23 July 2025

Committee Secretariat
Finance and Expenditure Committee
Parliament Buildings, Wellington

submitted by email to fe@parliament.govt.nz

Federated Mountain Clubs of New Zealand Inc.
Submission on Overseas Investment (National Interest Test and Other Matters) Amendment Bill

Tēnā koe,

Introduction

1. Thank you for the opportunity to submit on the Overseas Investment (National Interest Test and Other Matters) Amendment Bill ('the Bill').
2. Federated Mountain Clubs of New Zealand Inc. (FMC) was founded in 1931 to, amongst other things, promote public access to our outdoors, to preserve our public lands and to promote non-commercial outdoor recreation. We advocate on behalf of over 22,000 New Zealanders, comprising 93 member clubs and over 1,000 individual supporters, who enjoy outdoor recreation in New Zealand's front and backcountry. We also speak for the large number of other New Zealanders who enjoy our public lands for outdoor recreation.
3. Our submission on the proposed Bill considers it from the perspective of the outdoor recreation community, and in particular, the implications for public access to public lands. The provision of safe, practical legal access to public land is often overlooked by decision makers.
4. We have read the Cabinet Paper[1], the Treasury's Departmental Disclosure Statement ('Disclosure Statement') and the Bill's Regulatory Impact Statement ('RIS').

General comments on the Bill

5. The Bill amends the Overseas Investment Act 2005 ('the Act'). It is intended to promote foreign investment in New Zealand by reducing compliance costs, speeding up decision making on applications while safeguarding New Zealand's key national interests, such as farm land, residential land, fishing quotas, national security and public order. The Bill would replace the existing National Benefits test with a new screening process – the 'National Interest' test.

[1] The Treasury (2025) *Detailed Policy Decisions for the Overseas Investment Act Reform Information Release* February 2025.

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6. FMC is not opposed to foreign investment in New Zealand. We note, however, that the Disclosure Statement and RIS identify a number of significant problems with the Bill. Specifically,

    a. the Overseas Investment Act ('the Act') and associated regulations have become a complex, procedural labyrinth as a result of amendments over the last 20 years. The official advice notes that the Act is "*... increasingly complex, technical, and unwieldy due to a proliferation of bespoke pathways, exemptions and repeated amendments – often designed to realise a range of secondary policy objectives (such as differential treatment for farmland, water bottling, forestry, and housing supply)*"[2]. A view also endorsed by the Law Society and Parliamentary Counsel Office.

    b. the complexity of the Act is imposing high legal and other costs on applicants, and creating long processing times[3].

    c. consultation on the Bill was limited, primarily drawing on work done for earlier proposals. Other interested parties, such as outdoor recreation groups and iwi were not consulted. It is questionable whether consultation on the previous amendments would draw out the full implications of this Bill, and its likely benefits and costs. The Quality Assurance Panel commented "*users and key stakeholders have not been consulted in the development of these proposals. While policy and implementation risks are somewhat mitigated by consultation undertaken as part of previous reforms, a high quality process would involve consultation with affected parties and implementing agencies, to ensure that any changes are informed by stakeholder input, are deliverable and that the expected benefits will materialise.*"[4].

    d. the scope of the Bill is also limited. It implements part of the Coalition agreement with a predetermined view on how to encourage foreign investment, and does not address the long standing factors hindering New Zealand's productivity growth. New Zealand's ability to attract foreign investment and improve productivity is hampered by a range of factors, such as New Zealand's small economy, remote location from major markets, lack of competition in many parts of the economy, influence of vested interests, low capital intensity, reluctance to adopt new technology and other innovations[5]. The officials view is that a fundamental review of the constraints to foreign investment and access to financial capital is likely to have identified a more effective package of measures[6].

7. Overall, it is hard to see how this Bill, with its narrow focus on promoting foreign investment, will resolve these wider structural problems associated with low productivity. Despite the various amendments to the Act over the last 20 years, the broad structure of the statute has remained largely intact, suggesting that in fact there is a degree of political consensus about the role of the Act.

