

To the Finance and Expenditure Committee

Submission on the Overseas Investment Amendment Bill (No 3)

10 December 2020

Introduction

1. The Finance and Expenditure Committee Staff of the New Zealand Parliament has called for submissions on the Overseas Investment Amendment Bill (No 3) which amends the Overseas Investment Act 2005 (Principal Act).
2. The amendments proposed in the Bill are of direct interest to the work of the New Zealand Walking Access Commission and to the public of New Zealand.
3. We do not object to our submission being published.
4. We would be happy to discuss any aspect of our submission.
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About the New Zealand Walking Access Commission Ara Hīkoi Aotearoa

6. The New Zealand Walking Access Commission Ara Hīkoi Aotearoa is the Crown agent responsible for providing leadership on outdoor access issues. We administer a national strategy on outdoor access, including tracks and trails. We map outdoor access, provide information to the public, oversee a code of responsible conduct in the outdoors, help to resolve access disputes and negotiate new access.
7. The Commission has an office in Wellington and a network of regional field advisors throughout New Zealand. An independent board governs our work. Our governing piece of legislation is the Walking Access Act 2008.

Access for a variety of modes

8. The Commission establishes, maintains and improves a range of access opportunities, including walking, cycling and mountain biking, using motorised vehicles including bikes and scooters, on horseback, with firearms and accompanied by dogs.

Value of outdoor access

9. Outdoor recreation provides a range of direct and indirect benefits to communities and the country.
10. Outdoor recreation is both a means to an end (health, fitness, therapy, regional development, pest control and tree planting), and an end in itself (fun, satisfaction, connection to nature). Participation in outdoor recreation occurs across our lifetime. It contributes to regional

economies, community, and social wellbeing, and understanding of conservation and biodiversity outcomes.

11. Research also shows positive links between mental health and outdoor recreation and access to green space. For instance, Sport NZ has linked outdoor physical activity to mental wellbeing (e.g. Active NZ - Recreational Physical Activity and Mental Wellbeing, Sport NZ 2018) and residential green space in childhood is associated with lower risk of psychiatric disorders from adolescence into adulthood (K Engemann et al, Proceedings of the National Academy of Sciences of the USA).
12. Free, secure, and practical public access is crucial to enable outdoor recreation. Without legally secured, free and practical access to the outdoors, it is impossible for many people to recreate in it.

Managing public access

13. In some cases, we need to manage public access to mitigate potential adverse impacts on the environment and other uses of that land. We can manage public access by regulating the types of activities, the time of year that people can access land, when they can access the land and the number of people who can access the land. For example, there may be a permit system to access forestry land or track closures on farms during lambing season.
14. Walkway easements under the Walking Access Act 2008 provide for connected and simplified management of access. They can mitigate the risk of adverse impacts from access, such as during lambing, at times of high fire danger, or excluding dogs.

The Commission's engagement in the Overseas Investment process

15. The Commission's involvement in the Overseas Investment Act process is through providing advice and recommendations to both the Overseas Investment Office and applicants on potential benefits to New Zealand under s17(2)(e) of the Overseas Investment Act 2005.

“whether there are or will be adequate mechanisms in place for providing, protecting, or improving walking access over the relevant land or a relevant part of that land by the public or any section of the public”

16. The Commission has assessed, and made access recommendations, on 335 Overseas Investment Act (OIA) applications between 2010 and 2019. We recommended new public access in 41 per cent of cases.
17. The Commission recognises that public access is one of several obligations for overseas investors. New or improved access can provide substantial benefits to New Zealand, and the cost and impact on the investor of doing so is minimal.
18. The Commission's key interest is in:
 - a. sensitive land (non-urban land over five (5) hectares, and land adjoining lakes, rivers, marine and coastal area, and/or land managed by the Department of Conservation),
 - b. special land, and
 - c. land that may be deemed less sensitive because it adjoins land that is sensitive (sensitive adjoining land).

19. There are three broad categories of access the Commission seeks as a benefit for New Zealand on such land:

a. Access to and along waterways and the coast

In many cases, we seek riparian access to replace other types of public access that have been lost through erosion or movement of rivers. Sometimes this access is ‘landlocked’ and has no immediate or short-term practical benefit. But the Commission has a long-term view. We consider an incremental increase in secure riparian access is valuable and will eventually provide an unbroken chain of access ‘links’.

b. Recreational access within or through sensitive land or to sensitive adjoining land

Public access may not already exist or may not have been considered previously but there may be many opportunities that enable recreational or community access. For example, for mountain biking, horse riding, fishing, hunting and tramping. It may be that new access loops can be completed, new access to cultural or historic sites or hunting areas achieved, new mountain bike trails established or improved access for local communities between neighbourhoods.

c. Access to satisfy identified demands

This category includes situations where historical informal agreements to access waterways, foreshore or PCL public conservation land exist and where there are existing demands for specific access routes. The latter may include longstanding public demands to improve access to public conservation land PCL, and access for existing projects (such as Te Araroa Trail, cycleways, and community driven active transport projects). We note that this type of access opportunity has been included within the Special Forestry Test.

Structure of the Submission

20. The submission does not comment on each clause in the Bill, rather we comment on specific clauses as indicated by the subheadings in each section.

