

The Treasury

Release of ENV-22-SUB-0001 - Overseas Investment Act Forestry Review: Removing Forestry Conversions from the Special Forestry Test

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Office of the Associate Minister of Finance (Hon David Parker)
Chair, Cabinet Environment, Energy and Climate Committee

Overseas Investment Act Forestry Review: Removing Forestry Conversions from the Special Forestry Test

Proposal

- 1 This paper seeks agreement to:
 - 1.1 remove forestry conversions from the Overseas Investment Act 2005 (the Act) special forestry test (and specify that forestry conversions instead go through the revised Benefit to New Zealand Test) and commence legislative change to give effect to this decision,
 - 1.2 amend the Overseas Investment Act Forestry Review (Forestry Review) Terms of Reference (Annex One) to include forestry conversions within the scope of the Forestry Review, and
 - 1.3 make minor/technical changes to the Act to improve the operation and effectiveness of the forestry-related provisions of the Act, consistent with the Forestry Review Terms of Reference.
- 2 Consistent with paragraph 2.39 of the Cabinet Manual, I submit this paper with the knowledge and approval of the Minister of Finance.

Relation to Government Priorities

- 3 The proposals in this paper may impact government priorities, specifically New Zealand's emissions reduction targets and the transition to a circular bioeconomy. However, this is also an opportunity to improve the management of forestry conversions by overseas investors, and ensure these overseas investments demonstrate benefits.
- 4 The Climate Change Commission recommends that production and permanent forestry play an important role in meeting the country's emissions budgets and targets, and helps sustain a thriving low-emissions bio-economy.¹ In addition to the role of exotic plantation forests in the Climate Change Commission's demonstration path, the Commission has recommended ramping up planting of new native (indigenous) forests to reach a recommended target of 25,000 hectares a year.² Finally, the Commission notes: "The role that emissions removals from forests play must be balanced with the need to make gross

¹ The Climate Change Commission recommends that an additional 380,000 hectares of exotic plantation (fibre and wood) forest need to be planted by 2035. The land most suitable to meet this recommendation is hill country farmland, of which there is estimated to be between 7.5 and 10.4 million hectares. This indicates that, while locally significant, farm to forest conversions in the next 13 years would involve less than 1 percent of this class of land per annum, if the Climate Change Commission's recommendations are achieved.

² See recommendations on page 103 of the Climate Change Commission's 2021 report, *Inaia tonu nei: a low emissions future for Aotearoa*. The report also explains "Native afforestation needs to start now to provide enough removals to maintain net zero long-lived greenhouse gas emissions beyond 2050" (p. 318).

emissions reductions, and consider the potential impacts of land conversion on rural communities and the broader food and fibre sector”.³

- 5 Given the reliance of New Zealand forestry sector on overseas investment any reduction in overseas investment in forestry could impact the rate of afforestation, with implications for New Zealand’s ability to meet its emissions budgets and emissions reduction targets, and the transition to a circular bioeconomy. The scale of this risk is, however, difficult to assess given uncertainties and limited evidence. However, the proposal in this paper, for overseas investments in forestry to go through the revised Benefit Test pathway, rather than the streamlined special forestry test, would give decision-making Ministers more discretion to balance consideration of the benefits of forestry investments (i.e. emissions reductions and supporting the bio-economy) [1]

- 6 Work is also continuing on the Labour Party’s 2020 Election Manifesto proposal to allow local councils to control which land can be used for plantation and permanent forests through the resource consent process.⁴ This commitment was made in response to concerns from some rural communities and sector organisations that too much productive pastoral land (or land that is important to local economies and communities) is being converted to forestry.

- 7 Other parallel policy workstreams are being undertaken by the Ministry for Primary Industries and the Ministry for the Environment to consider options that would (if progressed) impact on afforestation and investment signals. These include:
 - 7.1 a parallel paper, being considered at this ENV meeting, that is anticipated to seek Cabinet approval to develop and release discussion documents to consult the public on various options to manage afforestation, which may include:
 - 7.1.1 removing the incentives for permanent exotic afforestation by changing the forestry settings within the New Zealand Emission Trading Scheme (ETS);
 - 7.1.2 providing for greater local control over the location and type of new forests through the resource management system (noted above);
 - 7.1.3 potential amendments to the National Environmental Standards for Plantation Forestry (NES-PF) to include permanent afforestation; and
 - 7.1.4 developing national objectives and policies.
 - 7.2 policy work to consider the role of forestry in the ETS, including considering options such as removing permanent exotics from the ETS.

³ Ibid, page 315.

⁴ The Manifesto commitment proposes requiring consent for forests over 50 hectares on Land Use Capability Classes (LUC) 1-5.

- 8 The proposals in this paper do not address domestic investments. However, they do offer a way to manage spillover effects of whole farm conversions [1]

The proposals do this by giving decision-makers discretion to ensure forestry investment in land is undertaken in a way that increases and delivers wellbeing benefits to New Zealanders, in line with broader government priorities and objectives.

Executive Summary

Changes to the treatment of forestry in 2018

- 9 In 2018, the Government changed the way overseas investments in forestry are screened under the Act bringing forestry cutting rights into the screening regime, improving the regime's coherence, and establishing streamlined consent pathways for forestry investments, in order to facilitate overseas investment in forestry. This included the introduction of the special forestry test, which was designed to facilitate more overseas investment in plantation forestry than would be facilitated under the then-existing Benefit to New Zealand test.⁵
- 10 As these changes were developed at pace to align with the passage of Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Overseas Investment Amendment Act 2018 (Amendment Act) required a review of the changes' operation and effectiveness. Cabinet agreed to a Terms of Reference for the review of these changes (the 'Forestry Review') in March 2021 (DEV-21-MIN-0044 refers).

Contextual change since 2018 mean the need for a streamlined pathway for forestry conversions is less compelling

- 11 Since the 2018 changes were brought into effect, the operating context for production forestry investments has changed. There has been a significant shift in the economics of investing in production forestry, driven by the additional revenue from carbon credits, Emissions Trading Scheme (ETS) reforms and government afforestation schemes.
- 12 As a result of these factors (and others), New Zealand has seen an increase in farmland to forestry conversions (both permanent and production) by domestic and overseas investors. Specifically, of the 92 one-off consents (and six standing consents) granted since the special forestry test came into effect in 2018, 40 of the one-off consents related to the conversion of farmland to forestry. This compares to a total of 31 decisions related to forestry, seven of which relate to conversions from farmland to forestry, in the three years between 2015 and 2017 via the previous Benefit to New Zealand pathway.

⁵ The 'special test relating to forestry activities', commonly known as the special forestry test, assesses an investment against a "checklist" of requirements and does not involve a 'counterfactual' analysis. The test was introduced to facilitate more overseas investment in plantation forestry than would be facilitated under the existing benefits test. It aims to be more permissive, create more certainty for investors and streamline the processing of applications.

