The Treasury

Overseas Investment Act Forestry Review Information Release

June 2022

This document has been proactively released by the Treasury on the Treasury website at

https://www.treasury.govt.nz/publications/information-release/overseas-investment-act-forestry-review

Information Withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act).

Where this is the case, the relevant sections of the Act that would apply have been identified.

Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to sections of the Act under which information has been withheld:

[1] 6(a) - to avoid prejudice to the security or defence of New Zealand or the international relations of the government

[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

[26] 9(2)(ba)(i) - to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied

[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

Where information has been withheld, a numbered reference to the applicable section of the Act has been made, as listed above. For example, a [1] appearing where information has been withheld in a release document refers to section 6(a).

Copyright and Licensing

Treasury Report: Overseas Investment Act Forestry Review: Outcome of Māori Engagement and Minor and Technical Changes

Date:	1 February 2022	**Report No:**	T2021/3206
		File Number:	IM-5-8-4

Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	**Note** the contents of this report.	None.
Associate Minister of Finance (Hon David Parker)	**Provide feedback** on the attached draft Cabinet paper. **Refer** this report to the Minister for Māori Crown Relations: Te Arawhiti, Minister for Land Information, Minister of Forestry, Minister for Māori Development and the Minister of Climate Change.	3 February 2022

Contact for telephone discussion (if required)

Name	Position	Telephone		1st Contact
Jemma Jackson	Analyst, International	[39]	N/A	✓
Conor McBride	Manager, International		[35]	

Minister's Office actions (if required)

Return the signed report to The Treasury.

Refer this report to the Minister for Māori Crown Relations: Te Arawhiti, Minister for Land Information, Minister of Forestry, Minister for Māori Development and the Minister of Climate Change.

Note any feedback on the quality of the report	

Enclosure: Yes (attached)

Treasury Report: Outcome of Māori Engagement and Minor and Technical Changes

Executive Summary

This advice seeks your (Associate Minister of Finance) feedback on the attached draft Cabinet paper **(Annex 1)** for the Environment, Energy and Climate Committee (ENV), which proposes legislative change to both remove forestry conversions from the Overseas Investment Act 2005 (the Act) special forestry test (special forestry test),[1] and address some minor and technical issues that had been raised through targeted engagement officials have undertaken. This report also seeks your agreement to address some minor and technical issues through operational (and regulatory) change.

In October 2021, you, the Minister of Land Information, and the Minister of Forestry decided to remove forestry conversions from the special forestry test and seek Cabinet agreement to this proposal. Ministers also agreed that forestry conversions would instead go through the revised Benefit to New Zealand test, rather than the new Farm Land benefit test, which has a higher benefit threshold and indicated that their preference was for timely legislative change.

You subsequently agreed to rescope the Overseas Investment Act Forestry Review (Forestry Review) so that it is focussed on legislative change to both remove forestry conversions and improve the operation and effectiveness of the Act's forestry provisions.

Outcome of Māori targeted engagement

To support Māori-Crown relations, you led the first of two hui with targeted key Māori leaders and representatives in the forestry sector in mid-January 2022 so that participants could advise on the potential impacts of the proposed change to remove forestry conversions from the special forestry test. Officials have proposed changes to the draft Forestry Review Cabinet paper to summarise the feedback from participants at the hui.

The key themes of the feedback were overall support for the direction of the policy proposal, in particular protecting New Zealand ownership and control of land and ensuring that forestry investment benefits New Zealand. However, there was some sensitivity about regulations that limit the options of iwi/Māori in what they can do with their land, and reservations about the proposal's impact on Māori economic interests (noting some of this feedback came from those who had also expressed overall support as above).

Given the general support for the proposal, the Treasury does not recommend changes to the Forestry Review policy proposals as a result of this feedback. However, as this legislative programme progresses, officials will consider opportunities to work with Māori/iwi representatives, for example to potentially develop a 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.

Minor and technical changes

During the first tranche of stakeholder engagement for the Forestry Review in 2021, a range of issues were raised by stakeholders regarding the operation and effectiveness of the 2018 changes to the Act. The Treasury has proposed to address the five following issues through

[1] 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.

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 to improve coherence of screening regime:
- **Crop of trees**: Amend the Act to confirm that for the special forestry test to apply, the forestry must be for the purpose of harvesting wood, regardless of the species of tree.
- **Forestry (cutting) rights: Exemptions – Consented rights**: Clarify that consented forestry rights are not included in 1000 ha calculation (per calendar year) through amending this wording in the Act.
- **Technical issue: Relevant land with less than freehold interest**: Amend the Act to reflect that activities unconnected to the interest being acquired are excluded.

The Treasury has also proposed to address six of the issues raised operationally (or through regulatory change), likely through the Toitū Te Whenua Land Information publishing guidance or via a Ministerial directive letter.

There were also seven issues raised that we do not propose to address, because either:

- officials do not deem the matter to be an issue with respect to the effectiveness or operation of the regime as the matter is consistent with the policy intent of the 2018 changes,
- the scale of work required to address the matter is greater than the issue itself, or
- the matter will be made redundant as a result of the proposal to remove forestry conversions from the special forestry test.

Next steps

We will engage with your office on the timing of any potential announcement (subject to Cabinet agreement) and releasing the amended Terms of Reference **(Annex 2)**, including sharing it with industry groups and other organisations the Treasury engaged with as part of targeted stakeholder engagement on the Forestry Review.

You may also wish to consult with the Minister of Forestry on whether any announcement should take the form of a joint announcement with the work to consider the emissions trading scheme (ETS) and resource consents for land use change into forestry, which we understand the Minister of Forestry is looking to announce post- ENV in mid-late February 2022.

Recommended Action

We recommend that you:

a **note** the key feedback provided by Māori forestry leaders and representatives from the January 2022 hui,

b **review** the draft Cabinet paper, which rescopes the Forestry Review (Annex 1) so that it is focussed on legislative change to remove forestry conversions from the special forestry test, and provide officials with any feedback to be incorporated prior to circulating the draft for Ministerial consultation,

c **note** that a place has been sought on the 2022 Legislation Programme, category 3, to be passed within the year if possible,

d **agree** to seek Cabinet approval to make the following minor and technical changes to the Overseas Investment Act 2005 through **legislative change**:

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

e **agree** to address the issues outlined in the *Issues proposed to be addressed through operational change* section of this report via operational and regulatory change, which is likely to be at a slower pace than the legislative changes,

Agree/disagree

f **agree** to take the draft Cabinet paper and amended Terms of Reference to the Cabinet Environment, Energy and Climate Committee (ENV) on 17 February 2022, subject to any changes following your review, and consideration of comments from your Ministerial colleagues,

Agree/disagree.

g **refer** this report to the Minister for Māori Crown Relations: Te Arawhiti, Minister for Land Information, Minister of Forestry, Minister for Māori Development and the Minister of Climate Change,

Refer/not referred

h **note** that officials will share with your office a draft Regulatory Impact Statement next week for your information; and

i **note** that revised talking points for ENV are at Annex 4.

Conor McBride
Manager, International

Hon Grant Robertson
Minister of Finance

Hon David Parker
Associate Minister of Finance

Purpose of Report

1. This report seeks your (Minister Parker's) agreement to a revised draft Cabinet paper **(Annex 1)** on the statutory review of the forestry-related changes made to the Overseas Investment Act 2005 (the Act) (Forestry Review). Specifically, this report seeks your agreement to:

    a minor and technical changes to the Act to improve the operation and effectiveness of the forestry-related provisions, and

    b address other minor and technical issues with the operation and effectiveness of the Act's forestry-related provisions through operational (and regulatory) change.

2. In addition, this report provides:

    c an update on the outcomes of targeted Māori engagement, and

    d updated talking points to support the discussion at the for the Environment, Energy and Climate Committee (ENV) meeting on 17 February **(Annex 4)**.

Background

The Forestry Review is currently under way

3. In March 2021, Cabinet agreed to conduct a tightly focused review of the operation and effectiveness of the 2018 changes relating to how overseas investments in forestry are screened under the Act.

Ministers' decisions on removing forestry conversions from the special forestry test

4. In October 2021, you, together with the Minister for Land Information and the Minister of Forestry, agreed to remove forestry conversions from the special forestry test.[2] Instead of using the streamlined special forestry test pathway, Ministers agreed that forestry conversions would go through the revised Benefit to New Zealand test, rather than the new farmland benefit test (T2021/2512 refers).[3] Ministers indicated that they have a preference for action and that they prioritise timely legislative change.

5. You subsequently agreed to seek Cabinet approval to give effect to Ministers' decisions by rescoping the Forestry Review so that it is focused on legislative change to remove forestry conversions from the special forestry test and improve the operation and effectiveness of the Act's forestry provisions. You also agreed that, after the legislative process, officials would consider any further operational changes that may be required that are not resolved by the legislative changes (T2021/2764 refers).

[2] 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.