8. In our view, the Bill should be withdrawn. Instead of another amendment to the Act, there should be a multiparty or bipartisan effort to re-draft the entire Act so that the new statute sets out a clear, straightforward process for considering foreign investment proposals with the relevant tests to assess whether they would generally benefit New Zealand, not jeopardise national interests, the environment or create social and cultural issues for the community.

[2] Regulatory Impact Statement paras 20 – 22.
[3] Regulatory Impact Statement paras 25-27.
[4] Regulatory Impact Statement, Quality Assurance Panel Assessment pg 3.
[5] Ibid, OECD Economic Surveys: New Zealand 2024.
[6] Regulatory Impact Statement Section 1 pg 4.

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Specific comments on the Bill

The new 'National Interest' test

9. Overseas investment will have both benefits and costs to New Zealand. A key feature of the Bill is that the existing 'National Interest', 'Benefit to New Zealand' and 'Investor' tests would be replaced with a new broadly defined 'National Interest' test. Farmland, fishing quotas and residential housing would be exempted from the new test. The existing consent pathways would continue to apply to these activities. All other foreign investment, including purchase of plantation forests, would be subject to the new 'National Interest' test.

10. We note that under the current system (prior to the June 2024 Ministerial letter) the Overseas Investment Office (OIO) has sought advice from other agencies, such as Herenga ā Nuku and the Department of Conservation on prospective purchases. This system has created new public access opportunities[7]. However, these agencies can only make public access recommendations. There is no obligation on either the OIO or the applicant to accept them. In particular, for forestry blocks, applicants will offer a permit system to allow public access but not accept any form of legal access, such as easements, or esplanade strips.

11. The new 'National Interest' test is not clearly defined, but its intent is to focus only on the economic opportunity of overseas investments[8] and potential risks to national and economic security[9]. The test offers no guidance, or contains any principles, on how to assess the social, cultural, and/or environmental consequences or costs (some of the 'externalities') of a proposed overseas investment. For example, the Bill[10] repeals part of s.16A of the Act - the 'Benefit to New Zealand' test as it applies to forestry activities, including any regulations to maintain or protect things, such as historic heritage, biodiversity, environmental matters, public access that existed before the overseas investment transaction. When forests were sold, 'existing access arrangements' such as hunting permits and mountain bike parks would need to remain in place. Under the proposed new 'National Interest Test,' the 'existing access arrangements' requirement has been removed. How would this affect the sale of Rotorua's Whakarewarewa Forest, or the forest underlying Christchurch's Adventure Park?

12. Equally concerning are the extremely broad criteria for the new test. The regulator and/or Minister would retain a large amount of discretion as to how these criteria will be applied. It is not too farfetched to envisage a future overseas investment proposal, such as a dam, or a large scale AI data storage centre, being approved by a future government, without any assessment of the consequences, to the detriment of the environment or communities.

13. The narrow focus of the Bill is on solely promoting 'economic opportunity for certain classes' of overseas investments. The new 'National Interest' test focuses on economic and national security risks, and does not assess the broader benefits and costs of overseas investment in this country. It overlooks community concerns about the broader social, economic, cultural and environmental risks of these investments[11], such as loss of public access, alienation

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[7] For example: Rangitata River https://www.herengaanuku.govt.nz/our-work/news/news/7km-of-new-fishing-at-rangitata
Cutters Bay, Port Underwood
https://www.herengaanuku.govt.nz/our-work/news/news/exciting-new-walkways-and-cycleways-in-historic-cutters-bay
Coronet Loop track, Queenstown
https://www.herengaanuku.govt.nz/our-work/news/news/walking-access-easements-will-secure-epic-coronet-loop
Downloaded 22 July 2025.

[8] s.4 Overseas Investment (National Interest Test and Other Matters) Amendment Bill.

[9] s. 15 Overseas Investment (National Interest Test and Other Matters) Amendment Bill.

