

Submission on Overseas Investment (National Interest Test and Other Matters) Amendment Bill to Finance and Expenditure Committee

Committee Secretariat
Finance and Expenditure Committee
Parliament Buildings
Wellington

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Tēnā koutou

Introduction

1. Herenga ā Nuku Aotearoa, the Outdoor Access Commission, is the Crown agent responsible for providing leadership on outdoor access issues. Our role is to advise on and advocate for free, certain, enduring, and practical access to the outdoors.
2. Herenga ā Nuku has a legislative function to facilitate the resolution of disputes about outdoor access, and one of its priorities is to ensure public access to the outdoors is maintained and enhanced.
3. Overseas investment in New Zealand land offers practical and enduring opportunities for new public access to the outdoors that will benefit all New Zealanders, particularly hunters and fishers. The Overseas Investment regime has traditionally provided opportunities for establishing new public access.

Public access, hunting, and fishing

4. Most weeks, Herenga ā Nuku receives enquiries from members of the public about their ability to access waterways for fishing, the high country for hunting, coastal areas for recreation, and other areas to enjoy the benefits of being outdoors.

Supporting these enquiries is part of our role in advising on practical access to the outdoors. These enquiries show that the New Zealand public places a very high value on and expectation of public access.

5. The Government has also shown its commitment to public access by establishing the Minister of Hunting and Fishing. The Minister's role focuses on sustainably managing game animal and sports fish species while ensuring access to public lands for recreational hunting and fishing.
6. The Minister of Hunting and Fishing has made several announcements this year that signal the Government's commitment to enabling better access to hunting and fishing areas for New Zealanders.
 - March 2025 – Improved hunting permit system on its way.

<https://www.beehive.govt.nz/release/improved-hunting-permit-system-its-way>

*A new and improved hunting permit system **will make it easier for New Zealanders to go hunting on public conservation land**, Minister for Hunting and Fishing James Meager says.*

*"Longer permits, automatic reminders and better navigation are part of a significant upgrade that will **make life easier for 34,000 hunters that hunt on open conservation land**," Minister Meager says.*

*"These may be simple changes, but they reflect a government **which is committed to making it easier for New Zealanders to go hunting and fishing on conservation land**, and are willing to listen to the feedback of the hunting community to do so."*

- March 2025 – More recreational hunting opportunities on offer:

<https://www.beehive.govt.nz/release/more-recreational-hunting-opportunities-offer>

*Hunting and Fishing Minister James Meager says this announcement supports the Government's commitment **to make it easier for New Zealanders to hunt and fish**.*

*"We want to **support the growth of New Zealand businesses, which includes boosting opportunities for hunting**. Commercial hunting business also provide local economic and employment benefits," says Mr Meager.*

7. The Minister's announcements to make it easier to hunt and fish are enabled by the public access routes to hunting and fishing areas. The Overseas Investment regime has provided many of these opportunities in the past. It is important that it continues to enable new access opportunities to support the Government's hunting and fishing commitments.
8. The Minister's announcements also show the Government's desire to grow New Zealand businesses in outdoor tourism. The Amendment Bill is also aimed at enabling economic growth. More access to hunting and fishing opportunities will enable New Zealand's lucrative hunting and fishing businesses to grow. The economic opportunities for New Zealand businesses and tourism to leverage new opportunities presented through new access resulting from the Overseas Investment regime are not limited to hunting and fishing. Thousands of New Zealanders and tourists explore our outdoors on bikes each year.
9. In May 2023, an independent economist, Benje Patterson, published a report on mountain bike tourism.

<https://www.benjepatterson.co.nz/bike-tourism-in-plantation-forests-worth-291-million/>

Patterson's report shows that tourists biking through New Zealand's production forests in 2022 spent nearly \$300 million on food, accommodation, and entertainment. Production forests are a major overseas investment area that contributes significantly to tourism. The overseas investment regime needs to provide an avenue for the existing arrangements for cycle tourism and recreation in commercial forestry areas to remain in place. Existing arrangements for overseas investment in commercial forests under the Special Forestry Test pathway will not exist under the new National Benefits Test pathway.

