The Treasury

Te Arai Development Advice Release

Release Document

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https://treasury.govt.nz/publications/information-release/residential-land-changes-overseas-investment-amendment-bill

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THE TREASURY
Kaitohutohu Kaupapa Rawa

Treasury Report: Treasury Report: Overseas Investment Amendment Bill - Remaining policy issues for departmental report

Date:	19 March 2018	**Report No:**	T2018/709
		File Number:	IM-5-1-1

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	**Note** the contents of this report.	None.
Associate Minister of Finance (Hon David Parker)	**Agree** the recommendations on changes to the Bill for residential land. **Refer** a copy of this report to the Minister for Crown/Māori Relations, Minister of Māori Development, Minister of Land Information and Minister of Housing and Urban Development.	Tuesday 20 March 2018.

Contact for Telephone Discussion (if required)

Name	Position	Telephone			1st Contact
Daniel Lawrey	Senior Analyst	9(2)(k)	(wk)	N/A (mob)	✓
Thomas Parry	Team Leader, Overseas Investment	9(2)(k)	(wk)	9(2)(k) (mob)	

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.

Refer a copy of this report to the Minister for Crown/Māori Relations, Minister of Māori Development, Minister of Land Information and Minister of Housing and Urban Development.

Note any feedback on the quality of the report	

Enclosure: No

Treasury Report: Treasury Report: Overseas Investment Amendment Bill - Remaining policy issues for departmental report

Executive Summary

The purpose of this report is to seek your decisions on four remaining policy issues in relation to the Overseas Investment Amendment Bill (Bill). We would appreciate any feedback by 20 March 2018, in order to make any necessary changes to the Cabinet paper on residential land prior to it being lodged on 22 March 2018.

Financing hotel developments

We have considered approaches to address concerns of submitters and NZTE that hotel developments will be impeded by the way the Bill treats hotels. Our preferred approach is to draft an exemption into the current Bill, allowing hotel developers to enter into lease-back arrangements with overseas investors without requiring OIO consent.

We prefer this approach as the Bill is not designed to prevent commercial developers from making commercial decisions on the way they structure their assets. The approach appears to be the most efficient mechanism for enabling the commercial developments to take place without affecting their feasibility. It is also in line with the objectives of the Bill to minimise unintended consequences of the Bill and minimise compliance and administration costs.

Impacts of the Bill on Treaty settlements

In a joint submission, Te Uri o Hau, Ngati Manuhiri and Darby Partners raised concerns about the impact of the Bill on plans for the Te Arai property developments in Mangawhai, North of Auckland. Although the Bill may impact on the commercial value that may be realised from the divestment of land transferred to iwi as commmercial Treaty settlement redress, there is no legal obligation to exempt Te Uri o Hau or Ngati Manuhiri from the Bill.

On balance, we do not recommend an exemption for residential development on land acquired through a Treaty settlement. This recommendation is based on prioritising policy effectiveness of the overseas investment regime for residential land. Furthermore, an exemption tied to Treaty settlement land would present precedent risks in terms of other government actions that may negatively impact on the value of settlement assets.

Treatment of residential tenancies

We recommend the OIA does not cover periodic leases without rights of renewal that end up being renewed for a cumulative term of more than three years. The OIA would only apply to leases (including residential tenancies) where a fixed term, or term including rights of renewal, exceeds three years.

We also wish to clarify whether fixed-term leases of residential land of over three years should be subject to OIA screening. Although extending the duration threshold could provide greater security of tenure for migrant tenants, we recommend maintaining the three-year duration to avoid legislative complexity associated with different thresholds for different types of land. Resident visa holders seeking to enter into longer-term leases would be able to obtain consent under the commitment to reside in NZ pathway, and migrant tenants could

still enter into leases of shorter than three years and then renew them. However, if you wished to increase the duration threshold of residential leases subject to screening to 10 years, we do not consider it would have a significant impact on the housing market.

