

Chair  
CABINET ECONOMIC GROWTH AND INFRASTRUCTURE COMMITTEE

## COMPLETION OF THE OVERSEAS INVESTMENT ACT REVIEW

### Proposal

1. This paper seeks agreement to complete the review of the Overseas Investment Act by making the following changes:
  - a. introducing two new factors to the benefit test that is used to assess foreign investments in sensitive land; and
  - b. outlining this Government's policy on foreign investment more clearly by amending the Directive Letter issued to the Overseas Investment Office (OIO).

### Executive Summary

2. The proposals in this paper seek to address two issues:
  - a. **Increasing Ministerial flexibility to consider a wider range of issues when assessing foreign investments in sensitive land.** It is important that the screening regime provides sufficient flexibility to allow Ministers to consider all relevant concerns about foreign investment that may occur not only now, but also in the future. While it is difficult to specify in advance what all the relevant issues and concerns might be, examples of current concerns include:
    - concerns about the aggregation of foreign ownership of farmland, both at an individual investor level and by foreign investors as a whole;
    - concerns that foreign investors will create vertically-integrated firms in the agricultural sector, which may control the market for agricultural products; and
    - concerns that some foreign investors may seek to control resources for non-economic reasons.

I consider that the current screening regime does not provide the required flexibility to consider these issues.

- b. **Improving clarity and certainty for investors.** A consistent message from investors - regardless of the restrictiveness of the investment screening regime - is that providing certainty and clarity is the key priority. To avoid deterring valuable investment I consider that it is important to provide as much certainty and as stable an investment environment as possible.

3. In order to address these two issues I propose making the following changes to the benefit test that is used to assess foreign investments in sensitive land:

- a. **Introduce an ‘economic interests’ factor** to allow Ministers to consider whether New Zealand’s economic interests are adequately promoted. The factor will improve Ministerial flexibility to respond to both current and future economic concerns about foreign investment.
- b. **Introduce a ‘mitigating factor’** that will enable Ministers to consider whether the investment provides opportunities for New Zealand regulatory oversight or involvement in the investment. *[Withheld - maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials]* The factor aims to address two concerns: a concern that some investors may operate in jurisdictions where reporting standards are less transparent or robust than in New Zealand; and a concern that it may not be in New Zealand’s interests to relinquish total control of an asset.

4. I also propose issuing a new Directive Letter to the Overseas Investment Office (OIO). The Letter aims to improve investor certainty by outlining the Government’s general attitude towards foreign investment in sensitive assets, and by providing advice to the OIO about which factors in the benefit test are likely to be more or less important for the assessment of particular types of investments.

5. It is important to note that the proposed new factors will only apply to foreign investments in sensitive land. The factors assessing investments in significant business assets cannot be altered without amending the Act.

6. In addition, the new factors cannot in themselves be used to decline an investment application. As part of the benefit test, any new factor must be weighed up against the contribution the investment makes to the 19 other factors that form part of the test.

7. Alongside introducing the new factors, I propose removing the current ‘strategic assets’ factor from the benefit test. I consider that this factor will become redundant with the addition of the ‘economic interests’ factor, which can cover similar concerns. In addition, one of the aims of the ‘economic interests’ factor is to create enough flexibility to avoid having to make sudden changes to the screening regime in order to address particular issues or concerns. Given this aim, I consider it is appropriate to remove the strategic assets factor as a sign of our commitment to create policy stability in this area.

8. In making an assessment of the proposed changes it is important to remember that the screening regime already provides the ability to consider a wide range of economic, social and environmental issues. For example, Ministers can already consider whether the investment results in new jobs, increased processing of primary products, and adequate protection for indigenous vegetation. A full list of the factors that need to be considered as part of the benefit test is outlined in Annex 1.

