

Forestry¹ - imagine.

Key Points

1. Separate forestry out from the Ministry of Primary Industries as forestry has been marginalised within the current regime
2. Reinststate the forest service and rebuild the ethic and principles under which it was founded.
3. Locate the new Forest Service in Rotorua
4. The development of a National Forest Strategy is critical.
5. Include forestry cutting rights for stands of forest over 500 hectares in the Overseas Investment Act.
6. Implement a \$1/mt export levy on all logs exported without value added, with the proceeds going directly to fund research.
7. All log exporters and traders will be required to register with the Forest Service and provide reports detailing all log exports.

Sadly, it's much easier to create a desert than a forest.

James Lovelock

The best time to plant a tree was 20 years ago. The second best time is now.

Chinese Proverb

Over 50 years ago the New Zealand Forest Service came up with a strategy to diversify the country's plantation estate away from 99% radiata pine and into a range of native and exotic species. This ambitious project was shelved because those who controlled the finances only looked at the short term economics of radiata pine rather than trying to understand the longer term vision the NZ Forest Service was trying to create around diversity and sustainability.

If this vision had been realised our Nation's landscape would look significantly different than it does today and industries could well be reaping the rewards that would have resulted from the harvesting and processing of some of the best timber in the world.

For the vast majority of politicians imagining, let alone building, a world 50 years in the future is impossible. After all, politics is about three year cycles, not 50 year timeframes. A progressive government challenges this paradigm and seeks to implement solutions that it knows will deliver for future generations rather than simply seeking to get re-elected. This must be true right across the social and economic spectrum, but no more – or less – so than in forestry where decisions made today will only start bearing fruit long after those who make them are long gone and forgotten.

Forestry is the best example of how poor political decision-making over a number of years by those with very little knowledge or interest in the industry has destroyed our ability to control the future of an incredibly important segment of the New Zealand economy.

¹ Stuart is the MP for Napier and Labour's Forestry Spokesman. He has a Post Graduate Diploma in Forestry and a Master of Forestry Science from the University of Canterbury. Stuart has worked in forestry in Australia, Japan and in New Zealand for Fletcher Challenge Forests and Carter Holt Harvey Forests. Any questions or queries concerning this paper should be directed to stuart.nash@parliament.govt.nz

It epitomises the philosophical difference between Labour and National: National believes the market will self-regulate and end up with the optimal outcome whereas Labour believes that the government has a very important role to play in ensuring a level of fairness and equity that benefits all New Zealanders.

Having said that, governments should only intervene through the imposition of legislation and or regulation when there is clear market failure, but I believe that we are beginning to see such market failure in the forest sector because this government has shown little interest in changing the dynamics of the industry to benefit the economy, the environment, or communities or our future.

Successive governments have sold off, locked up, mismanaged, restructured, underfunded and marginalised our forest industry. This is a travesty because New Zealand was once a world-leading example of how to manage a strategic asset for the long term benefit of our communities and the country.

The reasons for such actions range from ideological (fourth Labour Government), political expediency (fifth Labour Government) and ignorance that has led to a complete lack of focus (Bolger and Key National Governments).

Early in 2016, it emerged that the foreign owners of one of New Zealand's larger plantation forests were not prepared to guarantee logs to a domestic processor on the East Coast, but rather preferring to export whole logs offshore without a single cent of value being added, even though the local manufacturer was prepared to pay export equivalent prices². The local mill is owned by the Gisborne District Council's economic development agency, and without guaranteed log supply, the mill can't operate. When running it employs around 40 people in the province with the highest percentage of the workforce unemployed.

I believe this cuts to the very heart of the debate we need to have about the amount of foreign control we are prepared to accept in strategically important industries and the risks that come with this inability to control our future.

Why is forestry strategically important?³ Because in 2013 this industry employed around 17,495 New Zealanders (in 2008 the number was 26,000), and usually in provincial areas of high-to-medium social deprivation like, for example, Northland, Gisborne, Wairoa, Hawke's Bay, Rotorua and Masterton. It's the third-highest industry contributor to GDP with \$4.5 billion, bettered only by meat-and-wool and dairy. It is responsible for around a third of our exports, it will play a significant part in allowing the country to meet its Paris climate obligations and covers around a third of the country's land area.

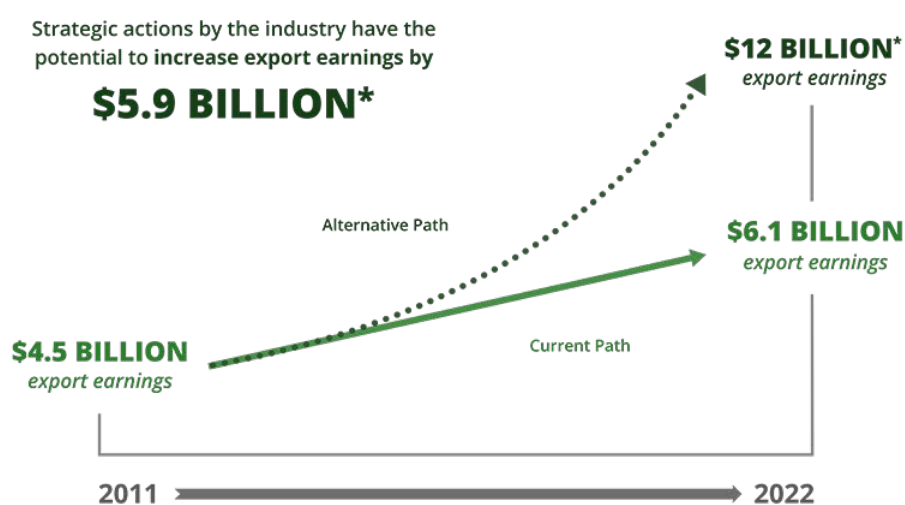
² Reference the case study in the Chapter on Overseas Investment.

