

The Treasury

Overseas Investment Act Forestry Review Information Release

June 2022

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Reference: T2021/2280 IM-5-8-4

Date: 9 September 2021

To: Associate Minister of Finance (Hon David Parker)

CC: Minister of Finance (Hon Grant Robertson)

Deadline: 13 September 2021
(if any)

Aide Memoire: Ministerial meeting on the Overseas Investment Act 'special forestry test'

Purpose

You are meeting with the Minister of Land Information and the Minister of Forestry on Monday 13 September to discuss the Overseas Investment Act 2005 (the Act) 'special test relating to forestry activities' (known as the 'special forestry test'), at the Minister of Land Information's request. This note provides talking points (see **Annex A**) and background information to support this discussion.

Overview

We understand that the Minister of Land Information's focus is the number of high-profile farmland-to-forestry conversion-related transactions approved or currently being assessed through the special forestry test pathway.

We also understand that the Minister of Land Information may raise the upcoming commencement of the farmland advertising requirements, including the extension of the advertising period from 20 to 30 working days (particularly in the farmland-to-forestry conversion context). We have included reactive talking points on this matter, and an overview of the upcoming farmland advertising changes, including the rationale for the advertising period extension (see **Annex B**).

Treasury officials are available to attend the meeting, should officials be invited.

Suggested agenda

Officials from the Treasury, Te Uru Rākau and the Overseas Investment Office (OIO) have jointly prepared the following suggested agenda and slidepack (see **Annex C**) to support the discussion.

Item	Lead Minister	Attachment	Timing
1. Overview of farmland to forestry conversion trends, including conversions by domestic owners and international investors	Minister O'Connor & Minister Nash	Slidepack (Annex C) and Treasury Report (Annex D)	5 min
2. Forestry settings and the 'Special Forestry Test'	Minister Parker	Slidepack	5 min
3. Government work programmes that are relevant to the issue of farmland to forestry conversions	Minister O'Connor & Minister Nash	Slidepack	10 min
4. Update on the Overseas Investment Act Forestry Review	Minister Parker	Slidepack and Treasury Report	5 min
5. Next Steps	All	N/A	5 min
Annex 1. Overview of upcoming changes to farmland advertising requirements	-	-	-

Key messages

Farmland to forestry conversions

- There is a range of factors, including high carbon and log prices, that are driving forestry conversions in New Zealand.
- Most land transacted under the special forestry test is for existing forestry (79%) rather than conversions (21%).
- New planting through the special forestry test is likely to be a small percentage of overall farmland to forestry conversions in New Zealand, given that most conversions are undertaken by New Zealanders rather than international owners.
- [1]

- Under the Cabinet-approved Terms of Reference, the Forestry Review will not 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.

Farmland advertising

- The intent of the Act's farmland advertising requirement is to ensure that New Zealanders have the opportunity to acquire, enjoy and use farmland rather than overseas persons acquiring that land through private sales, where no New Zealanders can make competing offers.
- The current farmland advertising rules are overly complex and are not meeting the Act's objectives. Therefore, from 24 November 2021, changes to the farmland advertising rules will commence. These changes include that:

- advertising must be completed before a transaction is entered
 - there will be minimum advertising requirements, requiring at least two forms of advertising (of which, one must be the internet),
 - the minimum advertising period is to increase to 30 working days (from 20 working days).
- The 30-working-day advertising period was identified following consultation with industry to identify a reasonable timeframe that will enable potential purchasers to have more of a legitimate chance to purchase farmland.

For information only: Special forestry test – levers under the Act

- The special forestry test assesses an investment against a “checklist” of requirements. There is a residual lever (under section 20B of the Act) for the Minister of Finance to apply the national interest test to any transaction, if the Minister considers that an application could be contrary to New Zealand’s national interest. We note, however, that there is a high threshold for applying the national interest test: it is expected to be used rarely and only where necessary to protect New Zealand’s core national interests.

