

The Treasury

Overseas Investment Act Forestry Review Information Release

November 2022

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Treasury Report: Approval of minor and technical changes to the Overseas Investment (Forestry) Amendment Bill

Date:	7 July 2022	Report No:	T2022/1434
		File Number:	IM-5-8-4-1

Action sought

	Action sought	Deadline
Associate Minister of Finance (Hon David Parker)	Provide feedback on the draft Departmental Report attached as Annex One	12 July 2022
Minister of Finance (Hon Grant Robertson)	Agree that the Departmental Report recommend four minor and technical changes to the Bill	12 July 2022
Associate Minister of Finance (Hon David Parker)		
Minister for Land Information (Hon Damien O'Connor)		
Minister of Forestry (Hon Stuart Nash)		

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Ben Lindsay	Analyst, International	[39]	N/A (mob) ✓
Sarah Key	Team Leader, International	[35]	

Minister's Office actions (if required)

Return the signed report to the Treasury alongside Hon Parker's feedback on the draft Departmental Report.

Note any feedback on the quality of the report

Enclosure: Yes: Draft Departmental Report.

Treasury Report: Approval of minor and technical changes to the Overseas Investment (Forestry) Amendment Bill

Purpose

1. The Overseas Investment (Forestry) Amendment Bill (the Bill) was referred to the Finance and Expenditure Committee on 7 June 2022. The Committee must report back to the House of Representatives by 1 August 2022. Treasury officials were appointed advisers to the Committee. Accordingly, we seek:
 - a *From Hon Parker as member in charge of the Bill:* Feedback on the attached Departmental Report (the Report) that summarises submissions received on the Bill and sets out our responses, and
 - b *From the Minister of Finance, Associate Minister of Finance (Hon Parker), Minister for Land Information and the Minister of Forestry in accordance with a delegation from Cabinet:*¹ Agreement to progress four minor and technical changes to the Bill.

The Departmental Report identifies three key issues arising from submissions

2. The Committee received 26 submissions, seven of which were from individuals and 19 from organisations. Overall, submissions were mixed on the Bill's proposal to remove the special forestry test for conversions and replace it with the general benefit to New Zealand test.
3. Our draft Departmental Report identifies three key issues arising from submissions. These key issues and our response are summarised below. We seek your (Hon Parker's) feedback on this approach and the draft Departmental Report (attached as Annex One) more broadly.

Key issue one: There is little evidence of a problem, and the Bill will discourage productive investment unnecessarily

4. Some submitters were concerned that there was little evidence of a problem, and that the Bill will therefore discourage investment unnecessarily – negatively impacting both New Zealand's economy and emissions reduction goals.
5. We do not recommend amending the Bill in response to these concerns. The Bill strikes a balance between supporting productive and sustainable forestry investment, while at the same time ensuring that investment brings benefits to New Zealand. The special forestry test provides the Government limited discretion to ensure the investment benefits New Zealand.

¹ ENV-22-MIN-0001 refers and provides that joint ministers can take further policy decisions consistent with Cabinet's policy decisions.

Key issue two: Guidance on the benefit to New Zealand test

6. Submitters were concerned that applying the benefit to New Zealand test would discourage productive investment because it is much more complex and uncertain relative to the special forestry test. Submitters called for greater clarity and guidance on how it will operate in practice for forestry conversion investments.
7. We have discussed this issue with the regulator (Toitū Te Whenua Land Information New Zealand), which will review its online guidance and consider how it can be amended to better reflect how forestry investment will be assessed under the benefit to New Zealand test. Relative to more prescriptive legislation or a ministerial directive letter, this approach is flexible and administratively simple.

