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PAPER

WESTERN SAHARA POLICY POSITION

Prepared by: [REDACTED]

Date:

May 2018

DRAFT

1 Purpose

1.1 For approval.

1.2 To communicate the Fund's position on the extraction of resources from the Western Sahara. Specifically, this encompasses:

1.2.1 Investment in listed companies extracting resources from the Western Sahara.

1.2.2 The purchase of products (particularly phosphates) in New Zealand that have been sourced from the Western Sahara.

1.3 We recommend:

1.3.1 Continuing to align our position with that of the New Zealand government and the UN. Currently, New Zealand offers full support to the United Nations Mission for the Referendum in Western Sahara (MINURSO mission), to allow the people of the Western Sahara to determine their future through a referendum.

1.3.2 Maintaining a watching brief on the situation in the Western Sahara. This includes:

- a) Monitoring press on the situation.
- b) Continuing conversations with MFAT to keep abreast of the views of MPI, the Prime Minister and other Ministers on the issue.
- c) Monitoring any new commitments by companies to stop sourcing phosphate or other resources from the Western Sahara.

1.3.3 Continued engagement with Ballance, OCP (the Moroccan-state owned company supplying Ballance) and other New Zealand industry participants to identify whether any commercially realistic alternatives are available.

1.3.4 Research into the policies of listed companies that have resource extraction operations, or those purchasing phosphates from the Western Sahara, and that are held by the Fund, with a view to engaging if the research findings deem it necessary.

2 Background and context

2.1 In late 2017, we undertook some research into the disputed territory situation in the Western Sahara. See [SD#2318236](#).

2.2 The research was prompted by the 2016 decision by the Norwegian Government Pension Fund to divest from companies with resource extraction operations in the

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region. The companies divested were San Leon Energy, Cairn Energy and Kosmos Energy. The decisions to divest were based on an assessment of the risk of particularly serious violations of fundamental ethical norms. It should be noted that these divestments were not the first that the Norwegian Government Pension Fund had made of companies operating in the Western Sahara. In 2011, they divested from Potash Corporation of Saskatchewan Inc for the same reason (now called Nutrien). *We note that in February 2018, Kosmos Energy and Cairn Energy agreed to stop operations in the Western Sahara region. Nutrien has also recently made some (not full) commitments to stop sourcing phosphates from the Western Sahara.*

2.3 [REDACTED] The Fund has exposure to OCP via fixed income holdings, not equity.

2.4 [REDACTED]

2.5 In 2017, a shipment of phosphate, ordered by Ballance from OCP, destined for New Zealand, was seized in South African waters. In February 2018, a South African court ruled that shipment of phosphate belongs to the government-in-exile and not a state owned Moroccan company.

2.6 That same week, The European Court of Justice (ECJ) ruled that a 2006 fisheries agreement between the Morocco and the EU does not apply to the waters off the coast of Western Sahara. The ECJ ruled that "if the territory of Western Sahara were to be included within the scope of the Fisheries Agreement, that would be contrary to certain rules of general international law... [including] the principle of self-determination." These rulings give a clear message that any product sourced from the Western Sahara must have the consent of the Polisari people or it may be illegal.

2.7 Further, in late 2017, Farmright received an email from a member of the NZ public querying their position on the import of pf phosphate sourced from the Western Sahara for farms owned by the New Zealand Super Fund. Our response can be found on page 6 of SD#2402319.

2.8 We also note that importing phosphate from the Western Sahara has attracted widespread criticism globally. New Zealand is now the largest importer of phosphate from the Western Sahara through fertiliser companies Ballance and Ravensdown. They are the main providers of phosphate to all New Zealand agriculture and horticulture industries, including to farms owned by the Guardians. Companies in other countries have stopped or committed to stop sourcing phosphate from the region [REDACTED]

2.9 We briefed the Minister on the issue on the 27 April 2018 and the GNZS Board in the CEO Report for the June 2018 meeting.