- 13 There has been increasing concern about the negative spillover effects of whole farm conversions, particularly in relation to the use of pastoral land (or land that is important to local economies and communities).
- 14 While high quality foreign investment in forestry and a strong forestry sector remain important, the value proposition for facilitating increased overseas investment in land to be converted to forestry is no longer as compelling and the settings need reconsidering. In particular, the Act does not serve as a substantial check on overseas demand for investment in new production forestry in the same way the Act does for other land-based investments.
- 15 The current forestry screening settings for forestry conversions reduce our ability to manage or protect against current and emerging concerns or risks from overseas investment in forestry to New Zealanders' wellbeing. [1]

This increases our exposure to negative effects of some forestry conversions on the four capitals – financial/physical, human, social and natural [1]

I propose removing forestry conversions from the streamlined pathway

- 16 To improve our ability to manage these risks and to ensure proposed overseas investments in land for conversions to forestry demonstrate benefits, this paper seeks approval to remove forestry conversions from the streamlined special forestry test pathway under the Act. Instead, the special forestry test could only be used for applications where the land is already used exclusively, or nearly exclusively, for forestry activities (effectively land that is currently being used for production forestry).
- 17 This change would ensure that forestry conversions through the overseas investment screening regime demonstrate benefits to New Zealand by aligning the assessment of forestry conversions with the approach taken under the Act for most other land-based investments. The proposed changes would require overseas investors looking to acquire land for conversion to forestry to access the Benefit to New Zealand test pathway.
- 18 The revised Benefit to New Zealand test came into force in November 2021. It assesses the likely benefits of a proposed overseas investment in seven broad categories or 'factors' compared to the current state.⁶ This is a more complex test than the special forestry test; it requires in-depth consideration of the additionality of the investment and involves greater discretion for decision-makers.
- 19 The proposed changes would apply only to those forestry investments that are conversions from another land use (e.g. farming) into forestry. The Act would, therefore, continue to support streamlined high-quality foreign investment in relation to land that is already production forestry by retaining the more streamlined special forestry test for those investments.

⁶ These seven benefit factors are: economic benefits; benefits to the natural environment; continued or enhanced public access; protection of historic heritage; advancing a significant Government policy; oversight or participation by New Zealanders; other consequential benefits.

Māori interests in forestry mean these changes do carry risk, which will need to be managed

- 20 Removing forestry conversions from the special forestry test presents some risks for Māori – Crown relations because of the importance of forestry to Māori, economically and culturally. Furthermore, progressing legislative change, ahead of any comprehensive consultation, presents significant relationship risks for the Crown and risks for Māori, for whom these changes disproportionately impact, due to the scale of Māori interest in the sector.
- 21 To provide further information on the changes and to understand and assess the potential impacts of change on Māori, I have led a hui with selected key Māori leaders and representatives in the forestry sector so that they could advise on potential impacts of the changes. In addition, I propose that officials engage with a wider group immediately after the announcement of Cabinet's decision, to enable Māori to advise on the potential impacts of the changes.

Communication of this change to the forestry industry will need to be carefully managed

- 22 One of the key drivers of the introduction of the streamlined test three years ago was a *quid pro quo* for bringing forestry rights into the screening regime (which did not previously require consent). It will be important for the Government to articulate the benefits of overseas investment to the forestry sector, as well as the need for an effective screening regime to ensure that forestry conversion investments demonstrate benefits to New Zealand.

The Forestry Review will proceed on a different track

- 23 To give effect to the recommended change in direction, this paper also proposes to amend the Terms of Reference for the Forestry Review. The key amendment is to rescope the Review so that it is focused on legislative change to remove forestry conversions from the special forestry test and to improve the operation and effectiveness of the Act's forestry provisions. This would allow the Review to continue but on a different track. The Treasury will no longer release a discussion document nor conduct a second round of wider stakeholder engagement, which was scheduled for the first quarter of 2022.
- 24 This approach will essentially deliver on stakeholders' expectations for the Forestry Review (i.e., improvements to the operation and effectiveness of the 2018 forestry changes to the Overseas Investment Act 2005). However, given the policy proposals relating to the operation and effectiveness of the Act's forestry provisions are largely informed by the targeted stakeholder engagement undertaken in 2021, some of the issues included within the Terms of Reference have not been progressed at this stage.
- 25 The key issue that would require legislative change is the 1,000 hectare screening threshold for forestry rights. During targeted engagement, some investors noted that the 1000 hectare cutting rights exemption was too low and that the threshold should be increased to facilitate investment in forestry. No other groups commented specifically on the threshold. The commitment to review the threshold will remain in the Terms of Reference, but I do not propose any changes to the screening regime at this time. Officials will, however, test the appropriateness of this threshold as part of the targeted engagement with key

stakeholders following the public announcement. In addition, the anticipated select committee process will be an opportunity for interested parties to submit on this issue.

- 26 Pursuing this legislative change also presents an opportunity to address some minor and technical issues with the forestry provisions that were raised through the first tranche of engagement on the operation and effectiveness of the 2018 changes. Many of these issues can be addressed via operational and/or regulatory change. However, should Cabinet agree to progress legislative change to remove forestry conversions from the special forestry test, there are five minor and technical issues I consider would be best addressed via the same legislative vehicle. These proposed changes are discussed further below.

Background

Context for the 2018 Changes and Forestry Review

- 27 Forestry is a significant industry for New Zealand, accounting for around 1.6 per cent of New Zealand's GDP (\$6.9 billion).⁷ New Zealand's forestry sector relies on overseas investment for growth and productivity, with up to 70 per cent of forestry plantations being foreign-owned.
- 28 In 2018, as part of the first phase of reforms to the Act (the Phase One reform), we amended the Act to facilitate overseas investment in the forestry sector and to better align the screening regime with the Government's forestry priorities (particularly, the One Billion Trees Programme and climate change mitigation).
- 29 This created more permissive screening rules for overseas investment in forestry. At the same time, we brought forestry rights into the regime so forestry held via freehold, leasehold and forest registration rights were treated the same, and to protect the right of the Government and future governments to screen foreign direct investment in forestry.⁸
- 30 When the forestry changes were introduced in 2018, the Government prioritised a regulatory environment that provided investors certainty, in order to support ongoing high-quality foreign investment in forestry that was seen as crucial to the success of the sector.
- 31 The Government considered that a strong forestry sector contributes to multiple Government priorities, including regional development and employment, and climate change policy. In particular, it was difficult for mature, well-managed forests to meet the then-Benefit to New Zealand test. This was due to the benefit factors an overseas person had to demonstrate, as well as the hypothetical counterfactual analysis required at the time, where forestry investors struggled to show a 'point of difference' from the current owner or a New Zealand investor.

⁷ As at September 2020.

⁸ Forestry rights are a type of interest in land that gives rights to 'establish, maintain and harvest' a crop of trees on land, or to 'maintain and harvest' a crop of trees on land. For the purposes of the Act, the term 'forestry rights' also includes profits à prendre that relate to taking timber from a forest. Forestry rights can also include associated rights to access the land and to construct buildings and other facilities on the land.

