

The Treasury

DEV-21-SUB-0044 - Overseas Investment Act Forestry Review: Terms of Reference Information Release

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Office of the Associate Minister of Finance

Chair, Cabinet Economic Development Committee

OVERSEAS INVESTMENT ACT FORESTRY REVIEW: TERMS OF REFERENCE

Proposal

1. This paper seeks agreement to a Terms of Reference (Annex One) for a review of the forestry-related amendments to the Overseas Investment Act 2005 made in 2018, and a timeframe for the completion of the review.
2. Consistent with paragraph 2.39 of the Cabinet Manual, I submit this paper with the knowledge and approval of the Minister of Finance.

Executive Summary

3. Forestry is a significant industry for New Zealand, accounting for around 1.6 per cent of New Zealand's GDP (\$6.9 billion). New Zealand's forestry sector relies on overseas investment for growth and productivity, with up to 70 per cent of forestry plantations being foreign-owned.
4. In 2018, we amended the Overseas Investment Act 2005 (the Act) to create more permissive screening rules for overseas investment in forestry. At the same time, we brought forestry rights into the regime, to achieve the objective of coherence in the screening of forestry held via freehold, leasehold and forest registration rights, and to protect the right of Government and future governments to screen foreign direct investment in forestry. These changes were made in the first phase of reforms to the Act (Phase One reform) which aimed to facilitate overseas investment in the forestry sector and to better align the screening regime with the Government's forestry priorities (particularly, the One Billion Trees Programme and climate change mitigation).
5. The Act obliges the government to commence a statutory review of these changes within two years from the date they were enacted, meaning we were required to commence this review by 22 October 2020. I consider that the work commenced by officials in early 2020 to develop a terms of reference for the review satisfied this obligation.
6. I seek Cabinet's agreement to the attached Terms of Reference for the review (Annex One). I have proposed that the review focus on whether the changes are operating effectively. The review will consider any related outcomes from the other forestry-related work programmes which are active across Government.
7. The review will be conducted in close consultation with key users of the Act (investors, lawyers/advisors, industry, Māori and iwi groups) as well as relevant government agencies.

8. This is an important opportunity to check in on how the forestry changes have been operating rather than revising the key parameters of the 2018 changes. This is not a first principles review, so any question about the role of overseas investment in the forestry sector is also out of scope. The review will also not consider the screening of additional categories of assets under the regime,
[36]
9. The commissioning of this review itself has no financial or legislative implications, however any recommendations for reform emerging from the review may. If this is the case, I will seek Cabinet authority for such changes in conjunction with Cabinet's consideration of any such policy matters.
10. I anticipate that if Cabinet approves this proposal, I will provide Cabinet with a public discussion paper for consideration in the final quarter of 2021, then seek policy approval for any changes in mid-2022. Following Cabinet policy decisions, changes would be implemented by early 2023 (these could be legislative, regulatory or operational).

Overseas Investment in Forestry

11. Forestry is a significant industry for New Zealand. In addition to accounting for 1.6 per cent of New Zealand's GDP (September 2020), forestry was New Zealand's third largest export, behind dairy and meat, totalling \$6.9 billion. Forestry contributes an annual gross income of around \$5 billion, directly employs 38000 people in production, processing and commercialisation, and accounts for around 7 per cent of land use in New Zealand.
12. In the year to August 2020, the Overseas Investment Office (the OIO) received 49 applications for overseas investment in forestry.
13. Forestry provides a critical input for New Zealand's wood processing and manufacturing sector. A strong processing sector can help contribute to the 'One Billion Trees' goal by providing those considering planting trees with increased certainty that this is an economically viable use for their land over the long term.
14. 40 per cent of the \$50 billion Māori asset base is in forestry. Māori own at least 30 per cent of the land containing New Zealand's plantation forests (but not always the trees themselves). By area, and possibly by value, forest land is the single largest asset commercial class transferred to Māori through Treaty settlements and many groups rely on forestry income streams from overseas investors to grow their wealth. The proportion of Māori ownership of forests will increase as the remaining Treaty settlements are concluded.
15. In addition to being economically important, forestry also has environmental and social significance. Investment in forestry can contribute to climate change mitigation, fresh water quality, and biodiversity outcomes. Increasingly, forestry investment decisions are driven by incentives, including New Zealand Units (the primary unit of trade in the Emissions Trading Scheme), that are not income from timber. The impacts of forestry on communities are influenced on a range of other programmes.

