

The Treasury

Overseas Investment Act Forestry Review Information Release

June 2022

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- [25] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information or who is the subject of the information
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- [33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [34] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [35] 9(2)(g)(ii) - to maintain the effective conduct of public affairs through protecting ministers, members of government organisations, officers and employees from improper pressure or harassment;
- [36] 9(2)(h) - to maintain legal professional privilege
- [39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

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Treasury Report: Overseas Investment Act Forestry Review: Transitional arrangements and outcome of stakeholder engagement

Date:	29 March 2022	Report No:	T2022/501
		File Number:	IM-5-8-4-1

Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	<p>Agree to the proposed transitional arrangements.</p> <p>Agree that existing standing consents continue on the terms upon which they were originally granted.</p> <p>Agree to one of two options for requirements for forestry conversions to access the Benefit to New Zealand test:</p> <p>a. The Benefit to New Zealand test can be used where the farm land is to be used exclusively or nearly exclusively for forestry activities and replanted after harvest (<i>Treasury preferred</i>).</p> <p>OR</p> <p>b. The Benefit to New Zealand test can be used where the farm land is to be used primarily for forestry activities, with additional activities permitted to the extent appropriate for the relevant land and investment (<i>MPI preferred</i>).</p>	8 April 2022
Associate Minister of Finance (Hon David Parker)		
Minister for Land Information (Hon Damien O'Connor)		
Minister of Forestry (Hon Stuart Nash)		

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Lachy Stark	Analyst, International	[39]	✓
Conor McBride	Manager, International	[35]	

Minister's Office actions

Return the signed report to Treasury.

Refer this report to the Minister for Māori Crown Relations: Te Arawhiti, Minister for Māori Development, Minister of Conservation, Minister of Climate Change, and Minister for Trade and Economic Growth.

Note any
feedback on
the quality of
the report

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Enclosure: No

Treasury Report: Overseas Investment Act Forestry Review: Transitional arrangements and outcome of stakeholder engagement

Executive Summary

This report seeks joint Ministers'¹ decisions on:

- the proposed transitional arrangements and commencement of the Overseas Investment (Forestry) Amendment Bill (the Bill), which will give effect to recent Cabinet decisions on overseas investment in forestry [ENV-22-MIN-0001 refers], and
- the requirements for forestry conversions to access the 'Benefit to New Zealand' test.

It also provides Ministers with an update on the outcome of stakeholder engagement conducted by the Treasury and sets out an indicative legislative timeline.

We recommend the Bill's provisions come into force two weeks from Royal assent

We recommend that the Bill's provisions come into force two weeks following the date of Royal assent. We propose that investors who have made substantive steps towards completing an investment prior to commencement can proceed under the previous, more permissive rules.

We considered applying the Bill's more stringent test to new forestry conversions more quickly, however, ultimately determined this to be inconsistent with legislative best practice.

[1]

To support investor confidence, officials (the Treasury, Toitū Te Whenua Land Information New Zealand, and Te Uru Rakāu - New Zealand Forestry Service / Ministry for Primary Industries – MPI) will explore implementation options to provide certainty to investors as to how the new rules will work in practice.

We recommend that existing standing consents be allowed to continue on their original terms

Six standing consents have been granted under the Special forestry test with conditions limiting the total area of land that can be acquired before they expire (the last expires in October 2023). [1]

[1]

The requirements for forestry conversions to access the 'Benefit to New Zealand' test need to be clarified

When removing forestry conversions from the Special forestry test, Cabinet agreed that they should instead be assessed under the standard Benefit to New Zealand test (rather than the more stringent Farm land benefit test). We seek a further policy decision from joint Ministers to clarify this decision and to mitigate a potential avenue for avoidance.

¹ The Minister of Finance, Associate Minister of Finance (Hon David Parker), Minister for Land Information and Minister of Forestry [ENV-22-MIN-0001 refers].

We recommend you agree to one of the following options:

- **Option A:** The Benefit to New Zealand test can be used where the farm land is to be used *exclusively or nearly exclusively* for forestry activities and replanted after harvest (**Treasury preferred**).

This option is recommended if Ministers prioritise a coherent screening regime that requires prospective overseas owners of land to be retained for farming activity to demonstrate significant benefits (by going through the more stringent Farm land benefit test).

Option A uses the existing definitions provided in the Overseas Investment Act 2005 (the Act) for forestry conversion investments. This includes the definition of “forestry activities,” which Cabinet had agreed must be for the purpose of harvesting wood (regardless of the species of tree).