10. We support the Amendment Bill's objective of enabling economic growth. That growth should also include the growth of New Zealand hunting and fishing businesses and the many other tourism activities that better public access to the outdoors can provide.
11. In addition to the economic benefits provided by better public access, ordinary New Zealanders value the opportunity of better access to the outdoors for many recreation activities. New access to rivers can provide new opportunities for kayaking and pack-rafting. New access to mountains can offer new opportunities for hiking and parasailing.

12. New access opportunities enabled through the overseas investment regime will let New Zealanders connect to the outdoors. There are opportunities to provide economic, social, and environmental advantages through retaining public access enabled by the overseas investment regime. The Amendment Bill needs to strike the right balance – allowing overseas investment while still providing for the outdoor access benefits that ordinary New Zealanders want to see.

New public access created from overseas investment

13. The amount of new public access created through overseas investments before 2025 has been significant. This opportunity for new access will no longer be available under the new National Interest Test. The following new legal access has been created under the Overseas Investment regime since the start of this year alone. The investments involved with this year's outcomes have ranged from production forests to rubbish transfer stations. The outcomes being secured this year result from consent conditions put in place before the Ministerial Directive of June 2024. This public access would not have been created otherwise.
14. Commercial forestry and farmland are the main investment types that have provided this new legal public access. Commercial forestry will be assessed under the new National Interests Test. New access is not available under this test. Farmland will remain being assessed under the Benefits Test. The current Ministerial Directive letter on assessing applications makes it unlikely that any new public access will be created under this test.
15. New legal public access created in 2025 through Overseas Investment Office (OIO) consent conditions:

- July 2025, Taieri River, Otago.

Taieri Lake Grazing's public access OIO outcome has created two new walkway routes directly connecting the important Taieri River with State Highway 87 and the popular Central Otago Rail Trail. Both walkway routes include foot and cycle use. A variation to an existing walking easement halfway between the two new walkways has given various options for new loop tracks between the Rail Trail and along the river. This will provide more options for Rail Trail riders and shorter tracks for the local community to connect to the river.

The Taieri River scroll plain in Otago is one of the most important and unique wetlands in New Zealand. The new access will support the work of a large community restoration project transforming the many twists and turns along the river catchment and focusing on the health of the Taieri River. More fishing

opportunities along the Taieri River have also been opened up with the new walkways. The benefits of the new public access made possible through this OIO outcome will result in more recreational opportunities for the local community to enjoy the outdoors and the river, increased economic benefits from expanding tourism opportunities for the popular Central Otago Rail Trail and guided fishing businesses, and contributing to the restoration of the health of one of New Zealand's most important and unique wetland river systems.

- May 2025, Kai Iwi Stream and Huripari Stream, Whanganui:

The Tuawhare Forest OIO outcome has resulted in the registration of a new 20m wide esplanade strip along the bank of Kai Iwi Stream, which forms the western forest boundary. This forest is part of the Kai Iwi catchment area, known for its fishing and recreational use closer to the river mouth.

The OIO outcome for Te Ara To Waka Forest has resulted in the registration of a new 20m wide esplanade strip along the banks of Huripari Stream. These esplanade strips connect directly to State Highway 4, providing easy public access to the stream.

- March 2025, Taharua River, Taupo:

The Taharua Station OIO outcome has resulted in new public foot access alongside the Taharua River, which passes through a long length of the property. Taharua River is a highly prized fishery, especially for brown trout, resulting in Hawkes Bay Fish and Game becoming a party to the public access covenant. A small waterfall on this section of the river will be of interest for the wider public to access.

- February 2025, 5 separate commercial forests around Dunedin:

Wenita Forest Products Limited's OIO outcome created walkways over five different forests. These included:

Kaitangata Forest, where a new trail starting in Kaitangata township gives foot and cycle access along a short loop track through native bush to reach a historic mine ventilation fan house.

Akatore Forest, where a new walkway gives practical foot and cycle access over existing forestry roads to an archaeological site featuring historic sod house walls within the forest.

Mahinerangi 2 Forest, where new practical foot and cycle access has been provided to the shore of Lake Mahinerangi and around the shoreline to the northern corner of the forest.

Berwick Forest, where the new walkway realigns access along Peerie Road and gives access through the forest to get to an historic water race with views over the wider Waitahuna area.

Berwick Forest at Boundary Creek Flats, where easements for several new shorter foot and cycle trails connect to the outdoor education facility in this part of the forest.

