

# The Treasury

## Overseas Investment Act Forestry Review Information Release

June 2022

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Reference: T2020/1885 IM-5-8-4 (2020 Statutory Forestry Review)

Date: 16 June 2020

To: Minister of Finance (Hon Grant Robertson)  
Associate Minister of Finance (Hon David Parker)

Deadline: 17 June 2020

## **Aide Memoire: Update on the Overseas Investment Act Forestry Review: talking points for Forestry Ministers' meeting**

### **Purpose**

You are due to attend a meeting of the Forestry Ministers' on Thursday 18 June, and you have indicated that you would like to discuss the review of the forestry-related amendments to the Overseas Investment Act (Forestry Review). This Aide Memoire provides talking points and background information to support that discussion.

### **Talking points for agenda item 'Forestry Review'**

#### **Timing**

- In early March, we agreed to the Terms of Reference (ToR) for the Forestry Review. We also agreed to take a paper to DEV seeking Cabinet agreement to the ToR in May, to enable the ToR to be made public before the election. Other aspects of the Review were going to be progressed following the election.
- COVID-19 meant that this timeframe has slipped. I understand it has also put on hold or delayed other forestry-related work that could have a bearing on the review.
- I propose we delay seeking Cabinet's agreement to the ToR until after the election given the lack of time until the general election, limited agency capacity and the desirability of having other related forestry work programmes be completed before the Forestry Review.
- *[If raised]* The work by officials on the draft ToR means we will still be in a position to state the Review has commenced ahead of the statutory deadline of 22 October.

#### **Scope**

- We agreed that the Forestry Review will not consider whether conversions of farmland to forestry should be excluded from the special forestry test. [1]

- I understand MPI's work on afforestation control is looking at the impacts and trade-offs associated with farmland conversions, and the tools available to manage them. I would be interested to understand more about this work and its timeframes [note: this is next on the meeting agenda].

## **Background**

### ***Status of the Forestry Review***

- On 12 March 2020, Forestry Ministers met to decide on a preferred approach to the Forestry Review. At that meeting, Ministers agreed to the following:
  - a narrowly scoped review that excludes consideration of:
    - the first principles question of the role of overseas investment in achieving the Government's forestry priorities,
    - whether investments in permanent forestry should be able to access the special forestry test, and
    - whether applications to convert farmland to forestry should be unable to access the special forestry test,
  - a period of targeted stakeholder engagement and initial policy development prior to the general election, and the release of a discussion document and broader public consultation occurring after the general election.

### ***Impact of COVID-19***

- The current timeframe is no longer achievable, as agencies will have limited capacity for the foreseeable future to service the Forestry Review (due the ongoing allocation of resourcing to the COVID-19 response).
- We recommend that timeframe is revised and that the ToR are taken to the Cabinet after the general election. Seeking Cabinet agreement to the ToR prior to the election would incur trade-offs and require the reprioritisation of other work.

### ***Prominence of afforestation and special forestry test concerns***

- The issue of afforestation controls continues to generate considerable public interest. This is relevant to the Forestry Review as the 2018 forestry amendments introduced a 'special forestry test', which streamlines the consent process for investments in forestry, including those involving conversions of farmland to forestry.
- [1]

### ***Relation of Forestry Review to other work programmes***

- MPI is leading several work programmes that overlap with the Forestry Review, including the NES-PF review (led together with MfE) and separate afforestation control work.

#### *Afforestation control [see separate briefing from MPI]*

- MPI's afforestation control work programme is considering concerns that have been raised about the impact of afforestation, and options (if any/desirable) to limit the scope for new exotic forestry on productive land.
- So far, MPI has undertaken preliminary analysis of the tools available to manage afforestation, including through the ETS and the RMA. However, given the complexity of the issue, MPI would like to clarify Ministers' objectives for land-use change before developing a response. This will help MPI better understand the trade-offs and assess the available options.
- MPI have said the afforestation work programme is coordinated with the NES-PF review. They have recommended the work is progressed through the Emissions Reduction plan, which the Government is required to publish by the end of 2021. Preparatory work on this Plan has included identifying how to optimise the contribution of forestry removals, how much land should be afforested to meet emissions targets, and how to mitigate any potential adverse impacts.