MBIE has advised us that future changes to the Residential Tenancies Act may affect the application of OIA screening thresholds to residential tenancies and may require consequential changes to the OIA. However, at this stage, potential changes to residential tenancy law are still under development, so it would be difficult to ensure legislative alignment.

Impact on the residential land policy of the forestry SOP

The new consent pathways introduced in the forestry SOP will not be available where the land is used for residential purposes, or where the land is classified as "residential land". This upholds the Government's general policy approach is that land rated residential and lifestyle be screened as residential land, irrespective of its use.

Recommended Action

We recommend that you:

Financing hotel developments

a **note** the Treasury, OIO and NZTE have considered options for addressing concerns of hotel investors with the Overseas Investment Amendment Bill.

b **note** that under any option hotel developers will need to gain consent to purchase the underlying land if it was originally residential.

c **agree** that no changes should be made to the treatment of hotel units sold to overseas investors where there is no further arrangement with the hotel operation.

Agree/disagree

d **agree** to provide an exemption allowing hotel developers to enter into lease-back arrangements with overseas investors without requiring OIO consent.

Agree/disagree

e **agree** that to be eligible for the exemption the below criteria are met:

a. The lease-back arrangements are contractually agreed at the point of sale.

b. The overseas investor cannot reside in the room, or reserve the room for their own interests, for more than 30 days per annum.

c. The hotel development has 50 or more units.

d. The room must be used for the general purposes of operating the hotel.

Agree/disagree

Impacts of the Bill on Treaty settlements

f **note** the Bill may impact on the commercial value that may be realised from the divestment of land transferred to iwi as commercial Treaty settlement redress.

g **agree** there will not be an exemption from the Overseas Investment Amendment Bill for land acquired through a Treaty settlement.

Agree/disagree.

Treatment of residential tenancies

h **agree** the OIA will require consent for an overseas person entering into a lease of residential land (including a residential tenancy) of three years or more.

Agree/disagree.

i **agree** OIA screening requirements will apply to leases (including residential tenancies) where a fixed term (or term including rights of renewal) exceeds three years, but not to shorter periodic leases that end up being renewed for a cumulative period of more than three years.

Agree/disagree.

j **note** future changes to the Residential Tenancies Act may affect the application of OIA screening thresholds to residential tenancies, and may require consequential changes to the OIA.

Impact on the residential land policy of the forestry SOP.

k **note** the new consent pathways introduced in the forestry SOP will not be available where the land is used for residential purposes, or where the land is classified as "residential land".

Referral of report

l **refer** to the Minister of Minister for Crown/Māori Relations, Minister of Māori Development, Minister of Land Information and Minister of Housing and Urban Development.

Refer/not referred.

Thomas Parry
Team Leader, Overseas Investment

Hon David Parker
Associate Minister of Finance

Treasury Report: Treasury Report: Overseas Investment Amendment Bill - Remaining policy issues for departmental report

Purpose of Report

1. The purpose of this report is to seek your decisions on four remaining policy issues in relation to the Overseas Investment Amendment Bill (Bill). On 15 March 2018, we provided you with a draft Cabinet paper on changes to the Bill for lodgement on 22 March 2018 (T2018/664). We will incorporate decisions on this paper into the Cabinet paper prior to lodgement.

2. The four issues are:

   a) Financing hotel developments.

   b) Impacts of the Bill on Treaty settlements and Māori economic development.

   c) Treatment of residential tenancies.

   d) Impact on the residential land policy of the forestry SOP.

3. This report also provides you with the regulatory impact statement to be lodged with the Cabinet paper on 22 March 2018.

Analysis

Financing hotel developments

Issue of financing hotel developments as raised in submissions

4. Though hotels are commercial operations, many hotel units have a property valuation category of "residential", meaning that they are "residential land" under the Bill.