3 Both tests came into effect on 24 November 2021. The new farmland benefit test has a higher benefit threshold.

ENV's consideration of the draft Cabinet paper was delayed

6. In November 2021, you reviewed the draft Cabinet paper and amended Terms of Reference (**Annex 2**) and did not have any comments (T2021/2806 refers). The paper was then circulated for Ministerial consultation, before your office and the Prime Minister's Office agreed to delay consideration of the paper to February 2022. The previous iteration of the Cabinet paper sought agreement to:

    - remove forestry conversions from the special forestry test (and that forestry conversions instead go through the revised Benefit to New Zealand Test) and commence legislative change to give effect to this decision,
    - amend the Forestry Review Terms of Reference to include forestry conversions within scope of the Review, and
    - make minor/technical changes to the Act to improve the operation and effectiveness of the forestry related provisions, consistent with the Forestry Review Terms of Reference.

7. In light of this delay, you agreed in December 2021, that officials could conduct targeted engagement with Māori ahead of Cabinet's consideration of the draft Cabinet paper and that you would lead the pre-Cabinet-decision engagement (subject to your availability). You also agreed that the draft Cabinet paper would seek Cabinet's agreement to specific minor and technical changes to improve the operation and effectiveness of the Act's forestry provisions (T2021/3029 refers).

8. Please note that we have not made any changes to the amended Terms of Reference (**Annex 2**) since you agreed to them in November 2021.

Outcome of Māori Engagement

9. In mid-January 2022, officials conducted two Forestry Review hui, the first of which you led.[4] These hui were focussed on providing a targeted and representative group of key Māori leaders and representatives in the forestry sector 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.

10. There was strong and constructive engagement from participants over the course of the two hui. Overall, the key messages we heard are as follows:

    - overall support for the direction of the policy proposal, in particular protecting New Zealand ownership and control of land and ensuring that forestry investment benefits New Zealand, and
    - sensitivity about regulations that limit the options of iwi/Māori in what they can do with their land, and reservations about the proposal's impact on Māori economic interests (some of this feedback came from those who had also expressed overall support as above).

[4] As you (Minister Parker) were unable to attend the second hui, officials played the video introduction you had recorded.

11. The views expressed by participants were caveated as the proposed policy changes were only presented to participants at the hui itself, with participants noting that they would require more time to arrive to a firm view. Officials subsequently provided written information to participants, including a draft summary of the collated feedback officials heard at the hui for feedback, as well as Toitū Te Whenua Land Information/Overseas Investment Office New Zealand data and information regarding the value and scale of overseas investment into forestry in New Zealand and the screening pathways.

12. Officials did not receive any further comments or feedback following the hui – other than one kōrero where officials provided further information on the policy proposal – which may reflect the condensed time frames for consultation.

Summary of issues

In-principle support for policy proposal

13. There was in-principle support for protecting New Zealand ownership and control of land and ensuring that forestry investment benefits New Zealand. As noted above, a significant proportion of participants expressed support for the policy proposal itself, to the extent that the change would ensure that benefits to New Zealand from overseas investment into forestry conversions are able to be considered by decision makers. Some participants view the special forestry test as too easy to satisfy, especially those that have had experiences with this investment pathway.

14. In providing their views, many participants observed the changing operating context for forestry (particularly the Emissions Trading Scheme (ETS) settings and the rising carbon price) and the impact of land use change on rural communities.

Impact on Māori economic interests and commercial sovereignty

15. Officials heard that Māori and iwi being able to achieve their aspirations for their land is reliant on being able to access capital, skills, technology and overseas connections for forestry investment. A number of participants expressed concern over 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.

16. Many of the participants noted that Māori are not generally involved the conversion of pastoral land into forestry. However, there was some concern that the proposal may adversely affect New Zealand's reputation as a destination for forestry investment with the possible effect of making it harder for Māori to access foreign capital for other types of forestry ventures.

17. Some participants raised concerns that this policy change would impede the right of mana whenua to exercise authority and use of their land (and other resources) to achieve their own respective aspirations, including in relation to recently transferred land from the Crown to iwi resulting from Treaty of Waitangi Settlements.

18. Some participants questioned the Crown's role in setting the overseas investment rules, when Māori entities are involved, and considered that the Crown should not be an impediment to 'good' foreign investment, particularly when foreign partners are able and willing to provide capital that could assist in achieving Māori aspirations. Some of the participants believed that internal processes of Māori entities are sufficient protection and the current overseas investment screening processes are over and above what is needed. Others noted this was true of large well-resourced entities but not the case with many smaller ones.

Alignment with broader Government work programmes relating to afforestation and climate change

19. Participants sought clarity on how the proposed changes relate to other government work programmes, especially the ETS, Land Use Classification (LUC) and land use change, and resource management reforms.

20. There was 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.

Engagement process

21. While a number of participants welcomed the opportunity to engage on the policy proposals, some questioned how feedback raised through the Māori engagement would be reflected in final policy proposals and expressed a desire to be more directly included in the policy process. As a result of this feedback, officials shared additional information relating to the proposed policy change, including Toitū Te Whenua Land Information New Zealand data, and invited participants to provide further comment and feedback.

Analysis of issues

22. Officials have considered options to manage the impact of the policy proposal on Māori economic interests, for example through permitting the special forestry test to be used for forestry rights related to forestry conversions (for transaction of 1,000 hectares or greater). 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. 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.

23. 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 of forestry rights (both in conversions and existing forestry) in a calendar year.

24. Maintaining the current proposal would therefore support coherency of the regime in that the overseas investment screening regime can assess the benefits of proposed land use change, irrespective of the nature of interest being acquired.

25. As a result of this feedback, the Treasury does not recommend changes to the Forestry Review policy proposals.

26. However, as this legislative programme progresses, officials (the Treasury, Toitū Te Whenua Land Information, and Te Uru Rakāu-New Zealand Forestry Service/Ministry for Primary Industries (MPI)) 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. Officials will provide advice on this later this year.

27. During May-August 2021, officials undertook targeted engagement with a group of stakeholders that frequently engage with the overseas investment screening regime to determine how the 2018 changes are working in practice. In September 2021, officials provided you with an overview of outcomes from this engagement (T2021/1911 refers).

28. The following section (summarised at **Annex 3**) outlines the key issues with the operation and effectiveness of the 2018 changes raised through targeted engagement. The section also outlines feedback from Toitū Te Whenua Land Information, as well as how we propose to address the feedback raised. Specifically, we propose to address five of the issues through legislative change and six of the issues operationally, likely through the Toitū Te Whenua Land Information publishing guidance or via a Ministerial directive letter. There were also seven issues raised that we do not propose to address, because either:

    - officials do not deem the matter to be an issue with respect to the effectiveness or operation of the regime as the matter is consistent with the policy intent of the 2018 changes,
    - the scale of work required to address the matter is greater than the issue itself, or
    - the matter will be made redundant as a result of the proposal to remove forestry conversions from the special forestry test (subject to Cabinet's approval).

29. We have updated the draft Cabinet paper (**Annex 1**) to reflect the proposals below. However, if you do not agree with the proposed approach to addressing these minor and technical issues, we will amend the draft Cabinet paper accordingly.

30. Furthermore, these proposals have been developed on the basis that Cabinet will agree to remove forestry conversions from the special forestry test (and therefore legislative change will be progressed). For the issues where officials have not proposed legislative change, the scale of the issues would likely not warrant the legislative overhead required to effectively address them. Instead, officials consider that the majority of these issues could be largely resolved through operational (and regulatory) change.

Issues proposed to be addressed through legislative change

Dwellings/residential purposes

31. The Act prohibits the acquisition of land for forestry activities where it will be used, or is likely to be used, for residential purposes, including where there may be existing dwellings or tenants living in these dwellings.[5] Forestry workers supporting forestry operations on the relevant land, however, can occupy existing dwellings (although due to the nature of forestry activities, this rarely occurs in practice). [6]

32. This means that dwellings on land acquired via the special forestry test are unable to be lived in or tenanted, unless for forestry worker accommodation, meaning that dwellings often need to be vacated shortly after the land is acquired by an overseas person and remain vacant thereafter. The intent of this provision was to ensure that there was not a back door for overseas investors to purchase residential land through the streamlined special forestry test pathway.

33. In practice, where there is a residential dwelling on forestry land, Toitū Te Whenua Land Information requires investors to provide documentation to prove that the dwelling

[5] Overseas Investment Act 2005, s 16A(4)(c).
[6] Overseas Investment Act 2005, s 16A(4)(c)(i).

is not being inhabited. If an existing dwelling on the land is inhabited when the transaction occurs, Toitū Te Whenua Land Information allows a transitional period of approximately 12 months for the tenants to find alternative accommodation, although this has not been made explicit in guidance.

34. There are also options to subdivide land where there are existing dwellings and sell it to avoid the need to satisfy the restriction on residential use or avoid evicting tenants of the dwelling, however this is not always practical (e.g. the house is in the middle of a forestry block or at the back of the land with no connecting road).

The restriction on residential use is leading to adverse outcomes for investors and New Zealand citizens/residents

35. We have heard from stakeholders that this provision is creating negative impacts for a limited number of investors and tenants. The specific issues raised by stakeholders in relation to the restriction on residential use were:

    - the security risks presented by uninhabited dwellings and a requirement to provide excessive information to Toitū Te Whenua Land Information to satisfy the non-occupation condition,
    - a lack of clarity for investors about their obligations when dealing with existing tenants (i.e. whether they must evict tenants immediately or if there is a transitional period), and
    - the negative impacts on housing supply and tenants in local communities due to evictions and demolitions.