[10] s. 9 Overseas Investment (National Interest Test and Other Matters) Amendment Bill.

[11] Regulatory Impact Statement paras 10-12.

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from the land, changing land uses, profits going offshore etc. In a somewhat contradictory approach, these broader concerns will still remain in the Act and only be used to assess applications by overseas investors of what are deemed to be core strategic national assets, i.e. farmland, fishing quotas, residential land, and areas of fresh and seawater.

14. The RIS commented that "*... Other community concerns also often arise, such as environmental or other risks. However, these risks arise irrespective of whether activity is financed by foreign or domestic capital. And as such, these risks are best managed by domestic regulatory systems – such as councils' powers to regulate the use of land*[12]."

15. Such a credulous assessment highlights the lack of understanding or interest in the 'environmental or other risks ', which are important to the community. In many cases, these issues are not being adequately dealt with by other regulatory systems. A glance at the Herenga ā Nuku Aotearoa / Outdoor Access Commission 'Case Load' map shows that restrictions on public access is a widespread problem in New Zealand[13]. Many local authorities have other more urgent priorities, or show little willingness or have the resources to tackle these issues. The only legal obligation on local authorities to maintain and enhance public access is limited to rivers, lakes and the coast[14].

16. Instead of delegating responsibility for dealing with 'environmental or other risks' to various domestic agencies, it would be more efficient to deal with many or most of these administrative and legal matters at the time when there is an investment application. The applicant would then be able to understand what their obligations are likely to be, and whether their application is going to be accepted or declined, rather than being put through a protracted process by dealing with one or more domestic agencies.

17. The following two case studies illustrate how the overseas purchase of land, aside from the core strategic assets, can have significant effects on New Zealanders right to access large areas of public land. In both cases, although there are legal 'rights of way' across these properties, the use of these routes to large areas of conservation land, is not unrestricted but still remains at the discretion of the land owner.

Two case studies – public access and overseas investments

Case Study One: Mt Richmond Forest Park

Mt Richmond Forest Park occupies an area of 166,000 ha of steep, mountainous terrain, rising up to 1,760m, between the Nelson / Tasman area and the Wairau Valley. Plantation forests occupy much of the steep hill country on the margins of the forest park. The management of these forests affects public access to the park.

OneFortyOne Plantations Holdings Pty Ltd (OFO), an Australian owned company, manages approximately 80,000 ha of plantation forests, comprising approximately 51,000 ha of four Crown Forest Licensee forests (Golden Downs West, Golden Downs East, Rai Forest, Wairau), 12 freehold forests and four joint venture forests[15]. The forests were formerly

[12] Regulatory Impact Statement para 12.
[13] https://maps.herengaanuku.govt.nz/Viewer/?map=2e284d8497a44994a35cfc8aaffb3cc5 Downloaded 14 July 2025.
[14] s.6(d) Resource Management Act 1991.
[15] https://fscglobal.my.salesforce-sites.com/servlet/servlet.FileDownload?file=00Pf300000t06bLEAQ Downloaded 18 June 2024.

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owned by Nelson Forests Ltd. OFO has 18 public easements created as part of the Crown Forest licences[16], and it has public access policies controlling access into their forests[17].

The Overseas Investment Office (OIO) assessed OFO's purchase of Nelson Forests Ltd. The OIO report noted that public access across the forestry land at the time of the sale, comprised public access easements, legal roads, marginal strips, memoranda of understanding with Department of Conservation, Fish & Game NZ and user access agreements to parts of the forests[18]. Te Herenga ā Nuku / Outdoor Access Commission also made a number of recommendations to improve access to the forested areas[19]. The sale was approved 15 August 2018.