Sarah Key, Senior Analyst, International, [39]

Thomas Parry, Manager, International, [39]

Attachments:

- Annex A: Talking points
- Annex B: Overview of upcoming changes to farmland advertising requirements
- Annex C: Slidepack for Ministerial meeting on the Overseas Investment Act ‘special forestry test’
- Annex D: Treasury Report – Overseas Investment Act Forestry Review: Update on targeted stakeholder engagement and next steps

Annex A: Talking points

Item 1: Overview of farmland to forestry conversion trends, including conversions by domestic owners and international investors

Led by Minister O'Connor and Minister Nash

- As noted in the slidepack (1b, slide 4), there is a range of factors, including high carbon and log prices, that are driving forestry conversions in New Zealand.
- Most land transacted under the special forestry test is for existing forestry (79%) rather than conversions (21%) (1a, slide 3).
- New planting through the special forestry test is likely to be a small percentage of farmland to forestry conversions in New Zealand, given that most conversions are being undertaken by New Zealanders rather than international owners.
- The slidepack (1b, slide 4) notes that Te Uru Rākau is undertaking further work in this area and commissioning research on the potential impact of land-use change on rural communities.
- What is the timeframe for that work? Will it include information on the relative drivers of conversions by domestic owners versus international investors?

Item 2: Forestry settings and the 'Special Forestry Test'

Led by Minister Parker

- As you'll be aware, in 2018 the Government changed how overseas investments in forestry are screened under the Overseas Investment Act. The changes brought forestry cutting rights into the screening regime and established streamlined consent pathways for forestry investments (including the special forestry test).
- The original policy intent of the changes was to increase overseas investment in forestry and improve the coherence of the screening regime. This recognised the importance of inward investment to forestry and supported the Government's broader forestry priorities (e.g. the One Billion Trees Programme).
- The special forestry test, an alternative to the existing benefits test, **assesses an investment against a "checklist"** of requirements and does not involve a 'counterfactual' analysis.
- The test is intended to **facilitate more overseas investment in plantation forestry** than would be facilitated under the existing benefits test. It aims to be more permissive, create more certainty for investors and streamline the processing of applications.

Farmland to forestry conversions

- The issue of afforestation continues to generate considerable public interest. The special forestry test streamlines the consent process for investments in forestry, including those involving conversions of farmland to forestry. However, it is not available for permanent forestry investments (which must go through the full benefit test, the most stringent screening pathway).
- During the legislative process for the 2018 forestry changes, the Government initially proposed that the new special forestry test only be used where the land is already forestry land, and not land for conversion into forestry. Following feedback during the select committee process, the Government agreed that the test could be used by investors acquiring land for conversion to forestry. This was on the basis that this would best support encouraging investment into forestry.
- [1]

- As noted in the slidepack (2, slide 6), under the Cabinet-approved Terms of Reference the Forestry Review will not inquire into the appropriateness of applications to convert farmland to forestry using the special forestry test, beyond reporting on the frequency with which those applications use the special forestry test consent pathway. *[See also agenda item 4, below.]*

Use of special forestry test for conversions – matters raised during initial stakeholder consultation on the Forestry Review [see also agenda item 4, below]

- While the use of the special forestry test for farmland to forestry conversions is outside of the scope of the Forestry Review, officials have advised that stakeholders did proactively raise this issue during the initial targeted stakeholder consultation *[a limited number of ‘frequent users’ of the system – see Annex B in the Treasury Report for a list of stakeholders]*.
- Industry noted that it has been helpful for increasing investment in forestry. Other stakeholders noted that this is a ‘hot button’ issue and one that is better addressed holistically as a land management issue. As this review is coming out before some of the wider work, it will still be a focal point for the conversions issue.

Farmland advertising (if raised) [see also Annex B]

- During consultation on the Phase 2 reforms, both submitters and the OIO were clear that the current 20-working-day advertising period is often not enough time for a purchaser to complete sufficient due diligence to make an offer (for example, on high value investments).
- The 30-working-day advertising period was identified following consultation with industry to identify a reasonable timeframe that will enable potential purchasers to have more of a legitimate chance to purchase farmland.

- In addition to the advertising period extension, other changes were made to ensure the effectiveness of the farmland advertising standards:
 - advertising must be completed before a transaction is entered
 - there will be minimum advertising requirements, requiring at least two forms of advertising (of which, one must be the internet).

