

# The Treasury

## Reform of the Overseas Investment Act Information Release

July 2020

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- [23] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [29] 9(2)(d) - to avoid prejudice to the substantial economic interests of New Zealand
- [31] 9(2)(f)(ii) - to maintain the current constitutional conventions protecting collective and individual ministerial responsibility
- [33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [34] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
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**Treasury Report:** Overseas Investment Act: Further advice on sensitive adjoining land

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<b>Date:</b>	29 August 2019	<b>Report No:</b>	T2019/2622
		<b>File Number:</b>	IM-5-3-8 (Overseas Investment Act Phase Two)

**Action sought**

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	<b>Action sought</b>	<b>Deadline</b>
Hon Grant Robertson <b>Minister of Finance</b>	<b>Note</b> the contents of this report.	N/A
Hon David Parker <b>Associate Minister of Finance</b>	<b>Indicate</b> your preference for the categories of sensitive adjoining land to be screened under the Overseas Investment Act.  <b>Refer</b> this report to the Minister for Land Information and Associate Minister of Finance (Clark).	By <b>3 September 2019</b> to allow the Cabinet paper outlining your preferred package of reforms to the Act to be finalised.

**Contact for telephone discussion (if required)**

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<b>Name</b>	<b>Position</b>	<b>Telephone</b>	<b>1st Contact</b>
Ryan Walsh	Senior Analyst, International	[39] (wk)	n/a (mob) ✓
Megan Noyce	Principal Advisor, International	[39] (wk)	[23] (mob)

**Minister's Office actions (if required)**

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**Return** the signed report to Treasury. **Refer** the report to the Minister for Land Information and Associate Minister of Finance (Clark).

Note any feedback on the quality of the report

**Enclosure:** No

# Treasury Report: Overseas Investment Act: Further advice on sensitive adjoining land

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## Purpose of the report

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1. On 22 August 2019, you and the Minister for Land Information requested:
  - a data on overseas investment applications involving only sensitive adjoining land and the benefits accepted for these applications; and
  - b further advice on options for including public conservation land within a narrowed definition of sensitive adjoining land. In the context of the Overseas Investment Act 2005 (the Act) this type of land is: reserves managed by the Department of Conservation, other land held for conservation purposes, and national parks.
2. These requests emerged due to concerns that the proposal to significantly narrow the categories of sensitive adjoining land would reduce the Government's ability to negotiate conditions beneficial to the relevant conservation land (such as access across adjoining land to public conservation land). This report responds to these requests. Data related to the acquisition of sensitive adjoining land is at Appendix A.
3. We have copied this report to the Minister of Finance for his information and future discussion as proposals are finalised for Cabinet consideration.

## Background

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4. The Act requires transactions to be screened if they involve land that adjoins land with sensitive characteristics, such as the foreshore, a lakebed, some types of conservation land, historic places, and wāhi tapu (sacred places). We call this land 'sensitive adjoining land'.
5. Sensitive adjoining land is screened to ensure transactions are beneficial to the conservation of, or public access to, the land it adjoins. However, this adjoining land is often of low or no environmental, cultural or access sensitivity and therefore the costs imposed by screening are often disproportionate to the risks being managed.<sup>1</sup>
6. In response to our advice of 5 August [T2019/1649], you agreed to significantly narrow the categories of sensitive adjoining land that require screening to land adjoining:
  - a the foreshore and lakebeds (consistent with provisions in the Resource Management Act 1991 for the maintenance and enhancement of public access to coastal marine areas and lakes); and
  - b some land significant to Māori (consistent with the Crown's Treaty Obligations).

## Additional options for screening land adjoining conservation land

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7. You asked us to consider whether sensitive adjoining land next to public conservation land should continue require consent to purchase under the Act (in addition to the categories you have already agreed to retain). We have considered two alternative options to achieve this objective.

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<sup>1</sup> To receive consent to purchase sensitive adjoining land, investors must satisfy the investor test and demonstrate benefit to New Zealand against one or more of the Act's 21 benefit factors. This can cost up to \$100,000, including application fees.

8. [1, 36]

*Alternative option 1 – continue to screen land adjoining public conservation land*

9. If you wish to continue to screen land adjoining public conservation land, our preferred approach is to retain the following categories of sensitive adjoining land. That is, land adjoining:
- a land held for conservation purposes;
  - b reserves managed by the Department of Conservation; and
  - c national parks.
10. Based on our analysis, this option would result in around 1-2 additional transactions being screened each year (relative to our recommended option) and introduce some additional complexity associated with identifying whether adjoining land was sensitive. On two occasions in the last five years, screening this land has helped the government guarantee access to, or other benefits related to, that conservation land (see Appendix A).
11. If preserving the ability to potentially negotiate these benefits is important to you, adopting this option would still be a significant improvement on the status quo.