36. We heard that due to the risks of leaving a dwelling unoccupied (for example, 'vagrants' or the potential for illegal activity), in some cases it may be easier for an investor to simply demolish the property (or remove the roof).[7] Similarly, due to a perceived lack of clarity about how investors should deal with existing tenants, there may be cases where tenants are being evicted sooner than is necessary under Toitū Te Whenua Land Information's (informal) transitional approach.

37. Both of these investor responses reduce real housing supply (even if the dwelling remains in a habitable state) and do not align with the Government's priorities on housing and recognition of the current housing crisis.

The negative impact on housing supply affects a small number of communities, but can have significant consequences

38. We understand that the issue of displacement of tenants is more likely to occur in smaller, rural communities, due to the nature of land that is suitable for forestry activities. We have heard that while the issue has low prevalence, it has significant negative impacts for those tenants (and communities) it affects.

We have identified three options to address these issues

39. We have identified three primary options to address this issue:

    - Option 1: release a specific piece of guidance, confirming Toitū Te Whenua Land Information's existing approach of a 12-month transitional period for existing tenants to vacate the dwelling (operational change)

[7] Some stakeholders also told us that an excessive amount of information is required to satisfy Toitū Te Whenua Land Information and may be contributing to demolitions, however, we consider their approach to operationalising this condition to be appropriate.

- Option 2: allow existing tenants to stay on indefinitely but prohibit investors from entering into a lease with new tenants once the existing tenants vacate the dwelling (legislative change)

- Option 3: introduce a non-occupation condition which allows certain persons to occupy the dwelling, provided they are not associates of the investor (legislative change).[8]

Options 1 and 2 address the issues for existing tenants, but not potential tenants or investors

40. Allowing existing tenants to stay on for 12 months, or indefinitely, will reduce or remove the negative impact of displacement on those specific tenants. However, once the existing tenants vacate the dwelling the security risks and reporting requirements associated with vacant dwellings will still impact investors, and the negative impact on overall housing supply in local communities will remain.

Amending the restriction on residential use in the Act may create a risk of unintended consequences…

41. Option 3 would involve introducing a non-occupation provision in the Act that would require non-occupation by investors but would allow certain other persons (not associated with the investor) to occupy dwellings that existed on the land at the time of purchase (i.e. the investor would be prohibited from building new dwellings).

42. This option would represent a change to the original policy intent of the provision (i.e. ensuring there is no backdoor pathway to residential investment by overseas persons) as it would create a risk that investors could acquire land (through the special forestry test) that contained at least one residential dwelling and rent out that dwelling.

43. However, the Act also sets out that land obtained via the special forestry test must be used exclusively (or nearly exclusively) for forestry activities. We believe that this would protect against overseas investors buying forestry land containing dwellings for the purpose of renting those dwellings, by significantly reducing the profitability of the renting component of such an exercise. That is, because the land must be used exclusively or nearly exclusively for forestry activities, the Act ensures that the profit incentive to use this provision as a back door to invest in residential dwellings for the purpose of renting would be low enough to be considered negligible.

…but it appears to best address the concerns raised by stakeholders.

44. Considering the mitigation provided by the exclusively (or nearly exclusively) provision, we consider that the benefits of pursuing this legislative change may outweigh the potential risks. Option 3 would provide clarity for investors about the ways in which they can manage existing tenants and mitigate the security risks for investors and negative impacts to tenants and their communities.

45. The proposed approach would still require investors to provide information to Toitū Te Whenua Land Information in order to prove that the inhabitants of the residential dwelling are permitted residents under the non-occupation condition. However, this condition is unlikely to create an additional compliance burden on investors as it would be instead of the requirement to prove that the dwelling was uninhabited.

46. It is important to note that this option would only give investors **the option** to continue renting the dwellings to tenants, i.e. investors may still choose to demolish dwellings, subdivide and sell parts of the land, or retain them as unoccupied dwellings.[9] It would

[8] The proposed provision would be consistent with the "special housing test" non-occupation provision (Overseas Investment Act 2005, sch 2 cl 17(3)).
[9] Anecdotally, we understand that investors are likely to want to lessen the impact on local communities by continuing to rent the dwellings.

not require them to rent the dwellings and to do so would be counter to the policy intent of the special forestry test (to simplify and streamline investment in forestry).

However, the scale of the problem is not well understood, and legislative change may not be appropriate

47. As previously noted, we understand that where evictions occur, they have significant negative effects for those tenants. However, due to the limited consultation that has been undertaken, we do not know the prevalence of these cases and in addition, we cannot be confident that investors will choose to continue to rent dwellings, if they are given the option.

48. As such, the resource required to give effect to Option 3 via legislative change (and accompanying risk of unintended consequences) may mean that this option is not appropriate.

49. We recommend that you seek Cabinet approval to pursue legislative change in the first instance, coupled with delegated authority to decide to remove this issue from the legislative process, should risks of unintended consequences be discovered during further policy development.

Appropriateness of the modified benefits test for forestry activities

50. The modified benefits test for forestry activities is a modified version of the previous Benefit to New Zealand test.[10] The modified benefits test assesses the benefits of what an overseas investor proposes to do with the land against what the current owner would do if they continued to own the land.[11] This test was anticipated to be used by an investor who wishes to either establish a new forest or acquire an interest in an existing forest but is unable to maintain existing arrangements (such as public access).

51. This test was designed to encourage overseas investment into forestry by being less onerous than the previous benefit to New Zealand test. This is because it compares the investment against a counterfactual of what the current owner only would do with the land (rather than by what a hypothetical alternative investor might, as required under the previous benefits test). The revised benefit to New Zealand test requires comparison of:[12]

> …the likely result of the overseas investment against the existing state of affairs as at the time the overseas investment transaction is entered into or the time the application is made.

A lack of applications via the modified benefits test suggests that the test may be redundant

52. There have been no applications under the modified benefits test, and some stakeholders have questioned the value of retaining this pathway. The test is potentially redundant as it has been, in almost all cases harder to satisfy than the alternative tests available to investors (including the current, revised Benefits to New Zealand test), and negatively impacts the overall coherence of the regulatory regime with regards to offering two different counterfactual tests with two different sets of factors.

53. 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 Toitū Te Whenua Land Information.

[10] From 24 November 2021, this test has been superseded by the revised "Benefit to New Zealand test".
[11] Overseas Investment Act 2005, s 16A.
[12] Overseas Investment Act 2005, s 16A(1A)(a)

Removing the modified benefits test is likely to have benefits for the coherence of the screening regime

54. From a regulatory design perspective, we recommend repealing the modified benefits test in order to improve the coherence of the screening regime. We consider that this will provide more certainty for investors and operational benefits for Toitū Te Whenua Land Information, with little to no negative impact for investors or landowners (due to zero applications).

Crop of trees

55. To access the special forestry test screening pathway, the Act requires that *whenever a crop of trees is harvested on the relevant land, a new crop needs to be established on the relevant land to replace the crop that was harvested*.[13] This requirement was introduced to ensure that land acquired under the special forestry test is being used for the purpose of production forestry and not permanent forestry (carbon farming).

The definition of 'crop of trees' for the purposes of 'forestry activities' is resulting in ambiguity

56. It was reported during targeted engagement 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. [14] [36]

57. There is also ambiguity around the length/timeframe for harvesting trees. Some users of the regime noted uncertainty as to 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).

58. Operationally, Toitū Te Whenua Land Information has started defining "forestry activities" in the conditions of consent and has, in rare cases (where required), imposed harvesting conditions[16].

59. We also heard that investors were surprised that transactions of new tree nurseries were not able to use the streamline pathway. We consider that this matter is outside the scope of this review as tree nurseries are not considered "forestry activity", rather, they are viewed as an associated activity. Additionally, the original policy intent was to exclude tree nursery transactions from the special forestry test.

60. Furthermore even if tree nurseries were considered "forestry activities", and were permitted to access the special forestry test, the majority of these transactions would now need to go through the revised Benefit to New Zealand Test (given the concurrent proposal to remove forestry conversions from the special forestry) as they are new, rather than existing activities.

61. Operationally, under the special forestry test Toitū Te Whenua Land Information does not approve transitions for tree nurseries. This is consistent with the policy intent of the treatment of tree nurseries.

[13] Overseas Investment Act 2005, s 16A(2)(d)
[14] See Overseas Investment Act 2005, s 16A(9) for the definition of "forestry activities"
[36]

[16] This is largely for forestry applications whereby an overseas person has both rotation and permanent forestry operations, therefore imposing a harvesting conditions makes it clear that trees under a special forestry test consent must be harvested.

Amending the Act to confirm that for the special forestry test to apply, the forestry must be for the purpose of harvesting wood, regardless of the species of tree to address ambiguity on the definition of 'forestry activities'

62. Officials consider that the policy intent behind the forestry activities provisions was to allow any type of tree (either exotic or native) to be planted to gain access to the special forestry test, so long as there is an intention and plan for harvest.