Option A aligns with Cabinet’s policy decisions and is familiar to investors. However, it does have downsides in that it is inflexible and may result in afforestation of land that is best used for farming activity or may limit other land uses that complement timber production in forests. Activities that are minor or ancillary to the forestry activities, for example beekeeping or maintaining native bush, may be permitted but only to the extent that the requirement that the land is used ‘nearly exclusively’ for ‘forestry activities’ is satisfied (as is the case under the Special forestry test).

- **Option B:** The Benefit to New Zealand test can be used where the farm land is to be used *primarily* for forestry activities, with additional activities permitted to the extent appropriate for the relevant land and investment (**MPI preferred**).

This option is recommended if Ministers prioritise flexibility for decision-makers to consider the best use of land involved in farm land to forestry conversions and to allow additional complementary uses of the relevant land.

Option B provides decision-makers with more discretion on the types and scale of activities additional to timber production that can be conducted as part of a forestry investment on existing farm land to better support the efficient and integrated use of land compared to Option A.

Option B also gives Ministers more discretion to give effect to broader Government objectives (e.g. ‘right tree, right place, right purpose’). [1]

Stakeholders have expressed a need for certainty on the Bill’s implications

Officials hosted a series of virtual hui with forestry and other industry stakeholders after the changes were announced, including two dedicated to Māori engagement. The primary message we heard was that Māori and other stakeholders want clarity and certainty as early as possible about what Cabinet’s decisions will mean for them in practice, including when the new changes will come into effect.

Swift decisions on the matters included in this report will help to provide certainty for impacted parties. We intend to work with your office on options to communicate your decisions on these matters and we will also consider further opportunities to work with Māori and other stakeholders on implementation. An indicative legislative timeline is set out at the end of this report.

² The Farm land benefit test requires Ministers to give ‘high relative importance’ to the economic factor and the New Zealand oversight / participation factor and determine the benefit to New Zealand under those particular factors is ‘substantial’.

Recommended Action

We recommend that you:

- a **agree** the Bill's provisions should come into force two weeks following Royal assent

Agree/disagree

- b **agree** that transitional provisions provide that the old rules apply only when an investor:

- has made an application to Toitū Te Whenua Land Information New Zealand before commencement (whether or not the transaction has been entered into), or
- has entered into a transaction before commencement (that requires Toitū Te Whenua Land Information New Zealand approval) but has not yet applied for consent

Agree/disagree

- c **agree** that standing consents under the older rules can continue to be utilised on the terms upon which they were originally granted (which may include additional forestry conversions)

Agree/disagree

- d **note** that in removing forestry conversions from the Special forestry test, Cabinet agreed that they should instead be assessed under the standard Benefit to New Zealand test, rather than the more stringent 'Farm land benefit test'

- e **note** that officials seek a further policy decision from joint Ministers to clarify this decision and to mitigate a potential avenue for avoidance

EITHER

If Ministers prioritise a coherent screening regime that requires prospective overseas owners of land to be retained for farming activity to demonstrate significant benefits

- f **agree** that the Benefit to New Zealand test can be used where the farm land is to be used exclusively or nearly exclusively for forestry activities and investors will replant after harvest (**Treasury preferred**)

Agree/disagree

OR

If Ministers prioritise flexibility for decision-making Ministers to consider the best use of land involved in farm land to forestry conversions and to allow additional complementary uses of the relevant land

- g **agree** that the Benefit to New Zealand test can be used where the farm land is to be used primarily for forestry activities, with additional activities permitted to the extent appropriate for the relevant land and investment (**MPI preferred**)

Agree/disagree

- h **note** that the primary message officials heard during post-announcement stakeholder engagement was a need for greater certainty and clarity about what the changes will mean for them in practice
- i **note** that officials have already heard, anecdotally, of the changes causing some uncertainty and leading to some overseas investments in forestry being put on hold or redirected
- j **note** we will work with the Associate Minister of Finance's (Hon Parker) office on how to best communicate the decisions you have made on this report to support investor understanding and certainty
- k **note** the indicative legislative timeline at the end of this report, under which we anticipate the Bill will commence prior to the end of 2022
- l **refer** this report to the Minister for Māori Crown Relations: Te Arawhiti, Minister for Māori Development, Minister of Conservation, Minister of Climate Change, and the Minister for Trade and Economic Growth.

Conor McBride
Manager, International

Hon Grant Robertson
Minister of Finance

Hon David Parker
Associate Minister of Finance

Hon Damien O'Connor
Minister for Land Information

Hon Stuart Nash
Minister of Forestry

Treasury Report: Overseas Investment Act Forestry Review: Transitional arrangements and outcome of stakeholder engagement

Purpose of Report

1. This report seeks joint Ministers' decisions on:
 - the proposed transitional arrangements and commencement of the Overseas Investment (Forestry) Amendment Bill (the Bill), which will give effect to Cabinet's recent decision to remove forestry conversions from the Overseas Investment Act 2005's (the Act) 'Special forestry test' and make five minor and technical changes to the Act [ENV-22-MIN-0001 refers], and
 - the proposed requirements that investors looking to acquire farm land for conversion to forestry must satisfy to access the Benefit to New Zealand test.
2. It also provides Ministers with an update on the outcome of stakeholder engagement conducted by the Treasury and sets out an indicative legislative timeline.