- February 2025, Beehive Creek, Manawatu:

The Beehive Creek Forest OIO outcome resulted in esplanade strips and access strips along Beehive Creek, where an existing trail used by families crosses the shallow streambed multiple times. An additional access strip connects another existing trail in the western part of the forest, where it deviates from a legal road.

- January 2025, Waimea Plains, Nelson:

Tasman Pine Forests Limited's OIO outcome has created two new access routes. The Barnicoat Range walkway along Heslops forestry road provides 6 km of new foot, horse and cycle access. Heslops road is very near the town of Richmond and other existing mountain bike trails. The Lee Valley route gives foot access into Mt Richmond Forest Park to give alternative hunting access to DOC land.

- January 2025, Matakana, Auckland:

Matakana Estate's OIO outcome has created a new walking and cycling route between Golf Road and Matakana Road through the Matakana Estate vineyard, providing wider views over the district from its elevated position. This public access will eventually be an important part of the wider Puhoi to Mangawhai Trail Network community project.

- January 2025, Beaver Road and Ridge Road, Pokeno, Auckland:

Enviro NZ Services Limited's OIO outcome has created a new 3 km public access connection for walking and cycling between Beaver and Ridge Road in the fast-growing area of Pokeno, where demand for outdoor access trails is steadily increasing.

Enhancing the Overseas Investment (National Interest Test and Other Matters) Amendment Bill

16. It is important that the Amendment Bill strikes the right balance – allowing investment to progress through faster decisions, lower costs to investors, and more certain outcomes for investors while still providing the other benefits that are important to New Zealanders.
17. Consultation for the Amendment Bill included the following agencies (taken from Cabinet Paper cab 25 sub 0013 (73): the Ministry for Foreign Affairs and Trade; Land Information New Zealand (LINZ); the Department of Prime Minister and Cabinet's National Security Group; the New Zealand Security Intelligence Service; the Government Communications Security Bureau; The Office for Māori Crown Relations – Te Arawhiti; the Ministry for Business, Innovation and Employment; Te Puni Kōkiri; and the Ministry for Primary Industries. The Standing Committee on Investment was consulted. No consultation was done to see how ordinary New Zealanders thought the Amendment Bill could be enhanced. Consultation should be wide enough to find the right balance between supporting investments and meeting the needs of New Zealanders.
18. Identifying risks to the national interest through the new National Interests Test involves balancing investment benefits against the risks to the country's future well-being. The country's future well-being includes the well-being of ordinary New Zealanders who improve their mental and physical wellbeing by accessing the outdoors for recreation and enjoyment. It includes the well-being of the hunting, fishing, and tourism sectors of the economy that benefit from increased access opportunities and the well-being of local communities linked to these businesses.
19. It would enhance the Overseas Investment (National Interest Test and Other Matters) Amendment Bill by including new public access in the amendments. Access to all rivers for fishing and other recreation should be considered an inherent value to New Zealanders and not something that needs to be assessed for its benefits. The legislation needs to be enhanced by making new public access an expectation.
20. In addition to the new National Benefits Test, the Overseas Investment (National Interest Test and Other Matters) Amendment Bill has the impact of 'existing arrangements' currently in place through the Special Forestry Test (section 16A 6(b) of the existing Act) being removed from consideration. Access by permit has become a trend, particularly for forests, over recent years. The 'existing

arrangements' provision has secured access as forests change ownership amongst overseas forestry investors. In particular, mountain bike parks – involving significant investment by mountain bike clubs, and contributing significant economic benefits to New Zealand – are at risk. Existing arrangements for hunting permits or other hunting agreements, common in many forests held by overseas investors, are also at risk. The economic benefits of hunting, fishing, and cycle tourism in commercial forests may be lost if the 'existing arrangements' provision is lost.

21. The Overseas Investment (National Interest Test and Other Matters) Amendment Bill can be enhanced by including 'existing arrangements' in the amendments.

