

Sensitive Land

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Recent updates to this guide:

24 April 2009: New Designation and Delegation Letter

Introduction

A transaction will require consent if it results in an “overseas investment in sensitive land”. The definition of sensitive land is complex. The legislation defines sensitive land by several different types of land, each with an area threshold.

Consent is required if you are an “overseas person” as defined under the Overseas Investment Act 2005. For details, visit the OIO website or consult a lawyer with significant experience in overseas investments.

Legislation

Section 10 of the Overseas Investment Act 2005 states that a transaction requires consent if it will result in an overseas investment in sensitive land.

Overseas investments in sensitive land are defined in section 12 of the Act. The two tables that list the types of land and area thresholds for sensitive land are found in Part 1 of Schedule 1 in the Act.

Section 16 sets out the criteria for consent for overseas investments in sensitive land.

Determining sensitive land

Sensitive land is determined by the types of land and area thresholds detailed in the legislation. While determining sensitive land is sometimes straightforward, often significant legal and land expertise is required, particularly if there are any nearby waterways.

Definition

In short, sensitive land includes land of a particular type, such as farm land, that exceeds a particular area threshold. For example, five hectares of farm land is considered sensitive land, but three hectares of the same land is not.

Land is also sensitive if it adjoins land of a particular type and exceeds an area threshold. For example, three hectares of farm land would be considered sensitive if it adjoined a recreation reserve on the edge of a lake.

An interest in sensitive land is a freehold estate or a lease, or any other interest, for a term of 3 years or more, including rights of renewal, and is not an exempted interest.

See section 12 of the Act for the full definition of sensitive land. Use the flowchart diagrams in Annex 1 of this publication to help interpret Tables 1 and 2.

Legal expertise

You will need to read and understand the legislation to determine if land is sensitive. If in any doubt, the OIO strongly recommends that you consult a lawyer (or other land professional) with significant experience in overseas investments.

Please note that the OIO is not mandated to provide legal advice. While there are a limited number of circumstances in which the OIO may be willing to offer advice (in cases of extreme difficulty or uncertainty, for example), the responsibility remains with the applicant. In cases of genuine doubt, the only safe approach is to seek consent.

Researching land

Sensitive land researchers should see the OIO resource “Land Types and Areas” for information about:

- assessing the non-urban status of land
- aggregating areas of land
- exempted interests
- farm land
- land held under the Unit Titles Act 1972
- associated land
- leases
- subdivisions
- multi-story buildings
- identifying cultural sites, historic places and conservation land.

Land in a class listed as a reserve, a public park, or other sensitive area under section 37

The second table in Part 1 of Schedule 1 includes a reference to the regulator’s (the OIO) list of additional properties for which the adjoining land is sensitive. The list is published on the OIO website.

Consent criteria

Applicants for consent to acquire sensitive land must satisfy a number of criteria. In addition to the core criteria (the investor test - see below), consent will only be granted if **either**:

- in the case of an individual, the relevant overseas person intends to reside in New Zealand indefinitely (see the OIO resource “Lifestyle Properties and New Migrants”),
- in the case of a non-individual, all the individuals with control of that overseas person are New Zealand citizens, ordinary New Zealand residents or are intending to reside in New Zealand indefinitely **or**
- the transaction will, or is likely to, benefit New Zealand (and in some cases, that benefit is substantial and identifiable) (see below).

Special land and farm land also have specific consent criteria (see below).

Investor test

The four core criteria of any overseas investment are good character, business acumen, financial commitment and absence of ineligible individual(s) for exemptions or permits under the Immigration Act 1987. Collectively these are referred to as the investor test. See the OIO resource “Investor Test”.

Benefit to New Zealand

Benefit to New Zealand is measured against a large number of economic and conservation factors listed in section 17 of the Act.

If the relevant land includes non-urban land that exceeds five hectares (either alone or with associated land), the relevant Ministers or the regulator must determine that the benefit will or is likely to be “substantial and identifiable”.

See the OIO resource “Benefit to New Zealand” for more information about the OIO’s approach to the factors.

Special land

The offer back of special land is one of the factors under section 17 used to assess if an overseas investment in sensitive land will or is likely to benefit New Zealand. Where applicable, special land (qualifying foreshore, seabed, riverbed or lakebed) must be offered back to the Crown and the Crown must decide whether to accept the offer.