Background

Drafting is underway to give effect to recent Cabinet decisions on the Forestry Review

3. On 21 February 2022, Cabinet agreed to remove forestry conversions from the Act's 'Special forestry test', with forestry conversions instead accessing the 'Benefit to New Zealand test' pathway [CAB-22-MIN-041 refers]. Cabinet also agreed to make five minor and technical legislative changes to the Act and amend the 'Forestry Review – Terms of Reference' to give effect to these policy decisions.
4. Initial drafting instructions have been issued to the Parliamentary Counsel Office (PCO) and drafting is now underway. This report seeks further policy decisions that are required on the transitional arrangements for the legislative changes and the timing of commencement, as well as the requirements that investors looking to acquire farm land for conversion to forestry must satisfy to access the Benefit to New Zealand.

Officials have undertaken additional stakeholder engagement

5. In February 2022, Cabinet noted that officials would engage with a wider group of stakeholders after the announcement of these decisions, to enable Māori and other stakeholders to advise on their potential impacts. This followed engagement in January 2022 that the Associate Minister of Finance (Hon Parker) led with a smaller group of Māori forestry stakeholders prior to Cabinet's decisions.
6. Further stakeholder engagement has now been completed and this report includes a summary of the feedback we heard.

Recommended commencement and transitional arrangements

7. During stakeholder engagement, investors highlighted the importance of clear and fair commencement and transitional arrangements to minimise uncertainty for the forestry sector (which undertake, by nature, long-term investments).

8. In developing commencement and transitional provisions, we have drawn on PCO and Legislation Design and Advisory Committee (LDAC) guidance. In this case, transitional provisions require balancing:
 - a swift realisation of Cabinet’s goal of ensuring conversions of farm land to forestry demonstrate benefits to New Zealand
 - maintaining confidence in New Zealand as an attractive destination for productive investment by providing a stable investment environment, and
 - allowing time for the regulator to implement the changes.
9. We recommend that the Bill’s main provisions come into force two weeks following the date of Royal assent (unless major changes are made to the Bill during the legislative process). Toitū Te Whenua Land Information New Zealand advises that two weeks is needed between assent and commencement to update application templates and webforms, inform stakeholders, and finalise internal and external guidance.

Officials are considering additional implementation options to support investor confidence

10. To support investor confidence and minimise the impact of the change on productive investment, officials³ will explore options to provide certainty to investors, ahead of commencement, on how the new rules will work in practice. This may include publishing guidance or explanatory material during the legislative process to support submitters to understand these changes in the context of related Government priorities. It may also include a joined-up guidance framework and/or Ministerial directive letter to articulate the types of quality forestry investment that the Government is seeking from overseas investment in the forestry sector.

Transitional provisions should allow investors to finalise existing investments

11. Transitional provisions will need to strike a balance between:
 - quickly applying the more stringent test to new forestry conversions, and
 - maintaining investor confidence in the stability of the regime by not interfering with investments underway.
12. We propose that investors who have made substantive steps towards completing an investment prior to commencement can proceed under the old, more permissive rules via transitional provisions. This includes scenarios where an investor:
 - has made an application to Toitū Te Whenua Land Information New Zealand before commencement (whether or not the transaction has been entered into), or
 - has entered into a transaction before commencement (that requires Toitū Te Whenua Land Information New Zealand approval) but has not yet applied for consent.
13. In all other cases where an overseas investment involves forestry, the new rules would apply.
14. Allowing for investments substantively underway at commencement to proceed under the old rules is consistent with the default transitional position in the Legislation Act 2019 (s 33) and maintains confidence in New Zealand as an attractive investment destination.

³ The Treasury, Toitū Te Whenua Land Information New Zealand, and Te Uru Rakāu – New Zealand Forestry Service / Ministry for Primary Industries.

