

Overseas Investment Office

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Our Ref: 201900410

23 January 2020

TO: Neil Construction Limited

BY EMAIL

CC BY EMAIL: Deirdre Norris

CONSENT FOR YOU TO ACQUIRE 15.69 HECTARES OF LAND AT BRIGHAM CREEK ROAD AND TRIG ROAD, WHENUAPAI

1. We¹ have now considered, and approved, your application for consent to acquire approximately 15.69 hectares of land at 149-151 and 155-157 Brigham Creek Road and 69 Trig Road, Whenuapai, Auckland.
2. We enclose a copy of the decision. You will see it contains some important details of the consent you have been given, and of the conditions you must meet.
3. These include standard conditions that apply to all overseas people who are given consent to acquire sensitive New Zealand land. They also include special conditions that apply only to you and were important considerations that particularly influenced our decision to give consent.
4. The conditions are about the things you must do in order to be allowed to acquire, and keep, the land. They also require you to provide information to us either regularly or when particular events occur.
5. **Please read the conditions carefully and make sure you put processes in place so you can meet them. This is important because if you do not meet the conditions, you may be required to dispose of the land and/or be subject to fines or other penalties.**
6. You can find information about these penalties and how we monitor and enforce them on our website at: <http://www.linz.govt.nz/regulatory/overseas-investment/enforcement>.
7. Your legal advisers can advise you about the conditions and about the consequences of failing to comply with them, but only you are responsible for complying with them.
8. We look forward to hearing about the progress of your investment.

Yours sincerely



Clare Needham
Principal Advisor Applications
Overseas Investment Office

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s 9(2)(a)

¹ Your consent has been granted either by the Associate Minister of Finance and the Minister of Land Information, or by a manager at the Overseas Investment Office, acting under delegated authority from the Chief Executive of Land Information New Zealand.

Consent for Overseas Person to Acquire Sensitive New Zealand Land

Read this consent carefully - you must comply with all the conditions. If you do not, you may be required to dispose of the land and/or be subject to fines or other penalties.

Consent

Decision date: 22 January 2020

The following people have been given the following consent:

Case	201900410
Consent	Neil Construction Limited may acquire the Land subject to the Conditions set out below.
Consent holder/s	Neil Construction Limited We will also refer to each Consent holder and the Consent holders together as you .
Land	A freehold interest in approximately 15.69 hectares of sensitive land at Whenuapai, Auckland comprising: <ul style="list-style-type: none">• 5.94 hectares of land at 69 Trig Road (NA55D/1228 (North Auckland)) (the Trig Road land); and• 3.62 hectares of land at 155-157 Brigham Creek Road (RT 143112 (North Auckland)) (the Matthews land); and• 6.13 hectares of land at 149-151 Brigham Creek Road (NA55D/1229 (North Auckland)) (the Ridley land). (together the Land)
Timeframe	You have until 31 January 2021 to acquire the Land.

Conditions

Your Consent is subject to the Special conditions, Standard conditions and Reporting conditions (Conditions) set out below. You must comply with them all. Be aware that if you do not comply with the Conditions you may be subject to fines or other penalties, and you may also be required to dispose of the Land.

In the Consent and the conditions, we refer to the Overseas Investment Office as OIO, us or we.

Definitions

Business Park – the industrial development to be carried out on the Ridley and Trig Road land to create new serviced freehold industrial lots.

Development – the combined residential and industrial development of the Land, including earthworks and civil engineering to create legal roads and connections to bulk waste water services, water supply, communications services and power reticulation, resulting in the Residential Development and the Business Park.

Residential Development – the residential development to be carried out on the Matthews land.

Special conditions

You must comply with the following **special conditions**. These apply specifically to this Consent and were considerations that particularly influenced us to give consent:

Details	Required date
Special condition 1: Development of the Land	
<p>You must:</p> <ul style="list-style-type: none">(a) obtain all necessary consents to commence construction of the Development;(b) start construction of the Development; and(c) complete construction of the Development. <p>If you do not, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	<ul style="list-style-type: none">(a) by 30 September 2021(b) by 31 October 2021(c) by 30 June 2023
Special condition 2: Increased housing	
<p>You must use the Matthews land to increase the number of residential dwellings constructed or for development works to support such construction resulting in:</p> <ul style="list-style-type: none">(a) If the Matthews land is re-zoned "Residential Single House" at least 36 new freehold serviced residential lots; or	<ul style="list-style-type: none">(a) or (b) by 30 June 2023

