

Decision Date

9 February 2017

Decision

Consent is granted to the Consent Holder to acquire the Investment, being an overseas investment in sensitive land.

Consent is granted subject to the following conditions:

Interpretation

Any term or expression that is defined in the Overseas Investment Act 2005 and used, but not defined, in this consent has the same meaning as in the Overseas Investment Act 2005.

Act means the Overseas Investment Act 2005.

Agreement means the Agreement for Sale and Purchase dated 2 October 2015 between the Consent Holder and the Vendor in respect of the Land.

Annual Cycling Race means the annual cycling race around Lake Hawea (including that currently known as the Contact Epic).

Application Letter means the application letter dated 23 March 2016.

Business Plan means the plans set out in the Application Letter, all subsequent correspondence, and all attachments to these.

Capital Expenditure means expenditure on hay barns, yards, housing upgrades, capital fertiliser and land development.

Commissioner means the Commissioner of Crown Lands.

Consent Holder means Orange Lakes (NZ) Limited.

DOC means the Department of Conservation.

FMP means the farm management plan set out in Appendix 12 of the Application Letter that has been developed for Hunter Valley Station by the Vendor and the Applicant, which contains recommendations on the capital expenditure required from the Consent Holder to grow the business and improve the Land.

Hunter Valley Station means the part of the Land where the farming of sheep and cattle is undertaken.

Hunter Valley Station Road means the private farm track running from the termination of Meads Road at Terrace Creek to the northern boundary of the Land at Scrubby Flat Creek.

Individuals with Control means:

- (a) the individuals who have, directly or indirectly, a 25% or more ownership or control interest in the Consent Holder or a Parent of the Consent Holder; and
- (b) the members of the governing body of the Consent Holder or a Parent of the Consent Holder; and
- (c) includes, for the avoidance of doubt, the members of the governing body of Orange Lakes (NZ) Limited, and Orange Lakes LLC.

Inspector means a person appointed by the Regulator to undertake an Inspection on the Regulator's behalf.

Inspection means a visit to a property by an Inspector for the purpose of monitoring these conditions.

Investment means the Land.

Land means leasehold interests in approximately 10,759.83 hectares of land contained in:

- (a) the Special Lease; and
- (b) the Pastoral Lease.

Leasehold Interest means a leasehold interest for the term of the relevant lease and any rights of renewal (or other right of extension whether for the grantee or grantor).

Meads Road from SH6 to Kidds Bush means the portion of Meads Road from State Highway 6, Makarora-Lake Hawea Road to Kidds Bush that provides the public with access to Kidds Bush DOC camping ground.

OIO means the Overseas Investment Office.

Parent of Consent Holder means a person that has, directly or indirectly, a 25% or more ownership or control interest in the Consent Holder, and includes a person that has, directly or indirectly, a 25% or more ownership or control interest in any Parent of the Consent Holder.

Pastoral Lease means Pastoral Lease No. P179 under the Land Act 1948 in respect of approximately 7,809.8303 hectares of land recorded in Certificate of Title OTA2/1310, which provides for a perpetually renewable leasehold interest.

QLDC means Queenstown Lakes District Council

Race Recreation Permit means a recreation permit for commercial use of the Pastoral Lease land for the Annual Cycling Race.

Regulations means the Overseas Investment Regulations 2005.

Settlement Date means the date the acquisition of the Investment took place.

Special Lease means the special lease (LINZ 17471/1) from Her Majesty the Queen under Section 67(2) of the Land Act 1948 in respect of approximately 2950 hectares of land legally described as being Part Section 3 SO 24444, which lease commenced on 1 January 2007 and will expire on 30 June 2024.

Sub-Lease means a deed of lease substantially in the form attached to the Agreement.

Vendor means Hunter Valley Station Limited.

WAC means the New Zealand Walking Access Commission.

Western access to Sentinel Peak means walking access to Sentinel Peak via the north side of Camp Creek located off the Makarora-Lake Hawea Road (State Highway 6).