## Background

### The aim of New Zealand's foreign investment screening regime

9. New Zealand's foreign investment screening regime aims to strike a balance between three key objectives:

- a. **Addressing public concerns about foreign investment.** These may include concerns about profits going offshore, loss of ownership value and that overseas investors may not share the same values as domestic investors.
- b. **Welcoming desirable foreign investment in recognition of the benefits that it brings to New Zealand.** For example, foreign investment can help overcome domestic saving constraints, bring more productive and better managed firms to New Zealand, and provide spill-over benefits to the local economy such as greater competition and demonstration effects (i.e. local firms learning from foreign-owned firms).
- c. **Providing a stable investment environment.** Public concerns about foreign investment can change over time, but it is not desirable to frequently change our investment screening policy settings, particularly at short notice. Therefore, foreign investment policy needs to be flexible enough to address domestic concerns that may arise now and in the future, while providing adequate certainty for investors that the 'rules of the game' are unlikely to change suddenly.

10. The proposals in this paper seek to better align New Zealand's investment screening regime with these objectives.

### About the Act

11. The Overseas Investment Act 2005 ("the Act") regulates investments by overseas persons in sensitive New Zealand assets. The purpose of the Act is to acknowledge that it is a privilege for overseas persons to own or control sensitive New Zealand assets. Three categories of sensitive assets are covered by the regime: significant business assets, sensitive land and fishing quota.

12. Significant business investments by overseas investors of over \$100 million are screened. When applying for consent, investors must show that they have business acumen and experience, financial commitment and good character (the 'investor test').

13. Overseas investments in land are screened if the land is considered sensitive under the Act. Examples of sensitive land include non-urban land exceeding five hectares, any foreshore and seabed, land on certain islands, and land held for conservation purposes.

14. Investors wishing to purchase sensitive land must also pass the investor test and additionally demonstrate that the investment will benefit New Zealand. Benefit is assessed against a number of factors (the 'benefit test'). Factors in the benefit test assess economic, environmental and social benefits. The benefit assessment is made by assessing how an investment creates benefit across the range of factors. Not every factor is necessarily relevant to every investment and Ministers may determine the relative importance of each factor.

## About the review

15. In February 2009 the Government agreed to a regulatory review programme that included a review of the Act and the Overseas Investment Regulations 2005 [CAB Min (09) 6/5A refers]. The objective of the review was to create an overseas investment screening regime which promotes and encourages the flow of investment into New Zealand while addressing valid concerns about foreign investment. The key focus was to reduce unnecessary compliance costs which delay valuable investment.

16. A number of administrative and regulatory improvements have already been made to the screening regime, including:

- a. Greater decision-making powers delegated to the OIO, allowing it to decide all applications except those relating to sensitive rural land or land adjoining waterways. This ended the need for a large number of Ministerial decisions. This change was made by issuing a new Directive Letter to the OIO.
- b. Several types of investment applications of a minor, technical or temporary nature were exempted from screening, for example underwriting transactions or sales within a group of companies with shared ownership. This change was made by regulatory amendment.
- c. Clearer directions were provided to the OIO regarding when the Government wants to purchase special land when it is offered for sale. This reduced the time and costs for applicants. This change was made by issuing a new Directive Letter to the OIO.
- d. Clearer directions were provided to the OIO on what reserves and public parks should be included in a list under the Act. Under the Act any land adjoining land on this list is considered sensitive. Direction was provided that the list should be limited to land held for a purpose relating to protecting or providing public access to natural and physical resources or historic heritage. This change was made by issuing a new Directive Letter to the OIO.

17. Initial proposals to amend the Act and Regulations were subsequently considered by Cabinet in August 2009 [CAB Min (09) 27/12 refers] and officials were asked to do further work on possible changes to legislation. However, since that time it has become clear to me that the review needed to be refocused on addressing the following issues:

- a. **Increasing Ministerial flexibility to consider a wider range of issues when assessing foreign investments in sensitive land.** It is important to ensure that the screening regime can address concerns that foreign investment, in some cases or sectors, may be detrimental to New Zealand's interests. I consider that the current screening regime does not provide sufficient flexibility to allow consideration of all relevant issues or concerns. While it is difficult to specify in advance what all the relevant issues and concerns might be, examples of current concerns not directly considered by the regime include:
  - concerns about the aggregation of foreign ownership of farmland, both at an individual investor level and by foreign investors as a whole;
  - concerns that foreign investors may create vertically-integrated firms in the agricultural sector, which may control the market for agricultural products with little or no New Zealand involvement; and

- concerns that some foreign investors may seek to control resources for non-economic reasons.