For information about special land and the offer back procedure, see the OIO resource “Offer Back of Special Land”.

Farm land advertising

Farm land must be offered for acquisition on the open market before consent can be granted. The Regulations establish the minimum standards for advertising farm land.

See the OIO resource “Standards for Advertising Farm Land”.

Supporting documentation

The OIO also requires details about the proposed acquisition, including the nature of the investment, why the acquisition requires consent, and consideration and financing.

Statement on sensitive land

The OIO may require a certificate (or certificates) attesting to whether the land is captured by each element of the sensitive land tables and whether the land is or includes the foreshore, sea bed, riverbed or lakebed (special land). Land professionals such as LINZ accredited Crown property service providers can help complete this form.

The certifier must search each and every adjoining title to the land being acquired to determine whether the target land adjoins "sensitive" land in Table 2 of Schedule 1. In addition, a search of the territorial authority's planning maps should be undertaken.

There are serious consequences if the certificate is incorrect:

- the decision may be invalid as it is made by the incorrect decision-maker
- the applicant may have committed an offence by certifying that the information contained in the application is true and correct
- the OIO may not ask about, and therefore the relevant Ministers, may not be informed of, information that is relevant to the application they are considering.

You can download the certificate for the purposes of Schedule 1 of the Overseas Investment Act 2005 on the OIO website.

Delegation and fees

The Minister of Finance and the Minister for Land Information have delegated to the regulator (the OIO) many of the powers to grant consent under the Act. In these delegated cases, the regulator fees apply.

The relevant Ministers generally grant consent where:

- the relevant land is or includes special land, land on other islands, the foreshore, seabed or the bed of a lake, or adjoins the foreshore or bed of a lake
- the substantial and identifiable benefits criterion (section 16(1)(e)(iii)) applies.

However, even if the substantial and identifiable criterion applies, decisions will be delegated where:

- the land is leasehold (other than pastoral lease land) or the interest being acquired is an interest as mortgagee or encumbrancee, or
- the only 'sensitivity' is that the land is non-urban and more than five hectares.

See the current Ministerial designation and delegation letter for more information.

Apply for consent

Find out how to present an application in the OIO resource "How to Apply for Consent".

Further information

Visit the OIO website at 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.

If you require further information, please contact the OIO.