<p>(b) If the Matthews land is re-zoned "Residential Mixed Housing Urban" new freehold serviced residential lots to support construction of at least 80 new residential dwellings.</p> <p>If you do not, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	
Special condition 3: Non-residential use outcomes	
<p>You must use the Ridley and Trig Road land as the Business Park:</p> <p>(a) for non-residential purposes in the ordinary course of business.</p> <p>If you do not, Standard Condition 6 will apply and we may require you to dispose of the Land.</p>	<p>(a) by 30 June 2025</p>
Special condition 4: On-sale outcome	
<p>You must:</p> <p>(a) sell all fee simple residential lots in the residential development; and</p> <p>(b) sell all residential units or dwellings in the residential development; and</p> <p>(c) sell all fee simple industrial lots in the Business Park</p> <p>If you do not, Standard condition 6 will apply and we may require you to dispose of Land.</p>	<p>(a) by 30 June 2024</p> <p>(b) by 30 June 2026</p> <p>(c) by 30 June 2025</p>
Special condition 5: Non-occupation outcome	
<p>Prior to you disposing of the Land, none of the following people may occupy the Land for residential purposes:</p> <p>(a) You.</p> <p>(b) Any overseas person with a 25% or more ownership or control interest in any of the people in (a).</p> <p>(c) Any overseas person who occupies the Land other than on arm's length terms².</p> <p>(d) Any overseas person who has a beneficial interest in, or beneficial entitlement to, the relevant interest in the land.</p> <p>(e) If (a) is a trust, any beneficiary (direct or indirect) who may benefit under the trust at the trustees' discretion.</p>	<p>While you, or any of the people outlined in paragraphs (b) to (e), has any relevant interest in the Land</p>

² 'At arms length terms' has the meaning in clause 17, Part 5, Schedule 2 of the Overseas Act 2005. In summary it means terms, for example under a lease (or other contract), that are on a reasonable commercial basis.

<p>If any such persons do occupy Land for residential purposes, Standard condition 6 will apply and we may require you to dispose of the Land.</p>	
<p>Special condition 6: Additional Investment</p>	
<p>You must:</p> <p>(a) invest a minimum of § 9(2)(b)(ii) capital for the land subdivision and development works for the Development. For the avoidance of doubt, that is to be in addition to the § 9(2)(b)(ii) purchase price for the Land.</p> <p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	<p>(a) by 30 June 2025</p>
<p>Special condition 7: Walking Access</p>	
<p>You must:</p> <p>(a) raise the recommendations of the Walking Access Commission (WAC) in its email dated 13 September 2019 to the Overseas Investment Office with the Auckland Council during your resource consent negotiations for the Land and advise the Council of WAC's request to be included in those negotiations; and</p> <p>(b) if Auckland Council agrees to involve WAC in the resource consent negotiations, you must agree to do so; and</p> <p>(c) if Auckland Council wishes to adopt any of WAC's recommendations, you must do so; and</p> <p>(d) enter into good faith negotiations with the owners of Lot 2 DP 101583, who are the tenants in common of an access strip from Trig Road to the Trig Road land, with a view to entering into a covenant to allow for public access to the Auckland Council land at Section 1 SO516731, that covenant to lapse when the new road proposed under the Whenuapai Structure Plan vests in Auckland Council.</p>	<p>(a) (b) and (c) by 30 September 2021</p> <p>(d) By 30 June 2025</p>

Standard conditions

You must also comply with the **standard conditions** set out below. These apply to all overseas people who are given consent to acquire sensitive New Zealand land, including you:

Details	Required date
Standard condition 1: acquire the Land	
<p>You must acquire the Land:</p> <ol style="list-style-type: none">by the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Land, andusing the acquisition, ownership and control structure you described in your application. <p>Note, only you – the named Consent holder - may acquire the Land, not your subsidiary, trust or other entity.</p>	As stated in the Consent
Standard condition 2: tell us when you acquire the Land	
<p>You must tell us in writing when you have acquired the Land.</p> <p>Include details of:</p> <ol style="list-style-type: none">the date you acquired the Land (Settlement),consideration paid (plus GST if any),the structure by which the acquisition was made and who acquired the Land, andcopies of any transfer documents and Settlement statements.	As soon as you can, and no later than two months after Settlement
Standard condition 3: allow us to inspect the Land	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions.</p> <p>We will give you at least two weeks' written notice if we want to do this.</p> <p>You must then:</p> <ol style="list-style-type: none">Allow a person we appoint (Inspector) to:	At all times

<ul style="list-style-type: none"> enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (Inspection), remain there as long as is reasonably required to conduct the inspection, gather information, conduct surveys, inquiries, tests and measurements, take photographs and video records, and do all other things reasonably necessary to carry out the Inspection. <p>2. Take all reasonable steps to facilitate an Inspection including:</p> <ul style="list-style-type: none"> directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection, being available, or requiring your employees, agents, tenants or other occupiers to be available, at all reasonable times during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required. <p>3. During an Inspection:</p> <ul style="list-style-type: none"> we will not compel you and your employees, agents, tenants or other occupiers to answer our questions or to let us look at, copy or take away documents, our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection. 	
Standard condition 4: remain of good character	
<p>You and the Individuals Who Control You:</p> <p>1. must continue to be of good character, and</p>	<p>At all times</p>