#### ***NES-PF review***

- The NES-PF review is considering issues that have arisen in the first year of implementation of the environmental standards applying to the activities of the productive forestry sector.
- The final scope of the NES-PF review has yet to be determined, although it does not currently cover the issue of councils' ability to control afforestation on productive land.
- If you would like this to be within scope of the NES-PF review, it would be helpful to provide this direction to MPI.

#### ***Forestry Review can consider outcomes of these and other work programmes***

- As currently scoped, the Forestry Review would be able to draw on the outcomes of these pieces of work. It would be helpful if these work programmes were completed prior to the Forestry Review.
- Neither of these work streams are currently progressing on a fast track, therefore it would be helpful for you to provide that direction to MPI if you would like agencies to prioritise the work.

- Depending on the outcome of these work programmes, the Government may wish to consider whether the existing provisions of the Overseas Investment Act that provide for the conversion of farmland to forestry, are fit for purpose.

Chloe Thompson, Analyst, International, [39]

Thomas Parry, Manager, International, [39]

## **ANNEX 1: Forestry Review Draft Terms of Reference**

### **Context**

1. The Overseas Investment Amendment Act 2018 (Amendment Act) changed the way overseas investments in forestry are screened under the Overseas Investment Act 2005 (the Act). The Amendment Act:
  - a. streamlined consent pathways for forestry investment and introduced standing consents for repeat investors in forestry, in order to facilitate overseas investment in forestry, and
  - b. brought forestry rights into the screening regime, in order to improve the regime's coherence.
2. The Amendment Act also required the Minister to commence a review of the operation and effectiveness of these changes within two years of them taking effect (that is, by 22 October 2020).<sup>1</sup>
3. This review (Forestry Review) will be led by the Treasury, with input and support from Land Information New Zealand (LINZ), the Overseas Investment Office (OIO) and Te Uru Rākau (TUR) (collectively, 'the agencies').

### **Purpose**

4. The Forestry Review will:
  - a. assess the operation and effectiveness of the forestry-related amendments introduced by the Amendment Act, and
  - b. report to the Minister on any recommended changes by late 2021.

### **Background**

#### ***Forestry sector***

5. Forestry is a significant industry for New Zealand. It:
  - a. accounts for around 1.5 per cent of New Zealand's GDP (\$4.2 billion in March 2018) and is New Zealand's third largest export product earner, behind dairy and meat,
  - b. contributes an annual gross income of around \$5 billion and directly employs 35000 people in production, processing and commercialisation, and
  - c. accounts for around 7 percent of land use in New Zealand.
6. A strong forestry industry contributes to many of the Government's priority areas, including enhancing regional development and employment, protecting water quality and mitigating climate change.
7. The forestry sector is heavily dependent on inward investment, with up to 70 per cent of forestry plantations being foreign-owned. This means rules for screening such investment have a particular impact on the sector.

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<sup>1</sup> Clause 10(1)-(2), Schedule 1A of the Overseas Investment Amendment Act 2018.

### **Amendment Act changes**

8. In 2018, the Government changed the way forestry investments are screened under the Overseas Investment Act (the Act). This was in recognition of the importance of inward investment to forestry and in support of the Government's broader forestry priorities (e.g., the One Billion Trees Programme). The changes sought to:
  - a. facilitate overseas investment in forestry, by streamlining consent pathways for investments. This responded to concerns from domestic and international stakeholders that existing consent processes were time-consuming, costly and, due to the nature of forestry, difficult to satisfy, and
  - b. improve the coherence of the screening regime, by ensuring all types of investments in forestry are screened.
9. There were four key elements of the changes.
  - a. *Introducing a 'special test relating to forestry activities' (known as the 'special forestry test')*, an alternative to the existing benefits test, which assesses an investment against a "checklist" of requirements and does not involve a 'counterfactual' analysis.
  - b. *Introducing a 'modified benefits test'*, in which the investor uses a modified version of the existing benefits test that assesses the benefits of what a overseas investor proposes to do with the land against what the current owner would do if they continued to own the land.
  - c. *Introducing 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, amongst other things.
  - d. *Bringing large acquisitions of forestry rights and forestry-related profits-à-prendre (right to take soil or produce off the land) into the Act's screening regime*. Such rights can grant a high degree of control over large parcels of New Zealand land for long periods of time, so their inclusion was considered appropriate to the Act's overarching focus on overseas ownership or control of sensitive New Zealand assets.

