Greenpeace submission on the Overseas Investment (National Interest Test and Other Matters) Amendment Bill.

Submitter Details

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We consent to the publication of our submission and we wish to speak to the submission.

Introduction

We thank the Select Committee for the opportunity to submit on the Overseas Investment (National Interest Test and Other Matters) Amendment Bill (the Bill).

As an environmental organisation committed to protecting Aotearoa New Zealand's land, water, biodiversity, and ecosystems, Greenpeace Aotearoa strongly opposes this Amendment Bill and recommends it be rejected in its entirety.

The proposed Bill significantly weakens existing safeguards on the sale of ecologically and culturally sensitive land in Aotearoa, including conservation land, offshore islands, lakebeds, coastal and marine areas and wāhi tapu sites.

The Bill removes the requirement that the sale or investment in sensitive land must undergo a ‘Benefit to New Zealand Test’ which requires foreign investment to demonstrate clear benefits to New Zealand, including environmental protection, public access, and heritage preservation.

The Bill also removes the requirement that foreign investments involving water bottling and extraction have to meet a test that ensures that New Zealanders can continue to access sufficient and clean water. Furthermore the Bill removes requirements for appropriate environmental conditions to be placed on multinational forestry companies to manage the impacts of large-scale plantation forestry on the environment and on local communities.

We are deeply concerned to see the Government considering a Bill proposed by the ACT party that attempts to entirely remove these critical environmental and cultural protections for New Zealand’s most valuable and sensitive lands from the Overseas Investment Act

We are also deeply concerned that the Government is considering a Bill that would remove the mandatory requirement to verify whether a multinational corporation seeking to purchase sensitive land in Aotearoa has a history of significant criminal activity in other jurisdictions, including breaking environmental or cultural protection laws.

These are basic protections within the Act that ensure multinational corporations cannot unrestrainedly exploit Aotearoa for private offshore profits with little regard for New Zealanders' wellbeing or the wellbeing of the environment that we cherish and that sustains us.

Sensitive land, as outlined in Schedule 1 of the current Overseas Investment Ac**t (the Act)** includes public conservation areas, lake beds, marine and coastal zones, offshore islands, wāhi tapu, Māori reservations, other culturally significant sites, as well as land adjoining these areas.

The Act defines this land as sensitive precisely because it represents some of Aotearoa New Zealand's most vulnerable ecosystems, and irreplaceable natural cultural heritage.

However, if enacted, the Bill will severely curtail the ability of the Government to refuse the sale of sensitive land to multinational corporations that have flouted environmental laws in other jurisdictions or to impose meaningful environmental and cultural conditions on it’s sale.

According to the Regulatory Impact Statement for this Bill, New Zealand already has a less restrictive overseas investment regime than both Canada and Australia.

Clauses 8 to 13 of this Bill are particularly harmful along with the change to the Purpose of the Act and we strongly oppose these clauses, as follows:

- **Clause 4 - Changing the purpose of the Act** by watering down its primary focus on managing risks to Aotearoa from offshore investment by adding a vague reference to the purported “economic opportunities”.
- **Clause 8 - Removing the public benefit test for sensitive land.** This eliminates criteria that protect biodiversity, heritage, and public access

- **Clause 8 - Removing the investor test for sensitive land**. This reduces scrutiny of overseas investors' environmental and human rights track records or criminal activity.
- **Clauses 9 to 11** - **Repealing the special benefit test or forestry**. This weakens regulation of an industry already causing major environmental harm.
- **Clause 12 - Repealing protections for water bottling and bulk water extraction**, making it easier for foreign water botting companies to take New Zealand's water and ship it offshore by removing consideration of impacts on water quality and sustainability.
- **Clause 13 - Replacing existing tests with a narrow "national interest" test for sensitive land.** The consolidated "national interest" test fails to ensure that environmental, cultural, or public values are meaningfully considered.
- **Clause 23 - Imposing a 15-day decision timeframe**, for the initial risk assessment. This is an impossible timeframe for the public service to meet when considering such significant sensitive land sales and it undermines due process.