Clause 22: Schedule 1 amended

Sensitive adjoining land

21. The Bill reduces the scope of sensitive adjoining land. The intent appears to be to remove some land from the definition of sensitive land under Schedule 1, Part 1 of the Overseas Investment Act 2005. Specifically, it removes reserves and public parks from Table 2. The Bill removes reference to s37 of the Act which maintains a list of sensitive areas, including areas that provide public access to natural and physical resources or historic heritage (s37(2)(b)) including reserves, parks and roads.

22. Providing access to sensitive adjoining land is important and provides significant benefits.

Commission recommendation

23. We recommend no reduction in scope of sensitive adjoining land. We believe this reduction could result in lost opportunities for public access. Instead, we seek the retention of Table 2 in Schedule 1, with the refocus to include a type of sensitive adjoining land onto land that is significant to Māori, and of section 37.

Waterbodies

24. 'Table 2' land includes the 'marine and coastal area' and 'bed of a lake' but does not include 'bed of a river'. Ownership of lake and rivers beds is an important factor in determining the public's ability to recreate on or in these waterbodies. But, to do so, we must also provide public access *to and along these waterways*.

Commission recommendation

25. The Commission seeks the addition to Table 2 of "any qualifying water body", as defined at s24(1) Conservation Act 1987 [in reference to marginal strips] and s230(4) Resource Management Act 1991 [in reference to esplanade strips].

Road that adjoins sea or a lake

26. The Bill has removed 'Land that adjoins the sea or a lake and exceeds 0.4 hectares that is a road (as defined in section 315(1) of the Local Government Act 1974)' from 'Table 2'.

Commission recommendation

27. We seek the reinstatement of this land in Table 2 as the margins of many rivers and lakes are protected by unformed legal road which benefit New Zealand public by providing important outdoor access opportunities.

Clause 8: Section 16A amended (Benefit to New Zealand test)

28. The Bill does not seek to implement any substantive change in respect of forestry land. The Commission notes that the Bill does seek to improve the Benefit to New Zealand test for forestry land and proposes changes to section 16A to achieve that.

Special forestry test

29. The introduction of the special forestry test in October 2018 to enable the streamlining of forestry consents meant that the Benefit to New Zealand test was not applied in subsequent cases. The Land Information NZ website notes that 44 special forestry test consents were issued up to 30 April 2020.
30. The Commission contends that by removing the Benefit to New Zealand test from the special forestry test, we have lost multiple and varied public access opportunities where investors have purchased land for forestry.
31. The Commission has reviewed 33 of the special forestry test consents covering a total of 71,109 hectares. In 18 of those consents the Commission would have recommended creating new public access through the Overseas Investment consent conditions if the benefits test had been applied. Two further consents had the potential for new access with further investigation.
32. New Zealand has lost definite or possible public access opportunities in over 60 per cent of the overseas investment applications assessed through the special forestry test.
33. Lost public access opportunities include access for walking, biking, hunting, and fishing. New Zealanders have lost access opportunities to improve road and coast connections and access along rivers. We have missed opportunities to create esplanade and access strips under the Resource Management Act or Walkways under the Walking Access Act.

Commission Feedback

34. The Commission is open to presenting evidence to the Select Committee of the lost opportunities for public access since the commencement of the special forestry test. We will also present this evidence as part of a separate review to Treasury when the opportunity arises.

Clause 9: Section 17 replaced (factors for assessing benefit of overseas investments in sensitive land)

35. The Commission notes that Section 17 will be replaced by the Bill. This clarifies the legislation by ensuring that the factors for assessing benefit of overseas investments in sensitive land are included within the Act rather than also with the Regulations.

Commission Feedback

36. The Commission supports removing the term ‘walking access’ which was used in existing sections 17(2)(c)(ii) and 17(2)(e) and replacing it with the term ‘access by the public’ as in the proposed section 17(1)(c). This acknowledges that public access to the outdoors takes many forms including by bike, on horseback and with vehicles where appropriate.
37. The Commission supports clause 17(1)(c) to clarify the intention to provide the benefit to New Zealand of continued or enhanced access by the public within or over the sensitive land.
38. The Commission supports clause 17(1)(d) that emphasises the benefit of continued or enhanced protection of historic heritage in or on the relevant land and agreement to support entry to wāhi tūpuna, wāhi tapu, or wāhi tapu areas on the New Zealand Heritage List/Rārangī Kōrero, taking other actions under the Heritage New Zealand Pouhere Taonga Act 2014 to recognise or protect heritage values, or agreement to land being set apart as a Māori reservation.

Schedule 3: New Schedule 5 inserted in Overseas Investment Act 2005

Fresh and seawater areas

39. New Schedule 5 in the Bill requires that the Crown must acquire fresh or seawater areas. However, the Crown may decide not to acquire the fresh or seawater area in certain circumstances, including cases where the amenity and conservation values do not outweigh the potential risks, liability, and costs of acquisition and ownership of the area (Schedule 5, Part 2, cl.4(1)).

Commission recommendation

40. The Commission is concerned that New Zealand may lose opportunities for public access under the proposed considerations of when the acquisition of such areas may be declined by the Crown. We consider there should be a provision to recommend that public access be included in any consideration to decline the acquisition of a fresh or seawater area, to ensure that such opportunities are not lost.