Item 3: Government work programmes that are relevant to the issue of farmland to forestry conversions

Led by Minister O'Connor and Minister Nash

- There are several other work programmes underway across government that are relevant to the farmland to forestry conversions, including the Forestry Review, the Forestry & Wood Processing Industry Transformation Plan (F&WP ITP) and the Emissions Reductions Plan.
- Forestry Review officials are considering opportunities to coordinate with the F&WP ITP and other engagement processes to manage limited capacity for engagement amongst stakeholders.
- As the Forestry Review is coming out before some of the wider work, it will still be a focal point for the conversions issue.

Item 4: Update on the Overseas Investment Act Forestry Review

Led by Minister Parker

- Officials recently updated me on the Overseas Investment Act Forestry Review *[see Treasury Report enclosed, which was referred to Minister O'Connor and Minister Nash]*.

Scope of the Forestry Review

- In March 2021, Cabinet agreed to conduct a tightly-focused legislative review focusing on the operation and effectiveness of the 2018 forestry changes. 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.
- Analysis of the original policy rationale and intent underpinning the changes is out of scope of the Forestry Review. In addition, Cabinet agreed that the review will not consider:
 - whether carbon farming (permanent forestry) should be able to begin to use the special forestry test
 - 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
 - non-forestry related substantive issues that arose with the passing of the Overseas Investment Amendment Act 2018, for example requiring purchases of residential land to be screened, or
 - the addition of new categories of sensitive assets to the Act.

Key themes from the targeted stakeholder consultation

- Officials have completed the initial targeted stakeholder consultation for the Forestry Review. The targeted consultation has successfully drawn out some of the key issues that will inform the options that we draft for the discussion document. However, it does not provide a comprehensive view of all the issues because we only spoke to a limited number of 'frequent users' of the system *[the attached Treasury Report lists the stakeholders with whom we engaged through the targeted engagement (see Annex B of the Report)]*.
- The key themes are as follows:
 - **The 2018 changes are facilitating overseas investment in forestry.** The key message officials heard from stakeholders was that the changes have improved investor confidence in forestry, by providing investors with greater certainty and improved timeframes than would have occurred if investors were only able to access the Benefit to New Zealand pathway.
 - Stakeholders noted positively the way the OIO has engaged with applicants and the wider industry, but also **identified some technical issues and suggestions to improve the operation of the regime.**
 - Stakeholders commented that **some of the requirements for investors may not be as effectively facilitating overseas investment in forestry as they could be, or may be having unintended consequences.** Many of these comments relate to key design features of the 2018 changes that were put in place to address wider issues, such as trade obligations and to avoid creating loopholes for the residential land rules.

Next steps

- The slidepack provides an overview of the Forestry Review timeline. Officials are preparing the discussion document, which Cabinet will consider in November 2021. Officials will then undertake public consultation from December 2021-February 2022. This will include public meetings and separate hui in four or five regions most affected by the 2018 changes.
- There are several other work programmes underway across government that are relevant to the Forestry Review, including the Forestry & Wood Processing Industry Transformation Plan (F&WP ITP) and the Emissions Reductions Plan.
- Officials are considering opportunities to coordinate with the F&WP ITP and other engagement processes to manage limited capacity for engagement amongst stakeholders.

Annex B: Overview of upcoming changes to farmland advertising requirements

We understand that the Minister for Land Information has raised some questions about the farmland advertising rules (particularly in the farmland-to-forestry conversion context), in particular the rationale for why the new period for advertising has been landed on (the change increases the period of advertising from 20 to 30 working days).

Currently, farmland must be advertised for sale on the open market for a minimum of 20 working days before consent can be given to an overseas person to obtain an interest in it (unless an exemption has been granted).

The current requirements are overly complex and are not meeting the Act's objectives. Therefore, from 24 November 2021, changes to the farmland advertising requirements will commence.¹ These changes include that:

- advertising must be completed before a transaction is entered
- there will be minimum advertising requirements, requiring at least two forms of advertising (of which, one must be the internet),
- the minimum advertising period is to increase to 30 working days (from 20 working days).

During the Phase 2 policy development, the option to remove the requirement to advertise farmland was considered but ultimately rejected. Ministers were concerned that removing those requirements entirely would have a detrimental impact on New Zealanders' ability to purchase farmland.