Special Conditions

When the transaction must be given effect to

1. The consent will lapse if the Investment has not been acquired by and transferred to the Consent Holder within 12 months of the date of consent.

Good character

2. The Individuals with Control must:

- (a) continue to be of good character; and
- (b) not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.

Access

3. In respect of access:

- (a) Where WAC or another party applies to the Commissioner for a grant of an easement for public walking access over the Sawyer Burn Track between Kidds Bush and Sawyer Burn hut and between Sawyer Burn hut and Sentinel Peak, where such public walking access is required to cross the Pastoral Lease, the Consent Holder must actively and diligently support such application at no cost to the applicant for the easement (including but not limited to meeting all and any legal and surveying costs, waiving any compensation payable, and arranging all and any necessary consents);
- (b) The Consent Holder must permit non-commercial walking access along the western access to Sentinel Peak, on terms to be determined from time to time by the Consent Holder and its lessees or agents, acting reasonably and in accordance with the terms and conditions of the Pastoral Lease, and having regard to any officially designated use or purpose for the Land;
- (c) The Consent Holder must continue to permit the current non-commercial access to the Land for walking and non-motorised cycling on terms to be determined from time to time by the Consent Holder and its lessees or agents, acting reasonably and in accordance with the terms and conditions of the Pastoral Lease and the Special Lease, and having regard to any officially designated use or purpose for the Land;
- (d) The Consent Holder must apply to the Commissioner for a grant of a Race Recreation Permit, and if granted, provide public access to the Land for the Annual Cycling Race organisers, participants and associated public, on terms which comply with the terms and conditions of the Race Recreation Permit, the Pastoral Lease and any officially designated conservation purposes of the Land;
- (e) The Consent Holder must continue to permit the current non-commercial access over Hunter Valley Station Road by walkers, hunters, fishers, non-motorised cyclists, and horse riders, on terms to be determined from time to time by the Consent Holder and its lessees or agents, acting reasonably and in accordance with the terms and conditions of the Pastoral Lease, and having regard to any officially designated use or purpose for the Land; and
- (f) The Consent Holder must undertake and fund the maintenance of Hunter Valley Station Road; including clearing crossings and repairing track damage subject always to first applying for and obtaining any required written consent from the Commissioner.

4. In relation to road legalisation:

- (a) If QLDC seeks to complete the legalisation of any part of Meads Road from SH6 to Kidds Bush, the Consent Holder must actively and diligently support such legalisation at no cost to QLDC or the Crown (including but not limited to, executing all documentation required to legalise the road, meeting all and any legal and surveying costs, arranging all and any necessary consents, and forgoing any and all compensation payable to the Consent Holder); and

- (b) Where it is found that any formed part of the vehicle track is not within the legal road alignment of Meads Road and QLDC seeks to acquire for road any part of the Leasehold Interest, the Consent Holder must agree to such acquisition (including executing all documentation required to legalise the road, and consenting to any other documentation or actions required, but without any liability for QLDC's costs and expenses).
5. The Consent Holder must write to the Operations Manager at WAC (PO Box 12348, Thorndon, Wellington 6144) within 15 working days from the Settlement Date advising that consent has been granted to the Consent Holder and enclose:
- (a) a copy of the Decision Summary for this consent; and
- (b) a copy of conditions 3 and 4, together with information identifying and describing the Land including aerial photographs, maps and Certificate(s) of Title.
6. The Consent Holder must provide to the OIO a copy of the letter sent to WAC under condition 5 within 20 working days from the Settlement Date.

