

# Land Types and Areas

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Recent updates relevant to this resource:

9 November 2005: section 37 list of reserves, parks and other sensitive areas

## Introduction

In this document the OIO outlines its approach to assessing the land types and land area thresholds used to determine whether land is sensitive land.

### Land types

This document contains advice on how to determine land types, including non-urban land and farm land. However, note that a final determination may be highly dependent on the facts of each case.

### Land area

A land area threshold is used to determine whether land is sensitive (under Table 1 of Schedule 1 of the Overseas Investment Act 2005) or whether the adjoining land is sensitive (under Table 2 of Schedule 1 of the Act). In the majority of cases, the land area will be the area described in the computer register (title) of the land being acquired. Exceptions to this general rule may exist in cases involving leases, subdivisions, multi-story buildings and unit-titled land/common areas. As Schedule 1 includes "associated land", the definition of "associated land" in section 8 of the Act will need to be considered in calculating the relevant land area. The associated land provisions refer to "land A adjoins Land B". "Adjoins" means "touching, sharing a common boundary, touching at a point or along a boundary".

Note: In some cases, no area threshold is prescribed (for example, land that is on islands other than the islands listed in Part 2 of Table 1, or the North and South Islands; or land that contains the foreshore or seabed; or certain land in the section 37 list).

## Exempted Interests

Consent is not required to acquire interests in land that are exempted interests. “Exempted interests” are defined in section 6(1) of the Act as meaning an easement or *profit a prendre*. Forestry rights are deemed to be a *profit a prendre*: see section 3(1) of the Forestry Rights Registration Act 1983.

Consent is also not required to acquire certain other interests in land, such as the acquisition of any interest in land for a term of three years or less. In calculating the term of an interest in leasehold land, all renewal rights or options are included. See section 12(a)(ii) of the Act.

## Land

“Land” is not defined in the Act. The Shorter Oxford Dictionary defines land as “... (in law) usually together with any other buildings, etc. above the ground and any minerals, mines, etc., beneath it”. “Land” includes the physical aspects of the land, as well as the intangible rights capable of existing in land. These include rights to airspace (to such height as is necessary for the ordinary use and enjoyment of the land and the structures upon it). This principle has been extended to modern forms of landholding, such as the stratum estate (unit titles), and the subsoil (but subject to statutory restrictions).

The Act refers to “an interest in land” – see section 12(a) of the Act. “Interest” is defined in section 6(1) of the Act as including a legal or equitable interest. A licence (ie a mere permission to be on the land) is not an interest in land. However, if a “licence” gives a person exclusive possession of the land (by allowing the occupier to use and enjoy the property to the exclusion of strangers), the “licence” will be deemed to be a lease, notwithstanding the label by which the parties chose to place upon their transaction: *Fatac Limited (in Liquidation) v IRD*, CA227/01, 23 September 2002. A mining permit is not an interest in land: see section 92(1) of the Crown Minerals Act 1991.

## Non-urban land

Non-urban land is defined in section 6(1) of the Act as meaning:

- farm land, and
- any land other than land is both in an urban area, and used for commercial, industrial, or residential purposes.

