

Decision required under the Overseas
Investment Act 2005: Chimpland Limited

Date	8 October 2013
Security Level	Commercial: In Confidence
Priority	High
Case Numbers	201310076 201310075 201310074
Contractual Dates	195D Whitemans Valley Road – 21/06/2013 – Purchaser had option to extend to 23/08/2013 – running on. 88 Mangaroa Valley Road - 11/07/2013 - Purchaser has option to extend to 12/09/2013 – running on. 227F Whitemans Valley Road – 2/07/2013 – extension until 10/09/2013 – running on.

Contact for Telephone Discussion

Name	Position	Telephone (wk)	Cellphone	First Contact
	Team Manager			
	Senior Solicitor			✓

Annexure:

1. Report of the Overseas Investment Office on three proposed overseas investments (Report).
2. Three applications for consent with supporting material (Applications).

Instructions:

3. The regulator is required to grant consent in respect of these applications if it is satisfied that all of the criteria in section 16 of the Overseas Investment Act 2005 ("the Act") are met. It must decline consent if it is not satisfied that all of the criteria in section 16 are met. The regulator must not take into account any criteria other than those identified in section 16.
4. For completeness, it is noted that the Applications are being assessed under section 16(1)(e)(i) on the basis that both of the individuals with control of the relevant overseas person intend to reside in New Zealand indefinitely. Therefore, the Applicant is not required to demonstrate the investments will, or are likely to, benefit New Zealand or that that benefit will be, or is likely to be, substantial and identifiable (a requirement of section 16(1)(e)(ii)-(iii) of the Act). Accordingly, the decision of *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information*,¹ insofar as it found that benefits must be assessed using a with or without approach rather than a before and after approach, is not relevant to the Applications.
5. In the attached report the Overseas Investment Office addresses the criteria that the regulator is required to consider in this case.

Conditions

6. Conditions may be imposed on any consent that is granted, under section 25. The attached report recommends some conditions that the regulator 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.

Decision:

8. Having determined that:
 - (a) Chimpland Limited and Chimp Limited, collectively, are the 'relevant overseas person'; and
 - (b) the 'individuals with control of the relevant overseas person' are Matthew Joseph Monahan and Brian Matthew Monahan; and
 - (c) the Applications are delegated because Ministers have delegated decisions to the regulator where section 16(1)(e)(i) of the Act applies; and
 - (d) the individuals with control of the relevant overseas person collectively have, business experience and acumen relevant to the overseas investments; and

¹ [2012] NZHC 147

- (e) the relevant overseas person has demonstrated financial commitment to the overseas investments; and
 - (f) all the individuals with control of the relevant overseas person are, of good character; and
 - (g) 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
 - (h) all the individuals with control of the relevant overseas person are intending to reside in New Zealand indefinitely;
9. consent is granted to the investments subject to the conditions in Appendix 1 of the Report.

[Redacted Signature]

[Redacted Name]

Team Manager

Date

8-10-2012

**Report of the Overseas Investment Office
on the application for consent by
Chimpland Limited
Cases: 201310076, 201310075, 201310074**

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Summary of Key Information

Applicant	Chimpland Limited (United States of America 100.0%)
Vendor	WAKT Forestry Limited (New Zealand 100.0%)
Consideration	\$1,000,000
Recommendation	Grant Consent
Applicant	Chimpland Limited (United States of America 100.0%)
Vendor	Mangaroa Timber Co Limited (New Zealand 100.0%)
Consideration	\$1,550,000
Recommendation	Grant Consent
Applicant	Chimpland Limited (United States of America 100.0%)
Vendor	David Lawrence and Mandy Dews (New Zealand 100.0%)
Consideration	\$350,000
Recommendation	Grant Consent

Application

10. For consent for Chimpland Limited, the Applicant, and Matthew Joseph Monahan, or an entity 100% owned and controlled by Matthew Joseph Monahan (together, the "Consent Holder") to give effect to the following investments, (collectively "the Investments"):
 - (a) An overseas investment in sensitive land, being the Applicant's acquisition of a freehold interest in 68.1080 hectares of land at 195D Whitemans Valley Road, Upper Hutt.
("Investment 1")
 - (b) An overseas investment in sensitive land, being the Applicant's acquisition of a freehold interest in 354.6947 hectares of land at 88 Mangaroa Valley Road, Upper Hutt.
("Investment 2")
 - (c) An overseas investment in sensitive land, being the Applicant's acquisition of a freehold interest in 23.3299 hectares of land at 227F Whitemans Valley Road, Upper Hutt.
("Investment 3")