Minimum advertising period

During consultation on the Phase 2 reforms, both submitters and the OIO were clear that 20 working days is often not enough time for a purchaser to complete sufficient due diligence to make an offer (for example, on high value investments). Extending this period to 30 working days enables potential purchasers to have more of a legitimate chance to purchase farmland. The 30-working-day advertising period was identified following consultation with industry to identify a reasonable timeframe.

¹ The farmland advertising requirements, including the minimum advertising period, are primarily found in the regulations.



TE TAI ŌHANGA
THE TREASURY



Ministerial meeting on the Overseas Investment Act 'Special Forestry Test'

Monday 13 September 2021

Suggested agenda

Attendees:

- Hon David Parker, Minister for the Environment, Associate Minister of Finance
- Hon Damien O'Connor, Minister for Land Information and Minister of Agriculture
- Hon Stuart Nash, Minister of Forestry

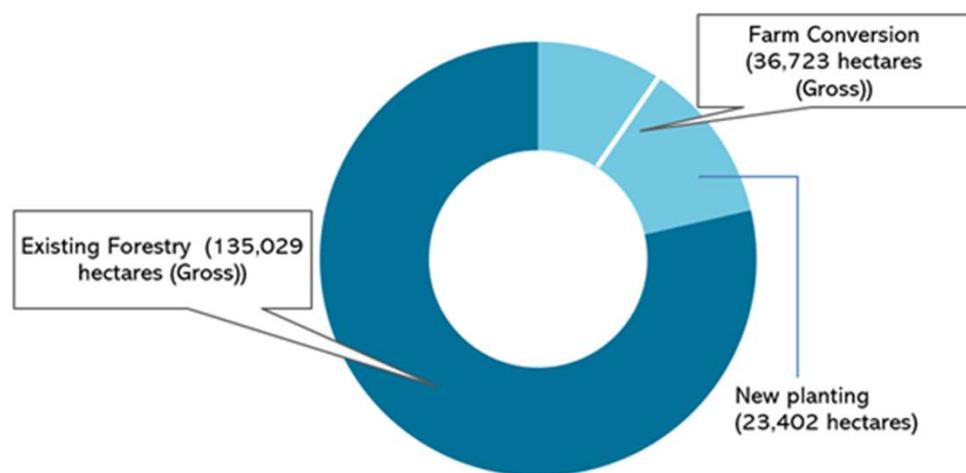
Item	Lead Minister	Attachment	Timing
1. Overview of farmland to forestry conversion trends, including conversions by domestic owners and international investors	Minister O'Connor and Minister Nash	N/A	5 min
2. Forestry settings and the 'Special Forestry Test'	Minister Parker	1.	5 min
3. Government work programmes that are relevant to the issue of farmland to forestry conversions	Minister O'Connor and Minister Nash	N/A	10 min
4. Update on the Overseas Investment Act Forestry Review	Minister Parker	1.	5 min
5. Next Steps	All	N/A	5 min
Annex 1. Overview of upcoming changes to farmland advertising requirements	-	-	-

Attachments:

1. Treasury Report – Overseas Investment Act Forestry Review: Update on targeted stakeholder engagement and next steps

1a. Overview of farmland to forestry conversion trends: *Consents under the 'Special Forestry Test' – Overseas Investment Office (OIO)*

- From October 2018, **87** consents under the Special Forestry Test have been granted.
- Of those consents, **47** have related to investments in existing forestry, and **40** have related to the conversion from farmland into forestry.
- The total hectares consented to under the Special Forestry Test are in the table and chart below.



- New planting through the 'Special Forestry Test' is likely to be a small percentage of farmland to forestry conversions in New Zealand.
- Over the past three years, there have been consents for 23,402 ha of new planting through the 'Special Forestry Test' relative to an estimate of 105,200 ha of exotic afforestation in New Zealand since the beginning of 2019 (Note that the data are not directly comparable in that there is a lag between OIO approval, purchasing of land and eventual planting).
- The OIO has been collecting Land Use Capability (LUC) class details on conversion investments since late 2020. While the majority of the land being consented to is in LUC classes 6 and over, there have been a number of consents in the last quarter with increasingly large areas of land between LUC classes 3-5.
- For example, four consents (with a total of 8,998 ha.) included approximately 5,244 ha. of land in LUC classes 3-5.