Environmental Protection

7. The Consent Holder must take all necessary steps to:
- (a) demolish the High Burn hut and remove the demolition materials from the site at its cost, subject always to first applying for and obtaining any required written consent from the Commissioner if the operation is likely to result in soil disturbance;
- (b) prevent cattle accessing the Hunter River Flats by either fencing certain areas of the Land or retiring pasture from grazing to the extent approved by the Commissioner; and as agreed with DOC;
- (c) subject to the Biosecurity Act 1993, continue the regular culling of Canadian geese on the Land.
8. The Consent Holder must write to the Statutory Land Management National Advisor of DOC (Conservation House, 18-32 Manners Street, Te Aro, Wellington 6011) within 15 working days from the Settlement Date advising that consent has been granted to the Consent Holder and enclose:
- (a) a copy of the Decision Summary for this consent; and
- (b) a copy of conditions 3, 4, and 7, together with information identifying and describing the Land including aerial photographs, maps and Certificate(s) of Title.
9. The Consent Holder must provide to the OIO a copy of the letter sent to DOC under condition 8 within 20 working days from the Settlement Date.

Other

10. The Consent Holder must, within five years of the date of consent, spend at least \$1.2 million to undertake the Capital Expenditure, subject always to first applying for and obtaining any required written consent from the Commissioner.
11. The Consent Holder must donate to the Upper Clutha Tracks Trust the annual net entry fees (after direct costs incurred) received by it for the Annual Cycling Race, for as long as the event is held and uses the Land and the Consent Holder holds a Race Recreation Permit.
12. The Consent Holder must:

- (a) before the Settlement Date, obtain the consent of the Commissioner to the Sub-Lease; and
 - (b) within 6 weeks of the Settlement Date, procure the execution of the Sub-Lease; and
 - (c) within 8 weeks of the Settlement Date, provide a copy of the executed Sub-Lease to the OIO
13. The Consent Holder must procure its sub-lessee (by way of obligations in the Sub-Lease) subject always to first applying for and obtaining any required written consent from the Commissioner and if necessary, DOC to:
- (a) invest approximately \$400,000.00 over a five year period in extra capital stock to achieve the increase in stock units referred to in 13(b), and the upgrade of older plant and equipment contemplated in the FMP within five years of the date of consent; and
 - (b) within five years of the date of consent, increase the stock units to at least 14,600, as set out in the FMP.

Reporting to the OIO

14. The Consent Holder must notify the OIO in writing as soon as practicable, and no later than twelve months from the date of consent, whether settlement of the acquisition of the Investment took place. If settlement of the acquisition of the Investment did take place, the notice must include:
- (a) the Settlement Date;
 - (b) final consideration paid (plus GST, if any);
 - (c) the structure by which the acquisition was made, and who acquired the Investment;
 - (d) where applicable, copies of transfer documents, settlement statements, and the executed Sub-Lease; and
 - (e) any other information that would aid the OIO in its function to monitor conditions of consent.
15. The Consent Holder must report in writing annually to the OIO detailing progress of its Business Plan ("Annual Report"), including the following:
- (a) the Consent Holder's compliance with conditions 3, 4, 7 and 10-13; and
 - (b) any increases in lambing and calving percentages, and income from wool
- The first Annual Report is due on 31 November 2017 and the final report is due on 31 November 2022 (or such other date as advised by the OIO in writing).
16. The Consent Holder must notify the OIO in writing within 20 working days if:
- (a) the Consent Holder, any Individual with Control, or any person in which the Consent Holder or any Individual with Control has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the law (whether convicted or not); or
 - (b) any Individual with Control:
 - (i) ceases to be of good character; or
 - (ii) commits an offence or contravenes the law (whether convicted or not); or

- (iii) becomes aware of any other matter that reflects adversely on an Individual with Control's fitness to have the Investment; or
 - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
- (c) the Consent Holder:
- (i) ceases to be an overseas person; or
 - (ii) disposes of the Investment.
17. If requested in writing by the OIO, the Consent Holder must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
- (a) the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent was granted; or
 - (b) the conditions of this consent.