- 32 The Phase One reform progressed changes to the Act that were required to be enacted prior to the ratification of the CPTPP. Because these changes were made at pace (to align with the passage of the CPTPP), the Act obliged the Government to commence a statutory review of the forestry changes within two years from the date they were enacted. Cabinet agreed to a Terms of Reference for the review of changes to the forestry-related provisions in the Act (the 'Forestry Review') in March 2021 (DEV-21-MIN-0044 refers). The current Terms of Reference, which I propose to amend, specify that the Forestry Review:
- 32.1 will assess the operation and effectiveness of the forestry-related amendments introduced by the Amendment Act,
 - 32.2 must not inquire into, determine, or report on the original policy rationale and intent underpinning the changes (increasing overseas investment in forestry and improving the coherence of the screening regime), nor consider whether carbon farming (permanent forestry) should be able to begin to use the special forestry test, and
 - 32.3 will not inquire into the appropriateness of applications to convert farmland to forestry using that test, beyond reporting on the frequency with which those applications use the special forestry test consent pathway.
- 33 Under the proposals in this draft Cabinet paper, the latter exclusion would be removed from the Terms of Reference, which would instead include legislative change to remove forestry conversions from the special forestry test.
- 34 The Treasury has been leading the review closely supported by Toitū Te Whenua Land Information New Zealand and Te Uru Rākau – New Zealand Forest Service. The Treasury has conducted an initial round of targeted engagement with key users and stakeholders to inform policy development and determine where changes may be needed to address issues with the operation and effectiveness of the regime.
- 35 During targeted engagement on the Forestry Review in 2021, officials heard from stakeholders that the 2018 changes are achieving their primary policy intent: facilitating overseas investment in forestry. The key message was that the changes have improved investor confidence, by providing greater certainty and improved timeframes than would have occurred if investors were only able to access the Benefit to New Zealand pathway.
- 36 Stakeholders identified some technical issues and suggestions to improve the operation of the regime. Some of these issues are best addressed through legislative change, while others can be addressed through operational change or guidance.

The special forestry test

- 37 The ‘special test relating to forestry activities’, commonly known as the special forestry test assesses an investment against a “checklist” of requirements and does not involve a ‘counterfactual’ analysis.
- 38 The test was introduced to facilitate more overseas investment in plantation forestry than would be facilitated under the existing benefits test. It aims to be more permissive, create more certainty for investors and streamline the processing of applications.
- 39 Since the special forestry test came into effect in 2018, there have been 93 one-off consents and six standing consents granted (as at 31 December 2021). Of the 93 one-off consents, 40 related to the conversion of farmland to forestry, all of which involve New Zealand vendors. Nearly 37,000 hectares of land have been acquired for forestry conversion under the special forestry test, with over 23,000 hectares of proposed new planting.⁹ The total value of investments through the special forestry test is nearly \$1.9 billion, of which nearly \$260 million is for conversion related applications. The total land size of investments through the special forestry test is 212,000 hectares, of which nearly 54,000 relates to land to be transferred from New Zealand ownership into overseas ownership.

Analysis

Context for Removing Forestry Conversions from the Special Forestry Test

- 40 Forests and forestry can deliver substantial benefits to New Zealanders, including wellbeing benefits in terms of financial, physical, human, social and the natural world (Te Taiao). Forests have an important role to play in New Zealand being able to build toward the future and in delivering on the wellbeing outcomes that we are working towards collectively across government. There is work underway across multiple streams of policy and strategy to enable us to maximise those benefits. This includes:
- the Emissions Reduction Plan (ERP),
 - the Forestry and Wood Processing Industry Transformation Plan (ITP),
 - the Aotearoa New Zealand Biodiversity Strategy (ANZBS),
 - policy work underway relating to the Emissions Trading Scheme (ETS),
 - the National Environmental Standards for Plantation Forestry (NES-PF), and
 - the National Policy Statement on Indigenous Biodiversity (NPS-IB).

There are a range of factors driving land use change to forestry

- 41 Since the Government introduced the special forestry test in 2018, the operating context for the forestry sector has changed. There has been a significant shift in the economics of investing in production forestry, driven by the additional revenue from carbon (as a result of the ~\$40 / tonne increase in the carbon price since 2018), ETS reforms and government afforestation schemes.

⁹ Some of the land acquired through the special forestry test can be subdivided and sold off, or may not be suitable for afforestation.

- 42 As a result of these (and other) factors, New Zealand has seen an increase in farmland conversions to forestry (both permanent and production) by domestic and overseas investors.
- 43 The majority of conversions of land into plantation forestry (production and permanent) do not utilise the Act's special forestry test, with available data suggesting around 80 per cent of overall land converted to plantation forestry (most of which via domestic investment) takes place outside of the special forestry test (though the data are not directly comparable).¹⁰ Over the past three years, nearly 37,000 hectares of land have been acquired for forestry conversion under the special forestry test, with over 23,000 hectares of proposed new planting (the majority, if not all, of the land planted for production forestry will be planted with exotic species).¹¹ This compares to an estimate of 105,200 hectares of exotic afforestation in New Zealand since the beginning of 2019.
- 44 Some of the land (23 per cent, or nearly 8,000 ha) acquired through the special forestry test since 2018 for forestry conversion investments is versatile land (Land Use Capability (LUC) classes 1-5). However, 90 per cent of the area currently being assessed for ETS registration is LUC 6-8 (37,260 hectares). While areas of land acquired through the special forestry test in lower LUC classes are more likely to be subdivided and sold off, some of that land will be converted to plantation forestry and the special forestry test does not allow decision-makers to ensure that forestry conversions on pastoral land demonstrate benefits to New Zealand.¹²
- 45 There is increasing concern about the negative spillovers from whole farm conversions, particularly in relation to the use of pastoral land (or land that is important to local economies and communities). The ETS settings, significantly higher carbon prices and other drivers appear to be resulting in:
- 45.1 Anecdotally, more speculative investment in production forestry (both from domestic and international investors), reflecting that the value proposition for investment in production forestry comes from both wood and fibre production, as well as the carbon credits investors can claim.
- 45.2 Afforestation of pastoral land (or land that is important to local economies and communities), which changes the patterns of economic activity and employment, creates spillover losses from farmland conversion in terms of farming-related support activity, and has broader wellbeing impacts,

¹⁰ The available data are not directly comparable in that there is a lag between Toitū Te Whenua Land Information / Overseas Investment Office (OIO) approval, purchasing of land and eventual planting. For completeness, there may be some ancillary planting of native forestry under the special forestry test, in the form of riparian boundaries or set-backs that are unsuitable for exotic forestry. Since 2018, there have been four consents granted under the Benefit to New Zealand test for forestry conversion-related investments, of which approximately 2,042 hectares is expected to be new planting.

¹¹ As above, some of the land acquired through the special forestry test can be subdivided and sold off, or may not be suitable for afforestation.

¹² Collection of Land Use Capability (LUC) classification information has been collated for forestry conversion related consents granted under the special forestry test. The Toitū Te Whenua Land Information does not record new planting against LUC data. The land of lower LUC classification is more likely to be the parts of the land that are subdivided and sold; but in other cases, it will be a mixture as LUC classes are 'marbled' through the land (i.e., not uniform).

including the loss of indigenous biodiversity on some of the land. This is most pronounced when a forest is established solely for carbon sequestration (this type of forestry conversion is explicitly excluded from the special forestry test. The proposals in this paper are not expected to affect overseas investor appetite in carbon sequestration investments).

