

The Treasury

Overseas Investment Act Forestry Review Information Release

November 2022

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Treasury Report: Finalising the Forestry Review

Date:	18 August 2022	Report No:	T2022/1682
		File Number:	IM-5-8-4

Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	For information only	N/A
Associate Minister of Finance (Hon David Parker)	Agree to: <ul style="list-style-type: none"> • progress some minor changes to regulations • respond to requests from the Finance and Expenditure Committee • provide feedback on the implementation plan for the Overseas Investment (Forestry) Amendment Act, and • table a report on the Forestry Review in the House. 	5 September 2022
Minister for Land Information (Hon Damien O'Connor)	Provide feedback on the draft joint submission of the Treasury and Toitū Te Whenua Land Information New Zealand to questions from the Finance and Expenditure Committee regarding the petition of Toby Williams: <i>Save Huiarua Station and Matanui Station from conversion to forestry.</i>	5 September 2022

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Michael Mathieson	Senior Policy Analyst, International	[35]	✓
Sarah Key	Team Leader, International	[39]	[35]

Minister's Office actions (if required)

Return the signed report to Treasury. **Refer** a copy of the report to the Minister of Forestry. **Send** the signed letter to the Finance and Expenditure Committee (FEC). **Provide** any ministerial feedback on the response to FEC in relation to a petition. **Present** a report on the Forestry Review in the House.

Note any feedback on the quality of the report

Enclosure: Yes, Annexes one to three.

Treasury Report: Finalising the Forestry Review

Executive Summary

In February 2022, Cabinet agreed to an amended terms of reference for the review of the Overseas Investment Act's (the Act) forestry provisions (the Forestry Review). As a result, the Overseas Investment (Forestry) Amendment Act 2022 (the Amendment Act) came into force on 16 August 2022.

To support implementation of the Amendment Act and to fulfil the remaining elements of the terms of reference for the Forestry Review, this report:

- summarises how the regulator plans to implement the Amendment Act and other operational changes arising from the review and seeks your decision to include additional guidance on applications for forestry standing consents (rather than a standalone ministerial directive letter).
- recommends that some minor and consequential amendment regulations arising from the Amendment Act are progressed alongside a proposed general package of regulations relating to the Overseas Investment Act 2005 (the Act) later this year, and
- responds to two requests from the Finance and Expenditure Committee (FEC) that relate to the Amendment Act:
 - a letter (attached as Annex One) that proposes a resolution to Committee members' concerns about the Act's exemption for investors who acquire less than 1,000-hectares of forestry cutting rights in a calendar year, and
 - a joint response with the regulator (Toitū Te Whenua Land Information New Zealand) to questions from FEC regarding the petition of Toby Williams: *Save Huiarua Station and Matanui Station from conversion to forestry*. We seek your feedback on the draft response (attached as Annex Two), which outlines the impact of the Amendment Act on forestry conversions.

Finally, the Act requires you to present a report on the Forestry Review to the House of Representatives. A summary report for tabling is attached as Annex Three. It demonstrates how we have fulfilled each element of the Forestry Review's terms of reference and provides a link to the key advice that has been proactively released.

Recommended Action

We recommend that the Associate Minister of Finance (Hon Parker):

- a **note** that to support implementation of the amended Overseas Investment Act 2005 (the Act), the regulator:
- o has sent initial communications to investors, their representatives, and domestic stakeholders and published initial guidance, and
 - o will publish more detailed guidance on how forestry investments will generally be assessed under the Act around February 2023.

- b **agree** that additional clarification on standing consents for overseas investment in existing production forestry is integrated with broader guidance on the Act's forestry provisions rather than provided via a stand-alone ministerial directive letter, as previously advised.

Agree/disagree.

- c **agree** to progress minor consequential regulatory changes arising from the Amendment Act alongside a proposed general package of regulations relating to the Act by the end of 2022.

Agree/disagree.

- d **note** that members of the Finance and Expenditure Committee (FEC) suggested that the regulator explore how to record information about overseas investors who are exempt from consent requirements if they acquire less than 1,000 hectares of forestry rights per year.

- e **sign** the attached letter (attached as Annex One) that sets out our proposed approach to addressing FEC's concerns, where targeted information about an investor's existing holdings will be sought by the regulator when they are seeking consent to invest in forestry activities in New Zealand.

Agree/disagree.

- f **agree** to present a summary report of the Forestry Review (attached as Annex Three) to the House of Representatives in accordance with the Act's requirement.

Agree/disagree.

- g **refer** a copy of this report to the Minister of Forestry.

Refer/not referred.

We recommend the Associate Minister of Finance and the Minister of Land Information:

- h **note** that FEC has requested a submission from the Treasury and the regulator on the petition of Toby Williams: *Save Huiarua Station and Matanui Station from conversion to forestry*.
- i **provide feedback** (if any) on the joint response to the petition attached as Annex Two.
Feedback provided / no feedback provided.