If these changes are enacted, the act will no longer protect sensitive land. Instead it will open it up for sale and exploitation to multinational corporations who will funnel profits to their offshore shareholders while leaving New Zealanders to bear the environmental and social consequences of inappropriate corporate activity on sensitive land. This is unacceptable.

Furthermore, we are deeply concerned that Te Tiriti o Waitangi is not referenced or embedded in the amendment bill. The amendments disregard the relationship of Māori with their taonga including whenua, wai, and wāhi tapu.

Greenpeace makes the following recommendations

1. **Continue to ensure the primary purpose of the Act is to manage the risks** of overseas investment and ensure these risks are not narrowly defined as national security risks.
2. **Retain and strengthen the "Benefit to New Zealand" test** for all investments in sensitive land
3. **Retain and strengthen the investor test** for all investments in sensitive land
4. **Retain specific safeguards for international investments in freshwater**
5. **Retain and strengthen protections for forestry investments**, including implementing mandatory environmental conditions
6. **Ensure decisions are based on quality, not speed**
7. **Embed Treaty obligations** explicitly into the purpose and principles of the Act, and require meaningful engagement with mana whenua for any investment involving Māori land or taonga.

The following submission elaborates on Greenpeace's key concerns and recommendations.

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Key Concerns

1.The removal of the Public Benefit and Investor Tests

Sensitive Land

Under section 10 the current act consent is required for overseas investments in ‘sensitive’ land. Sensitive land is outlined in Schedule 1 of the Act and includes:

- Conservation land including national parks, regional parks, reserves, or conservation areas
- Other publicly owned land set aside for recreation, public access, or open space
- The marine and coastal area
- Offshore islands
- Lake beds
- The Whanganui river and Te Urewera land
- Sites of historic heritage
- Wāhi tapu sites, Māori reservations or culturally significant land
- As well as land adjacent to the above listed areas.

Current application of the tests

Before the Government can grant consent for investment in or sale of sensitive land the Act requires that the investor test and the benefit to New Zealand test is met. This is outlined in Section 14 which says the Minister “must decline to grant consent if not satisfied that all of the criteria in section 16 or section 18 are met.”

Section 17 outlines the factors that are considered in the benefit to New Zealand test which requires the minister to consider whether the overseas investment will, or is likely to

> (b) result in benefits to the natural environment (for example, protection of indigenous flora and fauna or erosion control):
> c) result in continued or enhanced access by the public, or any section of the public, within or over the sensitive land or the features giving rise to the sensitivity (for example, access for recreational purposes or for the purposes of undertaking stewardship of, or exercising kaitiakitanga in relation to, historic heritage or the natural environment):
> (d) result in continued or enhanced protection of historic heritage in or on the relevant land

Section 18 outlines the Investor test which requires the minister to consider “”whether investors are unsuitable to own or control any sensitive New Zealand assets” It outlines the requirement for the minister to consider any significant criminal offences by the corporation or individual.

Proposed repeal of the Public Benefit and Investor Tests

Clause 8 of the Amendment Bill repeals the Benefit to New Zealand and Investors test. This means overseas investors in sensitive land will no longer have to provide clear, measurable benefits to New Zealanders - including environmental, heritage, and public access protections.

The repeal of the investor test for sensitive land removes the mandatory requirement that the Government considers criminal behavior of the corporation in other jurisdictions such as serious breaches of environmental or human rights laws.

In its place, the Bill proposes a vague, consolidated “national interest” test that fails to ensure that environmental, cultural, or public values are meaningfully considered.

The mandatory factors that have to be considered in this national interest test, outlined in section 19, focus narrowly on security and public order, with no requirement to consider the sensitivity of the land and the protection of public access for New Zealanders, along with biodiversity, sustainability, or cultural protections.

To restate the sensitive land to which these requirements will no longer apply includes; offshore islands, lakebeds, conservation estate, public parks, wāhi tapu sites and the coastline.

