International Agriculture Investment

Foreign Ownership of New Zealand Farmland

Kellogg Rural Leadership Project Report

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1.0 Executive Summary

Foreign Ownership of New Zealand farm land is an ever evolving topic that is of interest to a large number of us and a discussion that many people are uneasy to have or have a strong feeling either way.
People fear for loss of ownership of our great land and consider the implications it will have on future generations.
Before land can be sold to foreign investors it has to go through the Overseas Investment Office (OIO) which assesses applications from overseas investors seeking to invest in sensitive New Zealand farm land. Farm land that exceeds 5 hectares is deemed to be sensitive.
It also is required to get Ministerial approval if granted approval from the OIO.
New Zealand has a robust OIO process and we should not fear that it will let us down, but look for greater opportunity when foreign interest is expressed in our land.
Before reading into this report consider this – If you were a land owner looking at selling your farm land that you have firstly worked hard to get and secondly to keep and run as a viable operation, should you be deprived of the opportunity of obtaining maximum value from your asset?

I hope this report will stimulate further discussion and debate on Foreign Ownership of our New Zealand farmland.

2.0 Table of Contents

3.0 Introduction

In New Zealand we pride ourselves on ‘punching above our weight’ whether it be sport, the arts or business. Winning on a global stage is difficult to achieve from an arm chair and relies on individuals to move outside their comfort zone to try new ideas.

Foreign Ownership of Farmland in New Zealand is an area which frequently tests the comfort zone of the country. Fears of a loss of sovereignty, dealing with different cultures, uncertainty as to the actual benefits of Foreign Ownership and the implications for future generations are frequent discussion points in the media, the Primary Business Agriculture sector, and the wider public.

In this report I look into Foreign Ownership of Farmland within NZ. I have looked at a timeframe from 2010 -2015, what has happened in this timeframe, how much farm land has gone into Foreign Ownership, and what the 595,014Ha of land is being used for.

I have looked into the Overseas Investment Office (OIO) guidelines and the legislation that it has to work to.

I look into 2 Case studies that both went through the OIO process and both were granted approval from the OIO but only 1 of these transactions was to proceed due to Ministerial Approval.

1. Crafar Farms- 16 Farms combined area of 7,893Ha
2. Lochinver Station- 13,800Ha

One of my interesting findings out of my research as to what countries are acquiring our farm land was its not China that we need to be concerned about as they are only 5th with (5.46%) but the USA was the largest acquirer with 28.30%.

4.0 Background of the OIO Process

4.1 Background to New Zealand's overseas investment regime

Foreign investment into New Zealand is regulated by the Overseas Investment Act 2005 and related regulations (the **legislation**). Approval is required for an "overseas person" to acquire "significant business assets" or an interest in "sensitive land". The regime applies both when the acquisition is made either directly or through the acquisition of securities where the "overseas person" acquires 25% or more of the securities.

To obtain a "sensitive land" approval, the "overseas person" must satisfy certain "good investor" criteria and establish that the investment will or is likely to benefit New Zealand. Benefits are assessed against economic, environmental, social and cultural factors unless the applicant intends to reside in New Zealand indefinitely.

Most major sensitive land applications are decided by two Ministers having received a recommendation from the OIO. All other decisions are made by the OIO under delegated authority.

4.2 Article 1.

What are the practical implications for "sensitive land" applications?

As the OIO is now required to apply a "with or without" assessment in determining whether an overseas investment provides the required economic benefits to New Zealand, both vendors and potential overseas purchasers of "sensitive land" will need to put more thought into establishing the relevant counterfactual and in identifying and presenting to the OIO the economic, environmental, social and cultural factors that support their application.

The status quo has not been ruled out as a counterfactual: rather, following the High Court's decision, it is now clear that it will not always be the relevant counterfactual. The counterfactual will need to be based on evidence and on a commercial and pragmatic judgment – mere prophecy and speculation of what may happen is unlikely to be sufficient, and would be challengeable.