1b. Overview of farmland to forestry conversion trends:

Domestic Conversion Trends – Te Uru Rākau

- There are a range of factors, including high carbon and log prices, that are driving forestry conversions in New Zealand. From the information available, overseas investment is a relatively small proportion of purchases of land for forestry investment, but more time and additional data is needed to fully assess this.
- Te Uru Rākau is undertaking further work to obtain better information about farm sales, afforestation and drivers for farm conversion. Te Uru Rākau is also commissioning research on the potential impact of land-use change on rural communities.
- Afforestation has recently increased in response to the New Zealand Emissions Trading Scheme (NZ ETS) reforms, higher carbon prices and government afforestation schemes.
- This follows nearly two decades of low afforestation and high deforestation rates.

1c. Overview of farmland to forestry conversion trends:

Domestic Conversion Trends – Te Uru Rākau (cont.)

- Over the last two decades, land-use change out of sheep and beef farming has been driven by many factors.
 - Increases in dairy and arable farming have resulted in a one-million-hectare reduction in sheep and beef farm and forestry land over this period.
 - 1.3 million hectares of sheep and beef land has gone out of production through land retirement and reversion, urban expansion, and incorporation into the conservation estate.
 - More recently there have been concerns about the impacts of large-scale permanent exotic afforestation on rural communities driven by the carbon incentive in the NZ ETS.
- A recent MPI survey reports that exotic afforestation is estimated at:
 - *26,300 hectares in 2019*
 - *33,600 hectares in 2020 and*
 - *45,300 hectares in 2021, with around 77% intended for production and 23% intended for permanent forest.*
- The survey reports that exotic afforestation rates could range between 24,000 and 45,500 hectares per year from 2024. This range reflects uncertainty in land availability and price, seedling and labour availability, requirement for OIO approval, government, and local council regulation.

The nature of afforestation incentivised under the NZ ETS will be considered as part of the Emissions Reduction Plan which will be released prior to Christmas 2021.

2. Forestry settings and the ‘Special Forestry Test’

- One of the key changes of the Overseas Investment Amendment Act 2018 was the introduction of a ‘special test relating to forestry activities’ (known as the ‘Special Forestry Test’).
- This test, an alternative to the existing benefits test, **assesses an investment against a “checklist”** of requirements and does not involve a ‘counterfactual’ analysis.
- The test is intended to **facilitate more overseas investment in plantation forestry**. It aims to be more permissive, create more certainty for investors and streamline the processing of applications.

Treatment of farmland to forestry conversions and permanent forestry under the Special Forestry Test

- The test is available for forest acquisitions and conversions of farmland to forest.
- Permanent forestry investments (‘carbon farming’) cannot use the streamlined pathway and are subject to the most stringent overseas investment screening – the full benefits test.
- A change was made during the 2018 Select Committee process to allow farmland conversions to access the special pathway on the basis that this best supports encouraging investment into forestry.
- [1]

Overseas Investment Act Forestry Review Terms of Reference

- The Forestry Review will not inquire into the appropriateness of applications to convert farmland to forestry using the special forest test, beyond reporting on the frequency with which those applications use the special consent pathway.

3a. Government work programmes that are relevant to the issue of farmland to forestry conversions

- The RMA reform work is likely to have implications on where and how forestry conversions are undertaken.
- Work on the response to the Climate Change Commission's Recommendations including the Forestry Chapter of the Emissions Reduction Plan (ERP).
- The Forestry and Wood Processing Industry Transformation Plan ^[33]