5. A number of submissions noted that the financing of hotel developments often relies on the outright pre-sale, or pre-sale and lease-back of hotel units. It is common for investors to be "overseas persons" as defined by the Act (a separate issue from whether the hotel developer/owner itself is an overseas person).

6. Therefore, under the Bill as drafted, overseas persons wishing to invest in hotel units need to seek consent and, depending on the consent pathway used, may be required to on-sell. Lease-back arrangements, where the buyer leases the units back to the developer or hotel operator for use as a hotel unit, while possibly retaining rights to occupy the unit for a period of time each year, would not be allowed.

7. Submitters have argued that a) overseas investors having to apply for consent to purchase a unit and potentially on-sell it, and b) having no options to enter into lease-back arrangements, would likely impose a significant compliance cost, time delay and uncertainty on a range of commercial developments that would make these investments unattractive. They argue this could result in some desirable commercial developments not taking place.

Background

8. Hotels use a number of different business structures for financing the development. Most of these structures are not impacted by the changes in the Bill. However, where hotels use strata-title ownership and lease-back structures there may be an issue that the units sold to investors are classified as residential properties and will be captured by the overseas investment regime. Waldorf, Heritage Auckland, CityLife Auckland, Auckland City Hotel, Quest and Ramada are some well-known brands in New Zealand operating under this investment model.

9. In the strata-title ownership and lease-back structures, the developer builds strata-titles rooms into individual units and presells the units to individual buyers to obtain finance. We do not have data on the current use of these arrangements, however NZTE is aware of three projects planning to use them with around 650 units, and the Bill may further increase demand from overseas persons.

Policy Considerations

10. The Treasury, NZTE and OIO have been considering this issue further.

11. NZTE notes that New Zealand has a shortage of hotel accommodation, particularly of 4 stars and above. The most recent research published in July 2017 confirmed an estimated 9,200 new hotel rooms required to meet demand by 2025. The estimated shortfall of new hotel rooms over and above expected room supply growth is 2,605.

12. A major contributing factor is that the feasibility of developing hotels is severely challenged at present, similar to the development of other housing projects. Hotel development and operation is a specialist and capital-intensive activity. It is time-consuming, expensive, and complex with high construction costs, a lack of suitable sites, developer capability issues, difficulties securing financing, regulatory issues, and labour shortages. This limits the domestic set of hotel investors, developers and operators. As a consequence, international investors, developers and capital providers are likely to be important players in future hotel developments in New Zealand.

Options Analysis

13. We have identified three options for the treatment of investor-owned hotel units: 1) Status Quo in the Bill, 2) Consent Pathway for the owner-investors, 3) Exemption for the owner-investors, and considered them against the policy criteria as per initial paper.

14. For each option, we have outlined what it would mean for:

    a) the initial purchase of residential land for development, if the developer/hotel owner is an overseas person;

    b) outright pre-sale of hotel units to overseas investors; and

    c) sale of hotel units to overseas investors, with lease-back arrangements.

Table 1: Options for addressing concerns re: hotel lease-back arrangements

<table>
<tr><th>Option Name</th><th>Overseas developers' initial purchase of "Residential" land</th><th>Sale of units with lease-back arrangements</th><th>Sale of units with no lease-back arrangements</th></tr>
<tr><td>Option One: Status Quo</td><td rowspan="3">No change is proposed here. There are standard pathways in the Bill as it stands to allow overseas developers to purchase residential land.

Note there is ongoing work to ensure that the 'non-residential use pathway' as outlined in the Cabinet paper already will be as widely applicable as possible to non-residential transactions.</td><td>No options for selling to overseas-person investors under a lease-back arrangement (as they would have to on-sell and couldn't lease-back)</td><td rowspan="3">No change is proposed here. However, we could consider ways to align with large Apartment units.</td></tr>
<tr><td>Option Two: Consent Pathway</td><td>This option includes an allowance for developers to use lease-back arrangements, subject to OIO consent.</td></tr>
<tr><td>Option Three: Exemption (preferred option)</td><td>This option would mean drafting an exemption into the current Bill, allowing all developers to enter into lease-back arrangements with overseas investors (subject to meeting a number of conditions) without requiring OIO consent.