Later, OFO purchased 2,411 ha of forest land in the Wairau Valley, bordering the Mt Richmond Forest Park. The sale was assessed by the OIO, and approved 24 January 2019, with a requirement to establish new easements and esplanade strips[20]. Other conditions included, keeping access open to other existing marginal strips. Access to these areas could be closed temporarily for forestry operations, safety reasons or to protect the environment from damage. The company closed a number of these public access routes to the forest park, citing forestry operations, prompting an outcry from the local outdoor groups. To OFO's credit, senior management have recently met with representatives from local outdoor groups and FMC to discuss the access issues and to develop a practical solution to suit all parties.

Case Study Two: Hunter Valley, Otago

The Hunter Valley is a large picturesque valley, stretching for 42km from the Main Divide to Lake Hāwea. The valley offers extensive opportunities for a range of outdoor recreation such as tramping, hunting, fishing, pack rafting, and climbing. The easiest public access to the valley is limited to a track on the east side of Lake Hāwea and the 40km Hunter Valley Station Road on the west side of the lake. The valley can also be reached by alpine crossings from the adjacent Ahuriri, Makarora, Huxley, Wills and Landsborough valleys.

The upper part of the valley lies within the Hāwea Conservation Park while the lower reaches are on a pastoral lease, forming part of Hunter Valley Station. A U.S. company Orange Lakes (NZ) Ltd purchased the pastoral lease after the sale was approved by the OIO[21]. A debate about public access to the valley broke out after the OIO decision was released[22]. Several organisations, including Te Herenga ā Nuku / Outdoor Access Commission and FMC, argued for a legal easement for vehicles, trampers, hunters, cyclists', horse riders, through the station to Hāwea Conservation Park. The station owners objected saying that unrestricted access could affect the day to day management and financial viability of the farm operation. In September 2018 an agreement was reached between the Department of Conservation and Orange Lakes (NZ) Ltd setting out the conditions for public access through the station[23]. Access is available by permission only, and must be arranged 48 hours before arriving at the station. There is no access between October and December and no access to 4WD vehicles from May to November. Access

[16] https://cms.onefortyone.com/app/uploads/2024/04/NZEV001-Forest-Access-Policy-Public-March-2024-1.pdf Downloaded 20 June 2024.
[17] https://cms.onefortyone.com/app/uploads/2024/04/NZEV001-Forest-Access-Policy-Public-March-2024-1.pdf Downloaded 19 June 2024.
[18] https://www.linz.govt.nz/sites/default/files/2024-04/Assessment%20report%20-%20case%20201720119%20copy.pdf para 183 Downloaded 19 June 2024.
[19] Ibid Paras 184 to 207.
[20] https://www.linz.govt.nz/sites/default/files/2024-04/Ministerial%20-%20201810093%20-%20redacted.pdf Downloaded 19 June 2024.
[21] https://www.linz.govt.nz/our-work/overseas-investment-regulation/decisions/2017-02/201610030 Downloaded 10 July 2025.
[22] https://newsroom.co.nz/2018/07/26/inside-the-hunter-valley-station-access-wrangle/ Downloaded 10 July 2025.
[23] https://fmc.org.nz/huntervalleyaccess/ Downloaded 10 June 2025.

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may be restricted at other times. In practice, this has meant very limited access for those who do not know the station managers.

18. One possible solution would be to extend the scope of the 'National Interest' test so that the broader costs and benefits of an investment proposal were assessed rather than just considering a proposal through the narrow lens of 'economic opportunity' and national security. In other words, a revised 'National Benefits' test. Alternatively the term 'National Interest' test could be retained, but the definition widened to include the broader issues that we have highlighted.

19. One of the justifications for the Bill is to accelerate the processing time for consent applications. During the initial screening phase (new section 19A) it should be quite feasible within the timeframe for the OIO[24] to assess whether the proposal will have any significant implications for public access, the environment or local communities.

The Ministerial Directive Letter

20. The Minister responsible for the Act may direct the regulator by issuing a Ministerial directive letter[25]. The latest Ministerial Directive, issued to the OIO in June 2024[26], has reinforced the narrow economic view of overseas investments. It instructs the OIO, among other matters, to only consider the primary benefit of each overseas investment application, and not undertake a broad assessment of the benefits and costs to New Zealand. Consequently, issues such as public access – a 'secondary benefit' – are now no longer considered as part of each application[27].