³ Due to the nature of this book, the majority of this chapter is devoted to forestry's contribution to economic development, whereas it must be acknowledged that forestry provides a significant role in delivering non-financial returns such as environmental, ecological, conservation and other benefits. These would be fleshed out and quantified during the development of the National Forest Strategy

Yet it could be so much more valuable. In 2012, the Wood Council of New Zealand (Woodco) published its strategic plan for the sector. On a business-as-usual scenario, it saw export earnings rising from \$4.5 billion in the year ended June 2011 to \$6.1 billion in 2022.⁴

Under this base scenario, there is a continued reliance on unprocessed log exports, exposure to market volatility due to lack of product diversity, inefficient infrastructure, and a declining capacity for solid wood processing due to lack of new investment.

However, Woodco proposed an alternative path, based on the strong promotion of wood, pursuit of diverse export markets by expanding domestic processing capacity and manufacturing streams, increased new investment, and a collaborative and aligned industry sector. Under this scenario, Woodco forecast export earnings to double to \$12.3 billion in 2022⁵, which would place it in line with earnings from the dairy industry



Even more ambitious scenario planning has been undertaken. A report by Vivid Economics and University of Auckland Business School projected that, if we were to almost double our plantation forests and obtain the same high returns as Finland's forestry sector, then total output could reach \$41 billion or higher⁶ which would make it New Zealand's largest export earner by a significant margin.

Obviously, achieving this level of return would require the implementation of a hugely aspirational vision, but it is not out of the realms of possibility. Imagine. However, the variables required to realise such an ambitious scenario are a considerable and would require a highly proactive political will, vision and direction in order to create the regulatory and economic conditions that could facilitate such large scale land-use change (from agriculture to forestry)

⁴ Woodco, 'New Zealand Forest and Wood Products Industry Strategic Action Plan' (Wellington, NZ: Wood Council of New Zealand, March 2012), 6. Referenced from <http://pureadvantage.org/news/2016/04/22/our-forest-future> by Dr David Hall.

⁵ Andres Katz, 'Potential Export Revenues from Forest and Wood Products by 2022' (Alphametrik Consulting, 2012), http://woodco.org.nz/images/stories/pdfs/Potential_Forest_Products_Export_Revenue_in_2022.pdf. Referenced from <http://pureadvantage.org/news/2016/04/22/our-forest-future> by Dr David Hall.

⁶ Vivid Economics and Energy Centre & University of Auckland Business School, 'Green Growth: Opportunities for New Zealand' (Auckland, New Zealand: New Zealand Green Growth Research Trust, November 2012), 165–6. Referenced from <http://pureadvantage.org/news/2016/04/22/our-forest-future> by Dr David Hall.

coupled with the commercial and legislative settings that would provide investors with the confidence to invest significant sums of money in downstream processing that would add the value and the jobs.

The same goes for any shift toward the emerging bioeconomy. Forest research centre Scion (and more about them later) recently highlighted these opportunities by noting that renewable chemicals markets were valued at around US\$59 million in 2015, while the bioproducts sector is forecast to expand to €200 billion by 2021.⁷

Similarly, PricewaterhouseCoopers put the annual value of additional opportunities in sustainable forestry globally at US\$100–300 billion by 2050.⁸

Given our existing advantages in forestry New Zealand is in an almost unique position to capture these benefits, if we were prepared to invest in the future and set our minds on pursuing the diverse opportunities of the bioeconomy. The recent Woodscape Study by Scion and Woodco shows that two standout areas for strong returns and value-enhancement are engineered wood products (especially CO₂ modified wood and wood fibre composites), and fuels and chemicals. Meanwhile, the product that our forestry industry relies on most – logs for export – sits at the bottom of the value scale⁹

Leaving such a vision to the market hasn't worked this century will not work under the current settings. Changing this is the real challenge that the current government is not prepared to accept.

So how did we go from a world-leading forest service to such a sorry state of affairs? A bit of background¹⁰, beginning at the point post-colonisation when we started to actively manage our forests. This began in 1919 when the New Zealand Forest Service was established. The Forest Service immediately established controls on the harvesting of the State's remaining native forests and quickly ramped up the planting of fast growing exotic trees to ensure future generations had access to a reliable and sustainable source of wood products.

Such early vision meant that by the 1950s, plantation forests were providing a significant portion of the country's wood requirements at an affordable price and the harvest from native forests slowed accordingly. Encouraged by the government's activity, private investors established substantial forests and in time became major investors in wood processing.