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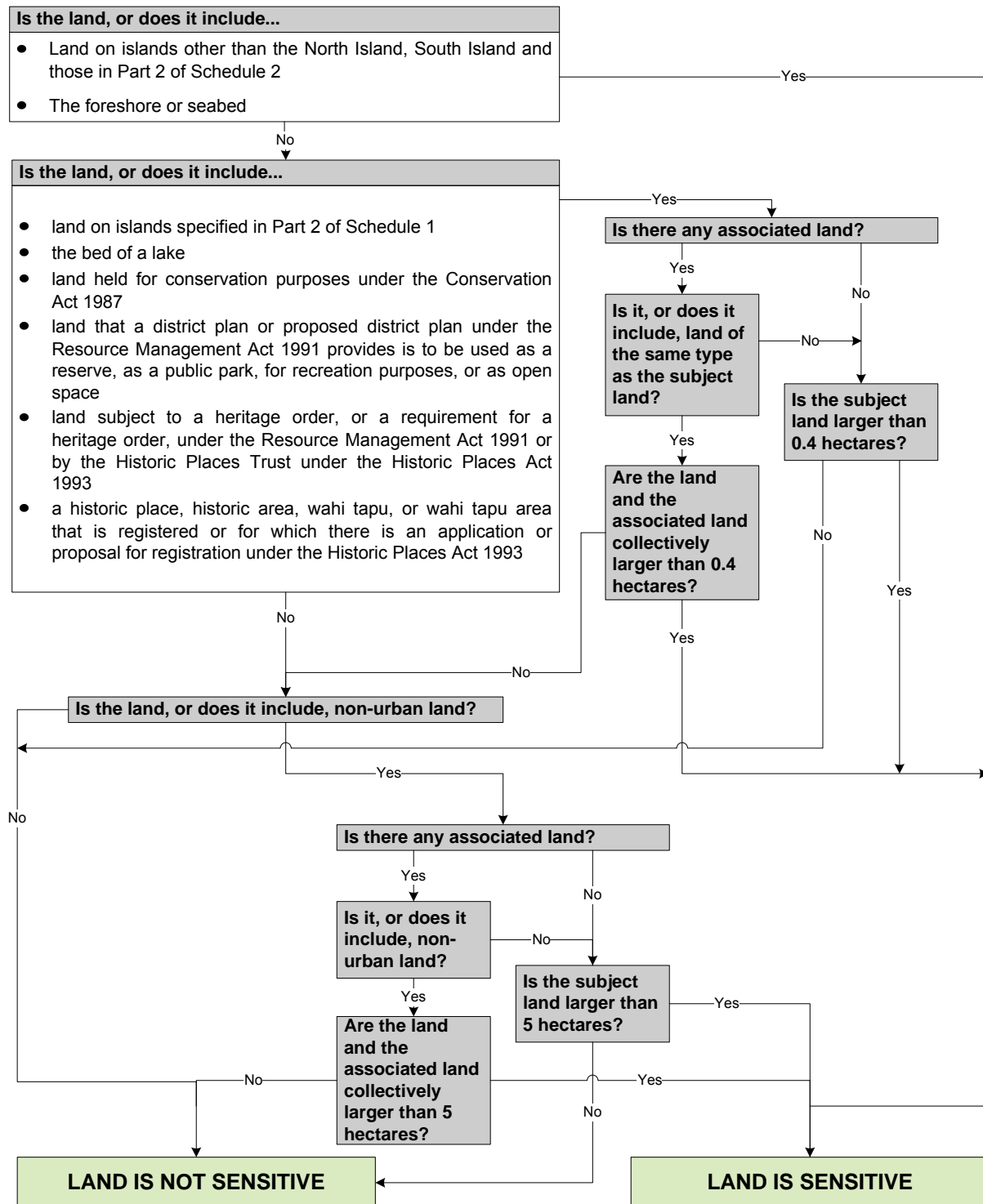
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Annex 1 - flowcharts and tables

These diagrams and tables illustrate the methods for determining sensitive land.

Flowchart 1

How to determine whether land ('the subject land') is sensitive under the Overseas Investment Act 2005.



Flowchart 2

How to determine whether land is sensitive under the Overseas Investment Act 2005.

