

# 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
- [36] 9(2)(h) - to maintain legal professional privilege
- [37] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice
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**Treasury Report:** Phase Two reform of the Overseas Investment Act:  
Design of a potential expanded environmental factor in  
the benefits test

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<b>Date:</b>	10 October 2019	<b>Report No:</b>	T2019/3209
		<b>File Number:</b>	IM-5-3-8

**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 recommendations in this report.	None.
Hon David Parker <b>Associate Minister of Finance</b>	<b>Agree</b> to allow some likely environmental harms to be considered before granting consent to investments in non-urban land over five hectares.	By 11 October 2019, to support ongoing Cabinet consultation on the draft Cabinet paper to agree the proposed Phase Two reform.

**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]	n/a (mob) ✓
Megan Noyce	Principal Advisor, International	[39]	[23]

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

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**Return** the signed report to Treasury.

Note any  
feedback on  
the quality of  
the report

**Enclosure:** No

# Treasury Report: Phase Two reform of the Overseas Investment Act: Design of a potential expanded environmental factor in the benefits test

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## Executive summary

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On 9 October 2019, the Associate Minister of Finance (Hon David Parker) requested an additional option for the draft Cabinet paper seeking changes to the Overseas Investment Act 2005 (the Act). Specifically, how the likely or actual environmental harms of an investment in non-urban land greater than five hectares could be weighed against other likely or actual benefits of the investment, before granting consent.

We have copied this advice to the Minister of Finance for his information as proposals are finalised for Cabinet consideration.

### *Background*

Overseas investors seeking to acquire an interest in sensitive land must generally satisfy the benefit to New Zealand test (the benefits test). The test currently has a number of problems that increase compliance costs and uncertainty (T2019/1694 refers). To resolve these, Minister Parker agreed to propose a revised benefits test to Cabinet with: fewer, broader, factors (but no reduction in the scope of benefits considered); benefits required to be proportional to the sensitivity of the land (and the interest being acquired); and benefits are assessed relative to the current state of the land (and activities on it).

Minister Parker also agreed to clarify that the test would not account for negative benefits of an investment. This reflected that the proposed national interest test would manage significant risks, general legislation such as the Resource Management Act 1991 (RMA) exists to manage environmental risks, and negatively weighting factors would reduce predictability and transparency.

### *Design of a negatively weighted environmental factor in the benefits test*

We do not recommend this option because it risks shifting the Phase Two reform towards greater protectionism, rather than reducing regulatory costs, with implications for economic growth.

However, if Minister Parker were to include an option in the Cabinet paper that allowed actual and likely environmental harms to be considered as part of the benefits test for investments in non-urban land of greater than five hectares, we would recommend that:

- any likely or actual harms to the environment be considered as part of the benefits test's proposed broad environmental factor, with benefits and harms having to be related to the:
  - adverse, or likely, adverse effects on natural and physical resources (as defined in the RMA, with the addition of 'ecosystems and their constituent parts', and no reference to structures) on the relevant sensitive land; or
  - adverse, or likely, adverse effects on natural and physical resources (as defined above) on other land as a result of activities occurring on the relevant land.
- the existence of any likely or actual environmental harms be assessed against the current state of the land rather than any theoretical future state of the land;

- consistent with how factors under the benefits test more broadly are proposed to be weighed under proposals in the draft Cabinet paper, likely or actual environmental harms must be weighted by Ministers in light of their proportionality to the sensitivity of the land and the type of interest being acquired;
- Ministers must consider whether any likely or actual environmental harms can be managed through the imposition of conditions before giving weight to any likely or actual environmental harms under the benefits test;
- the weighing of any likely environmental harms against environmental or other benefits when determining whether to grant consent to an application, requires Ministerial judgement (rather than, for example, a formal cost benefit analysis); and
- the existence of likely or actual environmental harms would not serve as a veto over a proposed investment, but increase the scope of matters that must be considered and balanced before consent is granted.

These features would best ensure that any new factor operates consistently with how other aspects of the Act are intended to work under the Phase Two reform of the Act.

