

OVERSEAS INVESTMENT REVIEW: PROPOSED CHANGES TO SENSITIVE LAND TEST

Scope (i.e. what land is screened)

Status Quo	Proposed change (if any)	Rationale for change
IS OR INCLUDES non-urban land > 5ha	IS OR INCLUDES farm land or forestry > 10ha	<ul style="list-style-type: none"> “Non-urban land” wasn’t well defined and captured, for example, industrial parks at edge of cities. Farm land and forestry are more specific definitions. Raising the threshold to 10ha will remove some lifestyle blocks and smaller farms from screening.
IS OR INCLUDES land on specified islands ¹ > 0.4ha		
IS OR INCLUDES land on other islands (other than North or South Island, but including the islands adjacent to the North or South Island)		
IS OR INCLUDES foreshore and seabed		
IS OR INCLUDES bed of lake > 0.4ha		
IS OR INCLUDES land held for conservation purposes under the Conservation Act 1987 > 0.4ha		
IS OR INCLUDES land that a district plan or proposed district plan under the RMA provides is to be used as a reserve, as a public park, for recreation purposes, or as open space > 0.4ha		

¹ Arapawa Island, Best Island, Great Barrier Island (Aotea Island), Great Mercury Island (Ahuahu), Jakkett Island, Kawau Island, Matakana Island, Mayor Island (Tuhua), Motiti Island, Motuhua Island, Rakino Island, Rangiwaia Island, Slipper Island (Whakahau), Stewart Island/Rakiura, Waiheke Island, Whanganui Island

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IS OR INCLUDES land subject to a heritage order, or a requirement for a heritage order, under the Resource Management Act 1991 or by the Historic Places Trust under the Historic Places Act 1993 a historic place, historic area, wahi tapu, or wahi tapu area that is registered or for which there is an application or proposal for registration under the Historic Places Act 1993		
ADJOINS foreshore > 0.2ha		
ADJOINS bed of a lake > 0.4ha		
ADJOINS land held for conservation purposes under the Conservation Act 1987 (if that conservation land exceeds 0.4 hectares in area) >0.4ha		
ADJOINS any scientific, scenic, historic, or nature reserve under the Reserves Act 1977 that is administered by the Department of Conservation and that exceeds 0.4 hectares in area > 0.4ha		
ADJOINS any regional park created under the Local Government Act 1974 > 0.4ha		
ADJOINS land that is listed, or in a class listed, as a reserve, a public park, or other sensitive area by the regulator under section 37 > 0.4a	ADJOINS National Parks > 0.4ha	<ul style="list-style-type: none"> The types of land captured in this category are very broad and include land adjoining local sport and recreation reserves. Narrowing to National Parks will screen only the most sensitive parks and avoid capturing local parks.

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<p>ADJOINS land that adjoins the sea or a lake and exceeds 0.4 hectares and is 1 of the following types of land:</p> <ul style="list-style-type: none"> • an esplanade reserve or esplanade strip (within the meaning of section 2(1) of the Resource Management Act 1991); or • a recreation reserve under the Reserves Act 1977; or • a road (as defined in section 315(1) of the Local Government Act 1974); or • a Maori reservation to which section 340 of Te Ture Whenua Maori Act 1993 applies > 0.4ha 		
<p>ADJOINS land over 0.4 hectares that is subject to a heritage order, or a requirement for a heritage order, under the Resource Management Act 1991 or by the Historic Places Trust under the Historic Places Act 1993 > 0.4ha</p>	Not screened	<ul style="list-style-type: none"> • Land currently screened only <u>adjoins</u> land with these sensitive features, so screening does not strongly support their protection. • Land that <u>is or includes</u> these sensitive features is still screened.
<p>ADJOINS land over 0.4 hectares that includes a historic place, historic area, wahi tapu, or wahi tapu area that is registered or for which there is an application or proposal for registration under the Historic Places Act 1993 > 0.4ha</p>	Not screened	<ul style="list-style-type: none"> • Land currently screened only <u>adjoins</u> land with these sensitive features, so screening does not strongly support their protection. • Land that <u>is or includes</u> these sensitive features is still screened.

Hurdle (i.e. criteria for approval)

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GOOD INVESTOR TEST <ul style="list-style-type: none"> the relevant overseas person has, or (if that person is not an individual) the individuals with control of the relevant overseas person collectively have, business experience and acumen relevant to that overseas investment: the relevant overseas person has demonstrated financial commitment to the overseas investment: the relevant overseas person is, or (if that person is not an individual) all the individuals with control of the relevant overseas person are, of good character: the relevant overseas person is not, or (if that person is not an individual) each individual with control of the relevant overseas person is not, an individual of the kind referred to in section 7(1) of the Immigration Act 1987 (which lists certain persons not eligible for exemptions or permits under that Act): 		
BENEFIT TEST² <ul style="list-style-type: none"> the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined by the relevant Ministers under section 17, or if the relevant land includes non-urban land that, in area (either alone or together with any associated land) exceeds 5 hectares, the relevant Ministers determine that that benefit will be, or is likely to be, substantial and identifiable 	DUE DILIGENCE AND WALKING ACCESS TEST The investor will be required to: <ul style="list-style-type: none"> detail sensitive features on the relevant land that relate to historic areas, indigenous vegetation, salmon and trout habitat and other protected wildlife, and walking access sign a certificate stating they are aware that the relevant land contains sensitive features and that New Zealand legislation has provisions to protect these features, and demonstrate that there are, or will be, in the 	<ul style="list-style-type: none"> The land test is the most complex, time consuming, and problematic part of the current regime. Significant improvements in the function of the regime need to target this test. The aim of the new test is (i) to ensure investors are aware of sensitive features on the land and their obligations under New Zealand legislation, and (ii) provide enhanced public walking access over the land. The new test targets the most sensitive aspects (i.e. walking access), but otherwise relies