63. [36]

This amendment would specify that all varieties of tree, including native and exotic, are able to be planted with any rotation length so long as there is an intention to replant after harvest. We consider that this change would reduce uncertainty about what trees can be planted and provide additional clarity that applications for permanent forestry cannot go through the streamline pathway.

64. Although this change would provide clarity and transparency for investors, we are informed that most production foresters harvest conventional production forestry trees after similar lengths of time and so clarifying that all types of trees can be planted, so long as they are harvested, would not materially change forestry management practices or incentives to invest. There is, however, the potential that alternate government work programmes, such as the reform of the ETS, could alter investment patterns in this space. Toitū Te Whenua Land Information's imposed conditions, somewhat mitigate this risk.

65. There are also perceived concerns and potential risks that investors may not be incentivised to harvest after up to four decades as a result of the desire to accrue carbon credits.

66. We intend to stay across other policy proposals that will impact overseas investment in forestry and carefully define 'crop of trees' when drafting the legislation to ensure it gives effect to the current operationalisation of the provision and does not drive new investment patterns.

Forestry (cutting) rights: Exemptions – Consented rights

Two core issues have been raised with respect to forestry cutting rights exemptions

67. One of the issues (below) we are proposing to address through legislative change and the other issue – relating to the point in time at which Toitū Te Whenua Land Information assesses an exemption – we are proposing to address through operational change (see paragraph 120).

68. Investors do not require consent for a transaction of forestry rights where the area of the relevant forestry right is less than 1,000 hectares each calendar year.[18] At the time that forestry rights were brought into the screening regime, a minimum size was suggested in order to prevent regulatory overreach. This threshold was settled on as a quid pro quo with industry and aims to strike a good balance between unreasonable compliance costs while screening significant transactions. This is particularly relevant for Māori landowners, where the land often comprises small parcels.

It was not considered at the time of drafting as to whether consented rights should be included in the less than 1,000 hectare calculation

69. According to two key users of the screening regime, consulted through targeted engagement, the legislation is not obvious as to whether the area of forestry rights

[36]
[18] Overseas Investment Act 2005, Sch 3 cl 6.

("combined area of all other forestry rights"), for the purpose of calculating whether a transaction requires consent, or is under the 1,000 hectare / calendar year threshold, includes consented forestry rights or whether it refers solely to unconsented forestry rights.[19]

70. In practice, Toitū Te Whenua Land Information does not include consented forestry rights in the 1,000 hectares calculation (each calendar year).

Amending the legislation would clarify that consented rights are not included in the calculation, reducing stakeholder uncertainty

71. The original policy intent of this provision is that the calculation only includes a transaction of unconsented rights given that including already consented forestry rights in the calculation per calendar year would be double counting.

72. Toitū Te Whenua Land Information has been applying the provision in this way, giving effect to the policy intent.

73. The issue raised by stakeholders arises as under basic principles of statutory interpretation, consented forestry rights should be included in the calculation. The provision does not distinguish between consented and unconsented rights and therefore *prima facie* would capture both forms of rights. However, an argument could be made for Toitū Te Whenua Land Information's current operational practice, on the basis that including consented forestry rights in the calculation would, to some extent, defeat the purpose of the exemption and essentially be double counting.

74. Accordingly, amending the provision would make the intended operation more clear and provide greater transparency for key users. Furthermore, clarifying the scope of the exemption through amending the wording in the Act would support a coherent, well-defined screening regime.

75. This would mean, for example, that a transaction whereby an investor was seeking to acquire 1,100 hectares of forestry rights, the whole transaction would continue to be screened and the investor could not carve out 999 hectares of this transaction to be exempt from screening. Furthermore, if there was a transaction whereby an investor was looking to acquire 999 hectares of forestry rights, this transaction would be exempt from screening as it is less that the 1,000 hectare exemption threshold. Any additional acquisitions of forestry rights in the same calendar year as the previous 999 hectares transaction would be required to be screened as the exemption threshold is up to 1,000 hectares per calendar year.

76. [33]

There is also a residual lever (under section 20B of the Act) for the Minister of Finance to apply the national interest test to any transaction, if the Minister considers that an application could be contrary to New Zealand's national interest (including for the aggregation of assets over a period of time). However, there is a high threshold for applying the national interest test: it is expected to be used rarely and only where necessary to protect New Zealand's core national interests.

77. As noted above, overseas investors do 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.

[19] See Overseas Investment Act 2005, Sch 3 cl 6.

[33]

Technical Issue: Relevant land with less than freehold interest

78. The Act states that, with respect to the special forestry test:[21]

> … regulations may provide that the […] test is also met if the relevant Ministers are satisfied that the relevant land will be, or is likely to be, used exclusively, or nearly exclusively, for forestry activities

There is a technical issue regarding the interpretation of 'relevant land'

79. A question was raised during targeted engagement as to whether the forestry activities requirement ("relevant land will be, or is likely to be, used exclusively, or nearly exclusively, for forestry activities") [22] 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 to be the relevant land even though the applicant would have no actual useable rights over the vast majority of it).

80. For example, if an investor were seeking to acquire a forestry right over 1/4 of 10,000 hectares and therefore they were only planning to plant on 2,500 hectares, there is uncertainty as to whether this 1/4 is considered the relevant land or whether the test requires an investor to demonstrate that the other 3/4 of the land (over which the investor has no interest) are also being used exclusively, or nearly exclusively, for forestry activities.

81. Toitū Te Whenua Land Information currently interprets relevant land (and this provision) as only capturing the land being acquired for forestry activities. As a result, areas of the underlying land which fall outside of the actual interest being acquired are deemed not to fall within the relevant land and can therefore be ignored.

Amending the Act to reflect drafting that activities unconnected to the interest being acquired are excluded, would give effect to the policy intent

82. We agree with Toitū Te Whenua Land Information's interpretation of this provision and believe it aligns with the policy intent of the drafting. We propose to amend the legislation to reflect drafting that the activities of the underlying land owner and third parties that are unconnected to the interest being acquired. Clarifying the language through a legislative amendment is the most effective way to provide more certainty of this provision.

Issues proposed to be addressed through operational (and regulatory) change

Existing arrangements (public access, the supply of logs and historic heritage)

83. Under the special forestry test, any arrangement that existed on land for a specified purpose before it was acquired by an overseas investor must be upheld and protected. That requirement is set out in regulations and includes maintaining any existing arrangement or agreements relating to historic heritage, biodiversity, environmental matters, public access and the supply of logs. [23] This is to ensure that local communities and New Zealanders are not disproportionately impacted by foreign ownership of forestry land, and that long-standing arrangements would not conclude as a result of a change in ownership of this land.

[21] Overseas Investment Act 2005, s 16A(4)(a)..
[22] Overseas Investment Act 2005, s 16A(4)(a).
[23] Overseas Investment Act Regulations 2005, reg 29(2)(a)

A lack of clarity about what constitutes an 'existing arrangement' is causing confusion for investors and persons who have historically used the land

84. The existence and terms of existing arrangements are often not well-documented, which makes it unclear as to what length of time the arrangement should continue for and the form it should take (for example, who it should apply to).

85. To satisfy the legislative requirements, Toitū Te Whenua Land Information requires written documentation of an arrangement (for example, a letter, email correspondence or publication) in order to condition the continuation of an existing arrangement. This does not need to be provided at the time of application consent, for example, if an existing arrangement only became apparent some time after the land is acquired, it is still required to be upheld. This removes the risk that a documented arrangement is not continued if it is not known about at the time of land acquisition.

86. The key issues regarding the need to maintain existing arrangements can be split into three main categories. Arrangements relating to:

- public access to the land,
- historic heritage and wāhi tapu,
- the domestic supply of logs.

87. We propose to address the lack of clarity across all three of these areas via Toitū Te Whenua Land Information publishing guidance clarifying that that existing arrangements need to be documented and continue on the same terms that they were agreed (where possible). The subsections below identify the specific issues for each category and any recommendations in addition to this guidance that we consider necessary to address them.

Public access

88. We have heard from stakeholder engagement that issues relating to public access are more likely to arise in farmland to forestry conversion settings where existing arrangements are no longer fit for purpose due to the different characteristics of farmland and forests. We consider that if the proposed removal of farm to forestry conversions from the special forestry test is progressed, it will significantly reduce the prevalence of this issue. We consider that clarification of what constitutes an existing arrangement via Toitū Te Whenua Land Information guidance and likely reduced prevalence of the issue sufficiently address the concerns raised.

89. It has also been raised that as result of the Walking Access Commission (WAC) not being consulted on many applications through the special forestry test, there are lost opportunities to add new access routes. Options to improve walking access and for requiring more consultation with the WAC have been considered but have not been progressed. This is primarily because adding a requirement to consider establishing new arrangements to the test's checklist is counter to the policy intent, which is to simplify and streamline investment in forestry, while protecting existing arrangements.