Applicant

11. The Applicant is Chimpland Limited ("the Applicant").
12. Matthew Joseph Monahan ("Matthew") is the sole director and 100% shareholder of Chimpland Limited.
13. Brian Matthew Monahan ("Brian") and Chimp Limited ("Chimp") are associates of the Applicant under section 8 (1)(c) of the Act. This is because:
 - (a) Matthew has previously applied for consent to acquire 329 Whitemans Valley Road, Upper Hutt because Matthew and Brian were associates under 8(1)(c);
 - (b) The land that is the subject of the applications ("the Land") is intended to provide a controlled environment for Chimp's research operations;
 - (c) Matthew and Brian are the directors and 100% shareholders of Chimp;
 - (d) The current purchases represent a continuation of the Matthew's and Brian's investment of over \$5 million in the Whitemans and Mangaroa Valleys over the last three years.
14. Due to this associate relationship, the OIO has determined that Chimpland Limited and Chimp Limited, collectively, are the 'relevant overseas person'; and the 'individuals with control of the relevant overseas person' are Matthew Joseph Monahan and Brian Matthew Monahan;
15. Matthew and Brian are citizens and currently residents of the United States of America.
16. Both Matthew and Brian were directors and shareholders of Chimpland when it originally made the applications. However, the company has since been restructured. The Applicant's solicitors have explained:

Our clients have advised us that Chimpland Limited has been restructured to align with Matthew Monahan and Brian Monahan's (hereinafter Matthew and Brian) respective investment goals. Matthew has a strong desire to invest in New Zealand and property. Brian sees other investment opportunities in various New Zealand technology projects and businesses and wants to focus more of his capital there. Brian also has more international investments and does not have as much free capital to invest in New Zealand as Matthew.

Chimpland Limited was created for the sole purpose of purchasing these particular properties. At present it has no assets and will be funded by Matthew.

17. The restructuring may also be due to financial constraints on the speed by which Brian will be able to become ordinarily resident. The Applicant's solicitors have advised that Matthew and Brian are still seeking buyers for the remaining half of their company. Inflection, and that Brian cannot meet the NZ\$10M required to fast-track his residence under the Migrant Investment categories in the same way that Matthew will.

Outline of the Investments

18. The Applicant has made three contemporaneous applications for consent to acquire more than 400 hectares of Upper Hutt forestry land situated at 195D Whitemans Valley Road, 88 Mangaroa Valley Road, and 227F Whitemans Valley Road ("the Land").

Rationale for the Investments

19. The overarching mission of the Chimpland and Chimp, the relevant overseas person, is to help build a more sustainable planet through innovation and multi-disciplinary integration.
20. Early areas of focus for Chimp include solar power, home energy efficiency, biomass energy, water conservation, and sustainable forestry practices. Much of the work to date has been of a digital nature. The work has included researching existing products, building relationships with global partners, recruiting employees, and establishing a solid financial, legal and operational base. Now, as Chimp matures, there is a need for a controlled environment for larger-scale, non-computerised tests.
21. The Land will provide a controlled environment for Chimp's research operations. Most of this research will focus around sustainable forestry operations and finding suitable uses for waste-products from the industry. Other areas of focus include wind power, solar panels, water conservation, top-soil erosion control, composting, biomass energy, greenhouse design, home-efficiency, and waterway preservation.
22. Chimp is the primary business, but the Applicant will be purchasing the Land. Although Chimp is owned by Matthew and Brian exclusively, it was decided to have a separate land owning company like the Applicant for the following reasons:
 - (a) Business Model Differences; Land-ownership is a low risk business with a regular source of income. Early-stage technology companies, however, have a huge upside potential and a high-failure rate. Separating these two very different business-models will make it easier for Chimp to raise capital in the future if needed. Chimpland's business can also provide a model for future landowners who want to hire Chimp as a sustainable steward of their land.
 - (b) Business Risks; Chimp has an innovative model which requires the company to take risks, and should those not work out Matthew and Brian want to separate the Land from Chimp's assets. This will be made clear to investors, lenders and any partners from the outset.
23. According to the Applications:

- (a) These purchases represent a continuation of Matthew's and Brian's long-term commitment to the Wellington region. They plan to continue investing in the area and intend to move their families and relocate to New Zealand. The specific area was chosen due to its mix of rural living and proximity to the Hutt Valley and Wellington.
- (b) Forestry is deeply aligned with Matthew and Brian Monahan's core focus on sustainability and mitigating climate change. They are excited to learn more about the industry and to begin developing technologies to increase the sustainability and yield of forested areas. It is their hope that such improvements will encourage global landowners to plant more of their land in trees.
- (c) Matthew and Brian Monahan believe that the market for sustainably produced forestry products will expand in the coming years, due to supply scarcity and increased customer demand and that they can leverage their US connections and skills in online marketing to actively facilitate this growth.
- (d) Matthew and Brian Monahan also believe in the long term promise of New Zealand to become a technology and media hub. This investment further expands their commitment to the area. The land is also geographically close to Matthew and Brian's existing investments, making this specific forest more appealing.

Sensitive Land


24. The Applicant is acquiring sensitive land. See Appendix 2.

Assessment Process

- 25. We have sought sufficient information from the Applicant for us to be assured about the accuracy of the information supplied and have sought sufficient evidence from the Applicant for us to be able to judge whether the criteria and factors that apply to the relevant category of overseas investment are likely to eventuate.
- 26. We did not consider it necessary to seek input from third parties in order to verify the information or evidence gathered.
- 27. We have determined that the:
 - (a) **'relevant overseas person'** is collectively Chimpland Limited and Chimp Limited; and
 - (b) **'individuals with control of the relevant overseas person'** are Matthew Joseph Monahan and Brian Matthew Monahan.

Criteria set out in section 16

28. s16(1)(a) Overseas Investment Act 2005

<p>Does the relevant overseas person, or (if that person is not an individual) do the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to that overseas investment?</p>	
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Applicant's Claims:

Matthew and Brian Monahan are the co-founders of Inflection LLC ("Inflection"), an internet software company based in Silicon Valley, California. Since 2006 Inflection has grown from no staff to over 100 full-time employees. In 2011 Inflection generated over US \$40 million in revenue and in August 2012 Inflection sold a portion of its business to Ancestry.com for US \$100 million.

The involvement in Inflection has given Matthew and Brian wide ranging business experience including but not limited to:

- (a) entrepreneurship: the Applicant and his brother Brian have been recognised as Ernst & Young Young Entrepreneurs winners in the Technology Services category in Northern California;
- (b) business management;
- (c) finance and accounting;
- (d) branding and marketing;
- (e) hiring, training and motivating employees; and
- (f) engineering.

Matthew and Brian have developed a multi-year relationship with Andrew Walker, the primary owner of WAKT Forestry Limited, who brokered the sale of 88 Mangaroa Valley Road. Mr. Walker shares their passion for sustainability and brings 20 years of practical forestry knowledge to the Applicant's proposed business.

OIO Assessment:

This factor is met.

Justice Miller in *Tiroa E* commented on the requirement for 'business acumen and experience' that is 'relevant to' the investment. His Honour stated that "a wide range of business skills may assume relevance, depending on the nature and scale of the particular investment".² His Honour also stated that the language of this section "broad and flexible, allows the Minister to require different or more or less specific expertise in any given case".³

The OIO has reviewed the background and work experience of the individuals with control of the relevant overseas person. The OIO is satisfied that, as founders of the company Inflection, Matthew and Brian have a track record of successful business activity which demonstrates generic business experience and acumen. In addition, their relationship with the vendor of 88 Mangaroa Valley Road will help to ensure that they have access to forestry experience required to successfully manage the forestry on the Land.

29. s16(1)(b) Overseas Investment Act 2005

Has the relevant overseas person demonstrated financial commitment to the overseas investment?	✓
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Applicant's Claims:

The financial commitment to New Zealand shown by the Applicant is evidenced by the Agreement for Sale and Purchase of the Land. Further evidence includes Matthew's and Brian's existing ownership of the properties in the Whitemans Valley area.

The Applicant does not have to borrow money to complete the purchase of the property. The funds are largely as a result of the sale of a division of Inflection.