For vendors this may mean that they will need to:

- plan their OIO strategy carefully and be more actively involved in the bidder's OIO application;
- establish a minimum price and plans for the business if it is not sold. This could be as simple as acknowledging it will be "business as usual"; and
- where a competitive auction is involved, undertake a comparative assessment of bidders' OIO applications including some due diligence in respect of the "benefits" to New Zealand that are claimed.

Overseas bidders would be advised to:

- seek assurances from the vendor that they will support an application by the bidder including relevant counterfactual information being provided to the OIO;
- establish from the vendor whether they are bidding against New Zealand bidders;
- seek from the vendor information on the vendor's intention should the highest bid fail to obtain OIO approval; and
- work hard to identify benefits to New Zealand, particularly in relation to environmental, social and cultural factors as well as the obvious economic factors. Bidders may need to spend money on these "non-economic" factors and this cost will need to be taken into account when deciding the total cost of the acquisition

4.3 Final thoughts

The degree of Ministerial discretion which has been built into New Zealand's overseas investment regime provides the government of the day with the flexibility to effectively alter the application of the legislation by altering its overseas investment policy without the need to also change the legislation. The structure is seen as beneficial by many, but also means that the government's policy is not clear there is an unacceptable level of uncertainty for vendors and overseas investors.

5.0 The Numbers from 2010-2015

5.1 Numbers & Trends

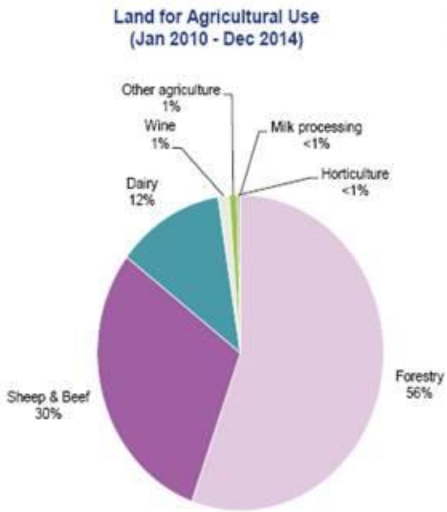
The key findings here are that of the 595014 Ha Forestry equates to 55.46% followed by Sheep & Beef 29.88% then Dairy only being 12.10% followed by Wine, other agriculture, horticulture & Milk processing making up the remainder of 2.56%.

5.2

Land acquisition by land use

Hectares acquired by land use (Freehold and Leasehold)

- The table below summarises the freehold and leasehold land acquired for the last five years.
- Forestry accounts for the majority of land acquired in New Zealand, followed by sheep and beef. Dairy comprises 22% of land acquired between 2013 and 2014, up from 6% for the period 2010 to 2012. Over a five-year period dairy land accounts for 12% of land acquired.
- To put land acquisition in context the land acquired over the last five years represents approximately 5% of New Zealand's total agricultural and forestry land area. Some of these acquisition are likely to be the consequence of an exchange of land between two overseas entities, rather than net investment (Note 2).



Land Acquired (freehold and leasehold) for Agricultural Use (Jan 2010 - Dec 2014)	2010 (Ha)	2011 (Ha)	2012 (Ha)	2013 (Ha)	2014 (Ha)	Total
Forestry	109,744	83,601	29,929	100,580	6,479	330,333
Sheep & Beef	19,177	82,181	6,880	63,606	5,966	177,810
Dairy	5,482	3,526	11,593	32,983	18,418	72,002
Wine	1,060	2,257	306	1,184	2,630	7,437
Other agriculture	2,463	1,144	760	432	460	5,259
Horticulture	36	-	696	232	1,057	2,021
Mlk processing	64	49	-	38	1	152
Total	**138,026**	**172,758**	**50,164**	**199,055**	**35,011**	**595,014**

Source: OIO Summary Statistics

Note 1: The land areas above includes freehold and leasehold land acquired over a five year period. The leasehold land acquired in the last two years equates to approximately 48,000.