- b. **Improving clarity and certainty for investors.** I am aware that there is a degree of uncertainty amongst investors over the Government's policy on foreign investment, particularly with regard to whether there may be 'sensitive' sectors that are 'off-limits' or subject to special conditions. A consistent message from investors is that, regardless of the restrictiveness of the investment regime, providing certainty and clarity is the key priority. To avoid deterring valuable investment it is important to provide as much certainty as possible for investors.

18. In designing options to address these problems I have asked officials to develop proposals that can be implemented by regulation. I consider amending the Act would be undesirable because of the time required to do so. Addressing the issues relatively quickly will help maintain public confidence and improve certainty for investors. I consider the benefits of making changes by regulation exceed the risks (these risks are discussed later in this paper).

19. I propose to make three changes to the screening regime. These are to introduce two new factors to the benefit test and to outline Government policy on foreign investment more clearly. These changes are discussed separately below.

### ***Proposals to amend New Zealand's foreign investment screening regime***

#### **Proposal one: Introduce new factors to the benefit test**

20. I propose that two new factors are added to the benefit test that is used to assess investments in sensitive land. I also propose that the 'strategic infrastructure assets' factor be revoked on the grounds that the new factors will address similar issues.

#### ***'Economic interests' factor***

21. I propose to introduce an 'economic interests' factor with the purpose of:

- a. allowing Ministers to consider a wider range of economic issues in their assessment of a particular investment, specifically whether New Zealand's economic interests are adequately promoted; and
- b. providing Ministerial flexibility to respond to both current concerns about foreign investment and concerns that may arise in future.

22. *[Withheld - maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials].*

23. The new factor must be drafted to consider positive effects (rather than considering detriments) in order for it to fit with the existing benefit test. As a result, the above example is drafted to consider how the investment will promote or safeguard economic interests, rather than considering whether it will result in economic harm.

24. I also propose to define 'New Zealand's long-term economic interests', at a high level, in the regulations. The definition will help investors and the OIO understand what New Zealand's economic interests are so that investors know what they should be addressing in their applications and the OIO knows how to assess them.

25. *[Withheld - maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials].*

*'Mitigating factor'*

26. In addition to creating an 'economic interests' factor, I propose to include a 'mitigating factor' in the benefit test. The aim of this factor is to enable Ministers to consider whether the investment provides opportunities for New Zealand regulatory oversight or involvement in the investment. Such a factor might address concerns that some investors may operate in jurisdictions where reporting standards are less transparent or robust than in New Zealand, and public concerns that it is not in New Zealand's interests to relinquish total control of an asset *[Withheld - maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials]*

27. *[Withheld - maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials].*

## What the new factors achieve

### *Ministerial flexibility*

28. The factors create additional flexibility in the screening regime by allowing Ministers to consider what New Zealand's economic interests are in relation to a particular investment, whether they are promoted and whether New Zealanders have an appropriate level of involvement or oversight. The factors have deliberately been designed to be broad, so that they can consider both current concerns and those that may arise in future. By allowing a wider range of issues to be considered, I expect that public confidence in the screening regime will be improved.

### *Investor certainty*

29. Additional Ministerial flexibility could result in a reduction in investor certainty given the range of possible interpretations of 'economic interest'. I aim to reduce this risk by providing guidance to investors through a Government statement on foreign investment. In addition, the high-level definition of 'economic interests' will provide additional guidance about what these are. Adding the 'economic interests' factor may also create a more stable investment environment if the flexibility it provides can avoid the need for rapid and short notice changes to the screening regime in future.