Key issue three: Applying the more stringent farmland benefit test

8. The Bill replaces the special forestry test with the general benefit to New Zealand test rather than the more stringent farmland benefit test. Most submitters that commented on the relative merits of the tests thought the general benefits test was most appropriate. However, Federated Farmers were concerned the Bill did not apply the Act's more restrictive farmland benefit test. In addition, private individuals thought the Bill should further restrict overseas investment in forestry. Members of the Committee from all parties also questioned why the farmland benefit test did not apply.
9. We consider the Bill appropriately balances supporting productive investment in the forestry sector with managing the risks it can sometimes pose. This is because:
 - a. replacing the special forestry test with the more stringent farmland benefit test would discourage productive investment needed to support the sustainable growth of the production forestry sector. Forestry investments have characteristics that mean they may struggle to demonstrate the substantial benefits against the economic and/or participation of New Zealanders factors that are required by the farmland benefit test.
 - b. the definition of farmland captured by the farmland benefit test is broad and the Act recognises that the farmland benefit test can impose an undue burden for investments in land less suitable for farming. It therefore provides for exemptions from the farmland benefit test in some circumstances, such as for residential and commercial development, and
 - c. the general benefit to New Zealand test requires the investor to demonstrate benefits in proportion to the sensitivity of the land. This means that the risk of losing highly productive farmland to forestry is minimised, as the benefits threshold for such investment would be correspondingly high. Conversely, the benefit threshold for investments in marginal or lower quality land would be lower. This supports the Government's goal of having the right forest, in the right place for the right reasons.

Recommended minor and technical changes to the Bill

10. To address minor and technical concerns raised in submissions and by officials, we recommend four changes to the Bill which:
 - a fixes a discrepancy between applications for forestry standing consents and residential standing consents, by confirming the regulator can look through to the applicants' associates when assessing their compliance record
 - b clarifies that forestry workers may continue to occupy land acquired via the special forestry test, in line with the Act's current restriction on residential use
 - c excludes forestry rights that were acquired in reliance on an exemption under the Act from contributing to the 1,000 hectare screening threshold (for example, following a merger of two companies, or a corporate restructure), and
 - d clarifies, for the avoidance of doubt, that investors can still access the special forestry test to acquire bare land that is between harvesting one crop of trees and replanting another, and that investors may stagger replanting and leave some land bare for a period.

Next steps

11. Cabinet agreed that the Bill should be enacted by the end of August 2022. We will work with your (Hon Parker's) office to provide you with relevant material for the remaining parliamentary stages of the Bill.
12. Finally, we note no regulations are required to support the Bill at commencement. There are, however, some consequential changes to be made when there is an appropriate regulatory vehicle. This primarily includes references to the fee for an application under the soon to be repealed modified benefit to New Zealand and related statutory timeframe. We will provide advice on further changes required to regulations under the Act around September 2022.

Recommended Action

We recommend that the **Associate Minister of Finance, Hon Parker:**

- a **provide** any feedback you have on the draft Departmental Report (attached as Annex One) to the Treasury

Provided/not provided

- b **note** that subject to your feedback we will provide the Departmental Report to the Finance and Expenditure Committee on 14 July 2022 (subject to any further minor, technical, and editorial changes we identify)

We recommend that the **Minister of Finance, Associate Minister of Finance (Hon Parker), Minister for Land Information and the Minister of Forestry:**

- c** **note** the Minister of Finance, Associate Minister of Finance (Hon Parker), Minister for Land Information and the Minister of Forestry have delegated authority from Cabinet to take further minor and technical policy decisions relating to the Bill

- d** **agree** that the Treasury’s Departmental Report recommend the Finance and Expenditure Committee amend the Bill to:
 - a fix a discrepancy between applications for forestry standing consents and residential standing consents, by confirming the regulator can look through to the applicants’ associates when assessing their compliance record

 - b clarify that forestry workers may continue to occupy land acquired via the special forestry test, in line with the Act’s current restrictions on residential use

 - c exclude forestry rights that were acquired in reliance on an exemption under the Act from contributing to the 1,000 hectare screening threshold (for example, following a merger of two companies, or a corporate restructure)

 - d clarify, for the avoidance of doubt, that investors can still access the special forestry test to acquire bare land that is between harvesting one crop of trees and replanting another, and that investors may stagger replanting and leave some land bare for a period.

Agree/disagree

Sarah Key
Team Leader, International

Hon Grant Robertson
Minister of Finance

_____/_____/_____

Hon David Parker
Associate Minister of Finance

_____/_____/_____

Hon Damien O’Connor
Minister for Land Information

_____/_____/_____

Hon Stuart Nash
Minister of Forestry

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Annex One: Draft Departmental Report on the Overseas Investment (Forestry)
Amendment Bill