### *Risks*

Under the time available, a full risk assessment has not been possible. However, we are concerned that this option would:

- reduce the Act's coherence, confusing the role of the national interest test (which is proposed to manage significant risks) and conflicting with other legislation that is designed to manage environmental risks;
- increase the Act's complexity, particularly in the short term, with investors having to provide additional information and the regulator having to complete additional assessments. Given that this proposal would affect between 60 and 75 per cent of applications to acquire sensitive land,<sup>1</sup> this could significantly reduce or even offset any other regulatory savings for applicants;
- risk inconsistent decision making across different regulatory regimes in respect of similar activities (for example, an application receives consent under the RMA but is denied on environmental grounds under the Act); and
- increase the chance of overseas investors viewing the balance of the Phase Two reform shifting towards protectionism, rather than reducing red tape, which would likely reduce New Zealand's attractiveness to foreign investment. This has implications for New Zealand's long term economic growth.

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<sup>1</sup> Excluding applications to acquire residential land and sensitive land under either of the streamlined forestry tests or intention to reside pathway. This is based on historical analysis conducted to support the development of options to embed the rural land directive in the Act.

## Recommended Action

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We recommend that you:

- a **Note** that this report responds to a direction to develop an option for the Phase Two review of the Overseas Investment Act 2005 (the Act) that would allow Ministers to consider some potential negative environmental consequences of investments in non-urban land of greater than five hectares.
- b **Note** that we do not support introducing such an option because it:
  - i. may shift the balance of the Phase Two reform towards better enabling the government to effectively manage risk at the expense of improving New Zealand's attractiveness to foreign investment, with flow on implications for New Zealand's economic growth; and
  - ii. will reduce the Act's coherence, increase the Act's complexity, risk inconsistent decision making across different regulatory regimes in respect of similar activities, and increase the perception that the government is prioritising risk management at the expense of proposals designed to increase New Zealand's attractiveness to foreign investment.
- c **Agree** that, if you were to proceed with this proposal, it be presented as an option in the draft Cabinet paper, rather than as part of a single recommended proposal for the design of the benefit to New Zealand test.

Agree/disagree.  
Associate Minister of Finance

- d **Agree** that the option to allow Ministers to consider likely or actual environmental harms under the benefit to New Zealand test in respect of investments in non-urban land of greater than five hectares should have the following design features. That is, any relevant likely or actual harms:
  - i. would be considered as part of the broad environmental factor proposed for inclusion in the benefit to New Zealand test as part of the Phase Two reform of the Act (T2019/1649 refers);
  - ii. be required to relate to the natural and physical resources on the relevant sensitive land, or to the natural and physical resources on other land as a result of activities occurring on the relevant land;
  - iii. be assessed against the current state of the land (and activities on it), consistent with the counterfactual test proposed in the draft Cabinet paper for the Phase Two reform; and
  - iv. be weighted proportionately to the sensitivity of the land or the interest being acquired in that land, consistent with the proportional approach proposed to be applied across the Act in the draft Cabinet paper for the Phase Two reform.

Agree/disagree.  
Associate Minister of Finance

- e **Agree** that natural and physical resources includes land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and 'ecosystems and their constituent parts'.

Agree/disagree.  
Associate Minister of Finance

- f **Agree** that before Ministers can use likely or actual environmental harms as grounds to deny consent to an affected application under the benefit to New Zealand test, they must consider whether conditions could be imposed on the prospective investment to mitigate, or remediate, any such harms.

Agree/disagree.  
Associate Minister of Finance

- g **Agree** to make clear in the Act that weighing benefits and costs, within and across factors, requires judgement (rather than, for example, a quantitative calculation).

Agree/disagree.  
Associate Minister of Finance

- h **Agree**, to ensure the Act's coherence, that benefits that can be accrued against the broad environmental factor in respect of all investments subject to the benefit to New Zealand test must also relate to:

- i. the natural and physical resources on the relevant sensitive land, or
- ii. natural and physical resources on other land as a result of activities occurring on the relevant land (with natural and physical resources defined as proposed at recommendation e).

Agree/disagree.  
Associate Minister of Finance

- i **Note** that the benefit to New Zealand test proposed in the draft Cabinet Paper for the Phase Two reform includes a consequential benefit factor that ensures that environmental benefits unrelated to physical or natural resources can still be considered when determining whether to grant consent.