We strongly oppose clause 8 of the Bill and the repeal of the Benefit to New Zealand and Investors tests to sensitive land. We recommend Clause 8 be removed from the Bill.

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2. The repeal of water bottling safeguards

Clause 12 of the Bill repeals section 17(3) of the Act which requires that for any overseas investment involving the extraction of water for bottling the Minister must consider whether the overseas investment will, or is likely, to negatively impact water quality or sustainability.

Without these provisions, there is no framework for ensuring that overseas purchase or investment in freshwater in Aotearoa is managed in the public interest. Clause 12 means that multinational corporations can invest in the extraction and export of fresh water, even if this comes at the expense of local communities who, as result, face water restrictions and degradation of drinking water.

We therefore strongly oppose the repeal of section 17(3) and recommend clause 12 be removed from the Bill.

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3. Deregulation for multinational forestry corporations

Large-scale conversions of land to forestry has already caused significant harm to ecosystems and communities. Erosion and slash has damaged infrastructure, homes and livelihoods and severely degraded the ecological health of rivers, lakes and the marine and coastal area.

Clauses 9-11 of the Bill repeal the special benefit test for offshore investment in forestry. This removes even minimal requirements for multinational forestry corporations to undertake replanting after felling, and maintain or protect existing arrangements relating to public access, historic heritage, biodiversity or environmental matters.

This change serves the interests of a small number of international forestry corporations while externalising the costs of slash, erosion and monocultural land use onto local communities.

We therefore oppose clauses 9-11 of the Bill and recommend they are removed entirely.

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4. Undermining due diligence

Clause 23 proposes a 15-working-day limit for the initial national interest screening. This timeframe is not only unrealistic for robust assessment, it is especially problematic given that no Treaty-based engagement is required before consent is granted. We therefore oppose clause 23.

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5. No treaty protections or mandatory Māori consultation

There is no reference to Te Tiriti o Waitangi in the new national interest test. This is a breach of the Crown's obligation to actively protect Māori interests and ensure Māori participation in decisions that affect land, freshwater, and taonga.

We recommend that Te Tiriti o Waitangi is explicitly incorporated into the purpose and principles of the Act, and require meaningful engagement with mana whenua for any investment involving Māori land or taonga.

Recommendations

We recommend **the current Amendment Bill** be rejected in its entirety. We make the following recommendations for any amendment of the Overseas Investment Act:

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1. **Continue to ensure the primary purpose of the Act is to manage the risks** of overseas investment and ensure these risks are not narrowly defined as national security risks.
2. **Retain and strengthen the "Benefit to New Zealand" test** for all investments in sensitive land
3. **Retain and strengthen the investor test** for all investments in sensitive land
4. **Retain specific safeguards for international investments in freshwater**
5. **Retain and strengthen protections for forestry investments**, including implementing mandatory environmental conditions
6. **Ensure decisions are based on quality, not speed**
7. **Embed Treaty obligations** explicitly into the purpose and principles of the Act, and require meaningful engagement with mana whenua for any investment involving Māori land or taonga.

Annex 1 – About Greenpeace Aotearoa

Greenpeace is a global, independent campaigning organisation that acts to protect and conserve the environment and to promote peace. Greenpeace is one of the world's largest and oldest environmental organisations, operating for half a century, since 1971, and now works in more than 55 countries. The New Zealand branch of Greenpeace (Greenpeace Aotearoa) was founded in 1974 and represents many tens of thousands of supporters. Our mission is to ensure Earth's ability to nurture life in all its diversity.

Greenpeace Aotearoa recognises Te Tiriti o Waitangi signed in Te Reo Māori on 6 February 1840 as the foundation for the relationship between the Crown (and so the New Zealand Government) and the indigenous hapū of Aotearoa. Greenpeace Aotearoa recognises that Te Tiriti o Waitangi affirmed the sovereignty of the tangata whenua, which has never been relinquished despite the violent colonisation of Aotearoa.