This option covers two transactions: The acquisition by an overseas person of the strata title; and the acquisition by the overseas developer of a leasehold interest in the strata title.</td></tr>
</table>

15. *The initial purchase of residential land for development:* As outlined in the table above, in all three options an overseas developer will first need to get OIO consent to buy residential land, through either the benefit to NZ pathway (included in the Bill) or non-residential use pathway (being considered by Cabinet).

16. *Sale of hotel units to overseas investors with no lease-back arrangement:* In all three options, where units are classified as residential in the District Valuation Roll, developers can only sell these units to overseas-person investors if those investors meet the requirements in one of the other usual pathways (many of which require the owner to on-sell). We have not considered options in this space given NZTE is not as concerned and we acknowledge they are more 'residential' in nature to those sold with a 'lease-back' arrangement. However, we could look at aligning these transactions with the pathway for large apartment units in the Cabinet paper.

17. *Sale of units with lease-back arrangements:* This is where the three options differ, as detailed below.

Option One: Status quo with no exemption or consent pathway.

18. Selling to overseas persons under a lease-back arrangement is not available under this option.

19. The Treasury does not recommend this approach as there is a projected shortfall in hotel accommodation, which is key for our tourism industry, and this option is likely to slow or halt a number of existing and future hotel developments.

20. Furthermore, the Bill was not designed to prevent commercial developers from making commercial decisions on the way they structure their assets.

Option Two: Consent pathway

21. This option provides for developers to use lease-back arrangements, subject to OIO consent.

22. All developers (NZ and overseas) wishing to continue using lease-back arrangements with overseas investors not otherwise consented will need to acquire certification from the OIO, similar to that proposed for apartment developers. Approval would depend on factors such as:

    - How they plan to operate as a short-term accommodation provider;
    - Timeframes and schedules for property development; and
    - How any relevant owners have complied with previous hotel developments enabled under this certificate.

23. The specifics of these arrangements would include:

    - The lease-back arrangements are contractually agreed at the point of sale.
    - The overseas investor cannot reside in the room for more than 30 days per annum. This captures the majority of existing arrangements.
    - The hotel development has 50 or more units. This would ensure the pathway is only available where the development was substantially adding new short-term accommodation to the market, and significant financing is required in order for the development to take place. This is also consistent with the approach recommended for multi-storied apartment complexes.

24. We do not propose that the overseas investors buying an individual unit would require their own separate consent, as the time and cost would be out of proportion to the unit bought, with little added benefit.

25. This pathway has added compliance which does not seem necessary given the arrangements are commercial in nature and not related to residential housing.

Option three: Exemption – Preferred Option

26. This option would mean drafting an exemption into the current Bill, allowing all developers to enter into lease-back arrangements with overseas investors without requiring OIO consent.

27. As per option two, the specifics of these arrangements will include:

    - The lease-back arrangements are contractually agreed at the point of sale.
    - The overseas investor cannot reside in the room, or reserve the room for their own interests, for more than 30 days per annum.
    - The hotel development has 50 or more units.

- The room must be used for the general purposes of operating the hotel.

28. Similarly, as per option two, we do not propose that the overseas investor would require their own separate consent.

29. These criteria ensure that people do not pretend to be hotels in order to get around the overseas investor requirements for residential houses.

30. This is the Treasury's preferred option, as it seems the most efficient mechanism for enabling the commercial developments to take place without affecting their feasibility, therefore it is the most in-line with the three policy criteria, (in particular the intentions to minimise unintended consequences of the Bill and minimise compliance and administration costs).