OIO Assessment:

The OIO is satisfied that Chimpland Limited, and Chimp Limited, collectively the relevant overseas person, have demonstrated financial commitment to the overseas investment.

Agreements for sale and purchase have been entered into to enable the Applicant to acquire the land at 227F Whitemans Valley Road, 195D Whitemans Valley Road, and 88 Mangaroa Valley Road.

² at [28]
³ at [28]

30. s16(1)(c) Overseas Investment Act 2005

Is the relevant overseas person, or (if that person is not an individual) are all the individuals with control of the relevant overseas person, of good character?	✓
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Applicant's Claims:

We attach a statutory declaration as to good character of Matthew Joseph Monahan and Brian Matthew Monahan as the persons controlling the Applicant in satisfaction of sections 16(1) (c) and (d) of the Act.

OIO Assessment:

The OIO is satisfied that Matthew and Brian Monahan, the individuals with control of the relevant overseas person, are of good character due to the statutory declarations provided and because its own internet search has not produced any adverse information about them.

31. s16(1)(d) Overseas Investment Act 2005

Is the relevant overseas person, or (if that person is not an individual) is each individual with control of the relevant overseas person, not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009?	✓
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Applicant's Claims:

We attach a statutory declaration as to good character of Matthew Joseph Monahan and Brian Matthew Monahan as the personal controlling the Applicant in satisfaction of sections 16(1) (c) and (d) of the Act.

OIO Assessment:

The OIO is satisfied that Matthew and Brian Monahan, the individuals with control of the relevant overseas person, are not individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.

This is based on the statutory declarations provided and the OIO's own searches of the internet and the designated terrorist list (published by the New Zealand Police), which have not revealed any adverse information.

32. s16(1)(e)(i) Overseas Investment Act 2005

Is the relevant overseas person or are all the individuals with control of the relevant overseas person New Zealand citizens, ordinarily resident in New Zealand, or intending to reside in New Zealand, or intending to reside in New Zealand indefinitely?	✓
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Applicant's Claims:

Matthew and Brian have a three year visa under the INZ Entrepreneur Visa program.

Matthew plans to obtain a resident class visa through the Investor 1 category and will apply for same by the end of 2013.

Brian plans to gain his resident class visa via the Entrepreneur Skilled Migrant Visa categories. Currently he is on a long-term business visa which expires in June 2014. It is possible that Brian may need to extend his existing visa depending on business outcomes and Immigration New Zealand considerations. The reason Brian and Matthew have chosen different paths is largely financial. While the NZ\$10M can be met by Matthew under the Investor 1 category, Brian cannot make such an investment at this time. Brian will continue to focus on building a new business in New Zealand which will be independent of Chimpland Limited.

They are currently not ordinarily resident as they make frequent trips overseas for their US business commitments (Inflection). Over the last three years, Matthew and Brian have made over 20 trips to New Zealand, including spending the holidays here with close friends and family.

They are seeking buyers for the remaining half of Inflection. Matthew and Brian intend to reside full-time in New Zealand as soon as possible.

Matthew will become ordinarily resident shortly after the approval of his resident's class visa, likely in early 2014. Brian plans to follow late 2014, depending on immigration approvals and business outcomes.

Neither Matthew nor Brian own any residential property in the United States and now consider New Zealand "home".

A letter date 5 August 2013 from Pathways to New Zealand immigration advisors states:

Our company assisted with the Monahan's individual Long Term Business Visa (LTBV) applications which were approved in May 2011 and the visas issued pursuant to these applications are currently valid to 6 July 2014.

These visas allow the Monahans to own and operate their own business in New Zealand consistent with their business proposal submitted in support of the original LTBV applications. This business proposal was to develop and operate an online educational portal providing innovative learning opportunities under the Chimp brand and to initially invest NZ\$500,000 (NZ\$250,000 each) in establishing the business. The business was established in August 2011 and has been progressing since this time.

The letter later goes on to say:

It is clear through their various investment activities, and the frequency of their visits, that the brothers are committed to a long term, permanent, future in New Zealand and our recent discussions have focused on the various options to achieve their resident visas.

OIO Assessment:

On balance, the OIO is satisfied that Matthew and Brian Monahan intend to reside in New Zealand indefinitely. It is noted that any consent granted will be subject to a condition which requires the Land to be disposed of if Matthew has not ceased to be an overseas person within two years from the date of consent.