16. Settings for overseas investment in forestry can alter both the incentives for investment in forest growing as well as incentives for investment in wood processing due to potential impacts on security of log supply. The settings have a particular impact on the sector, as up to 70 per cent of forestry plantations are foreign-owned.

Phase One reform of the forestry screening rules

2018 amendments to the forestry screening rules

17. In 2018 under the 'Phase One' reform of the Act, we changed the overseas investment screening rules to extend to large acquisitions of forestry rights and profits-à-prendre. This has achieved the objective of coherence between interests in forestry held via freehold, leasehold and forest registration rights, and has protected the right of the government to screen overseas investments in forestry.
18. Alongside these changes, we also sought to streamline the screening regime for forestry investment in order to improve the flow of private capital to a sector heavily dependent on inward investment. This involved introducing:
 - a a streamlined 'special test relating to forestry activities'. This moved away from the previous discretionary benefits test towards a "checklist" of requirements without a counterfactual analysis. The aim was to simplify the assessment, reduce processing time and provide applicants with greater certainty. It also facilitates pre-approval,
 - b a modification to the existing benefits test that assesses the benefits of what an overseas investor proposes to do with the land against what the current owner would do if they continued to own the land, and
 - c standing consents, a form of pre-approval from the OIO which enables an investor to make multiple investments without having to seek consent each time. To receive a standing consent, an investor must demonstrate a strong track record of compliance with the Act or overseas legislation (among other things).
19. These changes responded to stakeholder concerns that the screening regime involved lengthy delays and expenses, and that it was difficult for investors in mature, well-managed forests to demonstrate their investment would result in a substantial and identifiable benefit to New Zealand, as was required for consent.

Rationale for a review of the forestry screening rules

20. Parliament agreed to commit to a review of the Phase One changes, given the significant innovation in their design and operation relative to the previous screening rules.
21. The two-year commencement period for the review was considered important to ensure the changes were reviewed quickly, while allowing sufficient time for the changes to embed so that key users are able to provide experience-based feedback on how the new rules are functioning.

Terms of Reference

22. The purpose, objectives and scope of the review are set out in the attached Terms of Reference (Annex One).
23. The purpose of this legislative review is to ensure that the current overseas investment settings in the Act are delivering on the objectives of the Phase One reform, being to:
 - a facilitate overseas investment in forestry, and
 - b improve the coherence of the screening regime.
24. The review will consider how the changes are operating, including:
 - a the functioning of the new and amended consent pathways,
 - b the functioning of the forestry rights exemptions provisions, and
 - c any minor and/or technical amendments required to resolve unintended consequences resulting from the Phase One forestry changes.
25. The review will also include how effective the changes have been, including:
 - a whether the introduction of the special forestry test, the creation of the modified benefits test, the introduction of a standing consent for repeat investors, and the introduction of forestry rights into the regime are achieving their original policy intent,
 - b whether the changes are aligned with other Government objectives and other work programmes in relation to domestic wood processing, and
 - c aligned with other Government objectives and work programmes, including:
 - work on addressing afforestation concerns, which is looking at options such as changing National Environmental Standards-Plantation Forestry (NES-PF) settings and resource management policy,
 - the reform of the Emissions Trading Scheme,
 - the first emissions reduction plan under the Climate Change Response Act,
 - the One Billion Trees Programme,
 - the reform of the resource management system,
 - the development of the Forestry and Wood Processing Industry Transformation Plan,

- the establishment of a mandatory registration system for forestry advisers and log traders,
- the development of a national Wood Legality Assurance system, and
- *Te Mana o Te Taiao - the Aotearoa New Zealand Biodiversity Strategy* (ANZBS) and the draft implementation plan.

Out of scope

26. This is not a first principles review, meaning any question about the extent to which overseas investment is necessary for the sector is out of scope. Given the technical and sectoral expertise required to properly inquire into this question, I have determined that it would be better addressed in the context of a sector-led forestry work programme at a future point.
27. The review will not consider whether carbon farming (permanent forestry) should be able to begin to use the special forestry test, nor will it inquire into the appropriateness of applications to convert farmland to forestry using that test, beyond reporting on the frequency with which those applications use the special forestry test consent pathway. Conversions of farmland to forestry are better considered as part of the work on addressing afforestation concerns referred to in paragraph 25 above.
28. I have consulted the Forestry Minister (Hon Nash) and the Minister for Land Information (Hon O'Connor) on the Terms of Reference, and notified those Ministers whose portfolios are closely related to the forestry sector (Hon Shaw as the Minister of Climate Change and Associate Minister for the Environment, and Hon Allan as Minister of Conservation and Associate Minister for the Environment).

