

The Treasury

Overseas Investment in Forestry Information Release

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Cabinet Document Details

Title: **Cabinet Economic Development Committee Minute Decision DEV-18-MIN-0017: Overseas Investment in Forestry**

Date: **28 February 2018**

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Cabinet Economic Development Committee

Minute of Decision

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Overseas Investment in Forestry

Portfolio **Finance**

On 28 February 2018, the Cabinet Economic Development Committee:

Background

- 1 **noted** that the Overseas Investment Amendment Bill to ban overseas speculators from buying New Zealand houses is currently before Select Committee ^[1]

- 2 **noted** that currently any overseas persons seeking to purchase, or lease for three years or more, forestry land over 5 hectares must be screened by the Overseas Investment Office (OIO) to get consent for the investment, including forestry land;

- 3 **noted** that other interests in land, specifically easements and profits à prendre (a right to take some part of the soil or the “natural produce” of the land off another person’s land such as minerals, timber, or flax), including forestry rights are currently exempted from the OIA screening regime;

- 4 **noted** that officials recently consulted forestry stakeholders on making forestry rights (cutting rights) subject to OIA screening;

- 5 **noted** that stakeholders have expressed concern that the current forestry screening regime is not fit for purpose, and that it is difficult for investors to demonstrate that investments will provide substantial and identifiable benefit to New Zealand;

- 6 **noted** that forestry is a key component of a number of the government’s priorities, including the one billion trees programme, and that quality foreign investment is key to the success of the sector;

Policy

- 7 **agreed** that a set of criteria be developed to provide overseas forestry investors an alternative path to meeting the current benefits test under the OIA;

- 8 **agreed** that those criteria be specified in regulations, and that the OIA include legislative guidance to guide the nature and scope of those regulations;

- 9 **agreed** that the regulation-making power be cast such that the criteria below can be included in the regulations:
- 9.1 that the investor passes the OIA investor test (business experience and acumen, demonstrated financial commitment, good character);
 - 9.2 that any existing historic, bio-diversity, environmental or public access commitments are maintained (depending on what interests and rights are being assigned - leaseholders and forestry right holders may not always be in a position to provide this assurance);
 - 9.3 that felled areas will be replanted, where the investor obtains an interest that allows the investor to replant (e.g a freehold or leasehold interest);
 - 9.4 that any existing commitments to provide logs to domestic customers are maintained;
 - 9.5 for land sales, if the relevant land is or includes foreshore, seabed, or a bed of a river or lake, that the investor has complied with the procedure for offering foreshore, seabed, riverbed, or lakebed land to the Crown under the Overseas Investment Regulations 2005;
- 10 **agreed** that additional criteria may be added by regulations;
- 11 **agreed** that the criteria specified in the supporting regulations described in paragraph 8 commence at the same time as the regulatory guidance described in paragraph 9;
- 12 **agreed** that investors in forestry remain subject to the current investor test;
- 13 **agreed** that the test for forestry investment be supported by a requirement for investors to make statutory declarations as to their statements of fact and/or intent;
- 14 **agreed** that forestry investors be able to choose whether to apply for OIA screening of a transaction under either the existing net benefit test, or the new mandatory criteria;
- 15 **agreed** that a screening pre-approval regime be developed so that forestry investors can be pre-approved purchasers of forestry investments (subject to appropriate criteria, reporting, monitoring and compliance requirements);
- 16 **noted** that in including forestry rights within the OIA regime, balance is required between ensuring that significant investments are subject to review but not creating an unduly high regulatory burden on small operators and investors;
- 17 **noted** that the Ministerial Directive Letter to the OIO of December 2017 recognised that overseas investment in forestry sector, and the associated downstream processing industries, has the potential to add significant value to the economy; and that advancing the government policy around forestry is to be assessed as of high relative importance when the OIO considers “forest land” applications;

Forestry Rights

- 18 **agreed** that Statutory Forestry Rights and forestry-related profit à prendre that exist outside the Forestry Rights Registration Act (‘Non-statutory Forestry Rights’) be subject to OIA screening if the investor and the investor’s associates are acquiring 1,000 hectare or more of forestry rights per calendar year (in one or more transactions);

- 19 **agreed** that Statutory Forestry Rights and Non-statutory Forestry Rights be subject to the existing minimum duration threshold (3 years) for OIA screening that currently applies to leases of sensitive land;
- 20 **agreed** that assignments of Crown Forestry Licences not be subject to OIA screening;
- 21 **noted** that the changes to the screening regime will be supported by non-legislative measures by the OIO to provide greater clarity and support for forestry investors making applications to the OIO;

Non-forestry profit à prendre

- 22 **noted** that there may be potential for profit à prendre on other primary products to be used to construct transactions that side-step the OIA screening regime;
- 23 **noted** ^[1]
(legally privileged);
- 24 **agreed** that the current OIA exemption for profit à prendre be changed, so that profit à prendre of policy interest are screened, and mechanisms provided to enable other profit à prendre to not be screened;
- 25 **agreed** that non-forestry profit à prendre be subject to the existing hectare thresholds (typically 5 hectare) and duration thresholds (3 years) for OIA screening that currently apply to leases of sensitive land;