Disposal Process

18. If in the opinion of the OIO, condition 10 (Capital Expenditure), or 12 (Sub-Lease execution) are not complied with, or stock units have not increased to at least 14,600 (if consented to by the Commissioner and if necessary, DOC) ("Non-Compliance"), the Consent Holder must dispose of the Investment as follows:
- (a) The Consent Holder must, within six weeks of receiving notice from the OIO that in its opinion there has been Non-Compliance (the "Notice Date"):
 - (i) procure from an independent New Zealand registered valuer, and provide to the OIO, a written market valuation of the Investment; and
 - (ii) appoint licensed real estate agents to actively market and appropriately advertise the Investment for sale on the open market; and
 - (b) The Consent Holder must, subject always to first applying for and obtaining any required written consent from the Commissioner, dispose of the Investment within eighteen months of the Notice Date to a third party who must not be an associate of the Consent Holder. The Consent Holder must accept any reasonable offer for the acquisition of the Investment.
 - (c) The Consent Holder must provide a written report to the OIO quarterly (by the last day of March, June, September and December) about the marketing activities undertaken and offers received for the Investment. The Consent Holder must also report at any other time if required by the OIO.
 - (d) The Consent Holder must provide a written report to the OIO within two months of the Investment being disposed of, providing evidence that:
 - (i) the Consent Holder has disposed of the Investment (including copies of any sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor); and
 - (ii) the purchaser is not an associate of the Consent Holder.

Inspection for the purposes of monitoring these conditions

19. The Consent Holder must allow an Inspector to conduct an Inspection, provided that the Consent Holder has been given at least two working days' notice of the Inspection.

20. For the purpose of conducting the Inspection, the Consent Holder must allow an Inspector to:
- (a) gather information and provide that information to the OIO;
 - (b) enter any building on the Land other than a dwelling;
 - (c) remain for as long as is reasonably required to conduct the Inspection;
 - (d) conduct surveys, inquiries, tests, and measurements;
 - (e) take photographs and video recordings; and
 - (f) do all other things that are reasonably necessary to enable an Inspector to carry out an Inspection.
21. The Consent Holder must take all reasonable steps to facilitate an Inspection, including:
- (a) directing its employees or agents to permit an Inspector to conduct an Inspection; and
 - (b) being available, or requiring its agents or employees to be available at all reasonable times during an Inspection to facilitate access by an Inspector onto and across the Land, including providing transport across the Land if reasonably required.
22. For the avoidance of doubt:
- (a) an Inspector will not inspect, copy or take documents during an Inspection, unless the Consent Holder or an employee or agent of the Consent Holder agrees to the document being inspected, copied or taken;
 - (b) the Consent Holder, its employees, and agents are not required to answer an Inspector's questions, but may do so if they wish.

Statutory Conditions of Consent

Section 28 of the Overseas Investment Act 2005 ("the Act") provides that it is a condition of every consent, whether or not it is stated in the consent, that:

- (a) the information provided by each applicant to the Overseas Investment Office or the relevant Ministers in connection with the application was correct at the time it was provided; and
- (b) each consent holder must comply with the representations and plans made or submitted in support of the application and notified by the Overseas Investment Office as having been taken into account when the consent was granted, unless compliance should reasonably be excused.

For the purposes of section 28(1)(b), the representations and plans made or submitted in support of the application and taken into account when consent was granted are those contained in the correspondence listed in the statutory declaration of [REDACTED] dated 16 November 2016 and in all attachments annexed to that correspondence.

Monitoring Conditions of Consent

For the purpose of monitoring conditions of consent, the Overseas Investment Office may, under section 38 of the Act, require the consent holder to provide information or documents, or both, that are specified in the notice. Under section 40 of the Act, the Overseas Investment Office may also require a consent holder to provide a statutory declaration verifying the extent to which the consent holder has complied with the conditions of consent, and, if the consent holder is in breach of a condition or conditions, the reasons for the breach and the steps the consent holder intends to take to remedy the breach.

Sanctions

The Act provides for civil and criminal sanctions for breaching the Act, failing to comply with the conditions of consent and failing to provide information required by the Overseas Investment Office. The Overseas Investment Office has an obligation to investigate and act upon alleged and suspected breaches of the Act.

General

A reference to the "Overseas Investment Office" in this Notice includes a reference to the regulator (as defined by the Act). A reference to the Applicant includes a reference to the consent holder.

Released under the Official Information Act 1982