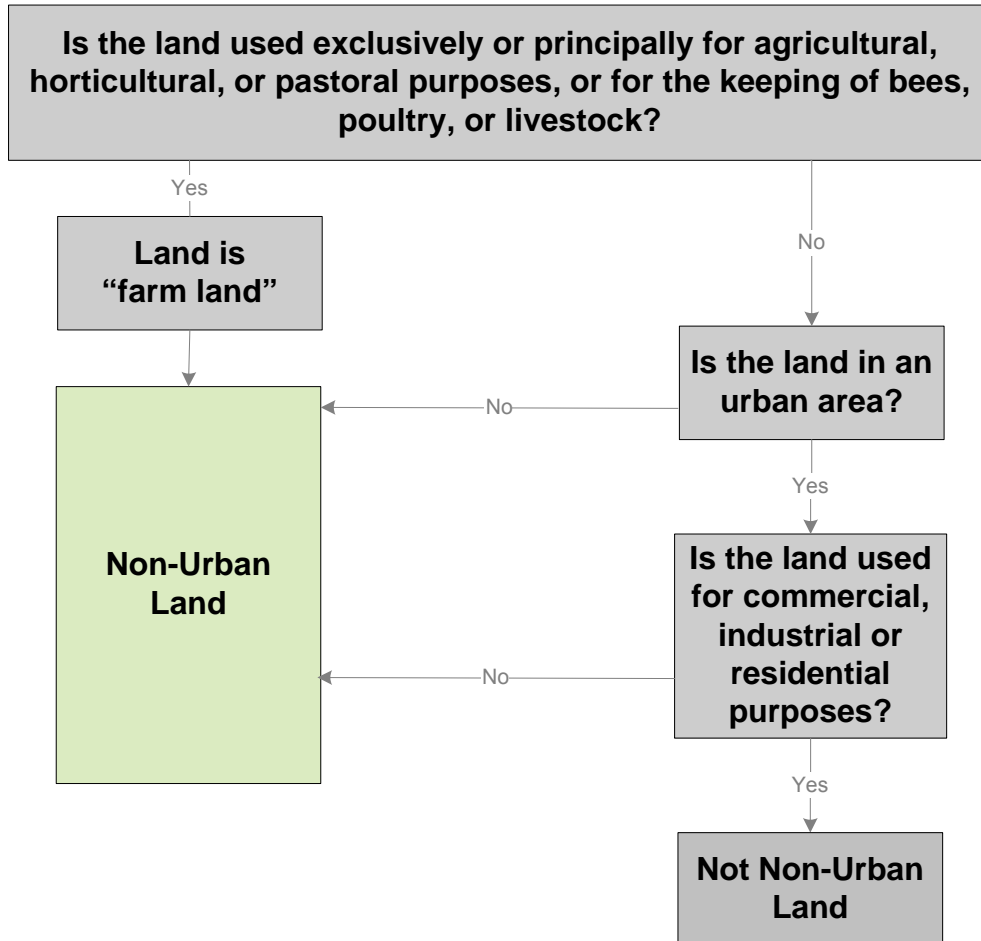
“Farm land” is defined in section 6(1) as meaning land used exclusively or principally for agricultural, horticultural, or pastoral purposes, or for the keeping of bees, poultry, or livestock.

“Urban area”, “commercial purposes”, “industrial purposes”, or “residential purposes” are not defined in the Act.

Use the following diagram to help determine if land is non-urban land.

## Overseas Investment - Definition of Non-Urban Land

How to determine whether land is 'non-urban land' for the purpose of schedule 1



On the OIO website you can download this diagram to enlarge or print a copy.

### Identifying whether land is "in an urban area"

"Urban" is defined in the Shorter Oxford Dictionary as "of, pertaining to, or constituting a city or town; occurring in or characteristic of a city or town". Black's Law Dictionary defines "urban" as "Of or relating to a city or town; not rural".

In the majority of cases, an urban area will be characterised by:

- high population density
- small land holdings (regularly less than 0.4 hectares), and
- zoning that is compatible with high density commercial, industrial and/or residential activity.

District plans and aerial photographs are the most effective tools for assessing urban area status.

## **Identifying whether land is used for “commercial, industrial or residential purposes”**

The land must be used for commercial, industrial or residential purposes and must be zoned accordingly in the relevant operative district plan.

## **Farm land**

Farm land is land that is used, exclusively or principally, for agricultural, horticultural or pastoral purposes, or for the keeping of bees, poultry or livestock.

“Exclusively” means “solely”, or “excluding everything else”. “Principally” means “the main or most important”. When determining whether land is used “principally” for agricultural, horticultural or pastoral purposes, the courts have indicated that a number of factors may be taken into account, including the intensity of agricultural use, including:

- whether the land is operated as an economically viable farming unit
- the area of land used for farming, as opposed to another activity
- whether farming is the main generator of the income on the property, or
- whether farming is a permitted use of the land in the relevant district plan.

Land that is used purely for lifestyle purposes (ie the primary purpose is as a residence) is probably not farm land. See also the OIO’s resource Lifestyle Properties and New Migrants.

Land that is used for forestry purposes is not farm land.

