

The Treasury

Overseas Investment Act Forestry Review Information Release

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Office of the Associate Minister of Finance (Hon David Parker)

Cabinet Legislation Committee

Overseas Investment (Forestry) Amendment Bill 2022: Approval for Introduction

Proposal

- 1 This paper seeks the Cabinet Legislation Committee's approval to introduce the Overseas Investment (Forestry) Amendment Bill (the Bill).
- 2 Consistent with paragraph 2.39 of the Cabinet Manual, I submit this paper with the knowledge and approval of the Minister of Finance.

Policy

- 3 This Bill will give effect to the policy decisions made by Cabinet on 21 February 2022 [ENV-22-MIN-0001 refers] to:
 - 3.1 apply the Overseas Investment Act 2005 (the Act) 'Benefit to New Zealand' test (Benefit test) to forestry conversions, rather than the more streamlined 'Special test relating to forestry activities' (special forestry test), and
 - 3.2 make a range of minor and technical changes to improve the operation and effectiveness of the Act's forestry provisions.
- 4 It will also give effect to further decisions taken by the Minister of Finance, the Associate Minister of Finance (Hon Parker), the Minister for Land Information, and the Minister of Forestry (joint Ministers) under delegated authority [ENV-22-MIN-0001 refers]. These decisions relate to the:
 - 4.1 commencement and transitional arrangements for the Bill,
 - 4.2 treatment of existing standing consents under the new rules, and
 - 4.3 requirements for forestry conversions involving farm land to be exempt from the higher threshold that currently applies to farm land under the Benefit to New Zealand test.

Background

- 5 New Zealand has seen an increase in farm land to forestry conversions (both permanent and production) by domestic and overseas investors. This has led to increasing concern about the spillover effects of whole farm conversions.

- 6 To better manage these concerns, Cabinet agreed to commence legislative change to apply the Benefit to New Zealand test to forestry conversions, rather than the more permissive special forestry test [ENV-22-MIN-0001 refers].
- 7 At the same time, Cabinet agreed to make five further minor and technical amendments to the Act via the same legislative process. These changes, listed below, are intended to improve the operation and effectiveness of the Act's forestry provisions:
 - 7.1 amending the no-residential-use condition under the special forestry test to allow certain persons (excluding the overseas investor and their associates) to occupy dwellings on the relevant land, for reasons other than the purpose of supporting forestry activities,
 - 7.2 repealing the redundant Modified benefits test for forestry activities to improve the coherence of the screening regime,
 - 7.3 clarifying that relevant forestry activities must be for the purpose of harvesting wood, regardless of the species of tree,
 - 7.4 confirming Toitū Te Whenua Land Information New Zealand's current practice that 'consented forestry rights' are not included in the 1,000 hectares investors can acquire each calendar year without obtaining consent, and
 - 7.5 amending the Act to reflect that activities unconnected to the interest being acquired are excluded from the definition of relevant land.

Further decisions taken under delegated authority

- 8 At the same time, Cabinet authorised joint Ministers to take further policy decisions consistent with the approved policy on any minor or technical changes that are aligned with the Terms of Reference for the Forestry Review, which improve the operation and effectiveness of the 2018 changes.
- 9 Joint Ministers have taken further decisions relating to the:
 - 9.1 commencement and transitional arrangements for the Bill,
 - 9.2 treatment of standing consents under the new rules, and
 - 9.3 requirements for forestry conversions involving farm land to be exempt from the higher threshold that currently applies to farm land under the Benefit to New Zealand test.

Commencement, transitional arrangements and existing standing consents

- 10 When considering the commencement and transitional arrangements for the Bill, joint Ministers sought to quickly apply the new rules to manage our concerns with the conversion of farm land to forestry while being mindful of

not impacting on existing rights and duties, or New Zealand's reputation as a stable investment destination.

- 11 As such, joint Ministers decided that the Bill proceed quickly by:
 - 11.1 progressing under a condensed legislative timeframe, and
 - 11.2 commencing the day after it receives Royal assent.
- 12 Subject to Cabinet's approval, at the Bill's first reading I will propose that the House issue special instructions to the Select Committee to report back to the House within two months (as opposed to the standard four to six months). This will allow the Bill to commence in late August 2022.
- 13 At the same time, joint Ministers considered it important that the Bill not override existing contractual arrangements made in reliance on the current rules. Joint Ministers therefore decided that the Bill should have transitional provisions that retain the current rules for investors that:
 - 13.1 have made an application¹ to Toitū Te Whenua Land Information New Zealand before commencement (whether or not the transaction has been entered into), or
 - 13.2 have entered into a transaction before commencement (that requires Toitū Te Whenua Land Information New Zealand approval) but have not yet applied for consent, or
 - 13.3 have been granted a standing consent prior to commencement.²