30. The table below indicates how the new factors could take account of concerns that have been the subject of recent public discussion:

Concern	How the concern is addressed
Aggregation of farmland by individual foreign investors	<ul style="list-style-type: none"><li>• Could be considered as part of the assessment of whether economic interests will be safeguarded.</li></ul>
Foreigners, as a group, owning a large portion of New Zealand's farmland	<ul style="list-style-type: none"><li>• Could be considered as part of the 'mitigating factor' [<i>Withheld - maintain constitutional conventions protecting the confidentiality of advice</i>]. It is very difficult to completely address this issue without creating an effective ban or limit on total foreign ownership of land.</li></ul>
Lack of transparency of how some investors operate	<ul style="list-style-type: none"><li>• Could be considered as part of the 'mitigating factor' which allows for a degree of New Zealand regulatory oversight.</li></ul>
Foreign ownership of 'strategic assets'	<ul style="list-style-type: none"><li>• Could be considered as part of the assessment of whether economic interests will be safeguarded or promoted.</li></ul>
Foreign government investors with non-commercial motivations	<ul style="list-style-type: none"><li>• Could be considered as part of the assessment of whether economic interests will be safeguarded.</li></ul>

	<ul style="list-style-type: none"> <li>• Also addressed if 'mitigating factors' allow for a degree of New Zealand oversight.</li> </ul>
Vertically-integrated foreign-owned firms reducing returns to New Zealand	<ul style="list-style-type: none"> <li>• Could be considered as part of the assessment of whether economic interests will be safeguarded or promoted.</li> <li>• Also addressed if 'mitigating factors' allow for a degree of New Zealand control and oversight.</li> </ul>

### **How the factors will be applied**

31. To apply the new factors, Ministers must first determine whether they are relevant to a particular investment in sensitive land. Ministers and the OIO use judgement to make this assessment on a case-by-case basis. It is unlikely that the factors will be relevant in every sensitive land investment, for example, in the case of an overseas investor purchasing a holiday home with a few hectares of land. I intend to issue guidance to the OIO about the types of investments where these factors are likely to be important.

32. Ministers and the OIO must then determine, case-by-case, the relative importance of these factors and whether they have been adequately addressed in the application. This assessment is based on a consideration of what New Zealand's economic interests are in relation to the investment. Again, I propose to issue guidance to the OIO about how to interpret this factor.

### ***Proposal two: Outlining Government policy on foreign investment***

33. To avoid deterring investment it is important that investors have a degree of certainty about government policy towards foreign investment, regardless of whether these policies are open or restrictive.

34. To provide greater clarity, I propose that the Government set out its position on foreign investment in the Directive Letter to the OIO. Outlining this Government's policy is also important to show that New Zealand remains open and welcoming to foreign investment.

35. The current letter already provides guidance but there is an opportunity to improve and update it to take account of the changes proposed in this paper. I propose the Letter cover the following issues:

- a. the Government's general attitude towards foreign investment in sensitive assets; and
- b. advice to the OIO about which factors in the benefit test are likely to be more or less important for particular types of investments. For example, this might include that the 'economic interests' factor will be relatively more important for investments in large agricultural holdings.

36. Providing guidance on these points may help to improve investor certainty by providing better clarity about the Government's general policy objectives and where factors are more or less important for certain investments.

37. The main risk of using the Directive Letter in this way is that it could be amended at short notice if the Government wanted to change its policy in response to a certain



investment. Doing this would undermine our objective of providing a certain and stable investment environment.

## Overall impact

38. The two problems this paper seeks to address are conflicting to some degree. That is, creating more flexibility for Ministers is difficult to achieve without increasing uncertainty for investors. However, I consider that the proposals in this paper will achieve a reasonable balance between both of these objectives.

39. It is difficult to judge the effect the new factors and the government policy statement would have on any one investment. As noted above, the new factors will allow Ministers to consider a wider range of issues when assessing an investment in sensitive land. The practical effect of the new factors will depend on whether the investment creates other benefits and how these other benefits are weighed relative to the new factors.

40. In making an assessment of the overall impact it is also important to remember the powers that already exist in the screening regime. The current screening regime already provides the ability to consider a wide range of economic, social and environmental issues. For example, Ministers can already consider whether the investment results in new jobs, increased processing of primary products, and adequate protection for indigenous vegetation. A full list of the factors used to assess the benefit of an investment in sensitive land is outlined in Annex 1. Relative to other countries New Zealand has a comprehensive regime and the OECD ranks our foreign investment regime as one of the most restrictive.