*Alternative option 2 – continue to screen land adjoining public conservation land if it is not zoned as commercial or urban land (not recommended)*

12. You also asked us to consider whether it would be appropriate to not screen some types of sensitive adjoining land if the land was zoned as urban or commercial. This was on the basis that such land was generally less sensitive than, for example, rural land.
13. We do not recommend progressing this option because it would result in different parcels of land adjoining the same sensitive land being treated inconsistently. That is, an applicant acquiring land zoned for business use adjoining a reservation would not need consent, but an applicant acquiring land zoned for rural use adjoining that same land would. An example of this is Snowden's Bush Scenic Reserve in Brightwater, Nelson District, which adjoins land zoned as "Suburban Commercial" and rural land. This would undermine the Act's coherence and increase costs for investors (for example, in determining whether consent was required to purchase a particular piece of land).
14. Critically, non-urban land of greater than five hectares, irrespective of whether it adjoins another type of sensitive land, will always continue to require consent to purchase under the Act.

## Next Steps

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15. We will reflect your decisions on this report in a draft Cabinet paper for your consideration recommending a range of amendments to the Act, to be provided to you in the week of 16 September 2019.

## Recommended Action

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We recommend that you:

- a **note** that this advice responds to a request by you and the Minister for Land Information for:
  - i. data on overseas investment applications involving only sensitive adjoining land and the benefits accepted for these applications; and
  - ii. further advice on options for including public conservation land within a narrowed definition of sensitive adjoining land. In the context of the Overseas Investment Act this type of land is: reserves managed by the Department of Conservation, other land held for conservation purposes, and national parks.
- b **note** that, in response to T2019/1649, you agreed to remove all categories of sensitive adjoining land from the Act, with the exception of land adjoining foreshore, lakebeds, and certain categories of land significant to Māori.
- c **note** that if you wish to screen additional categories of sensitive adjoining land, adopting recommendation d would still be a significant improvement on the status quo and may offer the government an enhanced ability to negotiate access and other benefits relevant to the adjoining land.
- d **agree**, in addition to the categories of sensitive adjoining land you have already agreed to retain (as referenced at recommendation c), to also retain the following additional categories of sensitive adjoining land. That is, land adjoining:
  - i. land held for conservation purposes;
  - ii. reserves managed by the Department of Conservation; and
  - iii. national parks.

Agree/disagree.  
Associate Minister of Finance

- e **note** that recommendation d:

[1, 36]

- f **note** that we do not recommend progressing an option to only screen certain categories of adjoining land on the basis of the adjoining land's zoning. This could lead to inconsistent treatment of similar pieces of land adjoining the same piece of sensitive land.

g **refer** this report to the Minister of Land Information and the Associate Minister of Finance (the Hon Dr David Clark).

Referred/not referred.

Megan Noyce  
**Principal Advisor, International**

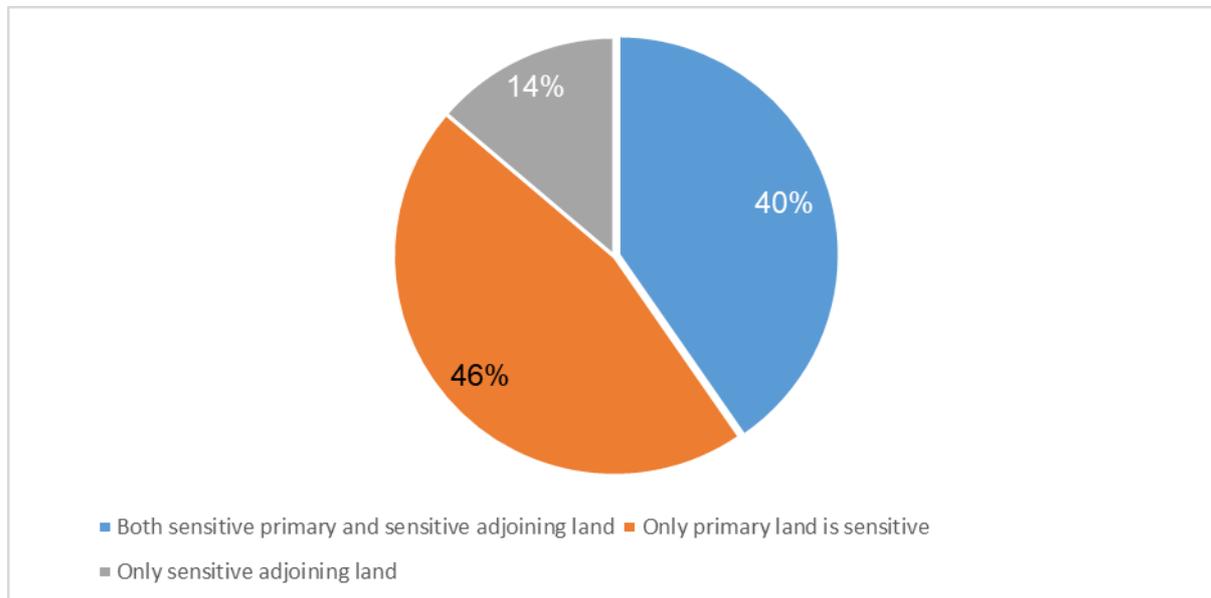
Hon Grant Robertson  
**Minister of Finance**

Hon David Parker  
**Associate Minister of Finance**

## Appendix A: Further information on applications only involving sensitive adjoining land

Of 567 applications involving sensitive land between August 2013 and June 2018, 14 per cent (78) were screened because they involved only sensitive adjoining land (see Figure 1).