Incorporating new and existing public access arrangements into the Amendment Bill

22. Existing public access arrangements can easily be incorporated into the Overseas Investment (National Interest Test and Other Matters) Amendment Bill by including a requirement in the new National Interests Test for any 'existing arrangements' for access to continue over land subject to the National Interests Test. This will ensure that the many forests that have put public access by permit arrangements in place to satisfy the public access benefit under the existing Benefits Test will continue to retain these public access arrangements when overseas investors sell forests amongst each other as they rationalise their New Zealand portfolios. The 'access by permit' arrangements did not create enduring legal access, but were accepted as a way to meet public access requirements. By bringing 'existing arrangements' into the new National Benefits Test, no new obligation is being created on an investor – simply the continuance of what already exists.
23. As this would be a continuance of 'existing arrangements' already in place, there is no delay in assessing the application. The arrangements already exist, and this would be a requirement in the legislation that would apply to all investments under the new National Interest Test. There are no additional costs to the investor as nothing changes from the status quo. The investor has certainty of what is required as it becomes a requirement of the Act.
24. Incorporating 'existing arrangements' in the new National Interest Test removes the risk to the hunting, fishing, and mountain bike communities that they lose significant outdoor access as properties change hands amongst investors in the future.
25. Incorporating new public access into the new National Interests Test can also be easily achieved. New Zealand already has mechanisms that automatically create

public access along qualifying waterbodies whenever the Crown disposes of any land. This is done by creating new marginal strips under Part IVA Conservation Act 1987. This is not an option—it is a legislative requirement. Likewise, section 232 of the Resource Management Act makes it a legislative requirement for landowners to create esplanade strips for public access along qualifying waterways when land is subdivided.

26. The Overseas Investment (National Interest Test and Other Matters) Amendment Bill can likewise incorporate new public access along qualifying waterbodies by replicating these existing mechanisms for public access along waterbodies, or simply requiring an esplanade strip by agreement under section 235 of the Resource Management Act 1991 to be created. An esplanade doesn't remove land from the property title in any way. It is simply a right over a small strip of land beside a waterbody that sits on top of the existing land rights. No compensation would be payable for this access right.
27. The requirement in the new National Interest Test to create an esplanade strip (which moves with the boundary of the waterbody, so is the most suitable mechanism for ecological protection and public access along waterbodies) gives certainty to the investor of what is required from them, does not delay the assessment process or add any costs to the assessment process, and does not involve significant costs to the investor to implement. It will no longer be part of an assessment process (except for the investment types that remain subject to the Benefits Test) but will become a requirement of the legislation.
28. Incorporating new public access along qualifying waterbodies into the new National Interest Test will help achieve the Government's commitment to better access for New Zealanders to go fishing. It will benefit the wellbeing and self-sufficiency of New Zealanders (many anglers using fishing to help feed their families), support New Zealand tourism businesses, and enhance the wider economic gains to local communities from these activities.
29. The Amendment Bill can also include the ability to incorporate new public access as a requirement to Department of Conservation (DOC) conservation land and hunting blocks through the use of public right-of-ways, or access strips created under section 237B of the Resource Management Act 1991. Neither of these access mechanisms removes land from the property title. They are simply access rights over a small strip of land connecting public roads or other legal access with DOC land. No compensation would be payable for this access right. This is a similar requirement to the Public Access Easements created under the Crown Forest Assets Act in the 1990s to gain access to DOC land that would become landlocked

through privatising public commercial forests. Creating new access to DOC land is not new. It can easily become a requirement of the new National Interest Test.

30. A requirement in the new National Interest Test to create new practical public access (for example existing forestry roads and farm tracks) to connect to any DOC land adjoining the property, gives certainty to the investor of what is required from them. It does not delay the assessment process or add any costs to the assessment process, and does not involve significant costs to the investor to implement. It will no longer be part of an assessment process (except for the investment types that remain subject to the Benefits Test) but will become a requirement of the legislation.
31. Incorporating new public access to any adjoining DOC land as a requirement into the new National Interest Test will help achieve the Government's commitment to achieving better access for New Zealanders to go hunting. Many commercial forests and high-country stations, particularly in the South Island, adjoin DOC land. This remote DOC land is often difficult for the public to access. Incorporating new public access into the Bill will also benefit the wellbeing and self-sufficiency of New Zealanders (many hunters use hunting as an economical way to help feed their families), support New Zealand tourism businesses, and enhance the wider economic gains to local communities from these outdoor activities.
32. Incorporating new and existing public access into the Amendment Bill supports the Bill's objectives of faster investment approvals, having no impact on processing times, improving the efficiency of the Act, and minimising delays. It is a transparent requirement of a known quantity and is unlikely to impact the attractiveness of the investment.
33. There is also an opportunity to include these compulsory requirements for any land remaining assessed under the existing Benefits Test.