## Constraints and risks

41. The options outlined in this paper pose a number of constraints and risks as described in the table below.

Risk/limitation	Summarised description
The new factors are not pass/fail tests.	The factors cannot in themselves be used to decline an investment application. Being part of the benefit test, any new factor must be weighed up against the contribution the investment makes to the 19 other factors in the test.
The new factors apply only to investments in sensitive land.	As the factors would be introduced by regulation they can only apply to the assessment of investments in sensitive land.
Investor perceptions and impact on inward investment.	There is a risk that foreign investors will view the changes to the screening regime as a sign that New Zealand is less open to foreign investment, with a negative impact on investment flows into New Zealand. The Directive Letter will improve investor certainty, but the difficulty of defining 'economic interests' precisely will mean that some uncertainty remains.
Consistency with international obligations/trading partner perceptions.	MFAT has advised that the proposals in this paper are likely to be consistent with New Zealand's international obligations, although this will depend on the final design of the factors. <i>[Withheld - maintain the effective conduct of public affairs through the free and frank expression of opinions]</i>
Out of step with comparator countries	There is a risk that the proposals are viewed as out of step with the approaches taken in other countries in relation to sensitive land, particularly Canada and Australia. While all business activities carried out by a non-Canadian must be

	notified to Investment Canada, Canada does not subject specific investments in rural or agricultural land to a review or screening process. Similarly, Australia only screens investment in rural land valued above \$A231 million.
Avoidance	It is possible that investors may be able to structure investment transactions so they meet some of the provisions of the 'mitigating factor' at face value, rather than in practice. For example, a key risk is that investors are able to appoint New Zealand proxies who act on their behalf. This risk can be reduced with strong conditions and monitoring by the OIO but may require additional resources for the OIO.
Review by the Regulations Review Committee.	The Regulations Review Committee has previously recommended that the ability to alter the factors in the benefit test by regulation be removed or restricted. Using the regulation-making power again could result in further criticism from the Committee. This risk can be reduced if it is clear that the changes are not targeted at any particular investment and will not be applied to any applications that have already been made to the OIO.

## Consultation

42. The following organisations have been consulted in the development of this paper: Overseas Investment Office, Ministry of Foreign Affairs and Trade, Ministry of Agriculture and Forestry, Ministry of Economic Development, and the Ministry of Fisheries.

43. The following organisations were informed of the proposals: Department of Prime Minister and Cabinet, Ministry of Conservation, Walking Access Commission, New Zealand Trade and Enterprise, Department of Internal Affairs, Te Puni Kōkiri, Ministry for the Environment, and the Department of Labour.

44. The Technical Reference Group established to support the review has also been informed of the proposals.

## Agency Comments

### *Treasury*

45. The Treasury does not see a strong policy rationale for screening overseas investment on the basis that the underlying policy concerns tend to occur regardless of the investor's nationality. For example, concerns about aggregation of farmland and vertical integration are likely to be more closely related to issues of market power, which can arise regardless of the nationality of the investor.

46. The Treasury considers that the changes proposed in this paper are undesirable on the basis that they create relatively more Ministerial flexibility than investor certainty and unnecessarily extend the reach of the screening regime. However, it is important to keep in perspective that the screening regime is only one of many factors that influence the desirability of New Zealand as a place to invest and the changes are unlikely to have a significant effect on investment flows.

47. *[withheld - maintain professional legal privilege]*

*[Withheld - maintain the effective conduct of public affairs through the free and frank expression of opinions].*

## **Financial Implications**

48. There are no immediate financial implications arising from the proposals in this paper. However the proposals are likely to increase the time required for the OIO to assess investment applications and to monitor compliance with any conditions of consent.

49. Officials will assess the size and impact of these effects six months after any changes have come into force. Depending on the outcome, additional resources may be required at the OIO, which would need to be supported by increasing the fees charged to investors.

## **Legislative Implications**

50. The policy proposals will require amendments to the Overseas Investment Regulations 2005. This paper seeks agreement to issue drafting instructions to Parliamentary Counsel Office to give effect to the policy proposals.

## **Regulatory Impact Analysis**

### ***Regulatory Impact Analysis Requirements***

51. The Regulatory Impact Analysis (RIA) requirements apply to the proposals in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached.