Historic heritage and unregistered wāhi tapu

90. During consultation we heard from stakeholders that the requirement to uphold and protect existing arrangements involves significant time and legal cost for investors, primarily due to the consultation required with the vendor and real estate agent to determine what, if any, existing arrangements exist on the land.

91. We have also heard that vendors will generally not consult with iwi unless there are indications of unregistered wāhi tapu and that the Act does not require investors to take appropriate steps to protect unidentified historic sites (where they may not appear on public mapping documents). Historic sites, such as wāhi tapu, may be deliberately excluded from publicly available maps to protect the sites, or for cultural reasons.

We consider that the proposed Toitū Te Whenua Land Information guidance may alleviate concerns, but should go further in this specific area

92. We consider that the proposed Toitū Te Whenua Land Information guidance on existing arrangements will help to alleviate the issues in this area. However, as previously mentioned, in order to protect them, some wāhi tapu sites are purposefully excluded from the New Zealand Heritage List/Rārangi Kōrero and public mapping documents. This creates risks for Māori when land is sold to an overseas investor, because that investor is not required to protect these sites under the existing requirements (unless they are documented in another form, as specified in regulations).

93. This risk could be mitigated by requiring the overseas investor or vendor of the land to make reasonable enquiries with relevant iwi to identify wāhi tapu sites that may not be publicly registered and provide iwi with an opportunity to document these existing arrangements, prior to the transaction taking effect.

94. However, imposing an additional requirement on investors to consult with Māori would require amending the Overseas Investment Regulations 2005 and regardless, the empowering provision may not be wide enough to impose this type of requirement. In addition, such a requirement would be counter to the checklist nature of the special forestry test, and we do not know how prevalent unregistered wāhi tapu sites are due to the limited consultation that has been carried out on this issue.

95. As such, we recommend that the guidance published by Toitū Te Whenua Land Information should recommend that vendors and investors make enquiries with relevant iwi, should they have any reason to suspect that there may be unregistered wāhi tapu sites present on the land.

Supply of logs

96. The regulations made in relation to the special forestry test require investors to maintain existing log supply arrangements and replant after harvesting.[24] Some stakeholders have questioned the practical effect of the log supply requirement given, for example, that very few contracts are for long-term supply. Because existing arrangements for the supply of logs are (generally) contracts between the current landowner and the domestic wood processor, contract law will determine the remedies available to the domestic wood processor if that contract is changed or broken due to sale of the land. We are not able to compel an overseas investor to honour a contract with a domestic wood processor that they were not a party to (however they may choose to enter into a new contract).

97. [1]

However, this would likely undermine the advantages of the ‘checklist’ nature of the special forestry test. [1]

[24] Overseas Investment Regulations 2005, s 29(2)(c).

[1]

98. [1]

99. Although options to address these issues have been considered, we do not recommend they be progressed [1] and against the policy intent of the 2018 changes.

Exclusively/nearly exclusively

100. When overseas persons invest in forestry under the special forestry test, the land must be used exclusively or nearly exclusively for forestry activities.[25]

101. The land can be used for activities that are minor to forestry activities, for example beekeeping or maintaining native bush. Other activities that are not minor or ancillary to forestry activities cannot take place on the land, for example building a sawmill or processing plant on the relevant land.

102. This requirement was put in place to avoid a loophole in the broader sensitive land rules.

There is uncertainty about what type of minor and ancillary activities can take place on the land

103. Anecdotal reports from investors and lawyers suggest that the interpretation and application of this requirement is creating uncertainty regarding what can be done with the land and what type of minor or ancillary activities can take place. For example, some stakeholders questioned whether there is a minimum proportion of the land that must be planted, as well as what types of activities could take place. This lack of clarity may create uncertainty about what consent pathways investors are able to use (with the potential to discourage overseas investment).

104. In practice, Toitū Te Whenua Land Information works on a case by case basis and does not use a specific formula to determine what activities can occur on the acquired land. Toitū Te Whenua Land Information assess the entirety of the land, and all activities being undertaken on that land, and whether or not on balance, the nearly exclusive use is satisfactory, for example there may be ancillary bee keeping, hunting party, grazing provisions, that are ancillary activities and do not tip the balance.

105. In addition, some stakeholders noted during engagement that this requirement may be potentially resulting in an inefficient use of land such as afforestation of productive arable land. As some of the land acquired through the special forestry test for conversion investments is arable land (LUC classes 1-4), this requirement could have driven the planting of this land.[26] This specific outcome will be addressed by the proposed removal of forestry conversions from the special forestry test, as there will be significantly less low LUC class land purchased through forest-to-forest transactions (and low LUC class land that is purchased will already be planted).

Formalising operational guidance on the exclusive or nearly exclusive use requirement will reduce uncertainty

[25] Overseas Investment Act 2005, s 16A(4)(a).
[26] Areas of land in LUC classes 1-4 are more likely to be subdivided and sold off (this is permitted under the special forestry test), though some of that land will be converted to forestry (although we currently have limited evidence on this, and it is unclear to extent to which this requirement might be driving this conversion, if at all.

106. We have considered options to address this issue through legislative change, such as introducing a percentage of total land that must be planted for forestry activities or introducing a percentage of income/revenue/profit generated from the land to determine what additional activities can take place (to ensure that production forestry activity is the primary revenue source of the land).

107. However, we have not progressed these options as, given the vast variety of factors that are considered when processing an application, overly-prescriptive criteria would run the risk of creating unintended consequences.

108. In addition, we would expect that a requirement to demonstrate a percentage of planted land/ or percentage of revenue generated on a yearly basis would be burdensome and time consuming for investors, working at odds with the goal to streamline the pathway and potentially deterring overseas investment. Furthermore, without consulting with the public and /stakeholders on any legislative change we are uncertain as to how burdensome these types of requirements may prove compared against their ability to increase clarity.

109. We consider that operational change is the most effective mechanism to address uncertainty as it would allow some discretion to Toitū Te Whenua Land Information to consider each application on a case by case basis and take into consideration factors such as whether the activities are already occurring. Formalising guidance will provide investors with certainty regarding what type of activities can occur on the land and decrease the volume of questions directed to Toitū Te Whenua Land Information on this provision.

Standing consents

110. Standing consents are a form of pre-approval from Toitū Te Whenua Land Information that enables an investor to make multiple investments without having to seek consent each time.[27] To receive a standing consent, an investor must demonstrate a strong track record of compliance with the Act or overseas legislation (such as the investor test or compliance with conditions of consent), amongst other things. [28]

111. Ministers are the decision makers for standing consents and have discretion over the scope of consent conditions, such as limits by total land area, location of land, and geographic type of land or limits on the number of overseas investments for which the standing consent can be relied on. Standing consents are for quality investors with a proven track record that were introduced to speed up and simplify the process for the landowner and investor, in cases where an investor is likely to be entering into a number of different transactions.

112. Investors in forestry or forestry rights may choose to apply for a standing consent. [29] This allows them to apply for consent before identifying the property or land they want to buy. A standing consent covers a predetermined number of transactions and may have an expiry date. [30] The standing consent may be granted subject to additional conditions. [31]

[27] Overseas Investment Act 2005, s 23A(1).
[28] See Overseas Investment Act 2005, sch 4 cl 3.
[29] See Overseas Investment Act 2005, sch 4 cl 3.
[30] See Overseas Investment Act 2005, sch 4 cl 3.
[31] See Overseas Investment Act 2005, sch 4 cl 3.

Long and variable processing timeframes, uncertainty over the scope of standing consent conditions and uncertainty about proving 'strong track record' are issues that have been raised by stakeholders

113. Stakeholders commented on the long and variable processing timeframes for standing consents during targeted engagement. They noted the impact of these timeframes on New Zealand's attractiveness to investment when considering other comparable jurisdictions.

114. Officials have considered developing policy options to shorten timeframes (for example, by increasing the level of resourcing allocated to processing standing consent applications), however this policy development has not been progressed as recent work completed on statutory timeframes (and noted in paragraph 164) should go some way to address this issue. Since November 2021, there is a 100-working day timeframe that applies to the assessment of standing consent applications.

115. Some stakeholders expressed frustration at the uncertainty over the scope of standing consent conditions (for example, conditions placed on permitting the number of transactions or total area of land) that might be ultimately approved. Relatedly, stakeholders observed that the scope of a standing consent appears to be trending down over time, making a standing consent less valuable and potentially not worth pursuing, undermining the intent of standing consents.

116. Stakeholders also noted that there is uncertainty about what is needed for investors to prove their 'strong track record', for example, what might be required from an entity with a parent company with different subsidiaries for different forests. In that instance, it is unclear if the parent company could demonstrate a 'strong track record' if its subsidiaries themselves do not have a proven track record.

Operational change will provide clarity and therefore improve certainty regarding the scope of conditions and proving a strong track record

117. Removing forestry conversions from the special forestry test may go some way to address varying nature scope conditions placed on standing consents, as the downward trend of consent conditions could be attributable to the increasing viability of converting versatile land to forestry. In addition, there may also be fewer applications for standing consents as a result of the comparatively less land that can be acquired under this pathway following the removal of forestry conversions (the market for existing forestry is much smaller).