Note 2: This estimate assumes that agricultural land accounts for 43% of New Zealand's land area, based on a 2011 World Bank estimate.

Overseas Investment Office (OIO)

Period	Number of OIO approvals	Approvals involving land *(based on aggregate of freehold land approvals and leasehold land approvals)*	Freehold Land		Leasehold land and other interests (leasehold land and pastoral leases)		Net land area induding forestry (Hectares)	Gross land area including forestry (Hectares)	Net agricultural land area (Hectares) - exduding forestry
			No. of approvals	Net hectares	No. of approvals	Net hectares			
12 months to 31 December 2010	123	*102*	80	17,040	22	14,789	31,829	139,939	23,712
12 months to 31 December 2011	146	*142*	106	68,054	36	23,627	91,681	217,126	15,242
12 months to 31 December 2012	113	*110*	89	33,517	21	353	33,870	51,634	..
12 months to 31 December 2013	117	*115*	93	65,954	22	14,129	80,083	208,246	..
12 months to 31 December 2014	148	*145*	114	26,485	31	1,394	27,879	40,791	..
Total consented 2010 to 2014	647	614	482	211,050	132	54,292	265,342	657,736	

Please note the difference between "net hectares" and "gross hectares" of land area approved for sale.

Net hectares

"Net hectares" represents the total land area proposed to be transferred into foreign ownership under consents granted during the relevant period. For example, if a New Zealander sells 10 hectares to someone from overseas, the whole 10 hectares is shown. However, if the seller was a company that was 50% New Zealand owned and 50% foreign owned then only five hectares would show in that column. Five hectares represents the "net" change in foreign ownership of New Zealand land.

Gross hectares

"Gross hectares" represents the total land area proposed to be acquired under consents granted during the relevant period. The figure will not show the seller's New Zealand ownership share (if any) (unlike the "net hectares" figure) and will include land that is proposed to be acquired by New Zealand interests as well as overseas interests (for example, under a New Zealand/Australian joint venture).

Source: http://www.linz.govt.nz/overseas-investment/decisions/decision-summaries/oio-decision-summaries-june-2014

5.3 Who is buying our land?

The key findings here are the countries that have the biggest influence in Foreign Ownership of farmland in New Zealand are.

1. USA - 168,441 Ha – 28.30%
2. Europe- 138,088 Ha- 23.20%
3. Other/Undisclosed – 128,725 Ha – 21.63%
4. United Kingdom – 67,425 Ha – 11.33%
5. China – 32,533 Ha – 5.46%
6. Australia – 28,294 Ha – 4.75%
7. Canada – 16,350 Ha – 2.74%
8. Japan – 15,169 Ha – 2.54%

5.4. Why is there such an Undisclosed amount of land?

This undisclosed amount of land relates to ownership of land that is acquired by large multinational companies that have a very complex multinational shareholding that would be too hard to identify direct countries.

Also any country that has less than 2% falls into this category.

6.0 Case Studies

In this section I look into 2 case studies that both went through the OIO process and both were granted approval from the OIO but only 1 of these transactions was to proceed due to Ministerial Approval.

6.1 Case Study 1: Crafar Farms.

CraFarms or Crafar Farms is a group of companies of which Allan, Beth and Frank Crafar were Directors. Crafar Farms was New Zealand's largest family-owned dairy business. The family business 22 dry stock and dairy farms with approximately 20,000 cows in various regions of the North Island, and was put into receivership in October 2009. Crafar Farms was involved in multiple prosecutions for pollution offences and incidents of poor animal welfare from 2007 to 2011.

On 5 October 2009 Crafar Farms had been placed into receivership by its lenders and that Michael Stiassny and Brendon Gibson had been appointed as receivers. The New Zealand Herald reported that Westpac, Rabobank and PGG Wrightson Finance, were owed about $NZ200 million, and had placed Crafar Farms into receivership as it was in breach of the covenants of the loans. The Crafars say that the recession and a drop in the Fonterra payout was a major factor in their business going into receivership. In 2007 Fonterra paid a record $7.90 per kilo of milk solids, this dropped by two dollars in 2008 and was just $4.55 in 2009. The Crafars had expanded rapidly by using their existing farms as leverage, and could no longer service their debt.