Government policy development is under way to consider options relating to managing afforestation, land use change, and the incentives driving forestry investment

- 46 There are existing government programmes affecting domestic regulation of land use that would (if progressed) impact on afforestation and investment signals. These include the development of policy to manage the wellbeing impacts of land use change to forestry over time, including policy work programmes to consider options such as potential upcoming changes to the NES-PF, resource consents for land use change into forestry, and potential changes to the ETS to remove incentives relating to restricting permanent exotic forests (e.g. permanent pine). There is also work underway preparing a Forestry and Wood Processing Industry Transformation Plan for consultation, as well as implementation of the proposed national policy statement for indigenous biodiversity (NPS-IB).
- 47 Subject to Cabinet approval, the changes to the ETS could be delivered by early next year. The changes to the resource management system have a longer delivery and lead in time. However, the impact of these and related programmes will take time and, in the short to medium term, I consider that the policy settings in the Overseas Investment Act could be improved to better manage the impact of land use change to forestry by overseas investors and ensure that foreign investment involving new afforestation delivers benefits for New Zealand.

The overseas investment screening regime recognises that it is a privilege for overseas persons to own sensitive New Zealand assets

- 48 The Act is New Zealand's principal tool for regulating foreign investment. It seeks to balance the need to support high-quality investment, while ensuring that the government has tools available to manage risks. The Act does so by providing an enduring framework for screening foreign investments in sensitive assets to help ensure that they benefit New Zealand and are consistent with New Zealand's national interest.
- 49 High quality foreign investment in forestry and a strong forestry sector remain important. However, the value proposition for facilitating increased overseas investment in land to be converted to forestry is no longer as compelling and the settings need reconsidering. In particular, the Overseas Investment Act does not act as a substantial check on overseas demand for investment in new production forestry (forestry conversions) in the same way the Act does for other land-based investments. This is because the special forestry test is very limited in its ability to allow discretion in decision-making by Ministers on particular investments and their delivery of benefits.
- 50 The current forestry screening settings for forestry conversions limit our ability to manage or protect against current and emerging concerns or risks from overseas investment in forestry to New Zealanders' wellbeing. This increases our exposure

to negative effects of some forestry conversions on the four capitals – financial/physical, human, social and natural. [1]

51 [1]

This increases our exposure to negative effects of some forestry conversions on the four capitals – financial/physical, human, social and natural.

52 If the current overseas investment screening settings for forestry conversions remain in place, I am concerned that the regime is not well-placed to manage the wellbeing impacts and risks posed by some forestry conversions by overseas investors. I note that there are other work programmes under way to develop options to manage land use change, as discussed above, but the impact of these programmes will take time. In addition, the overseas investment screening regime recognises that it is a privilege for overseas persons to own sensitive New Zealand assets, but the special forestry test is not well-placed to manage the risks that some forestry conversions under the Act pose.

Changing the Act to Ensure Forestry Conversions by Overseas Investors Demonstrate Benefits to New Zealand

53 I therefore propose to amend the Act to remove overseas investment transactions involving production forestry conversions from the special forestry test (i.e., land that is not already being used exclusively, or nearly exclusively, for forestry activities). Instead, the special forestry test could only be used for applications where the land is already being used exclusively, or nearly exclusively, for forestry activities (effectively land that is already being used for production forestry).¹³ Forestry conversion transactions would instead go through the revised Benefit to New Zealand test, which came into effect in November 2021.¹⁴ This would ensure that forestry conversions through the overseas investment screening regime demonstrate benefits to New Zealand and would provide greater flexibility to manage the risks posed by some forestry conversions, [1]

¹³ The special forestry test would therefore exclude, for example, transactions involving the acquisition of land that is native vegetation, such as tussock land or regenerating forest, or native regeneration (where the regeneration is not intended for harvest). Such transactions would need to go through the revised Benefit to New Zealand test.

¹⁴ Overseas investors would not require consent for a transaction of forestry rights, whether relating to existing forestry or land for conversion to forestry, where the area of the relevant forestry right is less than 1,000 hectares each calendar year, as the screening regime currently provides for this exemption.

- 54 By considering forestry conversion investments under the revised Benefit to New Zealand test, decision-makers would assess whether the proposed forestry conversion, compared to the current state, will or is likely to:
- result in economic benefits
 - result in benefits to the natural environment
 - result in continued or enhanced public access within or over the sensitive land or the features giving rise to sensitivity
 - result in continued or increased protection of historic heritage within the relevant land
 - give effect to or advance a significant government policy
 - involve oversight of, or participation in, the overseas investment or any relevant overseas person by persons who are not overseas persons
 - result in other consequential benefits to New Zealand.
- 55 A proposed investment may have different levels of likely benefits in each of the factors above depending on the nature of the investment. There is no requirement to show likely benefit in every factor. The Act requires a proportionate approach to considering the Benefit to New Zealand test, both to the sensitivity of the land and the nature of the overseas investment transaction.
- 56 The revised Benefit to New Zealand test would also give decision-makers the discretion to impose conditions (should consent be granted) to ensure that particular forestry investments in land being converted align with the benefit factors relevant to the overseas investment, along with conditions that are aligned with the overseas investment and business plan. The decision-makers' assessment can only be against the specific benefit factors (and not any broader).
- 57 For completeness, I also considered whether forestry conversion transactions should instead go through the new Farm Land Benefit test, which would ordinarily apply to transactions involving farm land of more than 5 hectares. The Farm Land Benefit test has a higher benefit threshold than the Benefit to New Zealand Test, requiring high relative importance for economic and participation and oversight factors, and that the benefits under one or more of those factors are likely to be substantial for New Zealand. However, I decided not to progress this option as it may be difficult for forestry focused investment to meet the higher benefit threshold. The unique characteristics associated with the forestry asset class mean that there is more limited scope for overseas forestry owners to demonstrate the required significant economic benefits (or participation and oversight) from their investment in forestry.

Forestry conversions by overseas investors will still take place, but this change would allow the regime to manage or protect against current and emerging concerns or risks from overseas investment in forestry to New Zealanders' wellbeing

- 58 Overseas investors looking to acquire land for conversion to forestry would still be able to access the revised Benefit to New Zealand pathway.¹⁵ However, this

¹⁵ As noted above, overseas investors would not require consent for a transaction of forestry rights, whether relating to existing forestry or land for conversion to forestry, where the area of the relevant forestry right is less than 1,000

change would allow the regime to manage or protect against current and emerging concerns or risks from overseas investment in forestry to New Zealanders' wellbeing by forcing investors to seek consent under the Benefit to New Zealand test (as for investments in permanent (carbon-only) forestry).

59 [1]

60 As noted above, the revised Benefit to New Zealand test requires investors to demonstrate benefits and involves greater discretion for decision-makers. This is a more complex test that requires in-depth consideration of the additionality of the investment.

61 However, it would be easier for forestry investors to demonstrate how the proposed overseas investment will, or is likely to, benefit New Zealand than the previous Benefit to New Zealand test (which was replaced on 24 November 2021 and was in force when the 2018 changes were made). This reflects that the Benefit to New Zealand test has been simplified as a result of the Phase 2 reforms, including that the counterfactual requirement is now a comparison of the current state of the assets against what is likely to occur as a result of the investment. In addition, the benefit factors have also been streamlined to 7 broad factors, rather than 21 specific factors. Additional changes to the screening regime through the Phase 2 reforms were designed to reduce costs and processing times (for example, the introduction of statutory timeframes). It would also increase the number of investments that are escalated to Ministers to be decision-makers.

62 At this stage, it is challenging to speculate how any of the forestry conversion investments that have been processed through the special forestry test would have fared under the revised Benefit to New Zealand test, or what additional benefits these investments might have had to demonstrate to meet the test, as applicants under the special forestry test are not required to provide the level of information needed to model alternative outcomes.