Review Process

29. The Treasury will lead the review, closely supported by Land Information New Zealand, the Overseas Investment Office, and Te Uru Rākau.

Timeframe

30. I am aware of the significant ongoing interest in the screening rules for overseas investment in forestry. The Terms of Reference outlines a timeframe for the review, and detailed project planning is underway. This timeframe seeks Cabinet's agreement to the Terms of Reference and initiating a targeted round of stakeholder consultation.

Engagement

31. As I have already highlighted, there is significant interest in this area meaning it will be important that the full spectrum of stakeholder views are able to be heard and reflected. In order to do this, the consultation rounds will need to be tailored to appropriately reflect the kinds of input and collaboration being sought at each stage of the review.

32. The review team will undertake two rounds of consultation: a targeted round of consultation with key users and stakeholders to inform policy development, and a broader public round of consultation on a discussion document.
33. The initial targeted round of consultation will be a user-driven approach involving frequent users of the regime, to allow for a clear picture to be built up about the full range of experiences with the new and amended consent pathways.
34. I anticipate that following the first round of consultation, officials will prepare a discussion document for Cabinet approval in the final quarter of 2021 with a view to releasing it ahead of a wider round of consultation in late 2021.
35. The second round of consultation on the discussion document will solicit feedback from those same users and stakeholders, as well as wider agencies and the general public. A detailed stakeholder engagement plan will be developed to support this approach.
36. Ongoing engagement with iwi and Māori groups will also be critical to ensure any recommendations are consistent with the government's Treaty obligations, and to consider the Phase One reform's potential impacts on iwi and Māori economic interests. Officials will develop a specific engagement plan to support this approach.
37. After this work is completed, the agencies will prepare a final report with recommendations for any changes considered necessary to the overseas investment settings in 2022.

Consultation

38. This paper was prepared by the Treasury in consultation with the Overseas Investment Office, Land Information New Zealand, Te Uru Rākau, the Ministry of Foreign Affairs and Trade, Ministry for the Environment, the Department of Prime Minister and Cabinet, and the Department of Conservation.
39. The agencies intend to consult with key users and stakeholders on the functioning of the 2018 changes in from the second quarter of 2021. The agencies intend to consult with wider agencies and the general public on a discussion document in late 2021.

Financial Implications

40. There are no direct financial implications as a result of the recommendations in this paper. Recommendations arising from the review may have financial implications. If required, I will seek Cabinet authority for any additional funding required in conjunction with any policy changes.

Legislative Implications

41. There are no legislative implications arising from the recommendations in this paper. Legislative and regulatory changes will likely be required once the proposed review is complete. I will report to Cabinet on proposed options for reform as policy progresses.

Impact Analysis

42. A Regulatory Impact Statement (RIS) is not required at this stage. Recommendations arising from the review will likely require a regulatory impact analysis and one will be prepared in conjunction with such recommendations.

Human Rights

43. This proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Treaty of Waitangi Implications

44. This proposal is consistent with the Government's obligations under the Treaty of Waitangi. In particular, the review will provide for consultation with relevant iwi and Māori groups impacted by these changes, consider whether there are specific Māori rights or interests requiring active protection, seek to avoid negative impacts on the interests of Māori and support the full participation of Māori.

Publicity

45. I intend to publicly release the Terms of Reference following Cabinet's agreement. This review is likely to attract comment from a range of stakeholders and it will be important for the Government to articulate the benefits of overseas investment to the forestry sector, as well as the need for an effective screening regime to ensure that such investments benefit to New Zealand.

Proactive Release

46. I intend to proactively release this paper, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

The Associate Minister of Finance recommends that the Committee:

1. **note** that the Government is required to commence a review of the forestry-related amendments made to the Overseas Investment Act by 22 October 2020,
2. **agree** to conduct that review on the terms proposed in the attached Terms of Reference,
3. **note** that farmland to forestry conversions will be considered as part of separate work on addressing afforestation concerns, which is looking at options such as

changing National Environmental Standards-Plantation Forestry settings and resource management policy,

4. **note** officials will hold an early round of stakeholder consultation from mid-2021, and a round of wider public consultation in late 2021 given close consultation, particularly with iwi and Māori groups, will be essential to the review's success, and
5. **note** that I intend to publicly release the Terms of Reference following approval by Cabinet.

Authorised for lodgement
Hon David Parker
Associate Minister of Finance