15. [36]

16. However, this option creates a risk that investors rush to lodge 'opportunistic' applications (or enter into a transaction conditional on Toitū Te Whenua Land Information New Zealand approval) before the new rules come into effect. We consider the likelihood of this to be small, because:
- the Act contains powers for Toitū Te Whenua Land Information New Zealand to reject opportunistic applications that do not contain sufficient information, with no refund of the lodgement fee of \$13,300
 - the window of opportunity between enactment and commencement (two weeks) is short, particularly relative to the eight months that will pass between when the changes were announced in March and planned enactment in November, and
 - if the application relates to a standing consent, Ministers have discretion to apply conditions to any transactions that proceed under it (for example, by limiting or preventing conversions).
17. We considered alternative options, including retrospective legislation or more restrictive transitional provisions (for example, extinguishing active applications before Toitū Te Whenua Land Information New Zealand if the transaction had not yet been entered into).
18. These options would more quickly apply the new rules to conversions, however, in doing so, they could have negative impacts on perceptions of New Zealand as a stable and attractive destination for productive investment (a key goal of the Phase Two reform). In addition, retrospective legislation (and to a lesser extent, more restrictive transitional provisions) raise rule of law issues and are contrary to legislative guidelines.

Minor and technical changes

19. We considered whether bespoke commencement or transitional provisions were necessary to support the implementation of the Bill's minor and technical changes. The minor and technical provisions are largely clarifications of existing policy settings. The two exceptions are:
- repealing the redundant modified benefits test (which has not been used since its inception), and
 - amending how the forestry provisions relate to residential dwellings to avoid perverse outcomes (such as demolishing or removing existing dwellings from effective supply).
20. All of these changes will support investor confidence, are easily implemented, and will not compromise Ministers' policy goal to require forestry conversions to demonstrate benefits to New Zealand. For reasons of simplicity and to minimise the impact on Toitū Te Whenua Land Information New Zealand, we therefore recommend these provisions come into effect the same day as the main provisions, two weeks after Royal assent.

Existing standing consents relating to conversions should be preserved

21. A standing consent is a form of pre-approval from Toitū Te Whenua Land Information New Zealand, which enables an investor to make multiple investments without having to seek consent each time. Standing consents are only granted for high quality

investors with a proven track record that meet stringent requirements. Standing consents therefore have high initial transaction costs for investors.

22. A standing consent covers a predetermined number of transactions and may have an expiry date. Standing consents may have additional conditions, such as on the total area of land (covered by the standing consent, per transaction and/or for existing forestry or conversion-related investments), or the geographical location of investments.
23. There are no current applications for a standing consent with Toitū Te Whenua Land Information New Zealand. Six standing consents have been granted under the Special forestry test, with conditions limiting the total area of land that can be acquired before they expire.⁴ Of those six standing consents, four have limitations on the area of farm land / bare land that can be acquired – with a maximum of 500 hectares allowed per transaction.
24. There have been six notifications from standing consent holders for land that has been acquired under their standing consents. Of those, four transactions have been for the conversion of farm land to forestry totalling 1,462 hectares.
25. These existing standing consents could be used to acquire land for conversion to forestry, which may compromise Ministers' goal that forestry conversions demonstrate benefits to New Zealand. However, we consider this risk to be small given the prior consideration of the nature of the investor and investment, the conditions relating to conversions and the consents' upcoming expiry dates.

Options for amending existing standing consents

26. Despite the relatively small risk posed, we considered options to prevent existing standing consents from being utilised for forestry conversions contrary to Cabinet's policy goals, including:
 - using the Act's existing provisions to impose new conditions on existing standing consents retrospectively. [1], [36]
 - or
 - [1]
27. We do not recommend either of these options because the existing standing consents were sought and granted on the basis that they could be used for forestry conversions, and investors would have made investment decisions and plans based on the standing consent.
28. Altering this position:
 - amounts to retrospective legislation which raises rule of law issues, and is inconsistent with LDAC guidelines, and
 - [1]
29. We consider these negative impacts would outweigh the benefits in preventing future conversions under existing standing consents, given the total land area that remains

⁴ One standing consent is due to expire on 1 October 2022, and the remainder are due to expire on either 30 September 2023 and 31 October 2023

available for forestry conversion is small, and all standing consents will expire within a year of commencement.

30. Nevertheless, we recognise that the exercise of these standing consents for conversions may prompt concern from rural communities and other stakeholders. We will work your office to provide communications material to support you if this arises.