Impacts of the Bill on Treaty settlements

31. The Bill will potentially impact on the commercial value that may be realised from the divestment of land transferred to iwi as commercial Treaty settlement redress, and may impact opportunities for Māori economic development. In a joint submission, Te Uri o Hau, Ngati Manuhiri and Darby Partners raised concerns about the impact of the Bill on plans for the Te Arai property developments in Mangawhai, North of Auckland. The land was acquired by Te Uri o Hau and Ngati Manuhiri as commercial redress in Treaty settlements signed in 2000 and 2011 respectively. The Te Arai plans involve developing 106 high-value houses for a market including overseas buyers, as well as environmental and recreational elements. The submitters assert the Bill will diminish economic returns from the development and seek an exemption.

32. In the time available, we have not been able to establish whether the Te Arai development is a one-off situation or whether other post-settlement entities have land whose value would be impacted by the Bill's restrictions on selling residential land top overseas buyers. TPK has not identified other specific development, but considers a small number of iwi may find the Bill to be a barrier to some of their development plans.

Legal advice (legally privileged)

33. Although the Bill may impact on the commercial value that may be realised from the divestment of land transferred to iwi as commmercial Treaty settlement redress, there is no legal obligation to exempt Te Uri o Hau or Ngati Manuhiri from the Bill. In particular:

    a) Treaty settlements do not generally warrant the commercial value that may be realised from the future divestment of redress assets. The settlement is typically final at the time of agreement, with the understanding that the Government will still pass laws of general application.

    b) Treaty settlement legislation contains no specific obligations that would require an exemption to the OIA reforms proposed.

    c) The specific Te Uri o Hau and Ngati Manuhiri settlement deeds contain no specific obligations that would require an exemption to the OIA reforms proposed. The deeds do not specifically refer to any intention or understanding that the redress land would be developed into housing for sale to third parties, let alone that the Government would protect the value of that prospective use of the land.

34. As there is no legal requirement to exempt Te Uri o Hau and Ngati Manuhiri's land, any exemptions made for land received through Treaty settlements should be phrased as policy choices rather than legal or Treaty settlement obligations (although the policy basis may be related to the Treaty more generally). The intended basis for, and application of, any exemptions should be precisely stated.

Policy considerations

35. The issue reflects a tension between providing for Māori economic development and achieving policy effectiveness of the overseas investment regime for residential land.

36. On one hand, for Te Uri o Hau and Ngati Manuhiri, overseas investment in residential land has a particular role in the potential commercial returns from Treaty settlement assets.

37. On the other hand, providing an exemption would not align with the general purpose of the Bill to provide a housing market with prices shaped by New Zealand-based buyers, and permitting overseas investment in residential land where it increases housing supply without adding to demand. Consistent with our advice in response to proposed exemptions for luxury homes, our view is that demand from overseas buyers for luxury homes displaces New Zealand buyers and places demand in other segments of the market.

38. There are also potential risks around fairness if a limited number of developments are exempt. If the Bill is enacted and provides for specific developments to be exempt, it will drastically reduce the supply of opportunities for overseas buyers to purchase residential property. This could lead to an increase in prices for any exempt developments, and the Bill creating windfall profits for those developers over and above potential profits if the Bill was not enacted.

39. An exemption tied to Treaty settlement land would present precedent risks in terms of other government actions that may negatively impact on the value of settlement assets.

Options

40. We have identified the following options:

    d) *Option One: Status quo with no exemption.* Overseas buyer restrictions would continue to apply to land acquired through a Treaty settlement. This would reduce economic development potential for Te Uri o Hau and Ngati Manuhiri. However, it would align with the general purpose of the Bill and provide for consistent treatment, including decisions not to exempt luxury homes, lifestyle property or some regions.

    e) *Option Two: Flexibility for future exemption by regulations (Ministry of Justice preferred option).* The Bill would establish a regulation-making power to provide a future exemption for land acquired through a Treaty settlement. There would be a risk of a number of parties seeking exemptions under this power. A regulation-making power should be well defined in the Bill, so Parliament has an opportunity to assess the breadth of potential exemptions, and to reduce the risks of the regime being undermined by ad hoc exemptions. This option would provide more time to investigate whether the Bill would have a similar impact on other iwi/Māori entities. It would also enable further assessment of potential impacts and alternative economic development opportunities for Te Uri o Hau and Ngati Manuhiri. 9(2)(h)