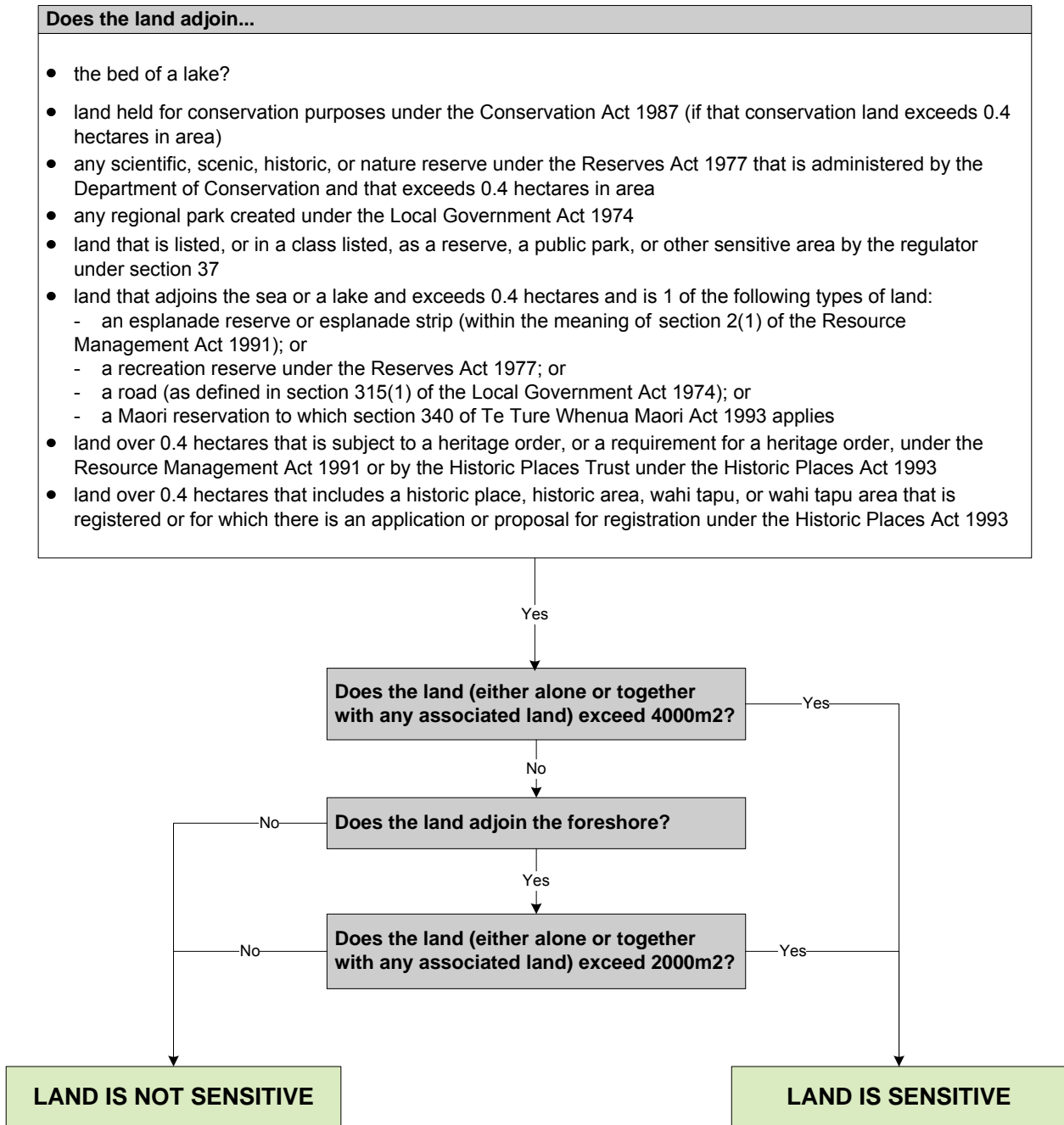


Table 1

Land is sensitive if it is or includes a type of land listed in Table 1 and that type exceeds the area threshold.

Description	Threshold
Non-urban land	5 ha
Land on islands specified in Part 2 of this schedule	0.4 ha
Land on other islands (other than North or South Island, but including the islands adjacent to the North or South Island)	0 ha
Foreshore or seabed	0 ha
Bed of a lake	0.4 ha
Land held for conservation purposes under the Conservation Act 1987	0.4 ha
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	0.4 ha
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	0.4 ha
A historic place, historic area, wahi tapu, or wahi tapu area that is registered or for which there is an application or proposal for registration under the Historic Places Act 1993	0.4 ha

Table 2

Land is sensitive if it adjoins a type of land listed in Table 2 and exceeds the area threshold.

Description	Threshold
Foreshore	0.2 ha
Bed of a lake	0.4 ha
Land held for conservation purposes under the Conservation Act 1987 (if that conservation land exceeds 0.4 hectares in area)	0.4 ha
Any scientific, scenic, historic, or nature reserve under the Reserves Act 1977 that is administered by the Department of Conservation and that exceeds 0.4 hectares in area	0.4 ha
Any regional park created under the Local Government Act 1974	0.4 ha
Land that is listed, or in a class listed, as a reserve, a public park, or other sensitive area by the regulator under section 37	0.4 ha
<p>Land that adjoins the sea or a lake and exceeds 0.4 hectares and is 1 of the following types of land:</p> <ul style="list-style-type: none"> • an esplanade reserve or esplanade strip (within the meaning of section 2(1) of the Resource Management Act 1991); or • a recreation reserve under the Reserves Act 1977; or • a road (as defined in section 315(1) of the Local Government Act 1974); or • a Māori reservation to which section 340 of Te Ture Whenua Māori Act 1993 applies 	0.4 ha
Land over 0.4 hectares that is 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	0.4 ha
Land over 0.4 hectares that includes a historic place, historic area, wahi tapu, or wahi tapu area that is registered or for which there is an application or proposal for registration under the Historic Places Act 1993	0.4 ha