63 This change would improve the coherency of the regime to the extent that the Act would require investment in new production forestry to demonstrate benefits as the Act does for other land-based investments, including for investments in permanent forestry. Further, the Act would continue to support high-quality investment in existing production forestry via the special forestry test.

hectares each calendar year, as the screening regime provides for this exemption.

¹⁶ However, some foresters which are Forestry Stewardship Council FSC or PEFC (Programme for the Endorsement of Forest Certification)-certified will already be planning to meet public benefit (biodiversity, access, historic sites) criteria under their certification. The main change for them will be the economic benefit criteria.

Impacts and Risks

64 One of the drivers of the introduction of the streamlined test three years ago was a *quid pro quo* with the forestry investment industry for bringing forestry rights into the screening regime. While the inclusion of forestry conversions in the streamlined test was not a specific part of that discussion, [1]

65 [1], [36]

66 The various other work streams underway across government to consider potential changes to forestry settings (e.g. relating to ETS, NES-PF, and resource management settings), combined with the Overseas Investment Act having a higher threshold for forestry conversions for production forestry, risk undermining investor confidence, and slowing overseas investment in suitable new forests as [1]

67 As overseas companies are a major part of the New Zealand forestry sector,¹⁷ there is a risk that removing forestry conversions from the special forestry test, or reduced interest in overseas investment in forestry more generally, would impact the rate of afforestation and may impact New Zealand meeting its emissions budgets and emissions reduction targets. This is because afforestation could decrease to levels below that required to meet the Government's carbon sequestration targets and the transition to a circular bioeconomy. The scale of this risk is, however, difficult to assess given uncertainties and limited evidence.

68 Given this change would only affect land use change by overseas investors, there are risks that New Zealand owners will convert land to forestry in order to sell to overseas investors via the special forestry test. There may therefore be some forestry conversion 'leakage', however the scale of any policy leakage is uncertain.

69 [1]

. However, I intend to mitigate these risks by articulating the benefits of overseas investment to the forestry sector, as well as the need for this change to ensure that forestry conversions through the overseas investment screening regime benefit New Zealand.

70 There will be operational impacts for Toitū Te Whenua Land Information New Zealand through the implementation of the proposed legislative change, as well as consequent impacts on the number and type of applications, and monitoring and enforcement of consents.

¹⁷ The forestry sector is heavily dependent on inward investment, with up to 70 per cent of forestry plantations being foreign-owned.

Impact on Māori Economic Interests and Māori-Crown Relations

- 71 Māori own at least 30 per cent of the land containing New Zealand's plantation forests (but not always the trees themselves), and large areas of indigenous forest. Tangata whenua have more than \$2 billion of assets in the sector, and forestry is also a significant employer of Māori. Tangata whenua have *kaitiaki* responsibilities within their rohe and partner in the management of forests as part of the conservation estate.
- 72 Where Māori interests are involved, it is generally for existing forestry, for example joint ventures for existing forestry land, or where forestry land is transferred from the Crown to iwi, and an overseas investor is seeking consent for a forestry right over the relevant land. Iwi broadly supported the liberalisation of overseas forestry investment screening in 2018.
- 73 Removing forestry conversions from the special forestry test may impact negatively on the value of Māori assets, to the extent that this change would deter overseas investment partners. In addition, this could hamper efforts to convert historically under-developed Ahu Whenua trust-land¹⁸ to production forest, including through aggregation arrangements. Any reduction in sector attractiveness risks a capital or revenue hit to significant iwi investments.
- 74 There are currently very few forestry conversion applications under the special forestry test that relate to Māori freehold land. However, this may not necessarily have been the case in the future if current policy settings were retained, given drivers such as ETS settings and the impact of the rising carbon price.
- 75 Māori landowners are more likely to utilise forestry rights than freehold or leasehold due to a desire to retain control of the underlying whenua asset. However, due to the length and nature of forestry rights, in practice the impact in the short to medium term is likely to be similar whether purchasing freehold or leasehold, versus purchasing forestry rights. In addition, the screening regime already permits the acquisition of less than 1,000 hectares (both in conversions and existing forestry) of forestry rights in a calendar year.
- 76 I am advised that there is a Treaty of Waitangi risk if this policy change is not progressed in a way that is consistent with the principles of the Treaty, including decision-making informed by good faith, robust engagement, and a clear understanding of the impact of the policy change for Māori combined with measures to any address negative impacts. The January 2022 hui (outlined below), which I led with key Māori leaders and representatives in the forestry sector, supported the Crown to adhere to the principles of the Treaty of Waitangi while managing risks around information leakage and competitive advantage provided to those consulted. Additional consultation was not conducted pre-announcement of the policy proposals due to these risks, as well as time constraints.
- 77 Further, I am advised that there would also be a risk to the durability of Treaty settlements involving Crown forest licensed land because all licences are now held by overseas investors and all are pre-1990 forests. This means most post settlement governance entities will rely on those investors entering into post-

¹⁸ Established under Te Ture Whenua Māori Act 1993, Ahu whenua trusts are land administration trusts designed to manage whole blocks of Māori freehold land.

licence forestry rights or leases with them so they can meet their legal obligations to replant.

- 78 I acknowledge that the wider changes being considered or made to the forestry sector (referred to above), alongside the impact of COVID-19 on the Māori economy, create an increased cumulative risk for Māori given the increased exposure of Māori economic interests in forestry to regulatory change.

Targeted engagement with key Māori / iwi leaders and representatives

- 79 In mid-January 2022, I led the first of two hui with selected key Māori leaders and representatives in the forestry sector so that they could advise on the potential impacts of the proposed changes. The hui were focussed on providing a targeted and representative group of key Māori representatives the opportunity to consider and provide feedback on the impact of removing forestry conversions from the special forestry test. Although the Forestry Review's focus on minor and technical changes was signalled to Māori representatives, this was not the main focus of the hui discussion.
- 80 Overall, the Māori representatives that were consulted indicated support for the direction of the policy proposal, due to the changing operating context for forestry, largely driven by the increase in the carbon price and ETS settings, as well as the impact of forestry conversions on rural communities.
- 81 The main concerns raised by Māori representatives included the potential economic and financial losses that could occur as a result of the proposed changes, these included potential lost opportunities to partner with overseas investors, reduced access to capital, and a reduction in available land use options. This reflects that achievement of Māori and iwi aspirations for their land relies on access to capital, skills, technology and overseas connections for forestry investment.
- 82 There were clear and consistent views on participants' desire to see these broader work programmes inform the ongoing Forestry Review, for government to address these issues in a more holistic manner, and for cohesion amongst officials across the relevant government agencies involved in the forestry (and the wider primary industries) sector. Participants sought clarity on how the proposed changes relate to other government work programmes, especially potential changes to the ETS, considerations relating to LUC classification and land use change, and resource management reforms.
- 83 Following these hui, I have considered options to manage the impact of the policy proposal on Māori interests, for example through permitting the special forestry test to be used for forestry rights. This option would provide iwi / Māori with the greatest opportunity to utilise Māori freehold land or land returned through Treaty redress for forestry use, as potential overseas investors in forestry rights would have the least burdensome option available to them through the special benefits test. However, I consider that maintaining the current proposal would support coherency of the regime in that the OIA screening regime can assess the benefits of proposed land use change, irrespective of the nature of interest being acquired.

