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Decision required under the Overseas Investment Act 2005:
Megastuff Limited / Kim Dotcom – Three applications for consent

Date	5 April 2011	Priority	High
Security Level	Commercial: In Confidence	Report/Case Number	1041/201020049 1042/201020048 1043/201020067

Instructions

	Action Sought	Deadline
Associate Minister of Finance	<ol style="list-style-type: none"> 1. Sign the attached memorandum 2. Forward the memorandum and annexure to the Minister for Land Information 	12 April 2011
Minister for Land Information	<ol style="list-style-type: none"> 1. Sign the attached memorandum 2. Forward the memorandum and annexure to the Overseas Investment Office 	19 April 2011

Contact for Telephone Discussion

Name	Position	Telephone	First Contact
Annelies McClure	Manager	462-4461 (wk)	✓

*AM not
same as
people advise?
Steve Panam
17/4/11*

MEMORANDUM

Executive Summary:

1. This Ministerial recommendation report covers three separate but closely related sensitive land applications (Applications 201020048, 201020049 and 201020067).
 - (a) Application 201020048: The relevant land is a large residential property which is reputedly the most expensive private residence in New Zealand ("Coatesville"). The applicant is Mr Kim Dotcom, a successful internet entrepreneur residing in Hong Kong. Mr Dotcom is an overseas person.
 - (b) Application 201020067: The relevant land is a smaller residential property ("the Prom") which adjoins Coatesville. The applicant is Megastuff Limited, a New Zealand registered company owned by Mr Dotcom. Megastuff Limited is an overseas person. The acquisition of the Prom is conditional upon consent being granted to the acquisition of Coatesville.
 - (c) Application 201020049: The relevant land is a coastal lifestyle block located at Taipa, Doubtless Bay ("Vara Prasada"). The applicant is Megastuff Limited.
2. The purchase price for the three properties exceeds
3. The applicants have both nominated A Limited (a Hong Kong registered company) to acquire the properties. The sole shareholder of A Limited is Kingdom International Ventures Limited, a British Virgin Islands registered company. Mr Dotcom claims to be the sole shareholder and director of Kingdom International Ventures Limited.
4. Each of the properties is "sensitive land". Coatesville, the Prom and Vara Prasada are all non urban land and each exceeds five hectares (either alone or together with associated land). In addition, the Vara Prasada property includes special land (the foreshore) and adjoins an esplanade reserve.
5. Ministerial consent is required as Ministers have not delegated their power to the Overseas Investment Office to make decisions where the relevant land includes special land.
6. There are matters that call Mr Dotcom's character into question. The Overseas Investment Office has considered these matters and is of the view that, on balance, Ministers can be satisfied that Mr Dotcom is of good character. A comprehensive analysis of Mr. Dotcom's character forms part of our report.
7. The Overseas Investment Office is satisfied that the benefits of these overseas investments will be or are likely to be substantial and identifiable.
8. The Overseas Investment Office recommends that Ministers grant consent to the proposed investments.

Annexures

9. Report of the Overseas Investment Office on the proposed overseas investment (Report) (including attached advice on whether or not Mr Dotcom is of good character).
10. Applications for consent with supporting material.
 - (a) Tab 1: Application 201020048
 - (b) Tab 2: Application 201020049
 - (c) Tab 3: Application 201020067
 - (d) Tab 4: Copies of correspondence and other supporting documents

Instructions:

11. In considering whether or not to grant consent, you must grant consent if satisfied that all of the criteria in section 16 are met.
12. You must decline to grant consent if not satisfied that all of the criteria in section 16 are met.
13. For a transaction that is more than 1 category of overseas investment, you must have regard to the criteria that apply to all of the relevant categories. However, if the criteria are the same, you need only consider the same criteria once (and not consider them under each relevant category).
14. If section 16(1)(e)(ii) and (iii) apply, you must consider all of the factors in section 17(2) and regulation 28, and determine which of the factors (or parts of them) are relevant to the overseas investments, noting that you need not consider the factors in regulation 28(i) - the 'economic benefits' factor - or regulation 28(j) - the 'mitigating' factor - as the three applications for consent were received before these factors came into force.
15. Having determined which factors (or parts of them) are relevant, you must determine the relative importance to be given to each relevant factor (or parts of them).
16. You must then determine whether section 16(1)(e)(ii) and (iii) have been met, with regard to the relevant factors (or parts of them), weighted for importance.
17. If you wish to make any changes to the conditions of consent, those changes should be discussed with the Overseas Investment Office, and the other Minister, before being finalised.
18. If you propose to disagree with the decision of the other Minister, you should discuss your decision with the Overseas Investment Office and the other Minister.

Recommendations:

I recommend that you

19. determine that:
 - (a) the relevant overseas person in relation to the overseas investments is Kim Dotcom; and
 - (b) Kim Dotcom has business experience and acumen relevant to the overseas investments; and
 - (c) Kim Dotcom has demonstrated financial commitment to the overseas investments; and
 - (d) Kim Dotcom is of good character; and
 - (e) Kim Dotcom is not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009; and
 - (f) the overseas investments will, or are likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
 - (g) the benefits will be, or is likely to be, substantial and identifiable; and

20. accordingly, you:

- (a) are satisfied that the criteria for consent in section 16 have been met; and

Associate Minister of Finance:

Satisfied

Not Satisfied

Minister for Land Information:

Satisfied

Not Satisfied

(b) grant consent to the overseas investments subject to the conditions in appendix 1 of the Report.

Associate Minister of Finance:

Consent Granted:

Consent Declined

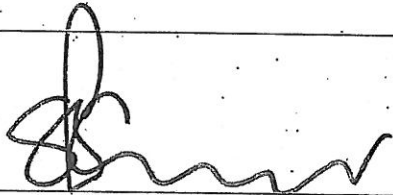
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Minister for Land Information:

Consent Granted

Consent Declined

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Associate Minister of Finance

Date

18/7/11



Minister for Land Information

Date

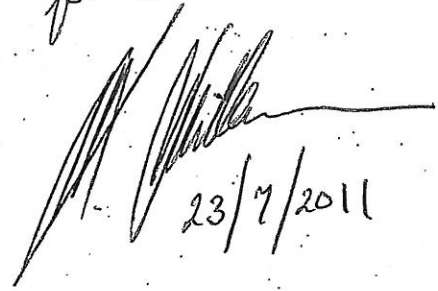
7/4/2011



Annelles McClure - Manager

Overseas Investment Office

After consultation and further discussion I support the decision to decline the application for Mr Dotcom.



23/7/2011

Released Under the Official Information Act