Requirements for forestry conversions to access the Benefit to New Zealand test

31. When removing forestry conversions from the Special forestry test, Cabinet agreed that they should instead be assessed under the standard Benefit to New Zealand test (rather than the more stringent 'Farm land benefit test').
32. We seek a further policy decision from joint Ministers to clarify this decision and to mitigate a potential avenue for avoidance. This section presents the following two options for where the Benefit to New Zealand test can be accessed for forestry conversions where the relevant land includes farm land. Officials will consider opportunities for Ministers to discuss the two options at an upcoming meeting of relevant Ministers (for example, at a Forestry Ministers meeting).
- **Option A: The Benefit to New Zealand test can be used where the farm land is to be used exclusively or nearly exclusively for forestry activities, and replanted after harvest** (*Treasury preferred; recommended if Ministers prioritise a coherent screening regime that requires prospective overseas forestry investors to demonstrate significant benefits if they retain more than a minor amount of land for farming activity*)
 - **Option B: The Benefit to New Zealand test can be used where the farm land is to be used primarily for forestry activities, with additional activities permitted to the extent appropriate for the relevant land and investment** (*MPI preferred; recommended if Ministers prioritise flexibility for decision-making Ministers to consider the best use of land involved in farm land to forestry conversions and to allow additional complementary uses of the relevant land*)

The screening regime ordinarily requires investments in farm land to demonstrate significant benefits

33. Under the overseas investment screening regime, investments in farm land generally go through the particularly stringent Farm land benefit test, which was embedded in the Act last year as part of the Phase Two reform. The Farm land benefit test reflects that farm land has significant cultural value and is a core part of New Zealand's economy.⁵
34. For transactions involving farm land, the main exception to the Farm land benefit test is for farm land conversions to production forestry, which can currently access the Special forestry test. In addition, to avoid unintended consequences, the Act gives the Minister flexibility to not apply the higher farm land threshold to transactions involving farm land that has no, or limited, productive capacity and will be used promptly as a result of the

5 In addition to the requirements under the Benefit to New Zealand test, the Farm land benefit test requires that, for one or both of the following factors, the benefits must be of a scale and nature that represents a substantial benefit to New Zealand. These two factors, along with any other factors the decision maker considers appropriate in the circumstances, must be given high relative importance.

- Economic benefits.
- Oversight or participation by New Zealanders.

investment for industrial or commercial development, or residential development.⁶ This flexibility was designed to ensure that highly productive land would be subject to the more stringent test for farm land, irrespective of its current or proposed use or any changes in zoning.

Farm land conversions to forestry will be able to go through the general Benefit to New Zealand test

35. Almost all conversions of land to forestry involve 'farm land' as defined under the Act.⁷
36. In February 2022, Cabinet agreed that land conversions to forestry would in future only need to pass the more permissive Benefit to New Zealand test (rather than the Farm land benefit test), recognising it may be difficult for forestry-focused investment to meet the higher Farm land benefit threshold used under the status quo. This is because 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, particularly with reference to the two benefit factors that Ministers must give 'high importance' to under that test.

Officials seek direction from Ministers on the implementation of Cabinet's decision

37. We now seek direction from Ministers on the requirements that a forestry conversion investment involving farm land must meet in order to access the Benefit to New Zealand test. Officials have identified the two options that aim to balance:
- alignment with the decisions Cabinet made when considering these policy changes
 - coherency of the screening regime, to ensure this policy change does not result in an avenue for avoidance of the Farm land benefit test, and
 - flexibility for decision-making Ministers to consider the best use of farm land related to forestry conversion transactions.
38. Following Ministers' decisions, we will work with agency colleagues to best express the policy intent in the draft Bill.
39. We anticipate that stakeholders will have views on whichever option Ministers agree to and may propose other options or refinements during the select committee process, which officials will consider. Further, as noted above, officials will explore options to provide certainty to investors ahead of commencement about how the new rules will work in practice.

6 The decision maker may choose not to apply the Farm land benefit test to farm land applications if:

- the transaction is minor, technical, or
- the transaction does not materially change the level of ownership or control that the relevant overseas person has over the assets, or
- the farm land has no, or limited, productive capacity and will be used promptly as a result of the investment for:
 - industrial or commercial development, or
 - the construction of one or more buildings that will consist of 20 or more new residential dwellings.

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

Option A: The Benefit to New Zealand test can be used where the farm land is to be used exclusively or nearly exclusively for forestry activities and investors will replant after harvest (Treasury preferred; recommended if Ministers prioritise a coherent screening regime that requires prospective overseas owners of land to be retained for farming activity to demonstrate significant benefits)