6.2

<u>What are some of the proposed benefits Ministers considered before granting consent?</u>

Benefits considered by Ministers included the intention of Milk New Zealand to invest more than $14m in the properties to make them more economically and environmentally sustainable.

Milk New Zealand will also ensure protection of two important pa sites (the Nga Herenga pa and the Te Ruaki pa), and provide improved public walking access to the Pureora Forest Park and Te Rere falls.

Milk New Zealand will also establish an on-farm training facility for dairy farm workers.

Milk New Zealand intends to engage Landcorp Farming Limited (Landcorp) to manage the farms. The Overseas Investment Office considers that the involvement of Landcorp makes it more likely that the expected benefits will occur.

In addition, Ministers have imposed comprehensive conditions of consent on the company to ensure that the benefits proposed by Milk New Zealand are delivered.

What conditions of consent did the Ministers impose on Milk New Zealand?

Conditions of consent imposed by Ministers include the following: The individuals with control of Milk New Zealand must continue to be of good character

- Milk New Zealand must invest a minimum of NZD $14m in the properties
- Milk New Zealand and their associates must not acquire an ownership or control interest in milk processing facilities in New Zealand unless a 50% or more ownership or control interest in those facilities is held by non-overseas persons
- Milk New Zealand must establish an on-farm training facility for dairy farm workers and must meet the capital cost of establishing this facility
- Milk New Zealand must give two scholarships of not less than NZD $5,000 each year to students of the on-farm training facility with the first two scholarships to be awarded by 31 December 2013
- Milk New Zealand must use reasonable endeavours to assist Landcorp to extend its business to, and market its products, in China
- Milk New Zealand must provide public walking access over Benneydale Farm and Taharua Station, in consultation with the Department of Conservation and the New Zealand Walking Access Commission
- Milk New Zealand must take reasonable steps to protect and enhance existing areas of significant indigenous vegetation and significant habitats of indigenous fauna and flora on the properties
- Milk New Zealand must register a heritage covenant in respect of the Te Ruaki pa site on Tiwhaiti Farm
- If required by the Office of Treaty Settlements, the Applicant must transfer the Nga Herenga pa site (approximately 1.6ha located on Benneydale Farm) to the Crown for nil consideration.

Milk New Zealand agreed to all conditions of consent imposed by Ministers.

How did Milk New Zealand satisfy the business experience and acumen requirement?

The Overseas Investment Act 2005 requires the individuals with control of the relevant overseas person to collectively have business experience and acumen relevant to that overseas investment.

The level of business experience and acumen required to satisfy this condition may vary according to the nature of the investment. In this case, the overseas investment is the acquisition of a large corporate farming business. The Ministers considered that the individuals with control have sufficient business experience and acumen to operate a large business of this nature.

Milk New Zealand is a subsidiary of Shanghai Pengxin Group Co. Limited, a fast growing international agribusiness which includes investment in sheep breeding, wheat, soy and maize production in China and South America.

Shanghai Pengxin has obtained advice from leading New Zealand consultancies such as Perrin Ag, Landcorp and PwC. Shanghai Pengxin will also employ two New Zealand directors and an independent chairman to the board of Milk New Zealand.

6.3 Case Study 2- Lochinver Station.

The sale of Lochinver represents an unprecedented opportunity to purchase a truly iconic New Zealand station. Lochinver is an internationally renowned station located in Taupo, comprising 13,800 hectares.

The station features both exceptional scale and standard, currently operating as a profitable sheep and beef breeding and finishing station supplemented with dairy grazing. It is predominantly flat to easy hill country, ensuring the farm's potential for a range of farming systems, including dairying, dairy support, stud, deer farming, cropping, sheep and beef finishing.

6.4

Paula Bennett- Associate Minister of Finance.

Louise Upston- Minister for Land Information.