- 84 In addition, as the proposed legislative programme progresses, officials will consider opportunities to work with Māori/iwi representatives, for example to develop a joined-up guidance framework and/or Ministerial directive letter to potentially articulate the types of quality forestry investment that the Government is seeking from overseas investment in the forestry sector.
- 85 Subject to Cabinet decisions, officials will engage with a wider group of Māori representatives to receive further feedback on the potential impacts of the changes, as well as other key industry stakeholders. If that engagement reveals significant issues from a Māori perspective that cannot be addressed through operational responses, I will report back to Cabinet and consider seeking further policy decisions to address those issues.

Minor and Technical Changes

- 86 There were several other minor and technical issues raised through the first tranche of engagement on the operation and effectiveness of the 2018 changes. Many of these issues can be addressed through operational and regulatory change. However, should you agree to progress legislative change to remove forestry conversions from the special forestry test, there are five minor and technical issues I consider would be best addressed via the same legislative vehicle.
- 87 I consider that making the following proposed minor/technical changes to the Act will improve the operation and effectiveness of the forestry related provisions, consistent with the Forestry Review Terms of Reference.
- 88 I propose that Cabinet delegate the authority to take further policy decisions on minor/technical changes that are consistent with the direction of this paper and aligned with the Terms of Reference for the Forestry Review, to myself (the Associate Minister of Finance) along with the Minister of Finance, Minister for Land information, and Minister of Forestry (joint Ministers). Any significant policy decisions will require joint Ministers to report back to Cabinet.

Dwellings / residential purposes

- 89 I am proposing to amend the special forestry test's restriction on residential use by introducing a non-occupation condition that would allow non-associates of an overseas investor to occupy existing dwellings on forestry land.
- 90 Currently, the Act sets out that when forestry land is acquired, it is not able to be used for residential purposes, including where there may be existing dwellings or tenants living in these dwellings. Forestry workers supporting forestry operations on the relevant land, however, can live in existing dwellings (although due to the nature of forestry activities, this rarely occurs in practice).
- 91 This prescriptive requirement is creating adverse outcomes for investors and tenants of these properties, due to a lack of clarity about how overseas investors must manage existing tenants. Operationally, the Toitū Te Whenua Land Information allows a transitional period of approximately 12 months for the tenants to find alternative accommodation, but this has not been made explicit in guidance and as a result, many investors simply evict tenants immediately.
- 92 The issue of immediate evictions could be addressed by the Toitū Te Whenua Land Information publishing guidance on this matter to allow for a 12-month transitional period, or regulatory change could be made to allow the existing tenants to stay until they choose to vacate the property. However, this would not address the medium to long term impacts of eviction and/or the negative impact on the housing supply for the – often rural – affected communities.
- 93 The policy intent of the existing provision was to ensure that there was not a loophole for overseas investors to purchase residential land through the streamlined special forestry test pathway, for either residential or renting purposes. My proposed amendment represents a slight change to the policy intent which could create a risk of investors acquiring land through the special forestry test that contained at least one residential dwelling and renting it out.
- 94 However, the Act also sets out that land obtained via the special forestry test must be used exclusively (or nearly exclusively) for forestry activities. I have been advised that this provision would protect against overseas investors buying forestry land containing dwellings for the purpose of renting those dwellings, by significantly reducing the profitability of such an exercise to a level low enough to be considered negligible.
- 95 Recognising the risk of unintended consequences arising during further policy development of this matter, I recommend that Cabinet agree to pursue legislative change to address this issue in the first instance, with the option for joint Ministers to remove this issue from the legislative process (as per the proposed delegation), should risks of unintended consequences be discovered during further policy development.

Appropriateness of the modified benefits test for forestry activities

- 96 The Benefit to New Zealand test requires overseas investors to prove that an investment will or is likely to provide benefits for New Zealand. Recognising that different forms of overseas investment present different risks and benefits, the Benefit to New Zealand test has multiple pathways for assessing investments. The four pathways under the Benefit to New Zealand test are primarily known as:

the (revised) general benefits test, the farmland benefits test, the modified benefits test and the special forestry test.

- 97 I propose amending the legislation to remove the modified benefits test for forestry activities from the Act. The modified benefits test for forestry activities was a pathway designed to encourage overseas investment into forestry by certain investors by having a less onerous counterfactual assessment than the previous benefits test.
- 98 However, the new, revised Benefit to New Zealand test introduced a less onerous counterfactual assessment, and as a result, the modified benefits test has potentially become redundant. This is because it is, in almost all cases, harder to satisfy than the revised Benefit to New Zealand test. Because of this (at least in part), there have been no applications under the modified benefits test to date.
- 99 Fragmentation of regulatory assessment frameworks creates compliance and administrative costs as Toitū Te Whenua Land Information and forestry investors face choices and uncertainties about which screening regime might apply to a given transaction. This is undesirable from a design perspective and is complicating the administration of the rules by the Toitū Te Whenua Land Information and creating additional costs for investors. As such, I propose that the modified benefits test be repealed.

Crop of trees

100 [36]

- 101 This clarification responds to targeted engagement with key users of the screening regime. That consultation concluded that the definition of 'crop of trees' for the purposes of 'forestry activities' is resulting in ambiguity. Specifically, that it is unclear whether forestry activities include a requirement to harvest, i.e. whether the land can be acquired for carbon/permanent forestry purposes. Additionally there is ambiguity as to the length/timeframe for harvesting trees whether specific varieties of trees (e.g. *Pinus radiata*) must be planted to access the special pathway, or whether the special forestry test can be used for investment in trees with a long rotation (for example, some native trees have an 80-100 year crop rotation).
- 102 I consider it is consistent with the policy intent of the Act to allow any species of tree to be planted, for any rotation length, to gain access to the special forestry test, so long as there is an intention and plan for harvest.

Forestry (cutting) rights: Exemptions – 1,000 hectares

103 I propose amending the legislation to clarify that consented forestry rights are not included in the up to 1,000-hectare screening exemption calculation (per calendar year).

104 [36]

105 I consider that it is consistent with the policy intent of the Act that the calculation only includes unconsented rights given that including already consented forestry rights in the calculation per calendar year would be double counting.

Relevant land with less than freehold interest (technical issue)

106 I propose amending the legislation to clarify that activities of the underlying landowner and third parties that are unconnected to the interest are excluded when interpreting what the 'relevant land' is.

107 There is uncertainty as to whether the forestry activities requirement ("relevant land will be, or is likely to be, used exclusively, or nearly exclusively, for forestry activities") is applied either:

- solely to the part of the overall land over which the applicant is obtaining forestry rights (in other words the interest in land which it was acquiring – being the plantable area and ancillary access/infrastructure areas), or
- to the entire land (which could technically be considered the "relevant land" even though the applicant would have no actual useable rights over the vast majority of it).

108 I consider that it is consistent with the policy intent of the Act that this provision captures only the land being acquired for forestry activities. Resultingly, areas of the underlying land which fall outside of the actual interest being acquired are deemed not to fall within the consideration and can therefore be ignored.