40. Treasury considers that this option most closely aligns with Cabinet’s decisions to date, in that the class of forestry conversions investments currently able to access the Special forestry test (that is, transactions where the land is to be used ‘exclusively or nearly exclusively’ for forestry activities) would instead be able to access the Benefit to New Zealand test. It also uses the existing definitions provided in the Act for forestry conversion investments, including the definition of “forestry activities,” which must be for the purpose of harvesting wood (regardless of the species of tree), as agreed by Cabinet. This option would therefore effectively substitute one of the key requirements under the Special forestry test and apply it to proposed forestry conversions looking to access the Benefit to New Zealand test.
41. This option also supports the coherency of the screening regime, particularly considering the intent of the Farm land benefit test, where overseas investors looking to own more than a small proportion of farm land would need to meet the higher Farm land benefit threshold. It would therefore mitigate the risk that the Benefit to New Zealand test creates an avenue for avoidance from the more stringent farm land test. Activities that are minor or ancillary to the forestry activities, for example beekeeping or maintaining native bush, would be permitted if the ‘nearly exclusively used for forestry activities’ requirement is satisfied (as is the case under the Special forestry test).⁸
42. However, to meet the ‘nearly exclusively used for forestry activities’ criterion, this option may incentivise investors to plant areas of productive arable land that may otherwise be retained for farm land or another land use⁹, such as indigenous vegetation, but only to the extent approved by decision-makers and otherwise permitted under resource management regulation.
43. We note that the future of forestry envisions the ability of forests to deliver diverse benefits to New Zealand other than only timber production, and this option may restrict the ability of overseas investment forestry to support those diverse benefits (to the extent that investors wish to access the general Benefit to New Zealand test as opposed to the Farm land benefit test).
44. These risks are, however, mitigated by the following factors:
 - investors needing to demonstrate that their proposal will bring benefits to New Zealand, which must be proportionate to the sensitivity of the land and the nature of the transaction, with decision-makers having broad discretion to impose conditions on an investment to ensure this occurs
 - investors must still comply with all applicable environmental regulations and any other rules relating land-use rules
 - decision makers would have some flexibility to approve other types of minor or ancillary activity on the land, and
 - investors can also indicate their intention to subdivide and sell land they do not intend to use for production forestry within a period of time, which would be

8 We had previously advised that the exclusive or nearly exclusive use requirement in the Special forestry test has created uncertainty regarding what can be done with the land and what type of minor or ancillary activities can take place. Toitū Te Whenua Land Information New Zealand will formalise guidance on this requirement, which will provide investors with certainty regarding what type of activities can occur on the land.

9 Local and site factors mean that it may not be feasible or appropriate to conduct forestry activities on the land (for example, if there were significant steep gullies on the land)

imposed as a condition of consent (as is currently the case under the Special forestry test).

Option B: The Benefit to New Zealand test can be used where the farm land is to be used primarily for forestry activities, with additional activities permitted to the extent appropriate for the relevant land and investment (Ministry for Primary Industries preferred; recommended if Ministers prioritise flexibility for decision-makers to consider the best use of land involved in farm land to forestry conversions and to allow additional complementary uses of the relevant land)

45. This is a more flexible option than Option A, providing decision-makers with more discretion on the types of activities additional to the primary¹⁰ purpose of production forestry that can be conducted on farm land, such as permanent indigenous vegetation or some level of farming activity. The level of activities additional to timber production would depend on local and site factors, as well as Ministers' expectations as to the particular level of forestry activities that might be appropriate for the relevant land and investment (for example, by having regard to the proposed investment's Forest Management Plan).
46. Officials at Ministry for Primary Industries – Manatū Ahu Matua (MPI) and Te Uru Rākau-New Zealand Forest (TUR-NZFS) explain that:
- forestry investments are long-term propositions over many decades
 - in addition to the need for timber production, Government plans, strategies and policy development relating to forestry and land use include: integrated land use models with a focus on 'right tree, right place, right purpose', empowering local communities around land use decisions, responding to climate change, establishing more native forests to increase biodiversity, meet climate change targets and provide ecosystem services, facilitating innovation to increase the value of our wood products (e.g. through investment in timber manufacturing, bio-pharmaceuticals, and cluster development), and building a bioeconomy (e.g. through biofuel facilities), and
 - forests lend themselves to diverse and complementary uses on the same area of land and can align with New Zealand's broader environmental, social, and economic goals – for example, afforestation primarily for timber production being able to occur alongside beekeeping, recreational activities, grazing, seedling production, processing of wood or biofuels, and/or establishment of native forests in particular areas to provide erosion control, long-term carbon capture, ecosystem services, and increased biodiversity.
47. We consider that Option B could help support the efficient and integrated use of land, help ensure the right forest is planted in the right place for the right reasons, increase total benefits to New Zealand of a forestry investment, and provide more options for overseas investment in mixed-use land, noting that such investments may not necessarily be able to demonstrate the level of economic benefit required under the Farm land benefit test.
48. However, giving greater discretion to Ministers as to which test applies would undermine the efficiency of the screening regime, running counter to the Phase Two reform objective of ensuring that the Act operates efficiently and effectively. In addition, as overseas investors could seek to acquire farm land for continued use in agricultural, horticultural or pastoral production without needing to demonstrate a genuine point of difference (that would otherwise be required under the Farm land benefit test), this would undermine the coherency of the screening regime. [1]

¹⁰ The 'primarily' threshold is adopted elsewhere in the Act (see section 12(2)(b))