### ***Quality of the Impact Analysis***

52. The Regulatory Impact Analysis Team (RIAT) has reviewed the RIS prepared by the Treasury and associated supporting material, and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria, as full consultation on the options presented was not able to be carried out. Consultation was limited to certain government agencies. A full consultation would have included:

- the expert Technical Advisory Group (which was only able to be informed of the proposals), could have provided information on the full impacts of the options proposed, and suggestions for their improvement; and
- the public, which could have provided further definition of the 'public concerns' that these proposals seek to address.

53. Given the limited consultation there is a risk that the full impacts of the options proposed have not been able to be identified.

54. The RIS appropriately highlights the uncertainties over the existence, nature and scale of the problem, and that the overseas investment screening regime may not be the appropriate way to address any problem.

### **Consistency with Government Statement on Regulation**

55. I have considered the analysis and advice of my officials, as summarised in the attached Regulatory Impact Statement and I am satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper:

- are required in the public interest;
- will deliver the highest net benefits of the practical options available; and
- are consistent with the commitments in the Government Statement on Regulation.

### **Other Implications**

56. There are no gender, disability or human rights implications arising from this paper.

### **Publicity**

57. I propose to make public announcements on these changes to the screening regime in the next few days. It will also be important to reassure investors that New Zealand remains open and welcoming to foreign investment and that there is no cause for alarm with the proposed changes. As part of my upcoming investor trips to the United Kingdom and Japan I will also be emphasising these messages to investors.

58. *[withheld - maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials]*

### **Recommendations**

59. I recommend that the Committee:

#### **Changes to the benefit test for investments in sensitive land**

1. **Agree** that a new 'economic interests' factor be added to the benefit test used to assess investments in sensitive land with the objective of:
  - 1.1 allowing Ministers to consider a wider range of economic issues in their assessment of a particular investment, in particular whether New Zealand's economic interests are adequately promoted; and
  - 1.2 providing Ministerial flexibility to respond to both current concerns about foreign investment and concerns that may arise in future.

2. *[withheld - maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials]*
3. **Agree** that the term 'economic interests' should be defined at a high level in the regulations.
4. *[withheld - maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials]*
5. **Agree** that a new 'mitigating factor' be added to the benefit test that enables Ministers to consider whether the investment provides opportunities for New Zealand regulatory oversight or involvement in the investment.
6. *[withheld - maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials]*
7. *[withheld - maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials]*
8. **Agree** that the 'strategic infrastructure assets' factor (regulation 28(h)) be revoked because the new factors will cover similar issues.
9. **Agree** that the two new factors above be introduced by regulation.
10. **Note** that the new factors will only apply to foreign investments in sensitive land, and not to investments in significant business assets and fishing quota.
11. **Agree** that the new factors will only apply to investment applications that are made after any regulation changes to implement the new factors come into force.

### **Government policy statement**

12. **Agree** that the Directive Letter to the Overseas Investment Office (OIO) be amended to outline government policy on:
  - 7.1 the Government's general attitude towards foreign investment in sensitive assets; and
  - 7.2 advice to the OIO about which factors in the benefit test are likely to be more or less important for particular types of investments.

### **Other matters**

13. **Agree** to conclude the review of the Overseas Investment Act.
14. **Note** that I intend to make public announcements on the conclusion of the review and changes to the screening regime in the next few days.
15. **Agree** that this paper be publicly released (with appropriate withholdings) along with the attached Regulatory Impact Statement.
16. *[withheld - maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials]*
17. *[withheld - maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials]*
18. **Invite** the Minister of Finance to issue drafting instructions to Parliamentary Counsel Office to give effect to the above proposals.