An intention to reside in New Zealand indefinitely requires a definite plan and accompanying action within a reasonable timeframe. In determining whether a person is intending to reside indefinitely, the OIO 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 individuals with control of the relevant overseas person must:

(a) have applied to Immigration New Zealand for a visa under any of Immigration New Zealand's residence policies, and provide evidence in the form of a confirmation letter from Immigration New Zealand;

(b) provide the regulator with evidence that the application for the visa is likely to be successful and provide evidence in the form of a confirmation letter from Immigration New Zealand; and

(c) show other actions consistent with an intent to reside in New Zealand in the near future.

Matthew and Brian Monahan each obtained a Long Term Business Visa on 6 July 2011 (expiring 6 July 2014), initially with the intention of applying for residency under Immigration New Zealand's Entrepreneur Category in December 2013 or early 2014.

Matthew and Brian Monahan are underway in establishing Chimp Limited, which can support an Entrepreneur residence application.

Matthew plans to apply for a resident class visa through the Investor 1 category (called Investor Plus) by the end of 2013, and has accepted a consent condition requiring him to do this by 10 July 2014.

According to the Applicant's solicitors, the NZ\$10M required under the Investor 1 category can be met by Matthew, but Brian cannot make such an investment at this time. Therefore Brian plans to gain his resident class visa via the Entrepreneur/Skilled Migrant Visa category.

Matthew and Brian Monahan's relative youth means they may not have had the opportunity or interest to acquire property in the U.S. which they must now dispose of (which would show they are committed to becoming ordinarily resident in NZ). However, they have set up the Chimp Limited business and have bought properties where they can reside (for example a property at 351 Whitemans Valley Rd, and a property at 296 Whitemans Valley Rd).

Third Party Submissions

33. No third party submissions were received.

Appendix 1 – Conditions of Consent

Consent is granted to Matthew Joseph Monahan and Chimpland Limited, or another entity 100% owned and controlled by Matthew Joseph Monahan (together, the "Consent Holder"), subject to the following conditions.

For each of Investment 1 (a freehold interest in 68.1080 hectares of land at 195D Whitemans Valley Road, Upper Hutt), Investment 2 (a freehold interest in 354.6947 hectares of land at 88 Mangaroa Valley Road, Upper Hutt) and Investment 3 (a freehold interest in 23.3299 hectares of land at 227F Whitemans Valley Road, Upper Hutt) (collectively, the "Investments"):

1. The consent will lapse if the Investments have not been acquired by and transferred to the Consent Holder within twelve months of the date of consent.
2. The Consent Holder must notify the Overseas Investment Office in writing as soon as practicable, and no later than twelve months from the date of consent, whether the Consent Holder acquired a legal interest in the Investments. If the Consent Holder did acquire a legal interest in an investment, the notice must include:
 - (a) the date of settlement;
 - (b) final consideration paid (plus GST, if any);
 - (c) particulars of the Consent Holder that acquired the legal and beneficial interest in the investment ("the relevant Consent Holder"); including where applicable:
 - (i) a copy of the certificate of incorporation of the relevant Consent Holder; and
 - (ii) the names and addresses of each of the individual or individuals who each have a 25% or more ownership or control interest in the relevant Consent Holder; and
 - (iii) the names and addresses of each of the members of the governing body of the relevant Consent Holder.
 - (d) where applicable, copies of transfer documents, historic copies of the computer freehold registers and settlement statements; and
 - (e) any other information that would aid the Overseas Investment Office in its function to monitor conditions of consent.
3. The Consent Holder, Brian Matthew Monahan, and Chimp Limited must:
 - (a) be, and continue to be of good character; and
 - (b) not be, and not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.
4. The Consent Holder must notify the Overseas Investment Office in writing within 20 working days if:
 - (a) the Consent Holder, Brian Matthew Monahan, or Chimp Limited:
 - (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 the Consent Holder's fitness to have the Investments; or
 - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;