[1]

However, this risk is mitigated by the following factors:

- to access the Benefit to New Zealand test, the farm land must be used primarily for forestry activities to the extent appropriate for the relevant land and investment. Therefore, decision-making Ministers would have discretion to decide whether or not to allow a portion of the land to not be afforested for timber production, depending on what they consider is appropriate for the relevant land and investment
 - under the Benefit to New Zealand test, the likely benefits of the proposed investment must be proportionate to the sensitivity of the land and the nature of the transaction, and
 - as for Option A, investors can also indicate their intention to subdivide and sell land they do not intend to use for production forestry within a period of time, which would be imposed as a condition of consent (as is currently the case under the Special forestry test).
49. Finally, this option may have tensions with the Government's policy intent behind the Phase Two codification of the previous rural land directive, in that it empowers decision-making Ministers with significant discretion as to the level and type of future overseas ownership of farm land. However, the Phase Two decisions were taken at a time when it was clearly understood by Ministers that investments to undertake forestry activities had a different (and more permissive) test than applied for farming.

Comparison of options

50. While both Option A and Option B are workable, the Treasury recommends Option A as it is most consistent with Cabinet's decisions and is familiar to investors (in that these are current requirements to access the Special forestry test). This option also maintains consistency with the recent reform of the Act, which now requires overseas investors acquiring farmland (for any reason beyond production forestry) to deliver substantial benefits to New Zealand.
51. MPI and TUR-NZFS are concerned that Option A's requirement for farm land to be used "exclusively or nearly exclusively for forestry activities" (timber production) is too rigid, could work at cross-purposes with the broader mix of outcomes that Government is seeking, and does not give Ministers sufficient discretion to consider what is appropriate in the context of the particular land and forestry investment. MPI and TUR-NZFS recommend Option B, as they consider it will provide Ministers the flexibility needed to strike the right balance (e.g. of environmental, economic and social outcomes) and maximise the benefits of forestry investments for New Zealand's present and future generations.
52. Given other work programmes underway across government, Option B would also provide additional scope for decision-makers to assess applications in a way that is consistent with future, related policy decisions [33]
53. Officials also considered the following option to give effect to Cabinet's decision while addressing the potential avenue for avoidance:
- **Requiring investors to meet all of the requirements currently placed on applicants via the Special forestry test:** These requirements include using the land exclusively, or nearly exclusively, for forestry activities, replanting after harvest, and maintaining or protecting existing arrangements, such as those

relating to historic heritage, public access, or the supply of logs. However, this would effectively require investors to meet the requirements of two tests (the Special forestry test *and* the Benefit to New Zealand test).

54. Either of the two options identified above (Options A and B) would instead allow investors to 'put their best foot forward' in terms of telling the benefit story for the particular investment, in order to meet the Benefit to New Zealand test. The consent granted can be subject to special conditions, such as maintaining existing arrangements (if the investor had identified this is a benefit of their proposed investment).

Outcome of post-announcement stakeholder engagement

55. The Treasury, supported by MPI (including TUR-NZFS) and Toitū Te Whenua Land Information New Zealand, hosted a series of virtual hui with Māori and other impacted stakeholders in the week beginning 28 February 2022. These hui were an opportunity for officials to provide attendees with additional context around Cabinet's decisions, listen to feedback and answer their questions. Officials conducted four hui, including two dedicated hui for Māori with forestry interests.¹¹
56. Officials also attended the most recent Forestry Ministerial Advisory Group meeting and conducted three additional meetings with stakeholders who were either unable to attend the hui or requested follow up meetings.

Māori and other stakeholders want certainty about what the changes will mean for them

57. Some attendees expressed elements of support for the direction of the changes and there were a range of clarifying questions asked.
58. The primary message we heard was that Māori and other stakeholders want greater clarity and certainty, as early as possible, about what Cabinet's decisions will mean for them in practice, as well as when the new changes will come into effect. To this effect, several stakeholders asked about the transitional arrangements and any impacts on existing standing consents.
59. Senior Officials at Te Uru Rākau - New Zealand Forest Service have heard anecdotally, of various forestry investments [26] that have been put on hold (or invested elsewhere) due to the uncertainty arising from these changes and other recent announcements of proposed changes to New Zealand's forestry policy settings. [26]

Some concerns may reflect limited experience with the recently revised Benefit to New Zealand test

60. Several attendees asked questions about the Benefit to New Zealand test that forestry conversions will be required to access. There were concerns voiced about attendees' previous experiences (pre-2018) when accessing the original Benefit test pathway, which was replaced by the revised Benefit test in November 2021.
61. While many attendees have a breadth of experience across the overseas investment screening regime, many of the people we spoke to will have had little or no experience with the revised Benefit test, which only came into force in November 2021. Many

¹¹ In total, 61 individuals attended, representing a range of iwi, post-settlement governance groups, lawyers, landowners, investors and industry bodies with interests in forestry, farming and/or agriculture.

attendees' experiences with the overseas investment screening regime are likely to have been primarily accessing the original Benefits test (pre-2018) and then the Special forestry test (post-2018).