Sarah Key
Team Leader, International

Hon Grant Robertson
Minister of Finance
_____/_____/_____

Hon David Parker
Associate Minister of Finance
_____/_____/_____

Hon Damien O'Connor
Minister of Land Information
_____/_____/_____

Treasury Report: Finalising the Forestry Review

Purpose of Report

1. This report seeks decisions necessary to finalise the review of the Overseas Investment Act's (the Act) forestry provisions (the Forestry Review).

Background

2. In February 2022, Cabinet agreed to an amended terms of reference for the Forestry Review to include a new focus on legislative change.¹ As a result of the Forestry Review, the Overseas Investment (Forestry) Amendment Act 2022 (the Amendment Act) came into force on 16 August 2022.
3. The terms of reference also require us to advise you, within six months of the Amendment Act commencing, on any necessary operational changes to improve the operation and effectiveness of the Act's forestry provisions. In addition, the Act requires that you present a report to the House of Representatives on the Forestry Review.

Decisions required to finalise the Forestry Review

Operational improvements

4. Prior to the legislative phase of the Forestry Review you agreed² that the regulator (Toitū Te Whenua Land Information New Zealand) progress a range of operational changes to improve the operation and effectiveness of the Act's forestry provisions.
5. We have revisited these earlier decisions in light of the outcome of the legislative process (including submissions and the report of the Finance and Expenditure Committee). We consider the operational changes remain appropriate, with one revision.
6. During targeted engagement in 2021, stakeholders expressed uncertainty over the scope of standing consent conditions and about proving their 'strong track record'. To address stakeholders' concerns, we earlier advised that a ministerial directive letter could specify the likely scope of standing consent conditions, give examples of the type of transactions that are likely to be approved, and provide guidance regarding what is needed for an investor to demonstrate a strong track record.
7. We no longer think a ministerial directive letter is needed because the Amendment Act limits the scope of standing consents to investments in existing forestry and clarifies how an investor's track record is assessed (by allowing consideration of the investor's associates). Instead, information can be included in planned guidance from the regulator on the Act's forestry provisions.
8. This approach is administratively simpler than a ministerial directive and provides flexibility to update guidance in light of broader government policy changes (such as potential Emissions Trading Scheme amendments).

1 ENV-22-MIN-0001 refers

2 T2021/3206 refers

Implementation of the Amendment Act

9. In response to submissions received through the legislative process for the Amendment Act, we advised (T2022/1434 refers) that the regulator should publish guidance on how forestry investments would generally be assessed under the benefit to New Zealand test.
10. The regulator proposes two phases for providing this guidance and delivering on the operational improvements mentioned above.
11. First, initial communications will be (or have been) sent to update investors, their representatives, and domestic stakeholders of the Amendment Act's changes. This includes:
 - a the Treasury sending out an update to stakeholders that we engaged with as part of the Forestry Review
 - b the regulator issuing a special pānui (newsletter) advising its database of stakeholders of the changes and the initial impact they will have, and
 - c officials from the regulator and Te Uru Rākau-New Zealand Forest Service exploring a range of opportunities to present to meetings or gatherings of affected stakeholders. The first of these took place on 16 August 2022.
12. Second, more detailed guidance on the Act's forestry provisions will be published once the regulator and investors have built up experience in applying the new rules – around February 2023. This guidance will cover the treatment of forestry-related investments under the Act. More specifically, it will cover how the benefit to New Zealand test will generally apply to forestry investments. It will also cover how the regulator intends to implement the operational changes discussed above.
13. We will support the regulator to draft this guidance, so it aligns with broader policy work on forestry in New Zealand.

Minor consequential updates to the Overseas Investment Regulations

14. The Overseas Investment Regulations 2005 provide for a fee and timeframe relating to the modified benefit test. As the Amendment Act removed the redundant 'modified benefit test' for forestry activities, these references should now be repealed.
15. We are planning to provide you with advice before the end of 2022 on a range of minor and technical amendments to the Overseas Investment Regulations more generally. This will include a recommendation that the references to the modified benefit test be repealed.