118. On one hand, it was by design that the scope of standing consents was not prescribed, in order to provide decision makers with discretion over conditions imposed in standing consents, for example to reflect the changing operating context for forestry. However, if investors have uncertainty about how their application may play out, this could have a chilling effect on investment. If the standing consent pre-approval pathway is not being used, and therefore not effective, we propose that greater certainty should be given to the sector via regulatory change.

119. We have considered legislative change that would specify the scope of conditions, ultimately constraining decision-making on standing consents. We consider that the most effective way to address these issues is through regulatory change, specifically, a Ministerial Directive letter that specifies the scope of standing consent conditions, giving examples of the type of transactions that are likely to be approve, and guidance regarding what is needed to demonstrate a strong track record. This would provide greater certainty and confidence for investors and local partners, which may lead to stronger overseas investment in the forestry sector.

Forestry (cutting) rights: Exemptions – Calendar year

120. In addition to the forestry rights exemption issue outlined above, the second issue raised during targeted engagement was that it is not clear at what point in time the exemption is assessed, as there is a mixture of language used in the legislation ("will result in an overseas investment";[32] " acquisition of";[33] "given effect to").[34]

121. In practice, Toitū Te Whenua Land Information assesses the exemption at the point in time when the transaction is first entered into. This is applied consistently across applications and consent pathways.

Publishing guidance on how the provision is interpreted is the most effective way to provide clarity

122. Officials have considered an option to clarify the wording in the legislation in order to address this issue. However, this has not been progressed as this wording ("acquisition of", "given effect to") is used throughout the Act, relating to other areas of overseas investment (not just the forestry-related provisions). Therefore, the issue of the point at which a particular forestry right is acquired for the purposes of this provision is larger than this specific provision and is relevant to acquisitions under a number of provisions in the Act.

123. Addressing that would therefore require careful consideration of the impact of the operation of other provisions. Alternatively, a specific time calculation could be included solely for the purposes of this provision, but that would not be a solution that fits well within the overall scheme of the Act.

124. We agree with how Toitū Te Whenua Land Information is operationalising this provision, assessing the exemption at the point in time at which the transaction is first entered into (as opposed to the settlement date for example). Therefore, the most appropriate avenue to address this issue is through Toitū Te Whenua Land Information publishing guidance confirming at what point in time the exemption is assessed. The use of a consistent point in time language will provide clarity and address uncertainty.

The interaction between standing consents, and farm land advertising exemption and fresh and seawater area requirements

125. Ordinarily an investor will apply for consent to acquire land prior to entering into the transaction. A standing consent, however, allows an investor to notify Toitū Te Whenua Land Information of a transaction post-settlement (i.e. when they own it).[35]

Questions have been raised regarding how standing consents interact with changes to the Act that came into force on 24 November

126. Specifically, there is a lack of clarity as to how standing consents interplay where an investor is required to meet certain requirements ahead of consent and ahead of settlement.

127. The areas of concern are:

- **Farmland advertising:** which must be completed ahead of a contract being entered into (except if there is an exemption).[36] This issue is redundant if forestry conversions were removed from accessing the special forestry test, as transactions from farmland to forestry would not be processed through this pathway.

[32] See Overseas Investment Act 2005, s 10.
[33] See Overseas Investment Act 2005, sch 4 cl 3.
[34] See Overseas Investment Act 2005, s 16A.
[35] See Overseas Investment Act 2005, sch 4 cl 3.
[36] Overseas Investment Act 2005, s 16(1)(f).

- **Fresh and seawater areas:** where the water areas acquisition notice must be lodged immediately on the owner receiving title to the interest. [37]

128. There is a risk that there is an inadvertent breach upon the investor notifying Toitū Te Whenua Land Information under their standing consent. This is because standing consents provide overseas investors pre-approval to enter into future forestry transactions, instead of requiring them to apply to Toitū Te Whenua Land Information for consent for each individual transaction (which is the usual point at which special land would be considered).

129. This may be an issue for both forestry standing consents and residential standing consents.

Operational change in the form of Toitū Te Whenua Land Information publishing guidance will best mitigate the risk if non-compliance

130. Due to this risk of non-compliance, officials recommend that this be address through Toitū Te Whenua Land Information publishing guidance clarifying the requirements on investors with standing consent when completing individual transactions (i.e. when they need to comply with the requirements under section 16(1)(f) for each transaction).

131. Furthermore, if an investor wished to apply for an exemption from the Farmland advertising and Fresh and Seawater Areas requirements, then they would need to apply for one through Toitū Te Whenua Land Information, as is standard practice.

Technical issue: The relevant land is not residential land only

132. The special forestry test can be used as long as (among other requirements) the relevant land is not "residential land only", and if the relevant land includes any residential land, the residential land adjoins other land that is included in the relevant land but is not residential land[38]

It is unclear in the drafting what is meant by "residential land only"

133. It has been raised that it is unclear in the drafting whether "residential land only"[39] means land solely categorised as residential land or instead means "residential (but not otherwise sensitive) land". [40]

134. Operationally Toitū Te Whenua Land Information has interpreted this provision as excluding purchases of land that are solely residential land.

Publishing guidance would remove ambiguity in the statute and give effect to the policy intent

135. The current wording of the provision captures only residential land. In other words, the special forestry test can't be used where the whole of the relevant land meets that definition. This would capture residential (but not otherwise sensitive) land where it is solely composed of residential land, but not where it includes residential land in addition to other land.

136. We agree with how the provision is being operationalised as this reflects the policy intent which was to capture all residential (but not otherwise sensitive) land[41].

137. Given this is not a large-scale issue (as it was only raised by one investor), the issue may be partially addressed with the removal of forestry conversions from the special

[37] Overseas Investment Act 2005, sch 5 cl 12.
[38] Overseas Investment Act 2005, s 16A(4)(b).
[39] See Overseas Investment Act 2005, s 16A(4)(b)(i)..
[40] See Overseas Investment Act 2005, s 16(1)(b).
[41] The initial intent behind this drafting remains and excludes purchases of land that are solely residential, to ensure that the special forestry test is not used as a loophole for acquiring residential land. This intent has remained the same and will not change/be revisited even if legislative change were proposed.

forestry test and the complexity required to articulate this change via a legislative amendment, we do not propose amending the legislation but instead propose publishing operational guidance on the interpretation of this provision.

138. In practice this would allow the special forestry test to be used for a purchase of some land that was only sensitive because it is residential, provided that it was going to be used nearly exclusively for forestry activities going forward, and the accommodation it contained was only used to support the forestry activities (among the other requirements of the special forestry test). Furthermore, this will ensure the intent of the drafting is clear and to reduce ambiguity about what is meant.

Issues raised through engagement but not proposed to be progressed

Forestry (cutting) rights: Exemptions - 1,000 hectare exemption threshold

139. In relation to the introduction of forestry rights into the screening regime, the Forestry Review Terms of Reference outlines that the Review will consider whether:

    - the screening thresholds are set at the appropriate level to achieve a balance between ensuring forestry investments benefit New Zealand while not disincentivising investment or increasing illiquidity.

140. During targeted engagement, some investors noted that the 1,000 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.

141. We had intended to consult on the appropriate limit as part of the public consultation. However, given wider consultation has not taken place ahead of Cabinet's upcoming consideration of these broader policy proposals, officials do not have a strong evidence base to inform advice on whether the 1,000 hectare screening threshold is set out the appropriate level.

142. While the commitment to review the threshold will remain in the Terms of Reference, we do not propose any changes to the screening regime at this time. However, we will take the opportunity to test the appropriateness of this threshold as part of the targeted engagement with key stakeholders following the anticipated public announcement. In addition, the anticipated select committee process will be an opportunity for interested parties to submit on this issue.

Transitional arrangements

143. After an overseas investor has acquired land for forestry activities there may be a period of time between when the land is purchased and when planting begins. There are currently no guidelines around what activities may take place during this interim period and the length of time they may occur for.

144. The intent is that investors can make business and forest management decisions (including when to begin planting) and can make use of unutilised land before production forestry begins. Investors must plant the land when using the special forestry test so there is no risk that the transitional activities become the sole activity on the acquired land.

Investors are concerned about the lack of clarity about which transitional activities can take place

145. There is uncertainty among investors about what the permitted transitional activities are and how long they may be continued for, prior to planting. We understand that conversions from farmland to forestry are likely to represent most, if not all, cases

where transitional activities are relevant. This is because where farmland is acquired to convert into forestry, it is common for cattle to graze the land until planting commences.

146. We are currently unaware of any circumstances other than farm to forestry conversions in which Toitū Te Whenua Land Information is likely to condition transitional activities. We understand that transactions involving land primarily but not exclusively planted in forest, or where the land is 'between' crops of trees (i.e. between the harvest of one crop and replanting of another), Toitū Te Whenua Land Information relies on the 'exclusively or nearly exclusively' to ensure that the investors is not using the special forestry test to acquire land for other purposes.