### **Statutory review**

10. Schedule 3, clause 10 of the Amendment Act provides for a mandatory review of the operation and effectiveness of these changes, given they represent significant innovations in the design and operation of the screening rules for overseas investment in forestry.
11. A two-year commencement period was selected to balance the desire to ensure the changes were reviewed quickly (given their significance) with the need to provide sufficient time for insights to be gained from the functioning and use of the new regime.

## Scope

### ***Operation of the forestry changes***

12. This part of the Forestry Review will consider:
- a. the functioning of the new and amended consent pathways and standing consent criteria, taking into account the ease and volume of use of each pathway for applicants, their lawyers/advisors, and the OIO,
  - b. the functioning of the forestry rights exemption provisions, and
  - c. any minor and/or technical amendments required to resolve unintended consequences associated with the implementation of the forestry-related amendments in the Phase One reform.<sup>2</sup>

### ***Effectiveness of the forestry changes***

13. This part of the Forestry Review will consider whether the changes are achieving their original policy intent, and whether they are aligned with other Government objectives and work programmes.

#### *Achieving original policy intent*

14. The Forestry Review will consider the extent to which the changes are achieving their original policy intent of:
- a. facilitating overseas investment in forestry (which would be measured by any changes to the speed of processing applications, and to the volume, value and type of applications, and
  - b. improving the coherence of the overseas investment screening regime.
15. In relation to the **special forestry test**, the Forestry Review will consider whether the mandatory “checklist-style” criteria are appropriate and achieve the right balance between being more permissive of overseas investment while retaining a sufficient level of regulatory discretion to impose conditions on consent.
16. In relation to the **modified benefits test**, the Forestry Review will consider whether the pathway remains fit for purpose in light of changes to the counterfactual assessment in the Act’s general benefits test, agreed to as part of the Phase Two reform.
17. In relation to the **standing consent for repeat investors**, the Forestry Review will consider whether the pathway has reduced the regulatory burden on the OIO, and whether it is encouraging repeat investments.
18. In relation to the **introduction of forestry rights into the screening regime**, the Forestry Review will consider whether:

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<sup>2</sup> The Phase One reform considered changes to the Act that were required to be enacted prior to the ratification of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The Phase Two reform, which is currently being progressed, has considered a wider range of policy changes to the Act which were not constrained by CPTPP timing.



- a. the screening thresholds are set at the appropriate level to achieve a balance between ensuring forestry investments benefit New Zealand while not disincentivising investment or increasing illiquidity, and
- b. the screening of forestry rights is better supporting landowners to make decisions about land use based on the highest value use.

*Alignment with other Government objectives and work programmes*

19. The Forestry Review will consider the extent to which the changes are aligned with the Government's objectives for **domestic wood processing**.
20. It will also consider the outcomes of other relevant work programmes some of which are due to conclude around mid-2020, including:
  - a. the development of the Government's Forest Strategy,
  - b. the review of the National Environmental Standards for Plantation Forestry,
  - c. the reform of the Emissions Trading Scheme,
  - d. the One Billion Trees Programme, and
  - e. other initiatives such as the domestic wood processing work programme, options to control afforestation on productive land, and the Industry Transformation Plan for the wood processing and forestry sector.
21. The Forestry Review must report its findings on the above matters to the Minister by late 2021.

**Out of scope**

22. The Forestry Review must not inquire into, determine, or report on the original policy rationale and intent underpinning the changes (increasing overseas investment in forestry and improving the coherence of the screening regime), or the place of the forestry industry within New Zealand's economy. These kinds of questions are more properly addressed through other parallel work underway, for example through the development of the Forest Strategy, which is setting the direction for New Zealand's forests in the medium and long-term.
23. The Forestry Review will not consider whether investments in permanent forestry should be brought into the screening regime. It will also not consider whether applications to convert farmland to forestry should be excluded from accessing the special forestry test.
24. The Forestry Review will not revisit non-forestry related substantive issues that arose with the passing of the Amendment Act, for example requiring purchases of residential land to be screened. Nor will it consider the addition of new categories of sensitive assets to the Act. [1]

**Constraints**

25. The Forestry Review will not result in the screening of investments that are not currently screened, and will only develop policies consistent with New Zealand's international obligations.

