

Decision Date

01 December 2015

Decision

Consent has been granted to **James Rudolph Baron Palumbo (Lord Palumbo)** (the "**Applicant**") to give effect to an overseas investment in sensitive land, being the Applicant's acquisition of a freehold interest in approximately 26,9954 hectares of land at 609A & 609B Orapiu Road, Waiheke Island.

Consent is granted subject to the following conditions:

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 James Rudolph Baron Palumbo of Southwark dated 10 November 2015 and in all attachments annexed to that correspondence.

Special 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.

Application Letter means the application letter dated 31 August 2015.

Business Plan means the business plan set out in Appendix 5 of the Application Letter.

Consent Holder means James Rudolph Baron Palumbo of Southwark (Lord Palumbo of Southwark).

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.

Investment means the acquisition of the Land.

Land means approximately 26.9954 hectares of land comprised in certificates of title NA115D/977, NA115D/978 and NA266/3 (all North Auckland Registry).

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 another Parent of the Consent Holder.

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

Special Conditions

When the transaction must given effect

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.

Resource Consents

3. The Consent Holder must use all reasonable commercial endeavours to obtain any necessary consents and approvals including resource consents ("**Consents**") required to implement Phase 1 of its Business Plan.
4. The Consent Holder must have applied to the relevant local authority or any other relevant body for any necessary Consents required to implement Phase 1 of its Business Plan by 30 November 2016.
5. The Consent Holder must provide the OIO with the following information as soon as practicable:
 - (a) a copy of any Consents granted; and
 - (b) if a Consent is not granted, or is granted on terms which substantially alter its Business Plan, a report detailing the reasons for this (including copies of relevant correspondence between the Consent Holder and the relevant body).

Construction

6. Within three years after such Consents are obtained (as referred to in condition 3 above), or the Consent Holder is advised by the relevant local authority or other relevant body that no Consents are required, the Consent Holder must complete Phase 1 of the development described in its Business Plan.

Environmental Protection

7. The Consent Holder must implement the five year plan set out in the Revegetation Plan Report provided as Appendix 15 of the Application Letter by 30 November 2021.

Special Land

8. The Consent Holder must, upon becoming the registered proprietor of the Land:
 - (a) Adopt and be bound by any offer, arrangement or agreement that the vendor has made, reached or entered into with the Crown in relation to the special land that forms part of the Land;
 - (b) If so required by the Crown, enter into a deed of covenant with the Crown to be so bound; and
 - (c) Deal with the Crown in accordance with the requirements of the Act as if it were the party making the initial offer of the special land to the Crown.

Reporting to the OIO

9. 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 and settlement statements; and
 - (e) any other information that would aid the OIO in its function to monitor conditions of consent.
10. 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, 6 and 7;
 - (b) the number and value of any new job opportunities created on the Land; and
 - (c) the Consent Holder's implementation of Phase 2 of its Business Plan.

The first Annual Report is due on 30 November 2016 and the final report is due on 30 November 2021 (or such other date as advised by the OIO in writing).

11. 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.
12. 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

13. If in the opinion of the OIO condition 6 or 7 is not complied with ("**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 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 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. If the Consent Holder has not disposed of the Investment at the expiry of the eighteen month period, the Consent Holder must offer the Investment for sale by auction or tender within a further three months (with no reserve price or minimum bid set for the auction or tender) and dispose 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.

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

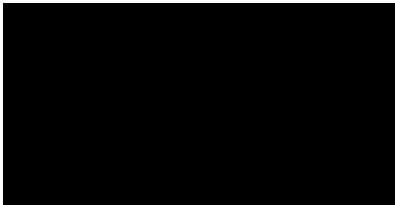
information or documents, or both, that are specified in the notice. Under section 40 of the Act, the Overseas Investment Office may also require a consent holder to provide a statutory declaration verifying the extent to which the consent holder has complied with the conditions of consent, and, if the 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.



Senior Solicitor
Overseas Investment Office

Released under the Official Information Act 1982