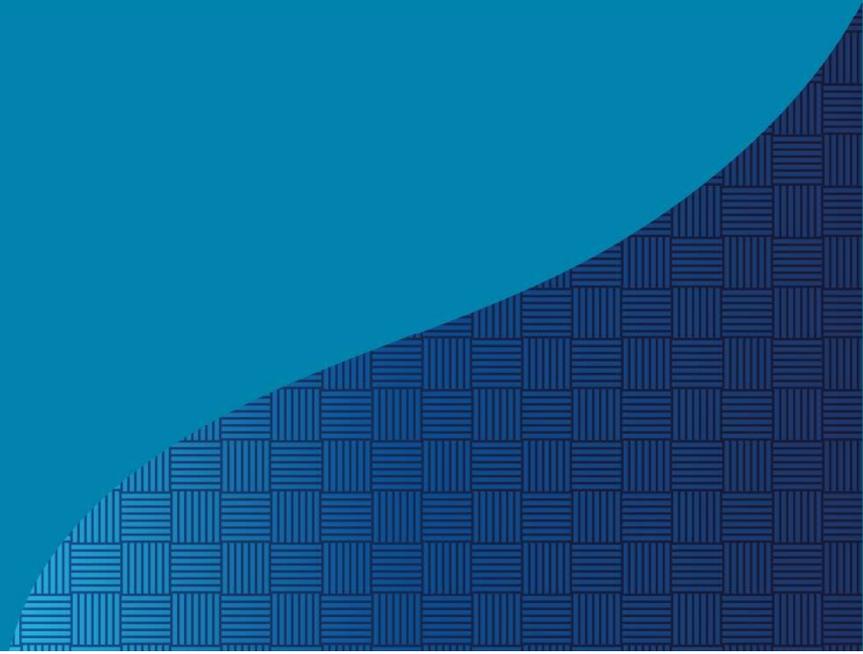
3b. Interconnection with other government work programmes

	Overseas Investment Act Forestry Review	Climate change – Emissions Reductions Plan	Forestry & Wood Processing ITP	Proposed comprehensive review of the Forests Act 1949 (timeline indicative only)
September 2021		Public consultation		Initial policy analysis development of project plan (underway).
October 2021			Cabinet to receive a progress update and confirm priorities for ITPs	
November 2021	Cabinet consideration and approval of discussion document	Cabinet consideration of the final ERP		[33]
December 2021	Release of discussion document and public consultation	Publish ERP		
January 2022	Public consultation			
February 2022			[33]	
March 2022	Submissions analysis and policy development			
April 2022				
May 2022				
June 2022	Cabinet agreement to any reform package			[33]
July 2022 (onwards)	Depending on Cabinet decisions: <ul style="list-style-type: none"> embedding operational changes developing and passing new regulations developing and introducing new legislation 			

4. Update on the Overseas Investment Act Forestry Review

Action	Date
Targeted engagement to inform discussion document and preparation of discussion document	May – October 2021
Draft discussion document and Cabinet paper to Minister Parker	Late October 2021
Cabinet consideration and approval of discussion document	November 2021
<ul style="list-style-type: none"> • <i>Cabinet Economic Development Committee (DEV)</i> • <i>Cabinet</i> 	<i>17 November 2021</i> <i>24 November 2021</i>
Release of discussion document (December 2021) and public consultation	December 2021 – February 2022
Submissions analysis and policy development	January 2022 – May 2022
Cabinet agreement to reform package	June 2022
Depending on Cabinet decisions: <ul style="list-style-type: none"> • embedding operational changes • developing and passing new regulations • developing and introducing new legislation 	July 2022 onwards

5. Next Steps



Annex 1: Overview of upcoming changes to farmland advertising requirements

The current requirements

- Currently, farmland must be advertised for sale on the open market for a minimum of **20 working days** before consent can be given to an overseas person to obtain an interest in it (unless an exemption has been granted).
- The intent of this requirement is to ensure that New Zealanders have the opportunity to acquire, enjoy and use farmland rather than overseas persons acquiring that land through private sales, where no New Zealanders can make competing offers.

The changes

- From November 2021, changes to the farmland advertising requirements will commence. These changes include that:
 - *advertising must be completed before a transaction is entered,*
 - *there will be minimum advertising requirements, requiring at least two forms of advertising (of which, one must be the internet), and*
 - *the minimum advertising period is to increase to **30 working days**.*

The rationale for the changes

- The current requirements are overly complex and are not meeting the Act's objectives.
- During consultation on the Phase 2 reforms, both submitters and the OIO were clear that 20 working days is often not enough time for a purchaser to complete sufficient due diligence to make an offer. Extending this period to 30 working days enables potential purchasers to have more of a legitimate chance to purchase farmland.
- The 30 working day advertising period was identified following consultation with industry to identify a reasonable timeframe.