## **Process**

### ***Roles and responsibilities***

26. The Treasury will lead the review, with input from and supported closely by LINZ, the OIO and TUR, who together hold the operational and technical expertise in overseas investment and forestry.
27. A cross-agency group involving senior representation from each of the agencies, as well as from the Ministry for the Environment (MfE) and the Ministry of Foreign Affairs (MFAT), will provide governance for the Forestry Review. The Treasury will be responsible for coordinating the meetings of and generally servicing this group.

### ***Consultation***

28. The agencies will work collaboratively with other interested agencies and external stakeholders as appropriate, including MfE, MFAT, Te Arawhiti, the Department of Conservation (DOC) and the Department of Prime Minister and Cabinet.
29. In addition to consultation within government, the agencies will consult with users of the regime using existing networks where possible (such as the Reference Group on Overseas Investment Changes (Forestry), the Forestry Ministerial Advisory Group, and the OIO's Legal Reference Group). There will be two stages of consultation:
  - a. identification of and early, targeted engagement with key users of the regime and stakeholders (including industry groups, investors, lawyers/advisors, iwi/Māori, and interested agencies) on how the changes are functioning, and
  - b. broad agency and public engagement on proposed policy solutions following the release of a discussion document.

### ***Timeframes***

30. The Government will seek agreement to the Terms of Reference by the middle of 2020, to enable the early, targeted engagement with key users and stakeholders to take place during 2020. Policy development and broader consultation on proposed policy options with stakeholders, wider agencies and the public will occur during 2021. A report will be presented to the Minister in late 2021, with a view to legislating any reforms in 2022.

### ***Coordination and alignment***

31. Several other work programmes underway across government are relevant to the Forestry Review, all of which are due to conclude by mid-2020. These include:
- a. **The Forest Strategy**, led by the Ministry of Primary Industries (MPI). This strategy will set the direction for New Zealand's forests and trees for the next 30 years and beyond. It is being developed collaboratively with sector participants and other stakeholders, and will reflect longer term and broader aspirations for forestry in New Zealand. It will include government and sector actions to enable transformation change in the forestry sector to support a low-emission, bio-circular economy. The draft Strategy is currently under development.
  - b. **The review of the National Environmental Standards for Plantation Forestry (NES-PF)**, led by MfE, MPI and DOC, and expected to conclude by May 2020. The NES-PF came into force in May 2018 and are being implemented by foresters and councils across New Zealand. The review is considering issues that have arisen in the first year of implementation, with particular regard to issues relating to wilding risk, slash management and biodiversity. If the review finds that substantive policy changes are necessary, full public consultation will be required. Agencies are due to brief Forestry Ministers on the review's progress in early March, and to report findings to Ministers Parker and Jones in May.
  - c. **The review of the Emissions Trading Scheme**, led by MfE, and expected to conclude in mid-2020. This review has considered the provisional emission budget for the period 2021-25 and changes to ETS settings including unit supply and price controls. The Emissions Trading Reform Bill contains amendments to improve the forestry aspects of the ETS including the introduction of averaging accounting and a new permanent forestry activity. The Bill is currently before Select Committee, which is due to report back to the House in April, and is likely to be enacted in May or June.
  - d. **The One Billion Trees Programme**, led by TUR, the purpose of which is to increase tree planting across New Zealand and support landowners to integrate trees into their land use. TUR is required to report in six monthly intervals on the progress as measured under the programme's monitoring and evaluation framework. The 12 month report is expected in early 2020.
  - e. The **domestic wood processing** programme, including work being led by TUR to develop measures for the commercial forestry sector to be more productive which reported to Cabinet's Economic Development Committee in March, and the Ministry for Business, Innovation and Employment's Industry Transformation Plan for the sector, which will support investment in primary and secondary wood processing.
  - f. **Options to control afforestation on productive land**, led by MfE and MPI, which reported to Cabinet in December.

32. Officials will ensure the Forestry Review is coordinated and aligned with the outcomes of this work.