² Investors are not subject to the benefit test if the relevant overseas person is, or (if that person is not an individual) all the individuals with control of the relevant overseas person are, New Zealand citizens, ordinarily resident in New Zealand, or intending to reside in New Zealand indefinitely.

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<p><i>where the factors for consideration are:</i></p> <p>(a) whether the overseas investment will, or is likely to, result in—</p> <p>(i) the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost; or</p> <p>(ii) the introduction into New Zealand of new technology or business skills; or</p> <p>(iii) increased export receipts for New Zealand exporters; or</p> <p>(iv) added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand; or</p> <p>(v) the introduction into New Zealand of additional investment for development purposes; or</p> <p>(vi) increased processing in New Zealand of New Zealand's primary products:</p> <p>(b) whether there are or will be adequate mechanisms in place for protecting or enhancing existing areas of significant indigenous vegetation and significant habitats of indigenous fauna, for example, any 1 or more of the following:</p> <p>(i) conditions as to pest control, fencing, fire control, erosion control, or riparian planting:</p> <p>(ii) covenants over the land:</p> <p>(c) whether there are or will be adequate mechanisms in place for—</p> <p>(i) protecting or enhancing existing areas of significant habitats of trout, salmon, wildlife protected under section 3 of the Wildlife Act 1953, and game as defined in sections 2(1) of that Act (for example, any 1 or more of the mechanisms referred to in paragraph (b)(i) and (ii)); and</p>	<p>judgement of the Ministers of Finance and Land Information, adequate mechanisms in place for providing, protecting, or enhancing walking access, where appropriate and practicable.</p> <p>In particular, note that:</p> <ul style="list-style-type: none"> the strategic assets factor is removed; the requirement to offer special land (i.e. foreshore, seabed, riverbed, lakebed) back to the Crown is being removed. 	<p>primarily on other relevant legislation.</p> <ul style="list-style-type: none"> Removing the strategic assets test reduces uncertainty and is being replaced by a national interest test for screening of business assets. Crown ownership of special land is not required to provide adequate protections – addressing concerns about <i>usage</i> of the land (such as walking access) through this test is better targeted.

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<p>(ii) providing, protecting, or improving walking access to those habitats by the public or any section of the public:</p> <p>(d) 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:</p> <p>(i) conditions for conservation (including maintenance and restoration) and access:</p> <p>(ii) agreement to support registration of any historic place, historic area, wahi tapu, or wahi tapu area under the Historic Places Act 1993:</p> <p>(iii) agreement to execute a heritage covenant:</p> <p>(iv) compliance with existing covenants:</p> <p>(e) whether there are or will be adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land or a relevant part of that land by the public or any section of the public:</p> <p>(f) 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 in accordance with regulations:</p> <p>(g) any other factors set out in regulations.</p> <p><i>and in regulation:</i></p> <p>(a) whether the overseas investment will, or is likely to, result in other consequential benefits to New Zealand (whether tangible or intangible benefits (such as, for example, additional investments in New Zealand or sponsorship of community projects)):</p> <p>(b) whether the relevant overseas person is a key</p>		

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<p>person in a key industry of a country with which New Zealand will, or is likely to, benefit from having improved relations:</p> <p>(c) whether refusing the application for consent will, or is likely to,—</p> <p>(i) adversely affect New Zealand's image overseas or its trade or international relations:</p> <p>(ii) result in New Zealand breaching any of its international obligations:</p> <p>(d) whether granting the application for consent will, or is likely to, result in the owner of the relevant land undertaking other significant investment in New Zealand:</p> <p>(e) whether the relevant overseas person has previously undertaken investments that have been, or are, of benefit to New Zealand:</p> <p>(f) whether the overseas investment will, or is likely to, give effect to or advance a significant Government policy or strategy:</p> <p>(g) whether the overseas investment will, or is likely to, enhance the ongoing viability of other overseas investments undertaken by the relevant overseas person:</p> <p>(h) whether the overseas investment will, or is likely to, assist New Zealand to maintain New Zealand control of strategically important infrastructure on sensitive land.</p>		

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FARM LAND ADVERTISING if the relevant land is or includes farm land, either that farm land or the securities to which the overseas investment relates have been offered for acquisition on the open market to persons who are not overseas persons in accordance with the procedure set out in regulations (unless the overseas investment is exempt from this criterion under section 20).	Not required	<ul style="list-style-type: none"> • This requirement creates delays to the consent process and is unlikely to change the final outcome of the transaction because the vendor does not have to consider any alternative offers. • Vendors are already incentivised to advertise on the open market if they wish to ensure they are getting the highest price.