Section 17(2)(a)(i)-(vi) - economic benefits;
 - b. Regulation 28(i) - the 'economic interests' factor; and
 - c. Regulation 28(j) - the 'mitigating' factor.
9. As an indicative guide, an overseas investment in farm land would be considered 'large' if it were to result in the relevant overseas person owning or controlling an area of land that is more than ten times the average farm size for the relevant farm type.¹ The Government does not expect that relatively small parcels of land, for example land brought for 'lifestyle' purposes, would fall within this direction.
10. The acquisition of 'large' areas of farm land could occur in one transaction or over a number of transactions over time. The Regulations expressly allow the decision maker to consider other investments by the relevant overseas person (see, for example, Regulation 28(e) and (g)). Given the Government's concerns in relation to overseas investment in the land-based primary sector, the Government considers that existing overseas investments in farm land by the relevant overseas person or the individuals with control of the relevant overseas person (the Person) may also be relevant in assessing whether New Zealand's economic interests will be adequately promoted. The Government therefore directs the regulator that Regulation 28(i) will generally be relevant to overseas investments in farm land and directs the regulator to have regard to the Person's existing farm land investments in applying that factor. If there is a conflict between Regulations 28(e) or 28(g) and Regulation 28(i), then Regulation 28(i) should be given greater importance.
11. The 'mitigating' factor (Regulation 28(j)) is intended to provide investors with an opportunity to show how they may allow for New Zealanders to oversee, or participate in, the overseas investment and any relevant overseas person. While investors are not required to put in place such measures, the decision-maker will take such measures into account in determining whether the 'mitigating' factor is met.
12. For the avoidance of doubt, the above paragraphs do not imply or make a statement about the relevance of the other section 17(2) factors (or parts of them) in relation to a specific overseas investment in sensitive land.

¹ The average farm size data should be made publicly available by the regulator, based on Statistics New Zealand data. The calculation of whether the investment in farm land is 'large' will be made in net, rather than gross terms, to exclude any New Zealand portion of ownership or control. Where the relevant land is used for a number of purposes, the regulator should assess the size against the Statistics New Zealand farm category most relevant to the principal proposed use of the land, and take into account existing land holdings used for similar purposes.

Conditions of consent – monitoring and enforcement

13. When imposing conditions of consent on an overseas investment, the regulator should ensure that the condition is necessary and achieves the intended result in the least onerous way including, where possible, at the least cost to the investor.
14. Where a grant of consent is made subject to conditions of consent there may be circumstances where compliance with the original condition is no longer necessary. In such circumstances, the condition should be varied or revoked as appropriate in accordance with section 27 of the Act.
15. In deciding whether a condition of consent should be varied or revoked, the regulator should give consideration to any realised benefits as well as the extent to which compliance with a particular condition may be out of the consent-holder's control or is a result of the consent-holder varying his, her or its plans.
16. The regulator should monitor compliance with conditions of consent until the benefits have been realised or the conditions have been revoked as appropriate in accordance with section 27 of the Act, whichever is the earlier. In general, monitoring should not extend for a period of more than five years unless the benefits are expected to begin accruing after five years in which case, in general, monitoring should be appropriate to the time span during which benefits accrue.

Criteria for including reserves, public parks or other sensitive areas on the list kept by the regulator

17. Under section 37(1) of the Act you, as regulator, must compile and keep a list of reserves, public parks and other areas, for which the adjoining land is sensitive under Table 2, Part 1, Schedule 1 (the list). The government considers that the list may include reserves, parks and other areas of land (specifically or by class) that are not listed in Table 2.
18. The principal factor in determining whether other reserves and public parks should be included on the list should be the purpose for which the land is held; specifically, land should only be added to the list if it is held for a purpose relating to protecting or providing public access to natural and physical resources or historic heritage. In all cases, reserves, public parks and other areas of land under 0.4 hectares should not be included on the list.
19. As a guideline, and without limiting your discretion as regulator, areas of land that are likely to meet the criteria for inclusion on the list include:
 - National Parks listed in the National Parks Act 1980;
 - Wildlife Sanctuaries, Wildlife Refuges and Wildlife Management Reserves created under the Wildlife Act 1953;
 - Government purpose reserves that are classified as a Government purpose reserve for: wildlife management; other specified wildlife purposes; or for similar purposes as scenic, nature and historic reserves under the Reserves Act 1977; and

- Marine Reserves under the Marine Reserves Act 1971.