The 1,000-hectare threshold for screening forestry rights

16. The Act provides an exemption from consent where the total level of forestry rights acquired by an overseas person is less than 1,000 hectares per calendar year. Reflecting the general purpose for the Act's exemptions provisions³, this is because imposing consent requirements on small acquisitions of forestry rights would be unduly burdensome and would risk the commercial viability of a generally beneficial activity (such as afforestation of small parcels of otherwise marginal land).
17. The terms of reference for the Forestry Review require you to assess the appropriateness of this 1,000-hectare threshold. We do not have much evidence to suggest the threshold should be lowered or raised through our targeted engagement with key users of the regime or through the select committee process. Forestry industry stakeholders, however, suggested the threshold could be raised. By aligning the treatment of forestry rights to other forestry investments (leasehold and/or freehold), the 2018 forestry changes reduced the risk that the Act distorts decisions about land use (by giving similar investments different treatment).
18. However, members of the Finance and Expenditure Committee (FEC) were concerned that the exemption means the aggregate area of forestry rights acquired by overseas investors is unknown. Members thought this information may be relevant to decision-making under the Act. These members encouraged you to consider the relevant settings and suggested that the regulator could explore how to record these exempted transactions.
19. The primary way to fully address members' concerns would be to implement a mandatory notification of an acquisition of forestry rights by overseas investors to the regulator (likely via a change in primary legislation). However, this undermines the purpose of the exemption and would also impose costs on both the regulator, investors, as well as ultimately the vendor. It is also not clear whether this broad collection of information is necessary to support decision-making under the Act.
20. As such, we consider the benefit of obtaining this information to be limited and would likely be outweighed by the costs (direct and indirect) in its collection and do not recommend a notification requirement be progressed.
21. However, as a lower-cost and targeted alternative, the regulator advises that it can amend its application forms to request relevant information about applicants' existing forestry rights when they seek a broader forestry-related consent. This will provide key information relevant to the specific consenting decision (such as the investor's total market share and power) without imposing additional costs on unrelated transactions.
22. If you agree this is a preferable alternative, we recommend you sign the attached response to the FEC (see Annex Two).

Response to the petition of Toby Williams: Save Huiarua Station and Matanui Station from conversion to forestry

23. The FEC has been referred the petition of Toby Williams: *Save Huiarua Station and Matanui Station from conversion to forestry* for consideration. The petition asks the House of Representatives to urge the Government to prevent Huiarua Station and Matanui Station from being converted to forestry by offshore interests. FEC had

3 Section 61B of the Act provides for exemptions to "provide flexibility where compliance with this Act is impractical, inefficient, unduly costly, or unduly burdensome, taking into account the sensitivity of the sensitive assets and the nature of the overseas investment transaction."

resolved to request written submissions from the Treasury and from the regulator on the matters raised by the petitioner.

24. The submitter’s more specific concerns and our response is summarised in table one. Our response focusses on the aims and impact of the Amendment Act – that is, overseas investment resulting in the conversion of land to production forestry will now face a more onerous test and be required to demonstrate benefit to New Zealand.
25. We seek your (both Hon Parker and Hon O’Connor’s) feedback on our joint response to FEC as summarised above and in table one, which is attached in full as Annex Two.

Table one: summary of the petitioner’s specific concerns and our response

Issue	Response
The petitioner is concerned about the environmental impacts of production forestry, particularly the impact of slash	All production forestry in New Zealand must meet national environmental standards. Under the Resource Management Act 1991 (RMA), local authorities (councils) are responsible for monitoring these rules to ensure compliance. These rules apply to all production forestry – not just that financed by foreign capital.
The petitioner is concerned that overseas investors will abandon forests after collecting revenue from carbon	The regulator can use its range of tools to monitor investors to ensure they deliver benefits to New Zealand and comply with any conditions of consent. These are summarised in an annex to our submission. To date, the regulator is not aware of any forestry consent holder that has abandoned the forest upon maxing out any carbon return. Consent holders typically have a long-standing interest in New Zealand and business model centred around harvesting and replanting of the trees.
The petitioner is concerned about the economic and social impact of increasing conversions on rural communities (such as closure of local schools and diminishing populations)	The impacts on rural communities cited by the submitter reflect a longstanding socioeconomic trend towards urbanisation with no single driving factor. In particular, we note that the total area of production forestry in New Zealand is less than it was in the early 2000s. Nevertheless, in addition to this change there are a range of other government work programmes underway, exploring options that could potentially address the petitioner’s concerns. These are outlined in more detail in Annex Two.

Next Steps

26. To finalise the Forestry Review, that Act requires that you prepare a report and present it to the House as soon as practicable after it has been prepared.⁴ A summary report is attached at Annex Three for tabling in the House (subject to your feedback).
27. The summary report includes an overview of the terms of reference for the Forestry Review and the actions taken in response. It also provides a link to all the proactively released material that is published on the Treasury website. We will shortly seek your approval to proactively release this report and remaining key advice not yet released.
28. Finally, we will continue to work closely with the regulator on implementation and begin monitoring the impact of the changes alongside our normal oversight and stewardship role over the Act.

⁴ Clause 10 of Schedule 1AA of the Act

Annex One: Draft response to the Finance and Expenditure Committee

See separate document.

Annex Two: Report on the outcome of the statutory review of the Overseas Investment Act 2005's forestry provisions

See separate document.

Annex Three: Response to the petition of Toby Williams: *Save Huiarua Station and Matanui Station from conversion to forestry*

See separate document.