109 I recommend that Cabinet delegate authority to me along with the Minister of Finance, Minister for Land information, and Minister of Forestry to take further policy decisions consistent with the direction of this paper for minor/technical changes that are aligned with the Terms of Reference for the Forestry Review to improve the operation and effectiveness of the 2018 changes. Any significant policy decisions will require Ministers to report back to Cabinet.

110 I will report to the Cabinet Legislation Committee (LEG) in the first quarter of 2022 with the aim of enacting this change in this term of government.

111 To address other minor and technical issues raised through targeted engagement, officials will consider any operational changes that may be required for those issues not resolved, or appropriate to be addressed, by the legislative or regulatory changes.

Changes to the Forestry Review

Addressing forestry conversions through the Act will change the scope and direction of the Forestry Review

- 112 The current Terms of Reference for the Forestry Review outline that, following the targeted engagement that took place in mid-2021, officials would prepare a discussion document for Cabinet approval in the final quarter of 2021 with a view to releasing it in late 2021 ahead of a wider round of consultation. The broad agency and public engagement on a discussion document would have solicited feedback from a broader range of users of the regime, along with stakeholders, wider agencies and the general public. After this work is completed, officials would have reported to me next year with recommendations for any changes considered necessary to the overseas investment settings.
- 113 I am proposing that the removal of forestry conversions from the special forestry test is progressed through legislative change via a discrete piece of legislation, at a faster pace than the Forestry Review timeframes specified above, and not consulting on a discussion document.
- 114 I am also proposing to make some minor and technical changes to the Act, via legislative change to improve the operation and effectiveness of the forestry related provisions.
- 115 I am proposing to progress this ahead of the current Forestry Review timelines as until such time as the change is enacted, forestry conversions that may not be of benefit to New Zealand will continue to take place. Furthermore, allowing time for consultation on this change would give investors more of an opportunity to bring forward investment in anticipation of the change (leading to a rush on forestry investments or speculation).
- 116 This would be a relatively straightforward amendment to the Act and bring it back in line with the drafting that was initially introduced to Parliament in 2018.¹⁹

The Forestry Review Terms of Reference needs to be amended

- 117 I propose to rescope the Forestry Review so that it is focussed on legislative change to remove forestry conversions from the special forestry test and to improve the operation and effectiveness of the Act's forestry provisions. This would allow the review to continue but on a different track. We will no longer release a discussion document nor conduct a second round of wider stakeholder engagement in the first quarter of 2022.
- 118 To give effect to the recommended change in direction above, I seek Cabinet's agreement to an amended Terms of Reference for the Forestry Review.

Next Steps

¹⁹ During the legislative process for the 2018 forestry changes, the Government initially proposed that the new special forestry test only be used where the land is already forestry land, and not land for conversion into forestry. Following feedback during the select committee process, the Government agreed that the test could be used by investors acquiring land for conversion to forestry. This was on the basis that this would best support encouraging investment into forestry.

- 119 Subject to Cabinet’s decision, officials will engage with a wider group of Māori / iwi stakeholders immediately after the announcement of Cabinet’s decision, to enable Māori to advise on the potential impacts of the changes. Officials will also engage with other industry stakeholders.
- 120 Subject to Cabinet decisions, officials will initiate work for legislative change and prepare an amendment Bill for consideration of Cabinet in [33]

Consultation

- 121 The Treasury prepared this Cabinet paper and the attached amended Terms of Reference and Regulatory Impact Statement. The following agencies were consulted: Ministry of Foreign Affairs and Trade, Toitū Te Whenua Land Information New Zealand, Te Arawhiti, Te Puni Kōkiri, Ministry for Primary Industries - Manatū Ahu Matua (including Te Uru Rākau - New Zealand Forest Service), Ministry for the Environment, and Department of Conservation. The Department of Prime Minister and Cabinet was informed.
- 122 As noted above, in order to understand and assess the potential impacts of change on Māori, I led a hui in January 2022 with selected key Māori stakeholders so that they could advise on the potential impacts of the changes.
- 123 As noted above, subject to Cabinet decisions, officials will engage with a wider group of Māori / iwi stakeholders immediately after the announcement of Cabinet’s decision, to enable Māori to advise on the potential impacts of the changes. Officials will also engage with other industry stakeholders. If that engagement reveals significant issues from a Māori perspective that cannot be addressed through operational responses, I will report back to Cabinet and consider seeking further policy decisions to address those issues.

Financial Implications

- 124 There will be financial implications for the Treasury associated with the legislative programme required to remove forestry conversions from the special forestry test, and to improve the operation and effectiveness of the Act’s forestry-related provisions.
- 125 [33]
- 126 The recommendations in this paper total \$0.650 million in operating funding to September 2023, to be charged against the between-Budget contingency. There may be savings, depending on the timing of the legislative process.
- 127 There will also be financial implications associated with these proposals for Toitū Te Whenua Land Information New Zealand. The implementation costs are expected to be modest (up to \$0.240 million) and can be met within existing Vote Lands baselines, through reprioritisation from the time-limited funding for monitoring and enforcement against those who have not come through the regime and/or the one year funding for the continued administration of the

Emergency Notification Regime. There will also be costs or savings associated with the processing of applications, as well as monitoring and enforcement of consents. There is therefore a risk that costs will be over-or-under-recovered from fee payers, affecting Toitū Te Whenua Land Information New Zealand's memorandum account for the overseas investment regime. However, a further review of the costs of administering the overseas investment regime in 2022/2023 will provide an opportunity to update fees as necessary to reflect application volumes.

- 128 In addition, there may be modest costs for the Department of Conservation, and potentially the New Zealand Walking Access Commission and the New Zealand Historic Places Trust, given the anticipated increased consultation on proposed forestry conversion applications under the revised Benefit to New Zealand test by Toitū Te Whenua Land Information New Zealand. For the Department of Conservation, it is expected that these can be met within existing Vote Conservation baselines. Officials have not consulted New Zealand Walking Access Commission and the New Zealand Historic Places Trust, but any impact is expected to be modest. Officials will monitor the impact of this change over time.

Human Rights

- 129 This proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative Implications

- 130 Introducing these changes will require an amendment Bill to make changes to the Overseas Investment Act 2005, which I anticipate will largely commence shortly after enactment. I recommend that Cabinet agree to introduce legislation to give effect to this change. [33]

Impact Analysis

Regulatory Impact Statement

- 131 The RIS QA Panel has reviewed the Forestry Review paper prepared by the Treasury and considers that the RIS **meets** the QA criteria.
- 132 The Panel found officials have done a good job in preparing the RIS against very tight timeframes and with very limited information on which to make a meaningful assessment of the proposed Government legislative changes. Officials have attempted to consult on the proposals within the timeframes provided, including with Māori and other stakeholders. The Panel notes the Treasury's preference for more comprehensive consultation and an intent to undertake this post-Cabinet decision. The RIS clearly notes constraints on the analysis, such as limited evidence of the effectiveness of the size and scale of the problem, and the potential impact the proposed legislative changes may have. The RIS would further benefit from a stronger commitment to how the legislative changes will be implemented and monitored. Consistent with the analysis in the RIS, these constraints indicate uncertainty as to the impact the statutory amendment may

have. These constraints are clearly identified and the policy intent is otherwise clear given the very tight timeframes allowed for the completion of the RIS.