<p>2. must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009.</p> <p>In summary, these sections describe convicted or deported people who are not eligible for visa or entry permission to enter or be in New Zealand and people who are considered likely to commit an offence or to be a threat or risk to security, public order or the public interest.</p> <p>The Individuals Who Control You are individuals who:</p> <ul style="list-style-type: none"> • are members of your governing body, • directly or indirectly, own or control 25% or more of you or of a person who itself owns or controls 25% or more of you, and • are members of the governing body of the people referred to in paragraph (b) above. 	
<p>Standard condition 5: tell us about changes that affect you, the people who control you, or people you control</p>	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <ol style="list-style-type: none"> 1. You, any Individual Who Controls You, or any person in which you or any individual who controls you hold (or at the time of the offence held) a 25% or more ownership or control interest commits an offence or contravenes the law anywhere in the world. This applies whether or not you or they were convicted of the offence. In particular, please tell us about any offences or contraventions that you are charged with or sued over and any investigation by enforcement or regulatory agencies or professional standard bodies. 2. An Individual Who Controls You ceases to be of good character; commits an offence or contravenes the law (whether they were convicted or not); becomes aware of any other matter that reflects adversely on their fitness to have the Land; or becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (see standard condition 4). 3. You cease to be an overseas person or dispose of all or any part of the Land. 4. You, any Individual Who Controls You, or any person in which you or any Individual Who Controls You hold (or at the time of the event held) a 25% or more ownership or control interest: 	<p>Within 20 working days after the change</p>

<ul style="list-style-type: none"> • becomes bankrupt or insolvent • has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or • becomes subject to any form of external administration. 	
Standard condition 6: dispose of the Land if you do not comply with key special conditions	
<p>Some of the special conditions were key to the decision to give consent. If we consider you have failed to comply with one of those Special conditions in a material way we may require you to dispose of the Land.</p> <p>We may also require you to execute a security deed before you may acquire the Land. The security deed:</p> <ol style="list-style-type: none"> 1. must be in the form we require, 2. must be executed and delivered to us before you acquire the Land, 3. gives us power to appoint a receiver to dispose of the Land if you do not do that as required by this standard condition 6, 4. will provide, among other things, that if we appoint a receiver, the receiver may dispose of the Land, deduct his or her costs from the proceeds of sale, and pay the remainder to you. <p>If all or part of this standard condition 6 applies to a special condition, we have said so in that condition.</p> <p>We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:</p>	
Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.	Within six weeks of the date of our notice.
Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.	Within six weeks of the date of our notice.
Dispose of the Land: dispose of the Land to a third party who is not your associate.	Within six months of our notice.

<p>Offer without reserve: if you have not disposed of the Land within six months of our notice, offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.</p>	<p>Within nine months of our notice.</p>
<p>Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.</p>	<p>By the last day of every March, June, September and December after our notice or at any other time we require.</p>
<p>Report disposal to us: send us, in writing, evidence:</p> <ul style="list-style-type: none"> • that you have disposed of the Land, • of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor), • the purchaser is not your associate. 	<p>Within one month after the Land has been disposed of.</p>

Reporting conditions

We need information from you about how your Investment Plan is tracking so we can monitor your progress against the Conditions and so we can measure the benefits you have brought to New Zealand through your investment.

Every year, you must lodge an **annual report**. It must:

1. be sent to **oiomonitoring@linz.govt.nz** by these dates:
 - year one: 30 November 2020;
 - year two: 30 November 2021;
 - year four: 30 January 2023;
 - year five: 31 July 2024; and
 - year six: 31 July 2025; and
 - year seven: 31 July 2026.
2. Contain information about your progress in implementing the relevant special conditions, including:
 - details of progress with proposed Plan Change 5 and the re-zoning of the Land, including confirmation of the new zones for each of the Matthews land, Trig Road land and Ridley land;
 - after the re-zoning has been confirmed, confirmation of the number of freehold serviced residential lots that will be developed on the Matthews land;
 - details of FTEs employed directly and indirectly in relation to the Development including details of the roles and evidence of employment for direct roles;
 - numbers of residential and industrial lots completed and / or sold including evidence of subdivision and sale; and
 - details of progress with special condition 7 (i.e. the Walking Access Commission's recommendations for access over the Land).
3. follow the format of the template annual report published on our website at: <https://www.linz.govt.nz/file/18086/download?token=19u75m6Z>
4. If requested in writing by the OIO, the Consent Holder(s) must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:
 - 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 content was granted; or
 - the conditions of this consent.