“Agricultural purposes” includes the cultivation of soil for the production of food products and other useful products. “Horticultural purposes” includes growing plants in gardens, greenhouses, shadehouses, orchards, vineyards or hydroponically; and “pastoral purposes” includes the grazing of livestock.

## **Farm land advertising**

Farm land must be offered for acquisition on the open market before consent can be granted. The Regulations establish the procedure and minimum standards for advertising farm land. See the OIO’s resource Standards for Advertising Farm Land.

## **Land held under the Unit Titles Act 1972**

When determining whether land under the Unit Titles Act 1972 comes within the thresholds in Schedule 1 of the Act, calculation of the land area should be based on:

- the area of the particular unit (including both principal and accessory units) being purchased by an overseas person, and
- the area of the common property.

In the view of the OIO, the area of common property must be included when calculating the area of land in which the overseas person will acquire an interest because:

- the area of common property is held by the proprietors of all units as tenants in common in proportion to the unit entitlement in respect of each unit under section 9(1) of the Unit Titles Act 1972. Each proprietor acquires an undivided share in the total area of the common property, and

- the area of common property (provided it adjoins the proprietor's unit) will be "associated land", as defined in section 8(4) of the Overseas Investment Act 2005.

For example:

Facts:

Land parcels 1, 2 and 3 are each 0.3 hectares and the three principal units in an industrial unit titled development

Land parcel 4, the access lot, is 0.15 hectares and is the common area held in undivided 1/3 shares

Land parcels 1, 2 and 3 adjoin conservation land. The conservation land exceeds 0.4ha

O, an overseas person, proposes to acquire land parcel 2.

Result:

Land parcel 2 adjoins conservation land

Land parcel 2 is associated land in respect of land parcel 4

The areas of land parcels 2 and 4 must be aggregated

Land parcels 2 and 4 are collectively 0.45 hectares

The area threshold for land adjoining conservation land is 0.4 hectares

Land parcel 2 is sensitive

Consent is required.

## Associated land

Associated land is defined in section 8(4) of the Act. Associated land is land owned or controlled by an applicant which adjoins, or is on the same island, and is, or will be owned or controlled by, the applicant or an associate. Adjoins" means "touching, sharing a common boundary, touching at a point or along a boundary".

You may need to aggregate associated land to determine whether land exceeds the area thresholds in Table 1 and Table 2 of Schedule 1 of the Act. However, the method for aggregating varies for each Table.

### Table 1

Only aggregate the areas of associated land that that are of the same type.

For example:

Facts:

Land parcel 1 is 0.3 hectares and includes a historic place

Land parcel 2 is 0.3 hectares and includes a reserve

Land parcels 1 and 2 adjoin each other

O, an overseas person, proposes to acquire land parcels 1 and 2.

Result:

Land parcels 1 and 2 are associated land under section 8(4).

For the purposes of Schedule 1 of the Act, land parcel 1's type is "land subject to a heritage order, or a requirement for a heritage order, under the Resource Management Act 1991 or by the Historic Places Trust under the Historic Places Act 1993".

For the purposes of the Schedule 1 of the Act, land parcel 2's type is "land that a district plan or proposed district plan under the Resource Management Act 1991 provides is to be used as a reserve, as a public park, for recreation purposes, or as open space".

The areas of land parcels 1 and 2 are not aggregated under Table 1 of Schedule 1 because they are not of the same type. Neither land parcel 1 nor land parcel 2 exceeds the threshold for their type. No consent is required.

## **Table 2**

Aggregate the areas of all associated land.

For example:

Facts:

Land parcel 1 is 0.3 hectares and adjoins a historic place.

Land parcel 2 is 0.3 hectares and adjoins land parcel 1.

O, an overseas person, proposes to acquire land parcels 1 and 2.

Result:

Land parcels 1 and 2 are associated land.

The areas of land parcels 1 and 2 must be aggregated. Land parcels 1 and 2 are collectively 0.6 hectares. The area threshold for land adjoining a historic place is 0.4 hectares. Consent is required.

## **Leases**

In the case of a lease, the relevant area will be the leased area. If the leased area is less than the area of the fee simple title from which the lease derives, it will also be necessary to determine whether the leased portion of the land is sensitive (as opposed to the fee simple portion).