The requirements for forestry conversions to access the Benefit to New Zealand test

- 14 When removing forestry conversions from the special forestry test, Cabinet agreed that they should be assessed under the standard Benefit to New Zealand test (rather than the more stringent 'Farm land benefit test').
- 15 Cabinet's decision required clarification to determine the specific requirements a forestry conversion will need to meet to be exempt from the higher threshold that currently applies to farm land under the benefit to New Zealand test. Joint Ministers decided that forestry conversions involving farm land will be exempt from the higher threshold, only where the farm land is to be:
 - 15.1 used exclusively, or nearly exclusively for forestry activities, and
 - 15.2 replanted after harvest.

¹ This may include applications for new standing consents. However, if the application relates to a standing consent, Ministers have discretion to apply conditions to any transactions that proceed under it (for example, by limiting or preventing conversions).

² There is a low risk of significant numbers of conversions being progressed under these existing consents due to the: nature and positive track record of investors that have been granted standing consents, and the upcoming expiry dates of the six existing consents.

- 16 I consider that these requirements will ^[11] maintain a coherent screening regime. This is because the ‘*exclusively, or nearly exclusively for forestry activities*’ requirement and the requirement to replant are both existing requirements under the special forestry test and are familiar to both investors and Toitū Te Whenua Land Information New Zealand. I consider that this approach also provides appropriate flexibility for minor and ancillary use of the land, in addition to the forestry activities.

Impact analysis

- 17 A Regulatory Impact Statement (RIS) was prepared in accordance with the necessary requirements and was submitted at the time approval was sought for the policy relating to the Bill [ENV-22-MIN-0001 refers]. The RIS QA Panel reviewed the Forestry Review paper prepared by the Treasury and considered that the RIS **meets** the QA criteria.
- 18 The Panel found that officials have done a good job in preparing the RIS against very tight timeframes and with very limited information on which to make a meaningful assessment of the proposed Government legislative changes. Officials have attempted to consult on the proposals within the timeframes provided, including with Māori and other stakeholders. The Panel noted the Treasury’s preference for more comprehensive consultation and an intent to undertake this post-Cabinet decision.
- 19 The RIS clearly notes constraints on the analysis, such as limited evidence of the effectiveness of the size and scale of the problem, and the potential impact the proposed legislative changes may have. The RIS would further benefit from a stronger commitment to how the legislative changes will be implemented and monitored. Consistent with the analysis in the RIS, these constraints indicate uncertainty as to the impact the statutory amendment may have. These constraints are clearly identified and the policy intent is otherwise clear given the very tight timeframes allowed for the completion of the RIS.
- 20 Notwithstanding the limitations with respect to consultation within the limited timeframes, the RIS provides a fair assessment of the risks and limitations. For this reason, the QA Panel has assessed the RIS as meeting the Quality Assurance criteria.
- 21 The further decisions taken under delegated authority described in this paper were taken after the RIS was finalised. However, I consider that these policy decisions are broadly consistent with the policy changes described in the RIS.

Compliance

- 22 I consider the Bill complies with:
- 22.1 the principles of the Treaty of Waitangi;
 - 22.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;

- 22.3 a disclosure statement has been prepared and is attached to this paper;
- 22.4 the principles and guidelines set out in the Privacy Act 2020;
- 22.5 relevant international standards and obligations;
- 22.6 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

23 [36]

Consultation

- 24 This Cabinet paper was developed by the Treasury with support from the Ministry for Primary Industries/Te Uru Rākau – New Zealand Forest Service and Toitū Te Whenua Land Information New Zealand (Overseas Investment Office). The following agencies were consulted: the Ministry of Foreign Affairs and Trade, Te Arawhiti, Te Puni Kōkiri, Ministry for the Environment, and the Department of Conservation.
- 25 To inform the policy decisions that the Bill will give effect to, I led hui in January 2022 with selected key Māori leaders and representatives in the forestry sector so that they could advise on the potential impacts of the changes. I heard in principle support for the policy proposal, with some concerns raised about the potential impact on Māori economic interests and commercial sovereignty.
- 26 After the announcement of Cabinet’s decisions in February, my officials at the Treasury, supported by agency colleagues, conducted a series of four further hui with a range of iwi, post-settlement governance groups, lawyers, landowners, investors and industry bodies with interests in forestry, farming and/or agriculture. Officials heard some similar messages to the previous hui with key Māori leaders but the primary message was the need for clarity and certainty, as soon as possible, about what the changes would mean in practice.
- 27 Joint Ministers’ decisions described in this paper were not consulted on. I consider that these decisions are consistent with those previously communicated to impacted stakeholders and that the select committee process will provide adequate opportunity for stakeholders to comment.
- 28 To progress the implementation of this legislation in a timely manner, an exposure draft of the Bill will not be released. However, the Treasury will consider publishing additional material to support the introduction and implementation of the Bill. This material is intended to support stakeholder