Ministerial Directive Letter

34. The Ministerial Directive letter, issued under section 34 of the current Act, gives guidance and direction to the regulator. The regulator guidance and direction are completely at the Minister's discretion.
35. The Ministerial Directive letter of June 2024 directed the regulator to focus on higher-risk transactions and, where an investment would meet the threshold of the Benefit Test under its primary benefit factor, other benefits did not need to be

considered. As a result, public access has not been considered in assessing any investment applications since June 2024.

36. This means that although the existing Benefit Test, which includes public access as a benefit, will remain in the legislation for some types of investments, the Ministerial Directive to the regulator (LINZ OIO team) on how it assesses applications under the benefits test will still only take the key benefit (which is normally economic) into account. The Ministerial Directive letter is a powerful tool in directing how the legislation is applied.
37. Farmland investments remain under the existing Benefits Test. Farmland, particularly high-country stations, enables new public access opportunities to remote rivers and DOC land that may traditionally be hard for New Zealanders to access.
38. A modified Ministerial Directive Letter will be issued for the Amendment Bill to direct the regulator and guide decision-making for the new National Interest Test and existing Benefit Test. The Ministerial Directive letter may identify sector-specific risks or benefits that decision makers should consider.
39. The new Ministerial Directive letter should include that legal public access to qualifying waterbodies and adjoining DOC land needs to be included as a condition of all investments in land under both the new National Interests Test and the existing Benefits Test, to support the Government's commitment to achieving better access for New Zealanders to go hunting and fishing.
40. Making this a requirement in the legislation for both the new National Interest Test and the existing Benefits Test would allow approval of investment applications without additional consent conditions. It would eliminate the need for a consent condition to require public access to waterbodies and DOC land. New public access would be a requirement and not an assessment criterion.

Schedule 5

41. Schedule 5 of the existing Act deals with the acquisition by the Crown of fresh and seawater interests relating to investment land. Schedule 5 remains unchanged under the Overseas Investment (National Interest Test and Other Matters) Amendment Bill.
42. Herenga ā Nuku supports the Schedule 5 requirements for fresh or seawater areas. These areas are important for public access to hunting, fishing, and other recreational activities and for their ecological protection.

43. Herenga ā Nuku's is concerned with the lack of visibility into the decision-making process for assessing freshwater and seawater areas for their amenity and conservation values. The Crown land team within LINZ has not consulted with other departments or agencies to determine these areas' amenities or conservation values. It is questionable how the value of the acquisition can be determined if the amenity and conservation values of the specific waterbodies are not understood.
44. Herenga ā Nuku is concerned that opportunities to acquire important fresh and seawater area interests that can provide hunting, fishing, and recreation access connections are being lost due to the lack of understanding by the decision-makers of the Schedule 5 process on the amenity and conservation values of the waterbodies. Consultation with other agencies and departments that specialise in assessing these values should be incorporated in the decision-making process.

Recommendations:

45. That the Overseas Investment (National Interest Test and Other Matters) Amendment Bill can be enhanced by including 'existing arrangements' as a requirement of the new National Interest Test in the proposed amendments.
46. That the Overseas Investment (National Interest Test and Other Matters) Amendment Bill can be enhanced by including new public access to qualifying waterbodies and adjacent DOC land as a requirement of the new National Interest Test in the proposed amendments.
47. That the existing Benefits Test can be enhanced by including 'existing arrangements' and new public access to qualifying waterbodies and adjacent DOC land as a requirement for any land continuing to be assessed under this test.
48. That the Ministerial Directive letter includes the conditioning of public access when assessing land under the Benefits Test.
49. That the decision-making process for Schedule 5 acquisitions include consultation with agencies and departments that specialise in assessing amenity and conservation values of the relevant fresh and seawater areas.
50. That the Government's commitment to achieving better public access for hunting and fishing be supported and enabled through new requirements under the Overseas Investment (National Interest Test and Other Matters) Amendment Bill.

Thank you for the opportunity to submit on this Bill

We would like the opportunity to speak to the issues this submission raises.

My contact details are phil.culling@herengaanuku.govt.nz and 027 815 8521.

A handwritten signature in black ink, reading "Phil Culling". The signature is fluid and cursive, with the first name "Phil" and last name "Culling" clearly distinguishable.

Phil Culling

Te Tumuaki Rangitahi | Acting Chief Executive