- j **Note** that adopting this option would have implications for other aspects of the Phase Two reform and the operation of the Act more generally. In particular it will:

- i. increase the government's ability to address concerns related to the environment, including water extraction on sensitive land;
- ii. likely further raise the threshold for overseas persons to acquire farmland; and, in some circumstances,
- iii. in some circumstances raise the threshold for overseas persons to acquire sensitive land for forestry activities.

- k **Note** that we will provide your office with an updated draft Cabinet paper reflecting our recommended approach, which can be modified if you take other decisions.

Megan Noyce  
**Principal Advisor**

Hon Grant Robertson  
**Minister of Finance**

Hon David Parker  
**Associate Minister of Finance**

# Treasury Report: Phase Two reform of the Overseas Investment Act: Design of a potential expanded environmental factor in the benefits test

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## Purpose

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1. This report responds to the Associate Minister of Finance's (the Hon David Parker) 9 October request to prepare an additional option for inclusion in the Cabinet Paper seeking agreement to the Phase Two reform of the Overseas Investment Act 2005 (the Act).
2. In particular, Minister Parker has requested advice on how likely or actual environmental harms of a proposal to acquire non-urban land of greater than five hectares could be accounted for under the 'benefit to New Zealand' test (the benefits test).
3. Minister Parker's office has communicated that his intention is that this broader factor:
  - a only apply to investments in sensitive non-urban land of greater than five hectares; and
  - b only allow consideration of a relatively narrow set of potential environmental harms.
4. We understand that this is to balance the need to protect against risks to New Zealand's environment through the Act without introducing significant additional regulatory or administrative costs, or uncertainty, for investors and the regulator.
5. We have copied this advice to the Minister of Finance for his information and future discussion, as proposals are finalised for Cabinet consideration.
6. In preparing this briefing, officials have consulted the Ministry of Foreign Affairs and Trade (MFAT), Land Information New Zealand (LINZ) and the Overseas Investment Office (OIO), and the Ministry for the Environment (MfE).

## Background and context

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7. Overseas investors seeking to acquire an interest in sensitive land must generally satisfy the benefits test. This test requires investors to demonstrate that their investment will, or will likely, benefit New Zealand (or any part of it or group of New Zealanders). If the land is non-urban land over five hectares, this benefit must be substantial and identifiable.
8. In T2019/1649, we provided advice on problems with the existing benefits test. Minister Parker subsequently agreed to pursue a simplified benefits test with:
  - a broadened economic, environmental and access factors (but no reduction in the scope of benefits that can be considered relative to the status quo when determining whether to grant consent);

- b a requirement for benefits to be proportional to the sensitivity of the land and the type of interest being taken in that land (that is, more benefits must be offered to acquire more sensitive land); and
  - c a 'before and after' counterfactual, where benefits would be assessed relative to the current state of the land (and activities on it) rather than a hypothetical counterfactual, which is often "an adequately funded New Zealand buyer".
9. Minister Parker also agreed to clarify that the test would only account for benefits of an investment, not any prospective costs (this occurs currently, however the Act is ambiguous on this point). This was because:
- a the proposed new national interest backstop test will manage significant risks;
  - b general legislation (for example, the Resource Management Act 1991 (RMA) and the Commerce Act), and sometimes the counterfactual (where outcomes would be worse than the status quo), can manage less significant risks; and
  - c an ability to negatively weight factors would make screening less predictable (because it would involve trade-offs between very different factors), more costly and time-consuming, and would duplicate existing legislation (such as the RMA).

#### Advice on the design of a broader environmental factor

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10. Consistent with Minister Parker's request and his office's subsequent guidance, we have developed an option for an expanded environmental factor that could be included in the draft Cabinet paper.
11. We do not recommend this option because it risks shifting the Phase Two reform towards greater protectionism, rather than reducing regulatory costs, with implications for economic growth. However, if it was to be included in the draft Cabinet paper this option would propose changes to the benefits test to grant the government the ability to consider any environmental costs or benefits in respect of applications to acquire sensitive non-urban land of greater than five hectares.
12. Our advice covers the following aspects of this proposal:
- a what types of environmental harms or benefits should be able to be considered (that is, the factor's scope);
  - b what baseline the existence of any likely harms should be assessed against (that is, the counterfactual);
  - c what the threshold for accounting for likely environmental harms should be; and
  - d how the factor should be practically applied by decision makers.
13. We have sought to ensure any new environmental factor operates consistently with how other factors in the benefits test are proposed to operate under the Phase Two reform.