- (b) any person in which the Consent Holder, Brian Matthew Monahan, or Chimp Limited 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
 - (c) the Consent Holder:
 - (i) ceases to be an overseas person; or
 - (ii) disposes of one or more of the Investments.
5. Matthew Joseph Monahan must submit an application for a residence class visa to Immigration New Zealand by 10 July 2014, and provide the Overseas Investment Office with evidence that this condition has been complied with.
6. By 10 January 2015, Matthew Joseph Monahan must possess a residence class visa and provide the Overseas Investment Office with evidence that this condition has been complied with.
7. Within 2 years from the date of consent, Matthew Joseph Monahan must:
- (a) cease to be an overseas person (as defined in section 7 of the Overseas Investment Act 2005); and
 - (b) provide a statutory declaration to the Overseas Investment Office stating that he has ceased to be an overseas person, and why he has ceased to be an overseas person.
8. The Consent Holder must report in writing to the Overseas Investment Office for three years (on an annual basis on the anniversary of the date of consent) as to the progress of:
- (a) Matthew Joseph Monahan's compliance with conditions 5, 6, 7; and
 - (b) Brian Matthew Monahan's and Matthew Joseph Monahan's disposal of the remaining half of Inflection LLC;
9. If in the opinion of the Overseas Investment Office, condition 3, 6 or 7 is not complied with, or if at any time after ceasing to be an overseas person, Matthew Joseph Monahan becomes an overseas person ("Non-Compliance"), the Consent Holder must dispose of the Investments as follows:
- (a) within six weeks of receiving notice from the Overseas Investment Office that in its opinion there has been Non-Compliance (the "Notice Date"):
 - (i) procure from an independent registered valuer, and provide to the Overseas Investment Office, written market valuations of the Investments; and
 - (ii) appoint licensed real estate agents to actively market and appropriately advertise the Investments for sale on the open market; and
 - (b) The Consent Holder must dispose of the Investments within eighteen months of the Notice Date to third parties who are not associates of the Consent Holder. If the Consent Holder has not disposed of the Investments at the expiry of the eighteen month period, the Consent Holder must offer the Investments 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 Investments to third parties who are not associates of the Consent Holder.
 - (c) The Consent Holder must provide a written report to the Overseas Investment Office quarterly (by the last day of March, June, September and December) about the marketing activities undertaken and offers received for the Investments. The Consent Holder must also report at any other time if required by the Overseas Investment Office.

- (d) The Consent Holder must provide a written report to the Overseas Investment Office within two months of the Investments being disposed of, providing evidence that:
 - (i) the Consent Holder has disposed of the Investments (including copies of any sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor); and
 - (ii) the purchasers are not associates of the Consent Holder.
- 10. If requested in writing by the Overseas Investment Office, 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.

Appendix 2 – Sensitive Land

1. 195D Whitemans Valley Road, Upper Hutt

Land Interest	Freehold Interest (68.1080 hectares)
CTs	119956 (Wellington)
Sensitivity	Is more than 5 hectares of non-urban land

2. 88 Mangaroa Valley Road, Upper Hutt

Land Interest	Freehold Interest (354.6947 hectares)
CTs	WN101/185, WN23D/695, WN23D/696, WN48A/87, WN81/172 (Wellington)
Sensitivity	Is more than 5 hectares of non-urban land

3. 227F Whitemans Valley Road, Upper Hutt

Land Interest	Freehold Interest (23.3299 hectares)
CTs	454118 (Wellington)
Sensitivity	Is more than 5 hectares of non-urban land

Decision Date

08 October 2013

Decision

Consent has been granted to **Matthew Joseph Monahan and Chimland Limited**, or another entity 100% owned and controlled by **Matthew Joseph Monahan** (together, the "Consent Holder"), giving effect to transactions which will result in:

- (a) An overseas investment in sensitive land, being the acquisition of a freehold interest in 68.1080 hectares of land at 195D Whitemans Valley Road, Upper Hutt; and
- (b) An overseas investment in sensitive land, being the acquisition of a freehold interest in 354.6947 hectares of land at 88 Mangaroa Valley Road, Upper Hutt; and
- (c) An overseas investment in sensitive land, being the acquisition of a freehold interest in 23.3299 hectares of land at 227F Whitemans Valley Road, Upper Hutt.

("collectively, the Investments")

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 applications and taken into account when consent was granted are those contained in the correspondence dated 3 July 2013, 5 August 2013, 8 August 2013, 9 August 2013, 17 September 2013, 19 September and 20 September 2013 and in all attachments annexed to that correspondence.