- 133 Notwithstanding the limitations with respect to consultation within the limited timeframes, the RIS provides a fair assessment of the risks and limitations. For this reason, the QA Panel has assessed the RIS as meeting the Quality Assurance criteria.

Climate Implications of Policy Assessment

- 134 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the potential emissions impact is indirect and unable to be accurately quantified.

- 135 As noted above, because overseas companies are a major part of the New Zealand forestry sector, there is a risk that removing forestry conversions from the special forestry test, or reduced interest in overseas investment in forestry more generally, would impact the rate of afforestation and may impact New Zealand meeting its emissions budgets and emissions reduction targets. This is because afforestation could decrease to levels below that required to meet the Government's carbon sequestration targets and the transition to a circular bioeconomy. The scale of this risk is, however, difficult to assess given uncertainties and limited evidence, including on:

135.1 the investor response to this change, given overseas investors looking to acquire land for conversion to forestry would still be able to access the revised Benefit to New Zealand pathway

135.2 how decision-makers might exercise their discretion under the revised Benefit to New Zealand test for forestry conversions applications, [1]

135.3^[1]

135.4 the interaction with parallel policy workstreams undertaken to consider options that would (if progressed) impact on afforestation and investment signals.

- 136 A Climate Implications of Policy Assessment is not needed for this paper.

Population Implications

- 137 This paper has no other significant population implications in addition to the impact on Māori interests, discussed above.

Communications

- 138 I intend to announce the Government's intention to remove forestry conversions from the special forestry test, along with other legislative changes to improve the operation and effectiveness of the Act's forestry provisions, shortly after Cabinet's

decision. I also intend to publicly release the amended Terms of Reference of the Forestry Review.

- 139 These changes will attract comment from a range of stakeholders and it will be important for the Government to articulate the benefits of overseas investment to the forestry sector, as well as the need for an effective screening regime to ensure that forestry conversion investments demonstrate benefits to New Zealand.
- 140 Officials will engage with a wider group of Māori / iwi stakeholders, to enable Māori to advise on the potential impacts of the changes, along with other industry stakeholders, immediately after the announcement of Cabinet's decision.

Proactive Release

- 141 I intend to proactively release this Cabinet paper online within 30 business days of Cabinet making the decisions required by the paper as required by Cabinet Office circular CO(18)4, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

The Associate Minister of Finance recommends that the Committee:

1. **note** that the Government was required to commence a review of the forestry-related amendments made to the Overseas Investment Act 2005 (the Act) and that it agreed to the Terms of Reference for this review in March 2021 (DEV-21-MIN-0044 refers),
2. **note** that the overseas investment screening regime recognises that it is a privilege for overseas persons to own sensitive New Zealand asset,
3. **note** that due to significant changes in the operating context for production forestry since the 2018 reform of the Act and introduction of the special forestry test, there has been a significant increase in the number of forestry conversions taking place, including the afforestation of pastoral land (or land that is important to local economies and communities),
4. **note** that the overseas investment screening regime is not well-placed to manage the wellbeing impacts and risks posed by some forestry conversions by overseas investors
5. **note** that in January 2022, officials and I conducted two hui with Māori forestry leaders, to inform them that the Government is considering removing forestry conversions from the special forestry test, and seek initial feedback on this proposal
6. **note** that hui participants expressed their in-principle support for the direction of the policy proposals, their sensitivity about regulations that limit the options for iwi/Māori on what they can do with their land, and reservations about the proposals' impact on Māori economic interests

7. **agree** to remove forestry conversions from the special forestry test (and specify that forestry conversions instead go through the revised Benefit to New Zealand Test) and commence legislative change in the first half of 2022 to give effect to this decision,
8. **note** that during previous targeted consultation in 2021, stakeholders raised several minor and technical issues with the forestry provisions in the Act, and that I propose to address five of these issues via the same legislative vehicle as forestry conversions,
9. **agree** to the following minor and technical amendments to the Act via the same legislative change process as forestry conversions:

Matter	Proposed legislative change
Dwellings / residential purposes	Amend the non-occupation condition to allow certain persons to occupy existing dwellings (investors and associates still prohibited).
Appropriateness of the modified benefits test	Repeal the modified benefits test for forestry activities to improve coherence of screening regime
Crop of trees	Amend the Act to confirm that for the special forestry test to apply, the forestry activities must be for the purpose of harvesting wood, regardless of the species of tree.
Forestry (cutting) rights: Exemptions – 1,000 hectares	Clarify that ‘consented forestry rights’ are not to be included in the 1,000 hectares calculation each calendar year
Technical issue: Relevant land with less than freehold interest	Amend the Act to reflect that activities unconnected to the interest being acquired are excluded.

10. **note** that the proposed legislative change to the test for forestry conversions is currently out of scope of the previously agreed Forestry Review Terms of Reference,
11. **agree** to amend the Overseas Investment Act 2005 Forestry Review Terms of Reference (attached) to include within scope forestry conversions and other, minor and technical legislative changes, after which officials would consider any

further operational changes that may be required that are not resolved by the legislative changes

12. **note** that officials will engage with a wider group of industry stakeholders immediately after the announcement of Cabinet’s decision, to enable Māori and other industry stakeholders to advise on the potential impacts of the changes,
13. [33]
14. **invite** the Associate Minister of Finance to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals by amendments to the Act, and any other legislation requiring consequential amendment as a result of the changes proposed,
15. **agree** to delegate authority to the Minister of Finance, Associate Minister of Finance, Minister for Land information and Minister of Forestry to take further policy decisions consistent with the direction of this paper for minor/technical changes that are aligned with the Terms of Reference for the Forestry Review which improve the operation and effectiveness of the 2018 changes,
16. **invite** the Associate Minister of Finance to bring a draft Overseas Investment Amendment Bill to Cabinet Legislation Committee,
17. **note** that, following the conclusion of the legislative process, officials will consider operational change to address any issues raised in early engagement that will not be addressed through legislative or regulatory change,
18. **approve** the following change to baselines to give effect to the policy decision in recommendation 7 above, with a corresponding impact on the operating balance and net core Crown debt:

Vote Finance Minister of Finance	\$m – increase/(decrease)	
	2021/22 to 2023/24	2024/25 & Outyears
Multi-Year Multi-Category Appropriations: Policy Advice and Financial Services Departmental Output Expense: Policy Advice (funded by revenue Crown)	0.650	-

19. **note** that the indicative funding profile for the increase in the multi-year category appropriation described in recommendation 17 above is as follows:

Indicative annual spending profile	\$m – increase/(decrease)				
	2021/22	2022/23	2023/24	2024/25	2025/26 & Outyears
	0.200	0.400	0.050	-	-

20. **agree** that the proposed change to appropriations above be included in the 2021/22 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply,
21. **agree** that the expenses incurred under recommendation 17 above be charged against the between-Budget contingency established as part of Budget 2021,
22. **agree** that Toitū Te Whenua Land Information New Zealand reprioritise time-limited funding received for the continued administration of the Emergency Notification Regime to meet the implementation costs associated with these proposals, and
23. **note** that I intend to publicly release the updated Terms of Reference following approval by Cabinet.

Authorised for lodgement

Hon David Parker

Associate Minister of Finance

Annex 1. Amended Terms of Reference for Overseas Investment Act: Forestry Review

Annex 2. Regulatory Impact Statement