### *The factor's scope*

14. We considered whether the types of likely environmental harms that Ministers could take into account under a new environmental factor should be limited in any way. This could be an effective way to balance the need to enhance the government's ability to manage environmental risks and maintain New Zealand's attractiveness to foreign investment.
15. We recommend that the types of harms that can be taken into account should be limited to:
  - a adverse, or likely, adverse effects on natural and physical resources (as defined in the RMA,<sup>2</sup> with the addition of ecosystems and their constituent parts, and no reference to structures) on the relevant sensitive land; or
  - b adverse, or likely, adverse effects on natural and physical resources (as defined in paragraph 15a) on other land as a result of activities occurring on the relevant land.
16. This is because:
  - a limiting the factor to these types of likely or actual harms would be consistent with the type of environmental benefits that the regulator generally recognises currently; and
  - b it restricts consideration of any likely or actual harms to those that can be (more) easily assessed and are directly related to the sensitive land that the investor is seeking to acquire (or the activities they intend to undertake on it); and
17. Adopting a wider definition of the environment (thereby increasing the scope of likely and actual harms that could be considered) would not have these benefits. For example, the definition of environment in the RMA<sup>3</sup> could result in Ministers considering intangible matters and second order environmental effects as part of the benefits test. This would significantly increase administrative and regulatory costs and uncertainty (at least in the short term).
18. To ensure the Act's ongoing coherence, we recommend that the range of benefits that can be accounted for under the environmental factor be limited in the same way, with this applying to all applications subject to the benefits test (not just applications to acquire non-urban land of greater than five hectares). The alternative of allowing consideration of a broader range of potential benefits than potential harms under the factor is difficult to rationalise.

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<sup>2</sup> Under section 2 of the RMA, natural and physical resources includes land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced) and all structures. Structures includes man-made structures.

<sup>3</sup> Under section 2 of the RMA, the environment includes: (a) ecosystems and their constituent parts, including people and communities; (b) all natural and physical resources; (c) amenity values; and the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters.

19. The benefits test proposed in the draft Cabinet paper would still include a 'consequential benefits' factor to ensure that other benefits to the environment could still be considered (consistent with Minister Parker's decisions on T2019/1649).

#### *The counterfactual*

20. We considered whether any likely or actual environmental harm should be determined with reference to the current state of the land or against an alternative, theoretical, measure.
21. The draft Cabinet paper proposes that all benefits of a prospective investment should be assessed against the current state of the land (and activities on it), rather than the current theoretical 'with and without' assessment. We recommend that this also be the benchmark for assessing whether an investment poses any likely or actual environmental harm as well as the scale of any such harms. This is because:
  - a the 'with and without' assessment has increased costs and reduced predictability for applicants. Adopting a theoretical counterfactual for determining the existence and scale of any likely or actual environmental harms would retain these problems; and
  - b the Act's coherence would be undermined if a different assessment base was used to determine the existence and scale of likely benefits and harms.
22. Under either option, there is a risk that any likely or actual environmental harms would be overstated, increasing the chance of this proposal resulting in the inappropriate denial of applications on environmental grounds. For example:
  - a under a theoretical counterfactual (such as an 'adequately funded New Zealand buyer'), a New Zealander could be assumed to have better environmental practices than an overseas person. As such, any likely or actual harms associated with an overseas investor could be calculated to be larger than they would be if the assessment was completed against the land's current state; and
  - b using a current state counterfactual could result in likely or actual harms being overstated where these harms are likely to occur irrespective of the investor (for example, where undeveloped land is to be turned into residential housing).
23. Despite this, given the other advantages associated with adopting a current state counterfactual, on balance we recommend that approach.