Legal

- 26 **noted** that to meet New Zealand's international trade obligations, the proposed changes need to be implemented prior to the entry into force of the CPTPP;
- 27 **invited** the Associate Minister of Finance (Hon David Parker) to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals by amendments to the OIA as a Supplementary Order Paper to the Overseas Investment Amendment Bill;
- 28 **invited** the Associate Minister of Finance (Hon David Parker) to issue drafting instructions to the Parliamentary Counsel Office to draft regulations that will prescribe the criteria for investments in forestry land;
- 29 **invited** the Associate Minister of Finance (Hon David Parker) to present the regulations to Cabinet on 19 March 2018;
- 30 **authorised** a group of Ministers consisting of the Deputy Prime Minister, the Minister for Crown/Māori Relations, the Minister of Finance, the Associate Minister of Finance (Hon David Parker), the Minister for Māori Development, the Minister of Forestry, the Minister for Climate Change and the Minister for Land Information to have Power to Act on further detailed policy matters that may need to be addressed;
- 31 **noted** that the proposals contained in the paper under DEV-18-SUB-0017 may have implications concerning consistency with the New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993;

Publicity

- 32 **noted** that the paper under DEV-18-SUB-0017, with sections redacted where required, will be published proactively on the Treasury website following introduction of the proposed SOP;
- 33 **agreed** that responsible Ministers make an announcement about the liberalisation of the forestry screening regime and inclusion of forestry rights following Cabinet approval;
- 34 **agreed** that officials can provide high level proactive overviews of these changes to key trading (and investment) partners to seek to manage perceptions of the changes;
- 35 **agreed** that relevant information be published on the websites of the Treasury and the Overseas Investment Office;

International Obligations

- 36 [2]
- 37 **agreed** that Australian investors not be subject to screening of forestry rights or any profit à prendre brought into OIA screening by these proposals;
- 38 **invited** Associate Minister of Finance (Hon David Parker) to issue drafting instructions to the Parliamentary Counsel Office to prepare regulations to give effect to the exemption for Australian investors;
- 39 **noted** [2]
(legally privileged);

Risks

- 40 **noted** that the OIO has expressed concerns regarding the ability to implement the proposed changes on an operational level so quickly, including:
- 40.1 resource and capacity pressures, including for enforcement, as OIO work to implement the proposed restriction on non-residents purchasing existing homes in New Zealand;
 - 40.2 not having the time to work with industry to develop appropriate criteria to assess forestry applications or develop a targeted and effective monitoring regime for forestry;
 - 40.3 making significant changes to the approval criteria for forestry assets that undermine the credibility of the regime;
- 41 **noted** that the OIO has noted that the check list criteria for forestry could have unintended consequences and that extending the timeframe for commencement of the forestry provisions by 12 months would go some way to addressing the risks;

- 42 **noted** that the Treasury engaged in a targeted consultation process with iwi/Māori with forestry interests in January 2018 who expressed concerns about the length of time allowed for consultation and the implications that including forestry rights under the regime will have on attracting overseas investment;
- 43 **noted** that the Associate Minister Finance (Hon David Parker) intends to review the effect of the proposed changes two years after the changes have taken effect;

Financial Implications

- 44 **noted** that financial implications will arise through this proposal and that the OIO is assessing costs associated with administering any new forestry requirements and exploring options for cost recovery, including appropriate fees;
- 45 **noted** that effective operation of the forestry regime requires the OIO to undertake enforcement action which, as enforcement is not generally funded through fees, will have fiscal implications;
- 46 **noted** that the previous commitment to ban foreign speculators from purchasing existing homes in New Zealand authorised Joint Ministers (Deputy Prime Minister, Minister of Finance, Minister for Housing and Urban Development, Associate Minister of Finance (Hon David Parker) and Minister for Land Information) to take decisions around design, implementation and associated charges;
- 47 **agreed** that the financial and implementation implications associated with these proposals be considered by the Joint Ministers as part of their consideration of options to address OIO capacity to implement the wider OIA Amendment Bill;
- 48 **noted** that the decisions referred to in paragraph 46 above could impact on the timeliness and effectiveness of implementation;
- 49 **noted** that the OIO intends to provide advice to Joint Ministers on the financial and implementation implications of the wider OIA Amendment Bill in mid-March 2018 and that preliminary analysis indicates that the financial implications of the Bill, including this proposal, can be managed within the funding set aside in HYEPU to fund the implementation of the non-residents ban as part of the government's 100-Day Plan.

Vivien Meek
Committee Secretary

Hard-copy-distribution (see over)

Present:

Rt Hon Winston Peters
Hon Kelvin Davis
Hon Phil Twyford
Hon Dr Megan Woods (Chair)
Hon Dr David Clark
Hon David Parker
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Jenny Salesa
Hon Damien O'Connor
Hon Clare Curran
Hon Shane Jones
Hon Kris Faafoi
Hon Willie Jackson
Hon James Shaw
Hon Eugenie Sage

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet
Officials Committee for DEV

Hard-copy distribution:

Deputy Prime Minister
Minister for Crown/Māori Relations
Minister of Finance
Associate Minister of Finance (Hon David Parker)
Minister for Māori Development
Minister of Forestry
Minister for Climate Change
Minister for Land Information