By the 1960s, tree planting and wood processing more than satisfied domestic demand and export markets were expanding. The 1960s and 1970s were the golden years of the forest industry.

⁷ Scion, 'Prosperity from Trees: Statement of Corporate Intent 2014–2019' (Rotorua, NZ: Scion, June 2014), 11. Referenced from <http://pureadvantage.org/news/2016/04/22/our-forest-future> by Dr David Hall.

⁸ John Hawksworth, 'Vision 2050: Estimating the Order of Magnitude of Sustainability-Related Business Opportunities in Key Sectors', Report Prepared for the World Business Council for Sustainable Development (WBCSD). (PricewaterhouseCoopers (PwC), February 2010). Referenced from <http://pureadvantage.org/news/2016/04/22/our-forest-future> by Dr David Hall.

⁹ For a more detailed survey, see Andrew Goodison et al., 'WoodScape Study—Technologies and Markets', Report Prepared for Wood Council of New Zealand (Woodco) (Rotorua, NZ: Scion, February 2013). Referenced from <http://pureadvantage.org/news/2016/04/22/our-forest-future> by Dr David Hall.

¹⁰ The background predominantly comes from Levack, H; Poole, L; Bateson, J; *The Great Wood Robbery? Political bumbling ruins New Zealand forestry*. Bateson Publishing Limited.

The privately-owned New Zealand Forest Products was the largest company in New Zealand from its incorporation in 1936 until the privatisation of Telecom in 1990. The company owned 250,000ha of plantation forests and had another 300,000ha of long-term crown leases, and it also developed all of its infrastructure independently including company housing, water supply, railway lines, transport networks and plant machinery. By the 1960s, New Zealand Forest Products was not only the country's largest company but also the largest single manufacturer in New Zealand.

New Zealand Forest Products also had a profound effect on a post-war economy that had verged on economic depression by replacing the once mighty British Empire-developed triumvirate of wool, meat and dairy, with a forestry industry that was focused on providing product not only to well-established Commonwealth export markets but to then-new emerging New Zealand trade destinations such as Japan and the United States. This marked a significant change in the psyche of post-war New Zealand industry¹¹.

Then, in 1984, the Labour Government dismantled the Forest Service, and created the Department of Conservation to manage all native forests, the Forestry Corporation to run the commercial plantation forests and the Ministry of Forestry to act as the regulatory and policy arm of the sector.

A further dilution of forestry's influence and ability to control its future occurred in 1998 when the Ministry of Forestry merged with the Ministry of Agriculture. When this happened the Government of the day assured the forestry sector that the merger would not result in any reductions in its services. This promise was not kept.

The transition from a highly functional organisation that was held up as a global model for forestry management to a disenfranchised industry sector with no ability to control its destiny was complete in 2012 when the Ministry of Primary Industries was created. This super-ministry approach has led to a loss of focus as pleasing political masters have become the order of the day.

Late last century, when I first started working in the forest industry, Carter Holt Harvey and Fletcher Challenge were the two largest owners of plantation forests in the country. Not only did they own the forests, but they also ran the largest sawmills, pulp mills and other downstream processing plants.

They understood the margins all the way along the supply chain and sought to capture these margins at points they believed they could control. Because they were New Zealand companies they could afford to take a long-term view of the industry and this allowed them to invest substantial sums knowing that the pay-back might be decades, but that the value extracted over the long term was substantially higher than just sending logs across the wharf without a cent of value being added.

¹¹ The NZFP story is a most interesting – if not sad – one. Throughout the 1970s and early 1980s, the company was the target of several takeover attempts given its strong asset profile. In 1986 the company was finally acquired by the Australian conglomerate Elders Resources, (the vehicle of Australian corporate raider, John Elliott) for around \$3b. It became known post-acquisition as Elders NZFP Corporation thus ending the Henry family's 110 years of involvement in New Zealand industry. Following the collapse of Elders NZFP in 1988 stockmarket crash, the assets were purchased by Carter Holt Harvey (CHH), which tripled the size of CHH and boosted its revenues by 60% to around NZ\$7b, then a record for any New Zealand company. Carters eventually ended by being purchased by Graeme Hart and asset stripped, including the sale of all its forests, thus, I believe, leading in large measure to a number of the problems facing the industry today.

Move forward 20 years and Fletchers no longer exists, Carter Holt was bought and dismantled by Graeme Hart's Rank Group and 55 per cent of all logs harvested from New Zealand's forests are exported to be processed offshore¹². In fact, we are now seeing Chinese sawmills cutting New Zealand radiata pine logs exported from our forests and competing in offshore markets with our domestic processed lumber.

This situation can be reversed, the country can regain control of this highly strategic asset in order to benefit our communities, but not under this National Government and not without massive political will to fight battles that need to be fought in order to implement the change that needs to occur.

The first step is the return of the Forest Service with its original mandate and function almost 100% years after it was first established and just over 30 years since it was axed.

This will see forestry untangled from the Ministry of Primary Industries and the disestablishment of the Department of Conservation and the Crown Forest Rental Trust (that manages what remains of the state forests that are either held on behalf of the nation or in preparation for treaty settlements).