engagement during the select committee process, as well as provide more clarity on how the new rules will work in practice and on the types of overseas investment in forestry that the Government is seeking.

Binding on the Crown

- 29 The principal Act binds the Crown, and the Bill will be binding on the Crown upon commencement.

Associated regulations

- 30 No regulations will be required to give effect to the policy that the Bill will implement.

Other instruments

- 31 The Bill does not include any provision empowering the making of other instruments that are deemed to be legislative instruments.
- 32 However, I note the principal Act allows for the issue of a ministerial directive letter. I am currently considering whether a ministerial directive letter would support the regulator to implement the Bill and support investors to understand how the Benefit to New Zealand test may apply to forestry conversions.

Commencement of legislation

- 33 The Bill will come into force the day after the date of Royal assent.
- 34 The new measures will apply to transactions that are entered into after this date. Consistent with Legislation Act and the Legislation Design and Advisory Committee guidelines, the current rules will apply for investors that:
- 34.1 have made an application³ to Toitū Te Whenua Land Information New Zealand before commencement (whether or not the transaction has been entered into), or
 - 34.2 have entered into a transaction before commencement (that requires Toitū Te Whenua Land Information New Zealand approval) but have not yet applied for consent, or
 - 34.3 have been granted a standing consent prior to commencement.

Parliamentary stages

- 35 The Bill should be introduced on 31 May and referred to Finance and Expenditure Committee in early June 2022.

³ As previously noted, this may include applications for new standing consents. However, if the application relates to a standing consent, Ministers have discretion to apply conditions to any transactions that proceed under it (for example, by limiting or preventing conversions).

- 36 Subject to Cabinet's approval, at the Bill's first reading I will propose that the House issue special instructions to the select committee to report back to the House within two months (as opposed to the standard four to six months). This will allow the Bill to commence in late August 2022.

Proactive Release

- 37 I propose to release this paper proactively in whole, subject to redaction as appropriate under the Official Information Act 1982, within 30 business days.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note the decisions taken by joint Ministers under delegated authority, including:
 - 1.1 that the Overseas Investment (Forestry) Amendment Bill's (the Bill) provisions should come into force the day after the date of Royal Assent;
 - 1.2 that the Bill's transitional provisions retain the current rules for investors that:
 - 1.2.1 have made an application to Toitū Te Whenua Land Information New Zealand before commencement (whether or not the transaction has been entered into);
 - 1.2.2 have entered into a transaction before commencement (that requires Toitū Te Whenua Land Information New Zealand approval) but have not yet applied for consent;
 - 1.2.3 have been granted a standing consent prior to commencement;
 - 1.3 that forestry conversions involving farm land will be exempt from the higher threshold that currently applies to farm land under the Benefit to New Zealand test, only where the farm land is to be:
 - 1.3.1 used exclusively, or nearly exclusively for forestry activities; and
 - 1.3.2 replanted after harvest;
- 2 note that the Bill holds a category 3 priority on the 2022 Legislation Programme (to be passed, if possible, in 2022);
- 3 note that, consistent with one of the Overseas Investment Act 2005's (the Act) purposes "that it is a privilege for overseas persons to own or control sensitive New Zealand assets", the aims of the Bill are to:

- 3.1 enable the Government to effectively manage overseas investment in production forestry;
- 3.2 improve the operation and effectiveness of the Act's forestry provisions;
- 3.3 support high-quality overseas investment in productive New Zealand land;
- 4 approve the Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 5 agree that the Bill be introduced on 31 May 2022;
- 6 agree that the Government propose that the Bill be:
 - 6.1 referred to the Finance and Expenditure Committee for consideration, along with special instructions to report back to the House within two months;
 - 6.2 enacted by 31 August 2022.

Authorised for lodgement

Hon David Parker
Associate Minister of Finance