9(2)(h)

f) *Option Three: Exemption for Treaty settlement land where a party has formulated development plans with reliance on existing OIA settings.* Some iwi groups may have taken steps towards realising a commercial return from Treaty settlement assets with some reliance on existing overseas investment rules. A specific exemption could address these types of situations. We would not advise retricting this to Te Uri o Hau and Ngati Manuhiri as that could lead to other Māori groups asserting that there has been more favourable treatment. This option would reflect a departure from the general purpose of the Bill and give rise to fairness risks associated with potential windfall profits.

g) *Option Four: Exemption for land acquired through a Treaty settlement.* In the time available, we have not been able to establish the extent to which post-settlement entities have land commercially suited to residential development that caters to overseas buyers. This approach would best align with Māori economic development objectives, but would reflect a departure from the general purpose of the Bill and give rise to fairness risks.

41. On balance, we recommend Option One (status quo). This recommendation is based on prioritising policy effectiveness of the overseas investment regime for residential land.

42. If you placed greater weight on providing for Māori economic development and the Crown's relationship with iwi, we would recommend Option 2 to enable further investigation of the issue in relation to Te Uri o Hau and Ngati Manuhiri, as well as for other post-settlement entities. This is the Ministry of Justice's preferred option. An exemption targeted toward Te Uri o Hau and Ngati Manuhiri would have a contained impact on the wider housing market as the Te Arai proposal is limited to 106 houses on land that is not near an existing urban centre. We have not been able to establish the potential impact of Option 4 on the housing market. 9(2)(h)

Treatment of residential tenancies

43. In its submission, Chapman Tripp raised concerns about how the Bill applies to leases including residential tenancies. There are two issues:

a) Clarification of whether periodicially-renewed leases that cumulatively exceed three years are subject to the OIA (e.g. a one-year lease that gets renewed each year for more than three years).

b) Whether leases of more than three years should be covered by the OIA, or whether the duration threshold should be increased. Chapman Tripp proposed raising the duration threshold to 12 years.

Clarification of OIA application to periodically-renewed residential leases

44. ***(Legally privileged)*** 9(2)(h)

45. We have identified two options:

    a) *Option One: Status quo*. The OIA would not cover periodic leases without rights of renewal that end up being renewed for a cumulative term of more than three years. The OIA would only apply to leases (including residential tenancies) where a fixed term, or term including rights of renewal, exceeds three years.

    b) *Option Two: OIA applies to periodic leases renewed for more than three years*. Under this option, the OIA would extend to cover periodic leases (including residential tenancies) without rights of renewal that end up being renewed for a cumulative term of more than three years. This would require an overseas person to obtain consent before the cumulative duration of their lease exceeded three years.

46. We recommend Option One (status quo). This achieves the policy effectiveness objective by requiring screening where an overseas person is acquiring a material interest or control of land. We do not consider that an overseas person who does not have legal rights of renewal, but ends up renewing a lease for a cumulative term of over three years, meets this threshold.

47. Option Two would increase compliance and administrative costs, by requiring an overseas person to obtain consent if they renew a lease for a cumulative term of over three years. Also, some overseas persons would not meet requirements to be granted consent and would not be permitted to renew a lease. Furthermore, including consent requirements for periodic leases that get renewed may lead to landlords avoiding leases to migrants if they are concerned migrants are less likely to renew a lease.

Duration threshold for residential leases covered by the OIA

48. We note the purpose of the Bill is aimed at property ownership and increasing restrictions for leases would have less of a connection to the Bill. Although a blanket exemption that covered long-term leases could raise avoidance concerns and impact the housing market, you could consider extending the duration threshold to longer than three years for residential land (e.g. to 10 years).