The research centre for forestry will once again be called the Forest Research Institute, rather than Scion, and will also move back under the Forest Service umbrella.

The Forest Service's head office will relocate from Wellington to Rotorua, which is the heart of the industry in the North Island, with regional offices where required. Such tasks as biosecurity at the wharf, managing the conservation estate, liaising with territorial authorities will be managed by the Forest Service.

In this age of advanced communications, there is no need for government ministries to be located in Wellington. The new Forest Service headquarters will be located in Rotorua.

Rotorua is home to what will be the rebranded-and-better-funded Forest Research Institute, as well as the biggest and highest tech sawmill in Australasia, a great polytechnic that has a highly regarded pre-degree course in forestry, and lies at the doorstep of the country's largest plantation forest resource.

I would also expect that as the research output and scope expands, so will the need for land to expand the facilities and create a National Forestry Centre of Excellence. Locating the Forest Service in Rotorua is a pragmatic decision that makes sense from a fiscal and resourcing perspective.

¹² When Hart purchased CHH from American giant International Paper in 2006, people were ecstatic that an iconic company had finally returned to New Zealand ownership. But how quickly they had forgotten what Brierley and his bunch of merry men did to a number of New Zealand's finest. Sure enough, Hart set about dismantling Carter Holt and selling of anything that wasn't tied down. There was never a more appropriate name for a company than Hart's Rank Group.

It will be the Crown's agent in dealing with Maori landowners and provide consultancy services. It will once again become an employer and trainer of young men and women around the country who want to make a career out of forestry.

Most importantly, the Forest Service will be responsible for developing, coordinating, implementing and managing a wide ranging and comprehensive National Forest Strategy. In the past the forest service was renowned for implementing a far-reaching vision around what is possible, and we need to get such vision and dedication back.

The development of a National Forest Strategy will be a process involving all sectors of the industry (conservation, commercial, territorial and local authorities and Iwi) and will involve strategies for addressing the challenges and opportunities that will present themselves from mitigating climate change risk through to uneven harvest spreads, managing our remaining native forests for conservation values and the development of downstream processing capacity.

It doesn't matter how long it takes to get agreement on the issues that are important, as long as the strategy is robust, has buy-in from key stakeholders, is visionary and there is a willingness from all parties to work towards the goals articulated in such a strategy. We once had the largest plantation forest in the world in the 189,000ha Kaingaroa Forest – it is time to make forestry great again.

In years gone by the forest owners paid a levy that funded the Forest Research Institute. Currently, there is a levy of 27c/mt for all logs harvested. This collected around \$7.6m in 2015. The funds are administered by the Forest Growers Levy Trust, which then, in consultation with key stakeholders, distributes the funds to a variety of projects and work programmes.

Admittedly, all the programmes funded by the levy will add value to the industry, this work programme will be ramped up considerably, however, \$7.6m is not nearly enough money to increase the quantity and quality of research and training that I believe New Zealand should be undertaking right across the board in order to drive innovation and excellence from conservation through to downstream processing.

Initially I would increase this levy to \$1.00 per metric tonne, but only levied on logs and poles exported without a cent of value being added. This differs from the current levy, which applies to logs, posts, poles, forest waste, binwood, hog fuel and woodchips produced in New Zealand sourced from a plantation forest.

I understand that this may be seen to be distortionary and act as a disincentive to plant forests compared to other forms of land use, however, at a one-off cost over the life of the plantation of around \$550 per hectare – and only for logs exported – I believe that the value and benefits created through a much increased research programme will outweigh the cost.

Keeping in mind that we actually want to encourage investment in downstream processing due to the value-added component and the jobs such manufacturing and remanufacturing industries create, and we want to ensure that domestic processors have access to the logs they need in order to create value on-shore.

This hypothecated levy would be invested back into the industry and, more specifically, into research and development and education and training opportunities. In 2015 there were 15,398,698m³ of logs and poles exported. At \$1/mt (assuming a cubic meter is equivalent to a metric tonne) this equates to levy income of \$15.398m, or around a doubling of the current levy

income. I would also reserve the right to increase the levy (after due consultation) in line with research and training requirements of the industry.

It would also mean that the Forest Research Institute could focus on the issues that are important to the industry and the country without having to concern themselves with contested funding and other such mechanisms that create research and employment uncertainty. Developing a self-funded, world-class research centre of excellence is a major step to once again reclaiming our future.

While the registering of log exporters and collecting levies only on logs and poles exported adds a degree of compliance currently not found in the industry, it also imposes a level of transparency that is lacking. The removal of unnecessary red tape is vital to the growth of any business sector, but transparency that leads to the ability to audit, thus protecting national brand reputation, is critical.

This is not compliance for compliance sake, but enhancing the overall integrity of the New Zealand industry on the global stage and ensuring that fly-by-night operators who place our reputation at risk, let alone operate outside the bounds of national interest, are excluded.

The next step is that we need to change is the overseas investment settings. The Overseas Investment Act and the Overseas Investment Regulations 2005 are the pieces of legislation that set out the terms and conditions under which an overseas investor can acquire “sensitive New Zealand assets”. Under legislation, these assets are divided into three categories: sensitive land, significant business assets and fishing quota.