17 SEPTEMBER, 2015

Ministers decline overseas purchase of Lochinver Station

An overseas company's application to purchase Lochinver Station has been declined because the benefits to New Zealand are not substantial and identifiable, Ministers Paula Bennett and Louise Upston say.

Pure 100 Farm Ltd, a subsidiary of China-based Shanghai Pengxin, applied to the Overseas Investment Office (OIO) last year to buy the 13,800 ha farm near Taupo for $88 million.

"Because Lochinver Station is classified by law as sensitive land, Ministers must consider whether the application meets the requirements set out in the Overseas Investment Act," Associate Finance Minister Paula Bennett says.

"While we recognise and support the importance of overseas investment, the Overseas Investment Act states it is a privilege for overseas people to own sensitive New Zealand assets and therefore requires such investments to meet statutory criteria for consent.

“After detailed and careful individual consideration, we are not satisfied there will be, or is likely to be, a substantial benefit to New Zealand – a key requirement for applications of sensitive land of this size.”

While the OIO said the question of whether the benefits of the potential investment to New Zealand are or could be substantial and identifiable was finely balanced, it recommended approving the application.

“We agreed parts of the proposed investment could benefit New Zealand but in our judgement on the overall balance of evidence, the benefits are not likely to be substantial and identifiable,” Land Information Minister Louise Upston says.

“This proposed sale didn’t pass a test we are required to exercise Ministerial judgement on.

“This is an example of our system working well. The OIO conducted a thorough investigation before making a finely balanced recommendation. Ministers carefully assessed the evidence and ultimately came to different view.”

A summary of the reasons for the Ministers’ decision can be found here: http://www.linz.govt.nz/news/2015-09/pure-100-farm-limited-application-for-consent-acquire-lochinver-station.

Pure 100 Farm Limited is seeking a judicial review of the Minister’s decisions to decline consent to acquire Lochinver Station.

(This matter may now be reviewed by a high court judge, so further details won’t be released until a decision is made.

7.0 Conclusions.

Throughout my project the key findings have been very interesting as to land that has gone through the OIO process and what the land use is.
Firstly who would have thought that Forestry would have made up 55.46% of the 595,014Ha that have gone into Foreign Ownership?
Secondly that Sheep and Beef make up 29.88% and that Dairy only accounts for 12.1%.
In my opinion the 12.1% that Dairy has is an extremely small portion of the pie given the increase of dairy in our country and the change of land use that farmland has taken in New Zealand over the past 5years.

The countries buying New Zealand farm land is another extremely interesting fact given that all we seem to hear about in the media is that we are selling out to the Chinese and the public perception in general.
When this is far from the facts with China only equating to 5.46% (32,522Ha) of farmland acquired and being 5th on the list. With USA and Europe equating to a massive 51.5% (306,529Ha) over a 5year period.
In my opinion these are the numbers that should be put out by the media and discussed in the public. We are very quick at knocking the Chinese but let the numbers speak for themselves!
More of a concern would be that third on the list with 21.63% (128,725Ha) of all farmland acquired over the period was either classified as other or undisclosed purchasers. Who are the undisclosed purchasers?
The OIO process is robust but in my opinion has a loop hole in the fact that the Government of the day has the flexibility to effectively alter the application of the legislation by altering its overseas investment policy without the need to also change legislation. The structure is seen as beneficial by many, but also means that if the government’s policy is not clear there is an unacceptable level of uncertainty for vendors and overseas investors.

Let’s keep things in perspective…

8. Acknowledgements

In order to research and report to be completed in such a short timeframe I would like to acknowledge the following people:

To my wife Stacey and children Harrison and Molly-Rose for there patience and understanding while I have been doing my Kellogg project and the support that Stacey has given me firstly to undertake the time to do this but also juggling things at home to enable me to be away.

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Finally, thank you fellow participants on the course who have contributed to a very enjoyable and successful course. The new networks and friendships gained through this process will be vital as we progress in our chosen fields and in my mind one of the highlights of the course.

9.0 References

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