For example:

Facts:

Land parcel 1 is 1 hectare. Land parcel 1 adjoins land held for conservation purposes that exceeds 0.4 hectares.

Facts Variation 1:

O proposes to lease all of land parcel 1.

Result:

Land parcel 1 exceeds 0.4 hectares and adjoins land held for conservation purposes that exceeds 0.4 hectares.

Land parcel 1 is sensitive.  
Consent is required.

Fact Variation 2:

O proposes to lease a 0.42 hectare portion of land parcel 1 (“land parcel 2”)

Result:

Land parcel 2 does not adjoin the conservation land.  
Land parcel 2 is not sensitive.  
No consent is required.

## **Subdivisions**

If land is acquired under a proposed subdivision, the relevant area is the area of land that will ultimately be acquired by the overseas investor.

## **Multi-story buildings**

The relevant area for the purposes of determining whether the land comes within Schedule 1 of the Act is the area that is being acquired. For example, in the case of an overseas person acquiring a long term lease of a multi-story building, the total area of each floor plate that is being leased is the relevant area (including any associated land, if relevant) for calculating the area under Schedule 1. It is then necessary to determine whether the land is sensitive because it either is or includes a Table 1 land type, or is sensitive because it adjoins a Table 2 land type.

## **Identifying cultural sites, historic places and conservation land**

Sensitive land researchers may find the following resources helpful.

### **Landonline**

Landonline is one of the most important source of information required to determine whether land is sensitive. Landonline's online service enables surveyors, lawyers and other land professionals to search title dealings and survey data digitally. The titles and title plans may identify:

- the area of the property
- adjoining properties of interest
- gazette references (see below), and
- Reserves Act 1977 and Conservation Act 1987 references.

### **Crown property service providers**

LINZ accredited Crown property service providers are able to conduct thorough research into the status of a property. They tend to have experience dealing with difficult issues relating to reserves and rivers.

### **Licensed cadastral surveyors**

Surveyors may be required to determine the boundaries of a property relative to the foreshore, seabed, a lake bed or a riverbed. Look under "surveyors - land" in the Yellow Pages or contact the New Zealand Institute of Surveyors.

### **District/regional plans & planning maps**

District and regional plans and their associated planning maps are required to determine whether land is to be used as a reserve, public park, for recreation purposes, or as open space. They are also required to determine whether land is captured by items 1 and 2 of the list published under section 37 of the Act (published on the OIO website).

District and regional plans and planning maps may also assist with identifying wāhi tapu sites, roads, waterways and esplanade reserves.

### **Historic Places Trust register**

The hard copy Historic Places Trust register is the only reliable record of registered historic places, wāhi tapu (sites of special significance according to tikanga Māori) and wāhi tapu areas (groups of wāhi tapu). The electronic version (available through the Historic Places Trust) is not a complete reproduction of the register and therefore cannot be relied on. Copies of the register can be accessed at every office of the New Zealand Historic Places Trust.

For more information, read the guide on the New Zealand Historic Places Trust's website "Sustainable Management of Historic Heritage – Guide no 8 – Overseas Investment Act 2005.

### **Other sources of information about historic places**

The New Zealand Archaeological Association holds extensive records of archeological sites. They also maintain a list of sites cross-referenced to mapping services.

### **New Zealand Gazette**

The New Zealand Gazette will record such matters as the grant of reserves status and the creation of roads.

### **Aerial photographs**

Aerial photographs may provide a useful overview of the property to assist with the assessment of whether the property is in an urban area.

### **Department of Conservation**

The Department of Conservation may need to be consulted where it is suspected that land is held for conservation purposes.

### **Relevant territorial authorities**

Territorial Authorities may hold additional information to that found in district plans and planning maps.

## **Further information**

Visit the OIO website at [www.linz.govt.nz/oio](http://www.linz.govt.nz/oio) to find related links, documents and answers to frequently asked questions. Read the Overseas Investment Act 2005 and the Overseas

Investment Regulations on [www.legislation.govt.nz](http://www.legislation.govt.nz).

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