The purpose of the Act is outlined in S3 and is to:

“Acknowledge that it is a privilege for overseas persons to own or control sensitive New Zealand assets by—

- (a) requiring overseas investments in those assets, before being made, to meet criteria for consent; and
- (b) imposing conditions on those overseas investments.”¹³

Obviously, if an overseas investor wants to purchase forests and more than 5ha of land upon which these trees are growing, then they already must go through the Overseas Investment Act process. However, what can happen in this industry is that investors don't purchase the land upon which the forests grow, just the forests themselves. This is known as cutting rights.

There are obvious advantages to both parties of such a scheme: the purchaser of the cutting rights doesn't have the upfront capital cost of buying the land and the landowner gets to keep the land while receiving income from the purchaser of the cutting rights. It's a great scheme except it is unregulated.

I suspect that we will see more and more of this occurring as the cutting rights for small-to-medium private holding (100-1000ha) and forests planted on Maori land become available.

In Northland alone there are already around 30 export log traders trying to buy the cutting rights to forests in order to harvest and send the logs offshore without a cent of value being added. This is beginning to have a significant impact on the age profile of Northland's forest stock and

¹³ Overseas Investment Act 2005, S3 Purpose

is of great concern to local sawmillers who have undertaken investment based on assumptions that, while well-grounded in best-practise forest management, are now out of date.

If the purchase of cutting rights had to go through the Overseas Investment Act regime, then at least the investor would be subject to a national-interest test, and if they didn't meet such a test then they wouldn't be able to purchase. This doesn't stop the New Zealand-based log export trader from buying up large and sending logs offshore, however, I would include within the definition of "overseas investor" the activities of any New Zealand-based contractor who has contracted 25 per cent or more to one overseas customer.

What I would strongly recommend, however, is the ability for a prospective purchaser of either land or cutting rights to gain a preapproval for the before actually submitting a consent application. This would be an inexpensive no-obligation assessment around the provision in S16 of the Act (see appendix 1) regarding good character, financial commitment, and relevant business experience.

The forestry industry must take some responsibility for its poor public perception. Just a simple example: the Wikipedia entry on "Forestry in New Zealand" is less than 20 lines long. Type in "New Zealand electricity market" and the entry is at least four times longer. The industry has done a poor job of promoting itself and its benefits.

The perception that forestry is concerned only with the planting, growing and cutting down of trees is incorrect. Of course, trees are an extremely important part of forestry, but so is international business, understanding emissions trading, conservation, enhancing social values, and a number of other important variables that do not directly involve wielding a chainsaw or a pair of loppers.

As a nation we need to be doing so much better with forestry and it should start with the appropriate government action. How we manage this extremely important resource for a long-term and sustainable future is a conversation we should be having now.

Appendix one – The Overseas Investment Act

The Overseas Investment Act 2005 and the Overseas Investment Regulations 2005 are the legislation that set out the terms and conditions under which an overseas investor can acquire ‘sensitive New Zealand assets’.

The purpose of the Act is outlined in S3 and is to:

“acknowledge that it is a privilege for overseas persons to own or control sensitive New Zealand assets by—

- (a) requiring overseas investments in those assets, before being made, to meet criteria for consent; and
- (b) imposing conditions on those overseas investments¹⁴”

While there is no legal definition for what constitutes ‘privilege’, the High Court in the Crafar Farms case noted that ‘the Act's stated purpose is that of acknowledging that it is a privilege for overseas persons to own or control sensitive New Zealand assets by requiring that overseas investment meet criteria for consent and imposing conditions on such investment¹⁵”

Under legislation, ‘Sensitive New Zealand Assets’ are divided into three categories; sensitive land, significant business assets and fishing quota.

The definition of ‘sensitive land’ (the predominant theme of this chapter) includes eighteen different criteria, however, the vast majority of applications for the purchase of sensitive land relate to rural land that exceeds five hectares.

The significant clauses that set out the criteria that must be met by prospective overseas investors wanting to purchase sensitive land are s16 and s17. These are set out below:

S16 Criteria for consent for overseas investments in sensitive land

- (1) The criteria for an overseas investment in sensitive land are all of the following:
- (a) the relevant overseas person has, or (if that person is not an individual) the individuals with control of the relevant overseas person collectively have, business experience and acumen relevant to that overseas investment:
 - (b) the relevant overseas person has demonstrated financial commitment to the overseas investment:
 - (c) the relevant overseas person is, or (if that person is not an individual) all the individuals with control of the relevant overseas person are, of good character:
 - (d) ...
 - (e) either subparagraph (i) is met or subparagraph (ii) and (if applicable) subparagraph (iii) are met:
 - (i) the relevant overseas person is, or (if that person is not an individual) all the individuals with control of the relevant overseas person are, New Zealand citizens, ordinarily resident in New Zealand, or intending to reside in New Zealand indefinitely:
 - (ii) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined by the relevant Ministers under section 17:

¹⁴ Overseas Investment Act 2005, S3 Purpose

¹⁵ Tiroa E and Te Hape B Trusts v Chief Executive of Land Information [2012] NZHC (10)