Intention to reside in New Zealand indefinitely

20. Under section 16(1)(e)(i) of the Act, overseas persons intending to reside in New Zealand indefinitely are not required to show that their investment is likely to benefit New Zealand. This is because the ownership of that land will assist new migrants to settle in New Zealand and the benefits of the proposed migration will be considered under immigration legislation.
21. An intention to reside in New Zealand indefinitely must involve a definite plan and accompanying action within a reasonable timeframe. In determining whether a person is intending to reside indefinitely, the regulator must give consideration to any active steps that have been taken by the investor to actually reside in New Zealand. In order for the section 16(1)(e)(i) criterion to apply, the applicant must:
 - a. have applied to Immigration New Zealand for a visa or permit under any of Immigration New Zealand's residence policies; and
 - b. provide the regulator with evidence that the application for the visa or permit is likely to be successful; and
 - c. show other actions consistent with an intent to reside in New Zealand in the near future.
22. The regulator may impose a time limit within which the applicant must become permanently resident in New Zealand. As a general rule the government would expect that this would require that the overseas person must be resident in New Zealand within five years of the date of application.

Acquisition of special land

23. Section 17(2)(f) of the Act requires that Ministers must consider whether any special land has been offered to the Crown in accordance with the Regulations. Special land is defined under Regulation 12 as "the foreshore, seabed, riverbed, or lakebed".
24. Special land includes land that forms part of the owner's registered title to the relevant land or that is held under common law (in relation to a riverbed or lakebed) by the owner under the *ad medium filum aquae* rule.

General policy approach to acquisition of special land

25. The Government's general policy approach to the acquisition of special land is that the special land should only be acquired if it is in the public interest for the Crown to own the special land.
26. Relevant matters for determining whether it is in the public interest for the Crown to acquire special land are:
 - a. whether there is a recognised attitude of New Zealanders (or a group of New Zealanders) to the special land. This attitude could relate to a specific piece of special land or may relate to a more general class of special land

- e.g. foreshore or seabed. The regulator is not expected to provide advice beyond recognising that an attitude may exist in New Zealand to that land;
- b. whether the overall benefit of Crown ownership exceeds the likely costs of acquisition and the ongoing liabilities likely to be incurred in maintaining and managing the special land;
 - c. the interrelationship with the surrounding area (for example, whether the special land adjoins riverbed, lakebed, foreshore or seabed that is already in Crown ownership);
 - d. whether the new owner intends to reduce public access to the special land, relative to the access provided (if any) by the current owner;
 - e. whether Crown ownership of the land in question will, or is likely to, adversely affect the overseas person's ability to carry out the overseas investment, for example by adversely affecting the business operations on the land; and
 - f. whether there is a more cost effective alternative to Crown ownership.
27. The following matters are already taken into account and are thus not relevant when deciding whether to acquire special land:
- a. values to do with the water covering the special land, such as fishing or swimming (it is the value of the special land that is at issue, not associated uses);
 - b. matters that relate to protections already offered under the Conservation Act 1987;
 - c. matters that relate to protections already offered under the Foreshore and Seabed Act 2004 or the Marine Coastal Area (Takutai Moana) Act 2010; and
 - d. the factors specified in section 17 of the Act and Regulation 28 of the Regulations (in order to determine whether an overseas investment in sensitive land will or is likely to benefit New Zealand, any part of it, or any group of New Zealanders).
28. There is nothing in the Act or Regulations which suggests that the relevant Ministers approach the question whether to purchase special land with any presumption as to the outcome – either for or against. In particular, there is no presumption that the relevant Ministers will accept an offer to purchase the special land if it is offered to the Crown for nil consideration.
29. The decision whether to purchase special land will be dependent on the individual facts in each case. Any decision will be based purely on consideration of the merits of only the special land in question. In particular, the decision to acquire special land, or to waive the Crown's right to acquire special land, does not imply that the Crown already owns (or does not own) the special land in question, or, in the case of riverbed, whether a river is or is not navigable.

30. The regulator may consult with the Department of Conservation when preparing this advice to Ministers.

Other matters relating to regulator's functions, powers, or duties

31. In providing advice to Ministers you, as the regulator, must:
- a. perform your functions in a timely, consistent, and efficient manner;
 - b. seek sufficient information from applicants for you to be assured of the accuracy of any information, advice, recommendations, or assessments of any relevant benefits provided to Ministers;
 - c. verify information provided by applicants by seeking evidence or input from third parties at your discretion;
 - d. seek to recover your operating costs in relation to applications for consent from applicants through fees set by regulation; and
 - e. monitor compliance with any conditions of approval, consent, permission, or exemption granted under the legislation.
32. In providing advice on how an application for consent should be determined, including whether to grant consent, or whether the Crown should exercise its right to acquire special land, or any other relevant matter in this directive letter, you must provide recommendations to the relevant Minister or Ministers.
33. The regulator's functions also include providing general information to applicants, compiling and keeping records, and making available statistics. This should include the dissemination of information on investment in New Zealand and publicly explaining the nature of our regulatory regime.

Revocation of previous letter

34. The Ministerial directive letters dated 31 August 2009 and 21 December 2009 are revoked on and from the date this Ministerial directive letter takes effect.

Date letter takes effect

35. This Ministerial directive letter takes effect on and from 13 January 2011.

Yours sincerely



Hon Bill English
Minister of Finance