**Figure 1: Sensitive land applications by type (2013-2018)**



### Benefits recognised through overseas persons' acquisition of sensitive adjoining land

Ministers expressed interest in the extent that screening sensitive adjoining land results in overseas investors providing benefits relevant to the land that it adjoins (for example, the foreshore). Our analysis indicates that benefits relevant to the adjoining land are rarely accepted for applications where the adjoining land is the only sensitivity. This reflects:

- the difficulty that applicants have in providing benefits relevant to land they have no ownership or control over; and
- the limited sensitivity of the sensitive adjoining land itself (making it hard for granting access or protecting indigenous flora or fauna to be recognised as a benefit).

Between August 2013 and June 2018, the following benefits were accepted for applications where adjoining land was the only sensitivity (see Figure 2).

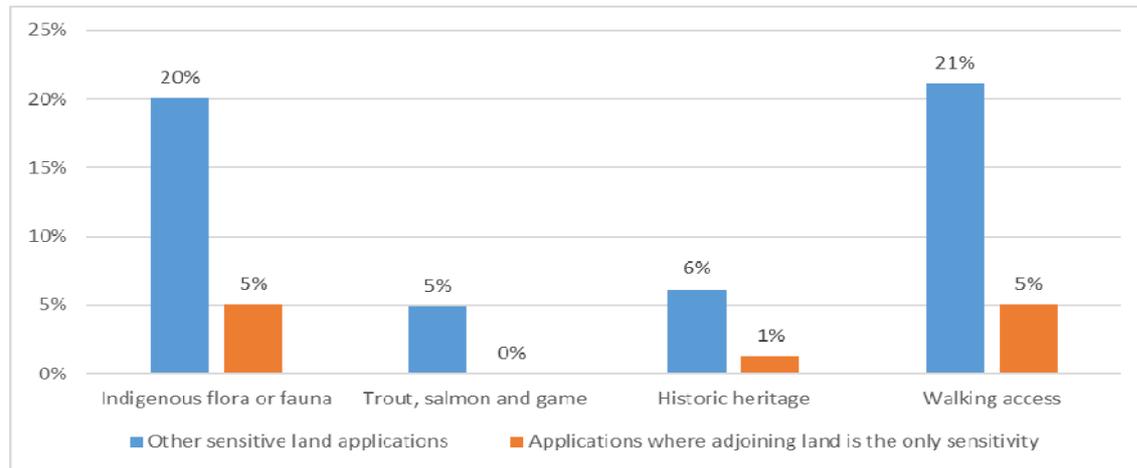
- Protection of indigenous flora and fauna was accepted for four applications (five per cent of all applications where adjoining land was the only sensitivity, and 3.9 per cent of all applications where protection of indigenous flora and fauna was accepted as a benefit). Three of these applications were for residential property, and their purchase would now be screened irrespective of any changes to the definition of sensitive adjoining land following changes in 2018. The other application was to purchase a Top 10 holiday park on the Karikari Peninsula.<sup>2</sup>
- Walking access was accepted as a benefit for four applications (5 per cent of all applications where adjoining land was the only sensitivity, and 2.8 per cent of all applications where walking access was accepted as a benefit). Of these applications:
  - i one was a petrol station that adjoined the foreshore;<sup>3</sup>
  - ii one was a pharmaceutical plant in an industrial area adjoining an esplanade reserve;<sup>4</sup> and

<sup>2</sup> Case 201420022

<sup>3</sup> Case 201510074

- iii the others related to the purchase of existing accommodation sites (one adjoining a small recreation reserve in central Queenstown, the other adjoining a reserve managed by the Department of Conservation and a heritage log cabin that collapsed in 2013 but remains listed under the Historic Places Act 1980).<sup>5</sup>
- One application (one per cent of all applications where adjoining land was the only sensitivity) cited protection of historic heritage as a benefit. This was a residential property, and its purchase would now be screened irrespective of any changes to the definition of sensitive adjoining land following changes in 2018.

**Figure 2: Proportion of all sensitive land applications with environmental and access factors accepted**



### Benefits cited for land adjoining public conservation land

In addition to general data on sensitive adjoining land screened under the Act, we have collated some data just related to the acquisition of sensitive adjoining land next to public conservation land (as defined in paragraph 1(b) above).

Across the same five-year period (that is, 2013 to 2018), 11 applications were screened only because they adjoined public conservation land.<sup>6</sup> Only two of these applications cited benefits potentially relevant to the public conservation land itself (as opposed to economic benefits, for instance).

- One application cited protection of indigenous flora and fauna, and historic heritage as a benefit. This was residential property, and would now be screened following the changes to the treatment of residential land under the Act in 2018.
- One application cited walking access as a benefit (the example adjoining a reserve managed by the Department of Conservation and a heritage log cabin referenced above).

<sup>4</sup> Case 201410050

<sup>5</sup> Cases 201420083 and 201510037

<sup>6</sup>National parks are currently defined as sensitive adjoining land by section 37 of the Act. We have been unable to find any examples where an application's only sensitivity was adjoining a national park.