#### *The threshold for accounting for environmental harms*

24. It is important to ensure that any new negatively-weighted factor is no wider than necessary to protect important environmental interests. A broadly-framed test that was overused as a tool to deny applications for consent would likely have a chilling effect on investment.
25. We considered whether one way to mitigate against this risk would be to only allow Ministers to account for likely or actual environmental harms of a certain magnitude (for

example, 'significant environmental harms'). We do not recommend adopting such a threshold because:

- a a high threshold could confuse the role of the benefits test, vis a vis the proposed national interest test, which is explicitly designed to manage significant foreign investment risks;
  - b the Act's coherence would be reduced if any likely or actual environmental benefits supported an investment in gaining consent, but only a limited set of likely or actual harms could have the reverse effect; and
  - c a subjective threshold would increase uncertainty for the regulator and investors and could increase the chance of judicial review if this factor was used to deny consent to an investment (at least until sufficient precedent is established).
26. The draft Cabinet paper proposes that Ministers must be satisfied that the benefits offered by an investment are proportionate to the sensitivity of the land, and the interest being acquired in that land, before granting consent. This 'proportionate' approach offers an alternative way of ensuring that the proposed environmental factor can only be used to manage material risks.
27. This would require Ministers to weight any likely or actual environmental harms proportionately to the land's environmental sensitivity. Environmental harms on a non-environmentally sensitive piece of land should count for less in the decision making process than the same harms on a highly sensitive piece of land. This effectively increases the threshold for accounting for likely or actual harms.
28. Adopting a consistent approach for determining the scale of any likely benefits and harms should also reduce any additional uncertainty associated with this proposal for investors and the regulator.
29. To further reduce the possibility of the factor being used to deny consent to applications that only pose limited likely or actual risks of environmental harm, we recommend that Ministers be required to consider whether conditions could be imposed on the prospective investment to mitigate, or remediate, any likely or actual environmental harms. This is consistent with how environmental impacts are currently managed under the Act.

#### *The factor's application*

30. Under this proposal, before granting consent, Ministers will have to weigh any likely or actual benefits of the proposal (including environmental), against any likely or actual environmental harms, and determine whether – on balance – the investment is likely to benefit New Zealand.

31. The OIO have expressed concerns that this 'balancing' would require them to complete a quantitative cost-benefit analysis.<sup>4</sup> If this approach to applying the factor was adopted, it would introduce significant additional complexity and cost, likely require the OIO to obtain additional expertise (such as economists), and increase processing times for applications.
32. To avoid this, we recommend that the Act make clear that weighing benefits and costs, within and across factors, requires Ministerial judgement (rather than, for example, a quantitative calculation). This would be consistent with the OIO's and Minister's current approach as well as indicative comments made by the High Court relating to how the benefits test should be administered.<sup>5</sup>

### Important interactions between this proposal and other features of the proposed Phase Two reform and existing Act

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33. This proposal would significantly alter a fundamental part of the Act's consent framework and consequently have implications for a number of Phase Two reform proposals and the Act's operation more generally. We want to draw Ministers attention to three particular interactions:
  - a the government's ability to account for an investment's effect on water quality;
  - b embedding a higher threshold for the acquisition of farmland; and
  - c the purchase of sensitive land for forestry activities.

#### *Consideration of an investment's impact on water under the Act*

34. We advised that adopting a broad environmental factor in the benefits test would provide the government further opportunity to manage concerns related to water use or quality on sensitive land or that result from activities being conducted on sensitive land (T2019/1649, paragraph 186 refers).
35. Allowing consideration of likely or actual environmental harms under this factor for investments in non-urban land of greater than five hectares will further increase the government's capacity to manage concerns relating to water. For example, under this proposal Ministers would be able to explicitly account for any reduction in water quality on the relevant land or as a result of activities being undertaken on that land before granting consent.

#### *Embedding the rural land directive in the Act*

36. Minister Parker has agreed to embed the Government's 'rural land directive' in the Act. This requires overseas persons to deliver increased benefits – with a genuine point of difference, such as the introduction of new technology – to earn the privilege of owning farmland.

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<sup>4</sup> The OIO envision that an assessment similar to that completed by the Commerce Commission when assessing prospective mergers would be required.

<sup>5</sup> *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147. Paragraph 39.

37. Adopting a negatively weighted environmental factor in respect of all non-urban land over five hectares (which includes farmland) will likely make it more difficult for overseas persons to acquire farmland. This is because, in addition to overseas persons only being able to acquire farmland if they can demonstrate a significant point of difference, these benefits could be eroded by any likely or actual environmental harms. This could result in the investment, on balance, not being of benefit to New Zealand.