62. Because of this, many of the questions asked primarily related to the previous Benefit test's hypothetical 'alternative New Zealand purchaser' counterfactual, consent timeframes, the significant number of specific benefit factors, and the use of conditions. Officials from Toitū Te Whenua Land Information New Zealand spoke to the changes made when the revised Benefit to New Zealand test was introduced last year, as well as the introduction of statutory timeframes and the changes to how consent conditions are developed.

Other issues raised by stakeholders

63. Some attendees also raised other concerns that reflected their particular interests in forestry or environmental matters. These included:
- how this change fits within New Zealand's broader forestry and climate change work programmes
 - whether consideration has been given to enabling overseas investment in native forestry to promote indigenous biodiversity
 - whether there will be changes to Toitū Te Whenua Land Information New Zealand's decision-making delegations because of the changes
 - whether there will be anti-avoidance measures included in the Bill, for example, to stop landowners from converting land immediately prior to sale to allow an overseas investor to access the Special forestry test, and
 - the timing of the Bill.
64. Officials from the Treasury and MPI provided answers to the questions raised where possible and indicated that we would consider this feedback during development and implementation of the Bill and other government work programmes.
65. The 1000-hectare screening threshold for forestry rights was not raised by officials or attendees during the engagement. However, in the 2021 targeted engagement, officials heard from some investors that this threshold was too low and should be increased to facilitate investment in forestry. We anticipate that this issue is likely to be raised during the select committee process.

Māori engagement

66. There were 16 individual attendees at the dedicated Māori hui. This group included some Māori with forestry interests whom we engaged with in January 2022 and others who we had not met before.
67. The feedback officials heard from Māori covered some of the same issues as the general engagement sessions. The primary message was again the need for certainty about what these changes will mean in practice, particularly around accessing the revised Benefit to New Zealand test.
68. What officials heard about the effect of the changes on Māori interests was largely the same as what we heard in January – general, in-principle support – but there were again concerns raised [25]

One attendee stated that Māori often seek to diversify their interests, meaning that forestry is part of a larger picture for many iwi, which often also includes farming and agriculture.

69. Officials also heard that access to capital is a key issue for Māori. One attendee noted that many iwi are asset-rich but cash poor, and overseas investment has historically been an important first step in building their credibility with domestic financial institutions, which enhances their ability to access the additional capital they need to achieve their aspirations.

Response to engagement

70. Many of the questions posed by stakeholders were addressed during the engagement which would have supplemented attendees' understanding of the motivation and nature of the changes. Officials emphasised that select committee would be the best opportunity for stakeholders to have their say on the changes and design of the legislation. Officials also noted that a report would be provided to Ministers, summarising the key feedback that we heard.
71. As mentioned above, officials will also explore implementation options to provide certainty to Māori and other stakeholders as to how the changes will work in practice, in response to what we heard during this engagement. As part of this, we will consider how best to engage overseas investors. It is important for overseas investors to have the opportunity to share their views alongside other stakeholders – [1]

Legislative timeline and next steps

72. After you make decisions on this paper, we propose to inform stakeholders, with a focus on providing information about the Bill's commencement and transitional provisions. We will work with your office and Toitū Te Whenua Land Information New Zealand on options for doing so.
73. The Bill has been confirmed on the 2022 Legislation Programme and we anticipate that changes to the Act will commence prior to the end of 2022. Proposed dates for the introduction of the Bill and consequent stages through the House are indicative only and will be subject to the Government's priorities for House time.
74. The table below indicates the key dates:

Activity	Date
Treasury report with draft Cabinet Legislation Committee (LEG) paper for the Associate Minister of Finance's consideration and talking points for LEG	14 April 2022
Ministerial consultation on draft LEG paper for approval for introduction	28 April 2022
LEG paper to be lodged	12 May 2022
LEG meeting	19 May 2022
Cabinet meeting	23 May 2022
Introduction of Bill	31 May 2022
First reading	[33]
Select committee consideration	
Select committee report-back	

Second reading	[33]
Committee of the whole House	
Third reading and royal assent	
Commencement	

75. The Bill will likely be considered by the Finance and Expenditure Committee [33]

(subject to Cabinet decisions following public feedback). Officials will engage with agency colleagues to identify opportunities for coordination and to manage communications.