Commented [REDACTED] Shall we add a sentence on why this was the case for SA – and why SA took such a stance?
[REDACTED] – good idea. And we should explain that this view is reflective of the African Union, not necessarily a global view. Other jurisdictions e.g. Panama have had similar situations where the decision has been the reverse.

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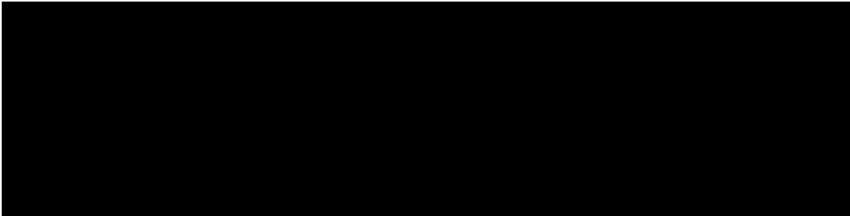
3 Next steps

3.1 International engagement

3.1.1 We note that recent months have seen a significant number of the companies with operations in the Western Sahara leaving or committing to leave the area. At 30 June 2017, GNZS had identified 10 companies with resource extraction operations in the Western Sahara or that were purchasing phosphate sourced from the Western Sahara (not all are in held in the portfolio). By early June 2018, 5 of these companies had made commitments to stop sourcing from the Western Sahara region. Therefore, we see that pressure for companies to stop sourcing from the area is having an impact.

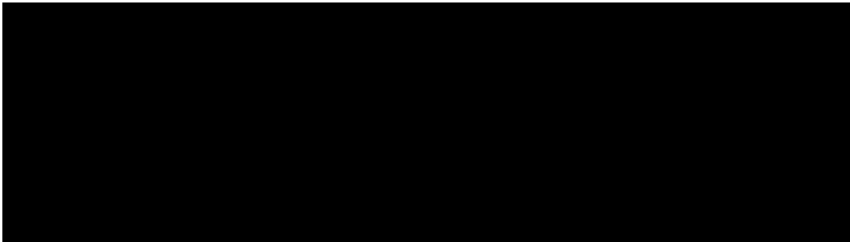
3.1.2 At the current time, we are of the view that the best approach is to review the human rights policies of the companies held in the Guardian's portfolio with extraction operations in the WS, and that haven't made commitments to leave the area. After reviewing the policies, we can decide whether they sufficiently support the rights and wishes of the Western Sahari people. If they are deemed to be insufficient, we can plan an engagement that would be undertaken on behalf of the CFIs. Engagement would seek to ensure that companies have appropriate polices in place to ensure that the Western Sahari people are not exploited. Engagement with (non-NZ) companies that are sourcing phosphates from the region to find out if they are looking for commercially realistic alternatives may also be useful.

3.1.3



3.1.4 Divestment is only undertaken in rare situations where we believe that either our engagement attempts have been unsuccessful or that engagement may not be the best course of action. If we decide to exclude a company then we will make that decision public and give the reasons why.

3.1.5



3.2 Engagement in New Zealand

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3.3 To date, GNZS and FarmRight have engaged with MFAT, Ballance, OCP (the Moroccan-state owned company supplying Ballance) and other industry participants to understand more about the issue and to identify whether any commercially realistic alternatives are available. MFAT has briefed the PM and Minister on the issue and MPI is currently undertaking economic analysis investigating alternative sourcing options, their feasibility and impact.

3.4 Once we get [redacted] notes on Ballance meeting, I can summarise a para here of their views.
[redacted]

3.5 We will continue to stay abreast of the issue.

4 Summary

4.1 Next steps will focus on:

4.1.1 Await response to engagement letters sent June 2018.

4.1.2 Continue engagement with Ballance, FarmRight and other key stakeholders in the industry, supporting them to look at alternative options for sourcing phosphates.