Special Conditions

- 1. The consent will lapse if the Investments have not been acquired by and transferred to the Consent Holder within twelve months of the date of consent.
- 2. The Consent Holder must notify the Overseas Investment Office in writing as soon as practicable, and no later than twelve months from the date of consent, whether the Consent Holder acquired a legal interest in the

Investments. If the Consent Holder did acquire a legal interest in an investment, the notice must include:

- (a) the date of settlement;
 - (b) final consideration paid (plus GST, if any);
 - (c) particulars of the Consent Holder that acquired the legal and beneficial interest in the investment ("the relevant Consent Holder"); including where applicable:
 - (i) a copy of the certificate of incorporation of the relevant Consent Holder; and
 - (ii) the names and addresses of each of the individual or individuals who each have a 25% or more ownership or control interest in the relevant Consent Holder; and
 - (iii) the names and addresses of each of the members of the governing body of the relevant Consent Holder.
 - (d) where applicable, copies of transfer documents, historic copies of the computer freehold registers and settlement statements; and
 - (e) any other information that would aid the Overseas Investment Office in its function to monitor conditions of consent.
3. The Consent Holder, Brian Matthew Monahan, and Chimp Limited must:
- (a) be, and continue to be of good character; and
 - (b) not be, and not become an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009.
4. The Consent Holder must notify the Overseas Investment Office in writing within 20 working days if:
- (a) the Consent Holder, Brian Matthew Monahan, or Chimp Limited:
 - (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 the Consent Holder's fitness to have the Investments; or
 - (iv) becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009;
 - (b) any person in which the Consent Holder, Brian Matthew Monahan, or Chimp Limited 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
 - (c) the Consent Holder:
 - (i) ceases to be an overseas person; or
 - (ii) disposes of one or more of the Investments.
5. Matthew Joseph Monahan must submit an application for a residence class visa to Immigration New Zealand by 10 July 2014, and provide the Overseas Investment Office with evidence that this condition has been complied with.
6. By 10 January 2015, Matthew Joseph Monahan must possess a residence class visa and provide the Overseas Investment Office with evidence that this condition has been complied with.

7. Within 2 years from the date of consent, Matthew Joseph Monahan must:
 - (a) cease to be an overseas person (as defined in section 7 of the Overseas Investment Act 2005); and
 - (b) provide a statutory declaration to the Overseas Investment Office stating that he has ceased to be an overseas person, and why he has ceased to be an overseas person.
8. The Consent Holder must report in writing to the Overseas Investment Office for three years (on an annual basis on the anniversary of the date of consent) as to the progress of:
 - (a) Matthew Joseph Monahan's compliance with conditions 5, 6, 7; and
 - (b) Brian Matthew Monahan's and Matthew Joseph Monahan's disposal of the remaining half of Inflection LLC;
9. If in the opinion of the Overseas Investment Office, condition 3, 6 or 7 is not complied with, or if at any time after ceasing to be an overseas person, Matthew Joseph Monahan becomes an overseas person ("Non-Compliance"), the Consent Holder must dispose of the Investments as follows:
 - (a) within six weeks of receiving notice from the Overseas Investment Office that in its opinion there has been Non-Compliance (the "Notice Date"):
 - (i) procure from an independent registered valuer, and provide to the Overseas Investment Office, written market valuations of the Investments; and
 - (ii) appoint licensed real estate agents to actively market and appropriately advertise the Investments for sale on the open market; and
 - (b) The Consent Holder must dispose of the Investments within eighteen months of the Notice Date to third parties who are not associates of the Consent Holder. If the Consent Holder has not disposed of the Investments at the expiry of the eighteen month period, the Consent Holder must offer the Investments 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 Investments to third parties who are not associates of the Consent Holder.
 - (c) The Consent Holder must provide a written report to the Overseas Investment Office quarterly (by the last day of March, June, September and December) about the marketing activities undertaken and offers received for the Investments. The Consent Holder must also report at any other time if required by the Overseas Investment Office.
 - (d) The Consent Holder must provide a written report to the Overseas Investment Office within two months of the Investments being disposed of, providing evidence that:
 - (i) the Consent Holder has disposed of the Investments (including copies of any sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor); and
 - (ii) the purchasers are not associates of the Consent Holder.
10. If requested in writing by the Overseas Investment Office, 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.

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 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 "applicant" includes a reference to "consent holder".




Senior Solicitor
Overseas Investment Office