49. We have identified three options:

    a) *Option One: Status quo.* The OIA requires consent for an overseas person entering into a lease of more than three years.

    b) *Option Two: Ten-year threshold for residential leases.* The duration threshold would be increased for residential leases only. If this option was preferred, we would suggest a threshold of 10 years as this would improve security of tenure without significant divergence from the rest of the OIA.

    c) *Option Three: Extended duration threshold for all sensitive land.* This would provide consistency between settings for residential land and other types of sensitive land. However, it would also enable greater overseas investment in sensitive land without OIA screening, which goes beyond the aim of the Bill.

50. We recommend Option One (status quo) as it avoids administrative complexity associated with different thresholds for different types of sensitive land. We are not certain the extent to which temporary visa holders would seek to enter into a lease of

longer than three years. Resident visa holders seeking to enter into longer-term leases would be able to obtain consent under the commitment to reside in NZ pathway. Provided periodic leases of less than three years are not subject to OIA screening (as recommended in the section above), tenants would still be able to renew a lease and continue to reside in a property for more than three years.

51. 6(a), 9(2)(h)

52. Although Option Two may increase complexity, we do not consider it would have a significant impact on the policy effectiveness objective for a housing market with prices shaped by New Zealand-based buyers. A person could seek to acquire a longer-term lease and profit from sub-leasing arrangements (such as tourism accommodation). However, we expect this to be reflected in freehold and leasehold prices regardless of restrictions for overseas persons. Therefore, we do not expect that moderately extending the duration threshold for residential leases covered by the OIA (e.g. to 10 years) would have a significant impact on the housing market. Option Two would also reduce compliance and administrative costs.

Implications of potential future changes to residential tenancy law

53. MBIE has advised us that policy under development for residential tenancies may have an impact on determining whether a residential tenancy agreement with an unspecificed term would be interpreted as triggering the three-year threshold. We consider it would be important for any future residential tenancy reform to consider interactions with the OIA, and include any consequential legislative amendments to the OIA. However, at this stage, potential changes to residential tenancy law are still under development, so it would be difficult to ensure legislative alignment.

Impact on the residential land policy of the forestry SOP

54. At the time of writing, we understand Cabinet has approved the lodgement of the SOP regarding forestry and other profits à prendre. The SOP adds forestry rights to OIA screening; creates two new consent pathways for investment in forestry (the modified benefits test and the checklist pathway); and adds some non-forestry profits à prendre to OIA screening (with the usual consent pathways available). We explain how those changes interact with the residential land policy of the Bill.

55. A core feature of the Bill, as introduced in December 2017, is to make “residential land”, being land rated as residential or lifestyle, sensitive at any size and irrespective of use.

56. In a previous Treasury Report on forestry [T2018/31], Hon David Parker agreed that the new forestry pathways would only be available for land used predominantly for forestry and that mixed-use land would be subject to existing tests in the OIA.

57. The SOP provides that the new consent pathways for forestry are only available where the land is not used for residential purposes, and where the land is not “residential land” (being land rated as residential or lifestyle).

58. This means that:

- forestry rights on “residential land” could potentially be screened, due to the zero hectare threshold (whether screening is required will depend on whether the overseas investor has crossed the 1,000 ha-in-a-calendar-year threshold); and
- the new consent pathways for forestry are not available whenever residential land or residential developments are involved.

59. In practice, we do not expect this to impact on a large amount of viable forestry land – as residential and lifestyle rating designations are typically given to small blocks. In particular, to be rated as ‘lifestyle’ land, the predominant use must be for a residence and the principal use of the land must be non-economic in the traditional farming sense.

Next Steps

60. We would be grateful if you could provide any feedback on the issues in this report by 20 March 2018. This will enable us to incorporate any proposals into the draft Cabinet paper on residential land changes to the Bill, prior to the Cabinet paper being lodged on 22 March 2018.