Toitū Te Whenua Land Information can publish guidance clarifying the type of transitional activities that are permitted should it be required

147. Given that this issue is likely to be addressed by the proposal to remove forestry conversions from the special forestry test, should it be progressed, we recommend taking no action at this time. Should it become apparent that investors still require additional clarity after this change, Toitū Te Whenua Land Information can publish guidance on this matter.

Definition of 'adjoining land'

148. In the Act[42] 'adjoins' is defined as "includes separated only by a public road (including a motorway or a State highway, and whether or not the road is formed)".[43] Accordingly, land that is bisected with a public road is treated as 'adjoining' but land bisected by a private road is not. On rural blocks this can create differences in treatment between functionally similar pieces of land.

Issues have been raised regarding the definition of adjoining land

149. If there is residential land on the property, the Act effectively requires that the residential land adjoin the balance of the land block (i.e. if it is separated by a private road, this does not meet the requirements of 'adjoining')[44]. However, an issue was raised this does not reflect the way that some rural properties are subdivided over time.

150. Further comments from Toitū Te Whenua Land Information on this issue highlight that 'adjoin' is specifically defined to differentiate it from the concept of adjoining land in other places in the Act. [45] In other places in the Act, adjoins means something different and if a road separated one piece of land from the other then those two pieces of Land would not be seen to be "adjoining".

151. Toitū Te Whenua Land Information noted that the logic is that the 'public road' is legally constituted in a separate parcel of land so would separate the two pieces of land so that they are not adjoining.

152. There are a range of different scenarios that could arise. In the most straightforward situation, where the relevant land and residential land are separated by some form of "private road" held by a third party, such as a driveway serving one or more rear lots, then the relevant land and residential land wouldn't adjoin. The consequence of that would be that the residential land wouldn't fall within the exception in section 16A(4)(c), and couldn't be acquired under the special forestry test.

[42] Overseas Investment Act 2005, s 16A(9)

[43] A "public road" is not defined in the Overseas Investment Act. The Land Transport Act defines a 'road' as including "a street; motorway, beach; a place to which the public have access, whether as of right or not; all bridges culverts, ferries, and fords forming part of a road or street or motorway; all sites at which vehicles may be weighed for the purposes of the Act or any other enactment". Accordingly, under the law a road is by definition public.

[44] Overseas Investment Act 2005, s 16A(4)(b)(ii).

[45] See generally Overseas Investment Act 2005, s 16A.

153. This exception for residential land in the special forestry test could be widened to allow acquisitions where the two properties are separated by a “private road” or other property. If the exception was going to be widened, there would be a range of scenarios similar to private roads that should also be considered, for example properties separated by comparable areas of private land that were not used for access. We would also need to determine what exactly would constitute a private road in the circumstances, and whether the whole of the separating land needed to be used as a private road (what level of “berm” on the side of the road would be permitted for example).

154. We therefore do not propose addressing this issue due to the scale of work required and because it has never been raised by an application considered by Toitū Te Whenua Land Information.

Crown Forestry Licenses to cutting rights

155. There is currently an exemption for converting Crown Forestry Licences (CFL’’s) into forestry rights [46].

156. It was the Crown Forest Assets Act 1989 that established CFL’s. The Act explicitly states that CFL are not an interest in land. It also stipulates that after a CFL is transferred from the Crown it has a life of up to 35 years, or until the trees are felled, whichever is sooner. Once the trees are felled in an area of the CFL, that area is likely to stop being subject to a CFL.

157. Two matters were raised during stakeholder engagement on this provision. The first related to the interpretation of this clause. These have related to the timing of the changing of the interest, what immediately meant in the context of the clause and situations which involved the timing of the surrender/ acquisition of various iwi interests on the land.

158. The second issue was regarding the transfer of crown forestry licenses into iwi ownership and maintaining forestry rights. The question raised was whether the 35 year limit is set at the appropriate level given the length of term often exceeds 35 year and may result in Toitū Te Whenua Land Information screening potentially low risk transactions and the potential increase of administrative burden for iwi.

159. We had intended to consult on CFL’s as part of the public consultation. However, given wider consultation has not taken place ahead of Cabinet’s upcoming consideration of these broader policy proposals, officials do not have a strong evidence base to inform advice on whether the transfer of the interest and 35 year limit is set out the appropriate level.

160. While the commitment to review the functioning of the forestry rights exemption provisions remains in the Terms of Reference, we do not propose any changes to the screening regime at this time. However, we will take the opportunity to test the appropriateness of this limit as part of the targeted engagement with key stakeholders following the anticipated public announcement. In addition, the anticipated select committee process will be an opportunity for interested parties to submit on this issue.

Crown acquisition of fresh and seawater areas (special land)

161. During targeted stakeholder engagement, a number of stakeholders raised the process by which the Crown acquires what was previously known as ‘special land’.

162. As part of the Phase Two reform of the Act, the Government clarified and streamlined the process by which the Crown acquires fresh and seawater areas – previously known

[46] Overseas Investment Act 2005, sch 3 cl 7..

as ‘special land’ – contained in sensitive land. The new rules governing the Crown’s acquisition of fresh and seawater areas took effect on 24 November 2021.

163. We believe that these processes will address the issues identified with this provision.

Processing timeframes

164. During targeted stakeholder engagement, a number of stakeholders commented that the 2018 forestry changes have improved investor confidence in forestry, by providing investors with greater certainty and improved timeframes than would have occurred if investors were only able to access the Benefit to New Zealand pathway. However, stakeholders also commented on the long and variable processing timeframes for both the special forestry test and standing consents, noting the impact of these timeframes on New Zealand’s attractiveness to investment when considering other comparable jurisdictions. Some investors indicated that they would be prepared to pay more for shorter processing times.

165. The Phase 2 reform introduced statutory timeframes for application decisions under the Act, which took effect on 24 November 2021.[47] Statutory timeframes for application decisions require decision-makers to arrive at decisions more quickly than they previously would. We believe this will go some way to address concerns raised.

Information requirements

166. During targeted stakeholder engagement, a number of stakeholders commented that Toitū Te Whenua Land Information’s pre-application meetings have helped to create awareness of the information needed but some questioned the relevance and necessity of information that Toitū Te Whenua Land Information has asked for to process applications.

167. The proposed operational changes, including the release of operational guidance, as well as the commencement of statutory timeframes, are expected to provide greater clarify for investors as to the information required.

168. Toitū Te Whenua Land Information were consulted on these proposals.

Additional amendments to the draft Cabinet Paper

169. In addition to the proposed changes to the draft Cabinet paper to reflect the above recommendations on minor and technical changes and the outcome of the Māori engagement, officials have also proposed a number of further changes to the draft Cabinet paper. These are as follows:

Clarification on the definition of ‘forestry conversions’

170. Officials heard feedback during Māori engagement and agency consultation that it was not clear what type of investments would be able to access the special forestry test pathway (for example. the effect of removing forestry conversions from the special forestry test).

171. The previous version of the draft Cabinet paper had noted that removing forestry conversions from the special forestry test would be achieved by only allowing the test to be used for the acquisition of land that is currently being used exclusively, or nearly

[47] Overseas Investment Act 2005, s 37B.

exclusively, for forestry activities.[48] This would bring the use of the special forestry test broadly in line with the 2018 supplementary order paper.

172. Officials have updated the draft Cabinet paper to further clarify the type of transactions that could access the special forestry test, effectively land that is currently being used for production forestry. The special forestry would therefore exclude, for example, 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.

173. As noted above, overseas investors do not require consent for a transactions 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.

Financial implications

174. The out-of-cycle request for Vote Finance funding sought through the draft Cabinet paper has been reduced from $0.771m to $0.650m. This funding request is to resource the legislative programme required to give effect to Cabinet's policy decisions.

175. The previous costings were developed on the basis of a more extended legislative timeframe than is currently proposed (i.e., enactment in the first quarter of 2023). You have since proposed (T2021/3029 refers) that this bill be passed in 2022, if possible, as part of the 2022 Legislation Programme.

176. As decisions on the 2022 Legislation Programme will not be confirmed until the end of February 2022, officials recommend seeking a revised figure of $0.650m, which will resource the legislative programme on the basis that the bill is enacted in March 2023. This buffer aims to avoid the overhead of return to Cabinet for additional funding, should this bill be delayed. Any underspend would be returned to the centre.

177. The financial implications of the draft Cabinet paper has also been updated to note that there may be modest costs for the Department of Conservation, and potentially WAC 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 Conversation, it is expected that these can be met within existing Vote Conservation baselines. Officials have not consulted WAC 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.

Other amendments

- **Related government work programmes:** Officials have updated the draft Cabinet paper to reflect the Government policy development under way to consider options relating to managing afforestation, land use change, and the incentives driving forestry investment. We understand a paper on managing afforestation: *Emissions Reduction Plan: Proposals to manage afforestation* will be considered by ENV on the 17 February meeting.

[48] 'Forestry activities' is defined, for the purposes of the Act (section 16A(9)), as establishing, maintaining or harvesting a crop of trees, i.e. trees that have been planted for the purpose of being felled to provide wood or other forest products. As noted above, Crown Law has previously advised that permanent forests, such as carbon forests, do not meet the definition of "forestry activities" under the Act.