Hon Bill English  
**Minister of Finance**

Date:

## Annex 1: Overseas investments in sensitive land

*Sensitive land is broadly defined in the Overseas Investment Act 2005 as:*

Land that it is or includes this type of land...	...and exceeds
non-urban land	5 hectares
bed of a lake; land on specified islands; land held for conservation purposes; reserve, as a public park, for recreation purposes, or as open space; land subject to a heritage order; or a historic place	0.4 hectares
foreshore or seabed; land on other islands (other than North or South Island)	-
Land that adjoins...	...and exceeds
Foreshore	0.2 hectares
bed of a lake; land held for conservation purposes; scientific, scenic, historic, or nature reserve; regional park; reserve, a public park, or other sensitive area; sea or a lake; land subject to a heritage order; or a historic place	0.4 hectares

### *Factors and criteria used to assess investments in sensitive land*

To gain consent to invest in sensitive land, an investor must meet the investor test of business experience and acumen, have financial commitment and be of good character.

In addition the investor must show:

- that the investment, will, or is likely to, benefit New Zealand;
- if the relevant land includes non-urban land that exceeds 5 hectares, that benefit will be, or is likely to be, substantial and identifiable; and
- if the relevant land is or includes farmland, that the farmland or has been offered for sale on the open market.

The factors are used to assess whether the investment will benefit New Zealand are listed on the following page.

<b>Economic factors</b>	<p><b>Whether the overseas investment will, or is likely to, result in:</b></p> <ul style="list-style-type: none"> <li>• the creation of new, or the retention of existing, jobs in New Zealand; or</li> <li>• the introduction into New Zealand of new technology or business skills; or</li> <li>• increased export receipts for New Zealand exporters; or</li> <li>• added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand; or</li> <li>• introduction into New Zealand of additional investment for development purposes; or</li> <li>• increased processing in New Zealand of New Zealand's primary products.</li> </ul>
<b>Environmental factors</b>	<p><b>Whether there are or will be adequate mechanisms in place for protecting or enhancing:</b></p> <ul style="list-style-type: none"> <li>• existing areas of significant indigenous vegetation and significant habitats of indigenous fauna, for example, any 1 or more of the following:</li> <li>• conditions as to pest control, fencing, fire control, erosion control, or riparian planting</li> <li>• covenants over the land.</li> <li>• existing areas of significant habitats of trout, salmon, wildlife protected under section 3 of the Wildlife Act 1953, and game as defined in section 2(1) of that Act.</li> </ul>
<b>Social factors</b>	<p><b>Whether there are or will be adequate mechanisms in place for providing, protecting, or improving walking access to:</b></p> <ul style="list-style-type: none"> <li>• the habitats described above, by the public or any section of the public;</li> <li>• the relevant land or a relevant part of that land by the public or any section of the public.</li> </ul> <p><b>Whether there are or will be adequate mechanisms in place for protecting or enhancing historic heritage within the relevant land, for example, any 1 or more of the following:</b></p> <ul style="list-style-type: none"> <li>• conditions for conservation (including maintenance and restoration) and access;</li> <li>• agreement to support registration of any historic place, historic area, wahi tapu, or wahi tapu area under the Historic Places Act 1993;</li> <li>• agreement to execute a heritage covenant;</li> <li>• compliance with existing covenants.</li> </ul> <p><b>If the relevant land is or includes foreshore, seabed, or a bed of a river or lake, whether that foreshore, seabed, riverbed, or lakebed has been offered to the Crown.</b></p>
<b>Other factors</b>	<p><b>Whether the overseas investment, or the granting of the application for consent, will, or is likely to:</b></p> <ul style="list-style-type: none"> <li>• result in other consequential benefits to New Zealand (whether tangible or intangible benefits)</li> <li>• give effect to or advance a significant Government policy or strategy</li> <li>• enhance the ongoing viability of other overseas investments undertaken by the relevant person</li> <li>• assist New Zealand to maintain New Zealand control of strategically important infrastructure on sensitive land</li> <li>• result in the owner of the relevant land undertaking other significant investments in New Zealand.</li> </ul> <p><b>Whether the overseas person:</b></p> <ul style="list-style-type: none"> <li>• has previously undertaken investments that have been, or are, of benefit to New Zealand</li> <li>• is a key person in a key industry of a country with which New Zealand will, or is likely to, benefit from having improved relations.</li> </ul> <p><b>Whether refusing the application for consent will, or is likely to:</b></p> <ul style="list-style-type: none"> <li>• adversely affect New Zealand's image overseas or its trade or international relations</li> <li>• result in New Zealand breaching any of its international obligations.</li> </ul>