- (iii) if the relevant land includes non-urban land that, in area (either alone or together with any associated land) exceeds 5 hectares, the relevant Ministers determine that that benefit will be, or is likely to be, substantial and identifiable:

S17 Factors for assessing benefit of overseas investments in sensitive land

- (1) If section 16(1)(e)(ii) applies, the relevant Ministers—
- (a) must consider all the factors in subsection (2) to determine which factor or factors (or parts of them) are relevant to the overseas investment; and
 - (b) must determine whether the criteria in section 16(1)(e)(ii) and (iii) are met after having regard to those relevant factors; and
 - (c) may, in doing so, determine the relative importance to be given to each relevant factor (or part)^{16, 17}
- (2) The factors are the following:
- (a) whether the overseas investment will, or is likely to, result in—
 - (i) the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost; or
 - (ii) the introduction into New Zealand of new technology or business skills; or
 - (iii) increased export receipts for New Zealand exporters; or
 - (iv) added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand; or
 - (v) the introduction into New Zealand of additional investment for development purposes; or
 - (vi) increased processing in New Zealand of New Zealand's primary products:
 - (b) ...
 - ...
 - (g) any other factors set out in regulations¹⁸.

Interpreting Section 16(1)

S 16(1)(a) Business experience and acumen.

The business experience and acumen clause provides that the individual(s) must have practical knowledge and abilities relevant to the overseas investment.

The OIO website states that they are looking for evidence that demonstrates and explains:

- substantial experience in the same industry and type of investment

¹⁶ Note the wording 'may' in 17(1)(c), rather than 'must' as in 17(1)(a) and 17(1)(b). 'May' implies a lack of compulsion, even though in the judgement discussed later, Millar J does say that Ministers 'must' determine the relevant the relative importance to be given to each relevant factor re 17(2)(a)(i – vi).

¹⁷ under s 34 of the Act the Minister of Finance is able to direct the OIO about, inter alia, the Government's general policy approach to overseas investment in sensitive assets and the relative importance of criteria or factors. By letter of 8 December 2010 the Minister notified the OIO of two specific concerns about overseas investment in the land-based primary sector: investment in vertically integrated firms which produce and distribute products on a large scale, and undue aggregation of farm land by overseas investors. Where overseas investment involves large areas of farm land, criteria in s 17(2)(a)(i)-(vi) (economic benefits), reg 28(i) (economic interests) and reg 280 (mitigating factor) are of "high relative importance"

¹⁸ Under Section 28 'Other factors for assessing benefit of overseas investment in sensitive land' The other factors that are referred to in section 17(2)(g) of the Act for assessing whether an overseas investment in sensitive land will, or is likely to, benefit New Zealand are set out.

- a track record of successful business activity that demonstrates generic business experience and acumen
- that sufficient “nouse” exists to oversee local managers engaged to undertake the investment on the investor’s behalf
- how the background, qualifications and work experience of the individuals are relevant to the proposed overseas investment¹⁹.

S 16(1)(b) Demonstrated financial commitment

The OIO requires evidence of demonstrated financial commitment to the proposed overseas investment. Evidence may include:

- setting aside or committing resources to the investment
- securing an advance or loan to undertake the investment
- having already funded aspects of the investment, for example, the overseas person has already acquired part of the business assets or has already undergone an expansion into New Zealand
- having paid the deposit towards the purchase or entered into a contract for sale and purchase.

Simple access to capital to make investments does not demonstrate a financial commitment to a particular investment. The OIO requires specific evidence that a particular part of the capital has been set aside for the investment, or that the particular capital required has been called up^{20, 21}.

S 16(1)(c) Good character

Although the Act does not define good character, the test for good character is detailed in section 19(1).

The relevant Ministers must take into account:

- offences or contraventions of the law by the individual, or by any person in which the individual has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not), and
- any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

The OIO considers that good character goes beyond the concept of criminal convictions. The existence of criminal convictions is merely one factor in determining a person's character.

“Character” denotes both moral factors and the reputation of the person concerned. Allegations made which suggest that a person has engaged in activities which, although not giving rise to a criminal conviction, must be regarded by any reasonable person as having an adverse impact on the person's good standing in the community, are also relevant.

¹⁹ <http://www.linz.govt.nz/regulatory/overseas-investment/making-application/technical-resources/investor-test>

²⁰ <http://www.linz.govt.nz/regulatory/overseas-investment/making-application/technical-resources/investor-test>

²¹ In *Jeffries v Attorney-General* [2009] NZCA, Justice Chambers, when ruling on a monitoring requirements case, stated that “the overseas person had demonstrated financial commitment to the overseas investment [the purchase of the land], makes perfect sense as a criterion when the Ministers are deciding whether to grant the consent. It makes no sense as a continuing obligation, as once the land has been bought, it has been bought”.

In considering all the information provided by the Overseas Investor, it is important to note that the Overseas Investment Office cannot approve a consent, but rather only make recommendations, as part of the consent process, that are then presented to the mandated Minister or Ministers with delegated authority to sign off on the consent or refuse the application; usually the Associate Minister of Finance and / or the Minister of Land Information.

There are two issues that New Zealanders should be concerned about regarding foreign investment in sensitive land:

1. the amount of land sold to foreigners and
2. the lack of meaningful follow up from the Overseas investment Office.