#### *Applications to acquire sensitive land for forestry activities*

38. To acquire sensitive land for forestry activities (that is, conventional forestry involving the growing and harvest of trees), investors can choose to submit their application under the benefits test or one of two streamlined tests designed to facilitate investment in this sector. These streamlined tests were introduced in 2018 as part of the Government's Phase One reforms to the Act.
39. Since these amendments took effect the majority of forestry applications have been made under the new streamlined tests and we expect this to continue. This proposal will have no effect on these applications because these tests do not include environmental factors.
40. However, this proposal would negatively affect any application to acquire land for forestry activities submitted under the benefits test. This is because any likely or actual environmental harms on the relevant land or as a result of activities on the land would have to be weighed against any prospective benefits. This would, at a minimum, result in applicants having to provide additional information to the regulator (increasing their costs) and could reduce the chance of some forestry applications receiving consent.

#### **Risks**

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41. Under the time available, we have not been able to complete a full assessment of potential risks associated with this proposal. However, there are four particularly worth noting:
- a reduced coherence of the Act;
  - b increased complexity;
  - c risk of inconsistent decision making across different regulatory regimes in respect of similar activities; and
  - d increasing the perception that the government is shifting the balance of the Phase Two reform towards better enabling the government to effectively manage risk at the expense of improving New Zealand's attractiveness to foreign investment.
42. Cumulatively these mean that there is a risk of this proposal reducing New Zealand's attractiveness to foreign investment, with flow on implications for New Zealand's economic growth.

### *Reduced coherence of the Act*

43. In designing this proposal, we have tried to align it to the extent possible with how we recommend the rest of the Act operate.
44. However, this change would still represent a significant departure from the recommended consent framework and reduce the Act's coherence. In particular it:
  - a Overlaps with the role of the proposed national interest test, which is designed to manage significant risks posed by foreign investment;
  - b duplicates other legislation that is designed to manage environmental risks; and
  - c elevates the importance of environmental factors without a clear rationale. This risk may be able to be managed through careful messaging about the value placed by New Zealanders on the natural environment.

### *Increased complexity*

45. This proposal is likely to result in increased uncertainty and complexity for applicants and the OIO. It will require applicants to provide additional information, including expert reports (at significant expense), to support their assessment of any likely or actual environmental outcomes. It will also require the OIO to complete additional analysis before consent can be granted. Cumulatively, this would be expected to result in either longer processing times or greater operating costs (which are passed on to applicants through fees), contrary to the Phase Two reform's objectives.
46. The OIO also advise that the introduction of a negatively weighted environmental factor would likely increase the number of third-party submissions received in respect of relevant investments. This would increase administrative costs for the OIO. Applicants could be required to respond to claims raised in such submissions, resulting in an iterative process that places additional pressure on timelines.
47. Given that historically between 60 and 75 per cent of applications received under the Act to acquire sensitive land relate to non-urban land of greater than five hectares,<sup>6</sup> this proposal risks significantly undermining any reduction in regulatory burden for applicants achieved through the Phase Two review.

### *Inconsistent decision making across regulatory regimes managing similar activities*

48. The RMA is the principal tool for ensuring the sustainable management of New Zealand's natural and physical resources. The RMA is supplemented by a range of other legislation that manage specific activities or environmental risks.
49. Under this proposal, there is a risk that applications will be denied on the basis of likely or actual environmental harm that would receive, or have received, consent under other regimes managing similar activity.

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<sup>6</sup> Excluding those relating to residential land or to acquire sensitive land under either of the streamlined forestry tests or intention to reside pathway. This is based on analysis completed to support the design of options to embed the rural land directive in the Act.

50. While this may be a legitimate outcome given each regime's different purpose, this scenario is likely to frustrate and confuse applicants. Further, if this occurred frequently, it may create a perception that New Zealand's regulatory system lacks coherence and predictability. This could be expected to undermine New Zealand's attractiveness to investment.

#### *International relations*

51. [1]

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#### Next steps

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54. The approach recommended in this report will be reflected in a revised draft Cabinet paper seeking decisions on the broader package of Phase Two reforms proposed for the Act. This will be provided to Minister Parker's office as soon as possible to support ongoing consultation with your Cabinet colleagues on the reform proposals. It can be updated, if necessary, to reflect Minister Parker's decisions (if those differ to our recommended approach).