21. This latest direction highlights a fundamental problem with the Act which will be exacerbated if the Bill becomes law (see para. 12). The Minister is able to exercise a large amount of discretion and bypass the Act's requirement to consider the national benefits of an application.

22. We recognise that governments need to have a degree of flexibility when considering overseas investment applications so that they can respond to changing geopolitical or economic conditions. Equally, the Minister responsible for the Act needs to be mindful of the potential costs to the country. This could be achieved if the definition of the 'National Interest' test was broadened to a revised 'National Benefits' test, as we have suggested (see para. 18). The Bill already contains a new clause directing the Minister to set the Government's preferred approach to undertaking a national interest assessment. Section 34 of the Act could be amended to make clear that the broader costs and benefits must be taken into account.

Comment on Schedule 5 - Fresh or Seawater Areas

23. Schedule 5 of the Act is not being amended by the Bill. We suggest that OIO's application of Schedule 5 could be improved if it sought advice on the South Island rivers.

24. Overseas investors must notify the OIO if they acquire land that includes Fresh or Seawater Areas - a marine or coastal area or the bed of lake or river[28]. The Crown retains the right to acquire a Fresh or Seawater area.

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[24] The OIO could consult with other bodies such as Herenga ā Nuku, Fish and Game NZ, Department of Conservation.
[25] s. 34 Overseas Investment Act 2005.
[26] https://www.linz.govt.nz/system/files/2024-06/Ministerial%20Directive%20Letter%20-%206%20June%202024_0_0.pdf Downloaded 14 June 2025.
[27] https://www.herengaanuku.govt.nz/our-work/advocacy/the-overseas-investment-office-and-public-access-2 Downloaded 14 July 2025.
[28] Schedule 5 Overseas Investment Act 2005.

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25. Many of the large South Island riverbeds are the primary access routes for people visiting the backcountry and the conservation state. Many of these rivers lie within or adjacent to Crown Pastoral Leases.

26. If the land does contain or include fresh or seawater interest, the applicant must supply a legal description, aerial photos, details of any structures, information about any biosecurity, contaminated land, or natural hazard issues, Treaty of Waitangi claim, whether all or part of the land is subject to other statutes e.g. Conservation Act 1987, Reserves Act 1977[29]. The OIO assessment process, however, does not consider the value of these riverbeds as important access routes. This oversight could be easily rectified if the OIO sought Herenga ā Nuku Aotearoa / Outdoor Access Commission's advice regarding public access on these river beds (see para 10).

Recommendations

To summarise our submission we suggest that:

A. Instead of yet another amendment to the Overseas Amendment Act 2005 there should be a thorough review of the whole statute, preferably by a multiparty working group, to produce a clear, straightforward process for considering foreign investment proposals with the relevant tests to assess whether they would generally benefit New Zealand.

B. If the Act is not reviewed, then the new 'National Interest' test be replaced with a new 'National Benefits' test that assesses whether a proposal is in New Zealand's interests. The new test would encompass economic, environmental, public access, heritage protection, and national security matters.

C. The OIO should be required to consult with Te Herenga ā Nuku / Outdoor Access Commission about public access prior to any purchase by an overseas investor, especially with regard to securing enduring legal public access.

D. As a minimum, existing public access arrangements must be carried over when land is purchased by an overseas investor.

E. As a consequence of (B) Section 34 of the Act should be amended so that the Minister is required to take into account the new broader definition of national interest or national benefit.

Yours faithfully,

Megan Dimozantos
President
Federated Mountain Clubs of NZ

[29] https://www.linz.govt.nz/guidance/overseas-investment/apply-consent-variation-or-exemption/you-apply/fresh-or-seawater-areas Downloaded 14 July 2025.

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