- **Additional data:** Officials have updated the draft Cabinet paper to include the latest figures from Toitū Te Whenua Land Information, as well as contextual data on forestry investment through the overseas investment screening regime. This includes the total value of investments through the special forestry test, that all conversion investments consented through the special forestry test involve New Zealand vendors.

- [34]

- **Climate implications of policy assessment:** Following feedback from the Ministry for the Environment, this section of the draft Cabinet paper now references emissions budgets risk relating to the proposed change (this risk is noted elsewhere in the Cabinet paper), and provides an overview of the uncertainties and limited evidence on the scale of this risk.

Next Steps

178. Once we have received your feedback on, and agreement to the draft Cabinet paper, we will:

    - update the documents and return them to you ahead of consultation with your colleagues beginning 4 February 2022, along with any consequent changes to the ENV talking points (**Annex 4**),

    - lodge the Cabinet paper and amended Terms of Reference for ENV on 10 February 2022, and

    - initiate work for legislative change and prepare an amendment bill for consideration of Cabinet on 19 May 2022 (date subject to Government decisions on the 2022 Legislation Programme).

179. Officials will also:

    - provide your office with a draft Regulatory Impact Statement for the week beginning 7 February 2022, and

    - work with your office (and Minister Nash's office, if necessary) to prepare the required materials for any announcement of this change.

Activity	**Due date**
Ministerial consultation on draft ENV paper	4 February 2022
ENV paper to be lodged	10 February 2022
ENV Meeting	17 February 2022
Cabinet Meeting	21 February 2022
Announcement	TBC

Consideration by Cabinet Legislation Committee (LEG) of Bill and approval for introduction	19 May 2022 (indicative only, subject to 2022 Legislation Programme)
Introduction of Bill	31 May (indicative only, subject to 2022 Legislation Programme)

This report has been prepared by the Treasury in consultation with Te Uru Rākau – New Zealand Forestry Service / Ministry for Primary Industries, Toitū Te Whenua Land Information, the Ministry for the Environment, the Department of Conservation, Te Arawhiti, Te Puni Kōkiri and the Ministry of Foreign Affairs and Trade.

Annex 1. Draft Cabinet paper

Annex 2. Amended Terms of Reference

Annex 3. Table of proposed changes

Annex 4. Talking Points and Q&A

Annex 4: Talking points and Q&A

I am currently undertaking the Overseas Investment Act Forestry Review

- As you know, in 2018, the Government changed the way overseas investment in forestry is screened. As the 2018 changes were developed at pace to align with the passage of Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Act also required a review of the operation and effectiveness of the 2018 changes to be initiated within two years.

- My officials at the Treasury, with support from other agencies, began work on this review in 2020 and Cabinet agreed to a Terms of Reference for the Review in 2021.

Wider contextual changes are potentially impacting the nature of overseas investment in forestry

- Since the forestry changes were introduced in 2018, the operating context for forestry 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.
- 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. There has been increasing concern about the negative spillover effects of whole farm conversions, particularly in relation to the use of productive pastoral land (or land that is important to local economies and communities).
- These drivers may be resulting in afforestation of pastoral land and, anecdotally, more speculative overseas investment than originally envisaged. Relatedly, rising carbon prices appear to be incentivising increased permanent exotic carbon forestry.
- While high quality foreign investment in forestry and a strong forestry sector remain important, [1]

  . 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.

As such, I am proposing that the focus of the Forestry Review be changed to specifically focus on legislative change to (1) remove forestry conversions from the 'special forestry test' under the Act, and to (2) improve the operation and effectiveness of the Act's forestry provisions.

- The proposed changes would require overseas investors looking to acquire land for conversion to forestry to have that investment proposal considered under the Benefit to New Zealand pathway, rather than the special forestry test. The Benefit to New Zealand test assesses the likely benefits of a proposed overseas investment in seven broad categories or 'factors' comparing the investment to the current state.

- This is a more complex test than the 'special forestry test'; it requires in-depth consideration of the additionality of the investment, providing greater discretion for decision-makers.

- This proposed change would apply only to forestry conversions. The Act would, therefore, continue to support high-quality foreign investment in existing production forestry by retaining the more streamlined special forestry test.

- The proposal is intended to improve our ability to manage the risks presented by our new operating context and to ensure proposed overseas investments in land for conversions to forestry demonstrate benefits to New Zealand.

I am also proposing to make five minor and technical changes to the Act, to address issues raised by stakeholders during engagement in 2021

- Stakeholders raised a number of minor and technical issues through targeted engagement in 2021 regarding the operation and effectiveness of the 2018 forestry changes to the Act.

- My officials have considered how to best address each of the issues raised and identified five that require legislative change. Some of the other issues raised are likely to be resolved by the removal of forestry conversions from the special forestry test and I consider that the remainder are able to be adequately addressed through operational and minor regulatory changes.

I conducted two targeted hui in early January, to test the impact of the conversions proposal with Māori forestry leaders

- Hui participants expressed their in-principle support for the direction of the forestry conversions policy proposal but also sensitivities about regulations that will further limit what iwi/Māori can do with their land, and some reservations about the proposals' impact on Māori economic interests.

- After considering the feedback from these hui, I believe that it is appropriate to progress the proposal to remove conversions from the special forestry test.

- The hui were focused on the forestry conversions proposal and, while participants were informed that work was being done to address minor and technical issues that had previously been raised, these were not discussed in detail.

I am proposing to undertake further engagement immediately after these decisions are announced

- I propose that after we take these decisions, my officials immediately engage with a wider group of Māori representatives and industry stakeholders, to enable Māori and wider industry stakeholders to further consider and advise on the impact of the conversions proposal, as well as to consider the proposed minor and technical changes.

Q&A

What are the specific drivers behind the increase in farm to forestry conversions?

- 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 (as a result of the ~$40 / tonne increase in the carbon price since 2018), Emissions Trading Scheme (ETS) reforms and government afforestation schemes.

Have you considered reviewing the settings around carbon farming/permanent forestry?

- The Forestry Review is focused on whether the 2018 changes are achieving their original policy intent – rather than on revisiting the original policy rationale underpinning the changes – which was to increase overseas investment in forestry and improve the coherence of the screening regime (by ensuring that the acquisition of forestry rights, like other interests in forestry land, are subject to screening).

- Permanent forestry is not within scope of this review but the forestry industry's place within New Zealand's economy is being considered through other work across government. The review will not consider whether carbon farming (permanent forestry) should be able to begin to use the special forestry test.

How is permanent forestry currently treated under the regime?

- Permanent forestry is subject to the full overseas investment screening process – the full benefits test (and, if it is conversion from farmland, the higher farmland threshold via the new Farm land benefit test will apply).

Have you adequately considered the impacts of the proposed changes for Māori?

- I am aware that removing forestry conversions from the 'special forestry test' presents risks because of the importance of forestry to Māori, economically and culturally and whom these changes disproportionately impact, due to Māori interest in the sector.

- The hui I conducted in early January served as part of the first tranche of engagement with Māori and wider stakeholders, prior to our decisions on these proposals. This was intended to give a small group of key Māori stakeholders the earliest opportunity to consider the impact of the potential removal of conversions from the special forestry test.

- After these decisions have been made my officials will engage with a wider group of industry stakeholders, to enable further consideration of the potential impacts of the changes by Māori and others. These targeted engagements will provide an opportunity for Māori stakeholders to share their views on the change, and for officials to understand and assess the potential impacts of change on Māori, and discuss how the settings could improve outcomes for them.

- There will also be a further opportunity for public consultation on the proposed Bill during the select committee process.

Will the Review consider impacts on biodiversity?

- The Treasury will consider the Government's biodiversity strategy as part of any policy development.

How has the Phase 2 reform of the Act changed the Benefit to New Zealand test?

- The Phase 2 reform of the Act significantly simplified the Benefit to New Zealand test with the goal of reducing costs and processing times. Key changes include:
    - reducing the number of test factors from 21 to seven, to allow investors to tell a simple story about the benefits of their transaction,
    - replacing the current hypothetical counterfactual with a simple 'status quo' test, and
    - clarifying that the test only requires an assessment of benefits, rather than a full 'cost benefit' analysis (consistent with case law).

When did the new Benefit to New Zealand test take effect?

- The new Benefit to New Zealand test took effect on 24 November 2021.

Have you considered making changes to the 1,000 hectare exemption threshold?

- In relation to the introduction of forestry rights into the screening regime, the Forestry Review Terms of Reference outlines that the Review will consider whether the screening thresholds are set at the appropriate level to achieve a balance between ensuring forestry investments benefit New Zealand while not disincentivising investment or increasing illiquidity.

- 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.

- Given that wider consultation has not yet taken place, my officials do not have a strong evidence base to inform advice on whether the 1,000 hectare screening threshold is set at the appropriate level.

- While the commitment to review the threshold will remain in the Terms of Reference, I am not currently proposing any changes to the threshold at this time. However, we will take the opportunity to test the appropriateness of this threshold as part of the targeted engagement with key stakeholders following the anticipated public announcement of our decisions. In addition, the anticipated select committee process will be an opportunity for interested parties to submit on this issue.