The number of Overseas Investment Applications for Investment in Sensitive New Zealand Land (2005 – 2014)

Year	2005	2006	2007	2008	2009	2010	2111	2012	2013	2014
Number of consents issued	51	125	88	98	130	80	106	89	93	114
Number of consents declined	0	3	3	5	0	3	5	0	0	0

First, the sale of New Zealand land to foreigners. The legislative requirements for an overseas investor when buying sensitive land are much more prescriptive than when purchasing a significant business.

While potential investors have to pass the ‘good character’ test, prove a demonstrated financial commitment to the proposed investment and have relevant experience, an overseas investor in sensitive land has to quantify the type of value they are going to add, whereas this is not the case in the purchase of a significant business.

For sensitive land purchases, the value propositions identified in Section 17 of the Act falls into 6 categories (in the table below). If the investor can’t prove how the value will be created, then, by law, the consent cannot be granted.

The table below lists the criteria as identified in the Act and then the number of successful applications that have promised to deliver such value.

Promises made in consent applications for the purchase of Sensitive New Zealand Land (2005 – 2015)

Applicable Section of the OIA	Value proposition	No of consents promising to meet value proposition
S17(2)(a)(i)	the creation of new job opportunities in New Zealand or the retention of existing jobs in New Zealand that would or might otherwise be lost; or	716
S17(2)(a)(ii)	the introduction into New Zealand of new technology or business skills; or	66
S17(2)(a)(iii)	increased export receipts for New Zealand exporters; or	358
S17(2)(a)(iv)	added market competition, greater efficiency or productivity, or enhanced domestic services, in New Zealand; or	574
S17(2)(a)(v)	the introduction into New Zealand of additional investment for development purposes; or	608
S17(2)(a)(vi)	increased processing in New Zealand of New Zealand's primary products:	214

The Overseas Investment Act then sets out various legislative requirements that a consent-holder must meet if their consent is granted. For example, under section 28(1)(b) of the Overseas Investment Act, each consent holder must comply with the representations and plans made or submitted in support of the application and notified by the OIO as having been taken into account when the consent is granted.

The OIO does not actively monitor or audit applicants' compliance with conditions of consent in a manner that I consider sufficiently robust to determine whether value is being added or not. The post consent monitoring process is a desk-top exercise primarily relying on written reports provided by the consent-holder to the Overseas Investment Office (OIO).

The issue is that the Overseas Investment Office does not collect quantifiable data on whether or not an approved overseas investor is actually delivering on the promises they made in their consent application. As a consequence, we have absolutely no idea what-so-ever on how much value is being added to our country or communities through overseas investment.

What the Overseas Investment Office does require is for the investor to send in annual reports, but there are no field audits, or any other form of proactive data collection that allows us to understand if foreigners buying our land is beneficial or not. This is wrong and unfair.

The current monitoring and reporting regime needs to change to meet the requirements of all New Zealanders to better understand the value that Overseas Investment is adding to our country and communities.

The Overseas Investment Office must start

1. employing investment managers and field officers who are responsible for delivering a proactive programme of auditing overseas investors in terms of delivering on the promises they have made in their successful consent applications, and
2. proactively collecting, collating data and reporting on the actual value being added by overseas investors buying up our farms, forests and other sensitive and strategic assets, and
3. holding all overseas investors to account for the promises made in the application process, and
4. proactively managing overseas investors' exit from New Zealand if the investor ignores or disregards their obligations as promised.

If an overseas investor is not complying with the terms and conditions of their consent, the Overseas Investment Office must be mandated to work with the investor over a specified period of time to ensure that terms and conditions are met.

If the investor continued to fail to meet the terms and conditions of their consent, the Overseas Investment Office can currently, under S of the Overseas Investment Act, order the disposal of the property thus terminating any further involvement of the investor in New Zealand. To date, this has been done just once.

It is simply not acceptable for overseas investors to blatantly ignore their obligations to our country and communities once they have been successful in obtaining ministerial permission to exercise the privilege of purchasing sensitive New Zealand assets.

We do not want investors in this country who lie on application forms or who are disingenuous in their intent.

There now needs to be a much higher level of accountability and transparency right across the overseas investment sector. I don't think this is unreasonable, unfair or a breach of the rights of the overseas investor.

Case Study: Hikurangi Forest Farms.

On 16th December 1996, the Overseas Investment Commission (the precursor to The Overseas Investment Office) approved the sale of Fletcher Challenge Forests' 33,259 hectare Gisborne estate (Hikurangi Forest Farm) to Glenealy Plantations (Malaya) Berhad, a Malaysian public listed company. The sale price was \$210m

In the Overseas Investment Commission's 'Decision Sheet', it stated that:

"The application has been approved as it met the criteria. The Commission is advised that Glenealy has extensive forestry and wood processing interests, marketing its products throughout the Asia-Pacific region. The Commission is further advised that Glenealy proposes to establish a "state of the art" processing facility to enable the local processing of the forestry resource from the East Coast Forest Estate. It is also advised that Glenealy's existing marketing infrastructure will provide increased export opportunities. The Commission is advised the proposal is likely to result in the following benefits being:

- (i) the creation of new job opportunities and the retention of existing jobs in New Zealand;
- (ii) the introduction of new technology and business skills;
- (iii) the development of export markets and increased export market access;
- (iv) a greater efficiency and productivity in the New Zealand marketplace;
- (v) the introduction of capital for development purposes;
- (vi) the increased processing in New Zealand of New Zealand's primary products."