4.1.3 Keep a close eye on the Government response to the issue, including the work of MPI and MFAT.

Commented [redacted]

Commented [redacted] For [redacted]

C2 - Internal Use Only**5 Supporting documents**

Document	Document Number
[REDACTED]	<u>SD#829229</u>
Global Phosphate Reserves 2018 – from MFAT	<u>SD#2503940</u>
Global Sovereignty disputes research (Taiwan equity listings included)	<u>SD#2503714</u>
Greens PQ on Potash and FMC February 2012	<u>SD#299546</u> and <u>SD#299296</u>
[REDACTED]	<u>SD#797122</u>
[REDACTED]	<u>SD#797121</u>
MFAT Call on Western Sahara Minutes 15 March 2018	<u>SD#2462680</u>
NZ Goods and Services Trade by Country – Year ended March 2017 – from MFAT	<u>SD#2503944</u>
Phosphate Statistics 2018 – from MFAT	<u>SD#2503943</u>
[REDACTED]	<u>SD#884438</u>
Q&As for FarmRight response to Phosphate sourcing	<u>SD#2402319</u>
Summary of other disputed territories that are facing similar issues to WS	<u>SD#2503714</u>
<u>Summary of Western Sahara Phosphate sourcing issue 2018</u>	<u>SD#2456839</u>
Western Sahara further research and <u>Media search</u>	<u>SD#2317517</u>
<u>Western Sahara Research 2017</u>	<u>SD#2318236</u>
<u>Notes of 2018 meetings/calls with MFAT</u>	
<u>15 March 2018</u>	<u>SD#2462680</u>
<u>10 May 2018</u>	<u>SD#2509462</u>
<u>29 May 2018</u>	<u>SD#2512639</u>
<u>31 March 2018 Briefing to Minister</u>	<u>SD#2472764</u>
<u>CEO Report to Board (June 2018) DRAFT</u>	<u>SD#2514773</u>

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Western Sahara – position thinking

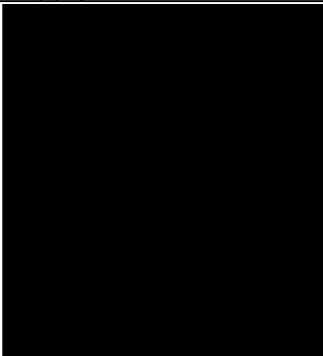
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	Investment in listed companies that are extracting resources from WS	Purchasing product from Ballance (our phosphate supplier) who in turn buys phosphate from Moroccan owned OCP
NZ's international obligations	<ul style="list-style-type: none"> • No international obligations (by law) • However, recent international legal decisions have founded that resources extracted from the WS belongs to the Western Saharai people, not the company that extracted them. • NZ is aligned with the UN position that supports the rights for the people of the Western Sahara to hold a referendum (which has not happened for 33 years now) 	
NZ law	<ul style="list-style-type: none"> • No law in NZ prevents investment in companies operating in the WS or from purchasing product that is sourced from the WS • [REDACTED] 	
NZ policy position		<ul style="list-style-type: none"> • [REDACTED] • Ministers are receiving letters requesting NZ stop purchasing phosphates from the WS. • NZ public has, on occasion, protested when shipments of phosphate from the WS have come into NZ. • The PM has visited the area and the seen the refugee camps. • [REDACTED] • Supporting the extraction of resources from a disputed territory is misaligned with NZs views on supporting indigenous rights.
Peer actions	<ul style="list-style-type: none"> • Peers such as the Norwegian Government Pension Fund, NEST (UK), APG, BMO Global Asset Management have excluded companies 	<ul style="list-style-type: none"> • NZ is one of the last remaining countries to continue sourcing phosphate from the WS. • This is a NZ-wide problem as the majority of