In the 20 years Glenealy has owned Hikurangi Forest not a single cent has been invested in any 'state of the art processing facility', there has been no increase in job opportunities, no introduction of new technology or business skills, nor capital, or greater efficiency and certainly no increased processing in New Zealand of New Zealand's primary products.

In fact, there is no evidence at all that Glenealy has met any of the promises they made in their 2006 application to purchase this 35,000ha forest estate: the promises that the Overseas Investment Commission based its recommendation to allow the transaction to occur.

In fact, ten years later in 2006 and 2007 Glenealy were successful in their applications to purchase 33ha of land and 8ha of land respectfully. It appears the Overseas Investment Office did not take into account the fact that Glenealy had not fulfilled any of the requirements of its successful 1996 application. In both decisions, the Overseas Investment Office noted the following:

[2006]

"Hikurangi proposes to acquire the subject property to develop a timber processing facility. The subject land is located in close proximity to Hikurangi's forestry plantations and the Gisborne Port. The timber processing facility will process Hikurangi's timber resources for the domestic market and for export to global markets.

The proposal is likely to result in the following benefits:

1. the creation of new job opportunities in New Zealand;
2. increased productivity in New Zealand;
3. the introduction into New Zealand of development capital; and

4. increased processing in New Zealand of New Zealand's primary products.”

[2007]

“Hikurangi proposes to acquire the subject property, which adjoins land already owned by Hikurangi (A200520147/D200610014) to develop a timber processing facility. The subject land is located in close proximity to Hikurangi's forestry plantations and the Gisborne Port. The timber processing facility will process Hikurangi's timber resources for the domestic market and for export to global markets.

The proposal is likely to result in the following benefits:

1. the creation of new job opportunities in New Zealand;
2. increased productivity in New Zealand;
3. the introduction into New Zealand of development capital; and
4. increased processing in New Zealand of New Zealand's primary products.”

As with the 1996 promises, 10 years after the successful consent applications, this company continues to completely disregard the promises it made to New Zealand in terms of adding value to the country and the local communities.

It gets worse: it is my understanding that the Prime Sawmill in Gisborne is unable to operate because Glenealy's forest managers (now operating under the NZ-registered company Hikurangi Forest Farms) refuse to guarantee the mill the necessary volume of logs (at export-equivalent prices) needed to justify the investment required to start operating, and yet every day Hikurangi is sending literally truckloads of logs past this sawmill to the Port of Gisborne to export overseas without a cent of value being added.

The question that needs to be answered is ‘why has the government allowed this major investor in the New Zealand Forest industry to get away without meeting one of its promises that formed the basis of the rationale for the original granting of the consent in the first place? It is unacceptable and unfair.

Appendix 2 – How big a forest estate do we want

How many trees could we plant²²?

Given that New Zealand's commercial forests are around 1.7 million hectares, it is certainly technically feasible to plant a new forest of 1.3 million hectares. But is it really possible to plant up this much land; much of it in private hands? Anything is possible, but it would involve a massive effort and political will that simply doesn't exist today.

The costs would not be unsubstantial at around \$3,000 / ha to plant radiata pine (and close to \$30,000/ha to plant native forests) – or around 25% of the recently announced budget to upgrade the military – and the economic benefits through employment and other infrastructure would be significant so it is not beyond the realms of plausibility; and remember that during the great depression New Zealanders left their homes and families to work four out of seven days to plant Kaiangaroa forest; at the time the largest plantation forest in the world

- China has overseen the world's largest ever tree-planting project, the Three North Shelterbelt Project, to combat desertification, soil erosion, and dust storms. According to China's State Forestry Administration, this project has resulted in some 66 billion trees since 1978, or the establishment of 24,469,000 hectares of forest
- The United Nations Environment Programme's (UNEP's) Billion Tree Campaign was launched in 2006 with the objective of planting a billion trees. That objective was realised in November 2007 and now around 12.6b trees are registered as planted. Nearly 2 million trees are registered from New Zealand.
- Kenya's Green Belt Movement, founded by Nobel Peace Prize laureate Professor Wangari Maathai, has planted more than 51 million trees in Kenya since 1977
- In December 2014, the Australian Government announced plans to plant 20 million trees by 2020, pledging to distribute AUS\$50 million over four years through a competitive grants scheme. This stands alongside the 2020 Vision target to increase urban forest by 20 per cent by 2020.
- Since 1905, the Jewish National Fund (founded in 1901) has planted some 250 million trees in Israel, a territory that is only 8% of New Zealand's total land area
- Toronto mayor John Tory promised in December 2014 to plant 3.8 million trees in the city of Toronto alone

So is it possible? Anything is possible. Imagine.

²² Taken from <http://pureadvantage.org/news/2016/04/22/our-forest-future> by Dr David Hall