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	<p>that extract resources from the area.</p> <ul style="list-style-type: none"> Exclusions happened in 2012 and again in 2016. 	<p>phosphates that come into NZ for all agriculture and horticulture use come from the WS region.</p> <ul style="list-style-type: none"> There are some organisations in NZ that have managed to source from other areas (xx)
<p>Severity of breach</p>	<ul style="list-style-type: none"> Pre 2018, this would have been minor. But with the recent international legal outcomes, with Kosmos Energy, Cairn Energy and Agrium deciding to cease operations/sourcing from the region, severity of breach has increased. [REDACTED] 	<ul style="list-style-type: none"> We expect increased international and local pressure on NZ to stop sourcing phosphates from the WS
<p>Alternatives to divestment</p>	<ul style="list-style-type: none"> NZSF has previously engaged with companies operating in the region, with some success. We have been happy with engagement responses. There are only 10 companies (that we are aware of) that have operations in the WS. NZSF has holdings in xx. Of these, only xx are extracting resources. In the last 12 months, 3 companies have committed to stop operations/sourcing from the region. [REDACTED] view: While engagement can ensure that global best practice policies are in place and that profits are fed back into the community, the WS people are still fighting that the resources are theirs to sell, not someone else's. So, while engagement 	<ul style="list-style-type: none"> [REDACTED] [REDACTED] NZSF is part of the Ballance coop. Therefore, exercising influence could be useful. [REDACTED] OCP has given a lot back to the WS community but there is still the argument that they are taking resources that aren't their own. An issue close to NZ's heart.

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	<p>can drive good practices, it is not the right approach to take if international legal rulings state that the resources belong to the WS people.</p>	<ul style="list-style-type: none"> • This is a NZ wide issue and NZSF, acting in isolation (if we leave the Ballance coop and source alternatively on our own) may not be the most effective option.
<p>Similar policy position by GNZS</p>	<ul style="list-style-type: none"> • OPT: GNZS has excluded building & construction companies operating in the OPT (we note that the WS is disputed rather than occupied). • Palm oil: GNZS has not excluded palm oil producing companies because the industry is showing signs of change/progress. Engagement is proving helpful. However, we have stopped using PKE on our farms as we could not secure a sustainably sourced supply. 	<ul style="list-style-type: none"> • OPT: GNZS has excluded building & construction companies operating in the OPT but has not excluded companies purchasing product sourced there or selling services within the OPT. • PKE: GNZS stopped using PKE on our farms as we could not secure a sustainably sourced supply. However, we are still invested in listed palm oil producers as engagement is having an effect and there are signs that the industry is changing.
<p>RECOMMENDATION</p>	<ul style="list-style-type: none"> •  	<ul style="list-style-type: none"> • Given the nation-wide issue that this, we recommend engaging with Ballance to see if they can source alternatives and to investigate what it would take to upgrade their processing plant to state of the art. • If GNZS was sourcing phosphate directly through Farmright, then we would recommend stopping. But given the coop nature of Ballance, we recommend exerting our influence and acting in alignment with the horticulture and agriculture industry.

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Filenote: Meeting with MFAT, Wellington

29 Aug 2018

Attendees: [REDACTED]

Meeting notes

GNZS: [REDACTED] talked through the OIA on the OPT, how we look at exclusion boundaries and gave an update on work we have been doing regarding the Western Sahara (including 2 new engagements with international companies).

MFAT: [REDACTED] noted that, after a quiet period, they have received two new OIAs relating to the Western Sahara in the last week. [REDACTED]

The first OIA will capture the briefing the MFAT gave to the PM back in May/June. It also captures the conversations MFAT has had with us, with the Fertiliser Association of NZ and other industry stakeholders. MFAT showed me the text regarding NZSF that will be released and I have confirmed that is fine with us.

The MPI work on the economics of alternative sourcing options has not yet been completed.

The other OIA was a ministerial to the PM and relates to her thoughts on the issue going forward.

MFAT also noted an incoming Moroccan visit – the Speaker of the Moroccan parliament on 12-15th Sept.

[REDACTED] It states that they expect companies to get their own legal advice and import from the region at their own risk.