

The Treasury

Overseas Investment Act Forestry Review Information Release

June 2022

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- [1] 6(a) - to avoid prejudice to the security or defence of New Zealand or the international relations of the government
- [23] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [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
- [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
- [36] 9(2)(h) - to maintain legal professional privilege
- [38] 9(2)(j) - to enable the Crown to negotiate without disadvantage or prejudice
- [39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

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Treasury Report: Overseas Investment Act Forestry Review: Options to progress removing forestry conversions from the special forestry test

| | | | |
|--------------|-----------------|---------------------|------------|
| Date: | 5 November 2021 | Report No: | T2021/2764 |
| | | File Number: | IM-5-8-4 |

Action sought

| | Action sought | Deadline |
|--|--|------------------|
| Minister of Finance (Hon Grant Robertson) | Note the contents of this report. | N/A |
| Associate Minister of Finance (Hon David Parker) | <p>Indicate which of the following options you wish to present to Cabinet in order to progress recent Ministerial decisions:</p> <ul style="list-style-type: none"> <i>Option 1:</i> Introduce legislation to remove forestry conversions (in addition to the ongoing Forestry Review) <i>Option 2:</i> Consult on removing forestry conversions as part of the ongoing Forestry Review (by expanding the Review's Terms of Reference) (<i>Te Arawhiti preferred</i>), or <i>Option 3:</i> Rescope the 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, after which officials would consider any further operational changes that may be required that are not resolved by the legislative changes (<i>recommended if timely change is the priority</i>) <p>Refer this report to the Minister for Land Information and Minister of Forestry</p> | 10 November 2021 |

Contact for telephone discussion (if required)

| Name | Position | Telephone | 1st Contact |
|---------------|-------------------------------|------------------|--------------------|
| Sarah Key | Senior Analyst, International | [39] | N/A (mob) ✓ |
| Conor McBride | Acting Manager, International | [35] | |

Minister's Office actions (if required)

| |
|---|
| <p>Refer this report to the Minister for Land Information and Minister of Forestry</p> <p>Return the signed report to the Treasury.</p> |
|---|

Note any
feedback on
the quality of
the report

Enclosure: Yes (attached)

Treasury Report: Overseas Investment Act Forestry Review: Options to progress removing forestry conversions from the special forestry test

Executive Summary

This advice responds to the Associate Minister of Finance, Minister of Land Information, and Minister of Forestry's 28 October 2021 decision to remove forestry conversions from the special forestry test under the Overseas Investment Act 2005. Ministers agreed that forestry conversions would instead go through the revised Benefit to New Zealand test, rather than the new Farmland benefit test, which has a higher benefit threshold (both tests come into effect on 24 November 2021).

[1]

It would increase application processing timeframes and create some uncertainty for investors, making the process for forestry conversions more complex and therefore reducing the option value of land for landowners.

Ministers indicated that they have a preference for action and that they prioritise timely legislative change, and directed officials to prepare a Cabinet paper for the Cabinet Economic Development Committee (DEV) on 8 December 2021, which would seek Cabinet agreement to either:

- **Option 1:** Introduce legislation to remove forestry conversions (in addition to the ongoing Forestry Review), or
- **Option 2:** Consult on removing forestry conversions as part of the ongoing Forestry Review (by expanding the Review's Terms of Reference) (*Te Arawhiti's preferred option*)

Either option would require additional resourcing for the Treasury, and Option 2 would not deliver Ministers' noted preference for timely action.

We have developed an alternative option, which would better manage Treasury resourcing demands than Option 1, while still supporting Ministers' preference for timely action. Under this option, the upcoming DEV paper would seek Cabinet agreement to:

- **Option 3:** Rescope the Forestry Review so that it is focussed on legislative change to remove forestry conversions and improve the operation and effectiveness of the Act's forestry provisions, after which officials would consider any further operational changes that may be required that are not resolved by the legislative changes, and consult with key stakeholders to understand and assess the potential impacts of the change on Māori.

All of the above options will require resourcing beyond what the Treasury has allocated to the Forestry Review, however Option 1 presents the most significant resourcing demand.

If you (Minister Parker) intend to present either options 1 or 3 to Cabinet, the Treasury would need to have a prioritisation discussion with you and the Minister of Finance to either: discuss what work could be stopped, reprioritised, or deferred to manage these demands, or to discuss seeking additional funding via the DEV paper. The upcoming Treasury Executive Leadership Team catch ups with Minister Parker (scheduled for 10 November 2021) and with the Minister of Finance (scheduled for early December 2021) provide opportunities to discuss this.

There are risks associated with either legislating change without comprehensive consultation, or expanding the scope of the Forestry Review, which would need to be carefully managed. They include: [1]

risks to Māori-Crown relations, a Treaty of Waitangi risk if this policy change were not progressed in a way that is consistent with the principles of the Treaty, and risks to the durability of Treaty settlements involving Crown forest licensed land.

To support Māori-Crown relations (if Options 1 or 3 are progressed), the Treasury would look to conduct a series of engagements immediately after the announcement of any Cabinet decision to progress legislative change, to provide further information on the changes and to understand and assess the potential impacts of change on Māori.

Either change would be a considerable shift for the forestry sector, as well as for the narrowly-scoped Forestry Review. Officials will engage with agency colleagues and with your (Minister Parker) office to manage communications.

Recommended Action

We recommend that you:

- a **Note** that this advice progresses Ministers' recent decisions to remove land for conversion from farmland to production forestry from the special forestry test and to seek Cabinet agreement to either:
 - i. *Option 1*: Introduce legislation to remove forestry conversions (in addition to the ongoing Forestry Review), or
 - ii. *Option 2*: Consult on removing forestry conversions as part of the ongoing Forestry Review, by expanding the Review's Terms of Reference (***Te Arawhiti's preferred option***).
- b **Note** that we have developed an alternative option, which would better manage Treasury resourcing demands than Option 1, while still supporting Ministers' preference for timely action:
 - i. *Option 3*: Rescope the 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, after which officials would consider any further operational changes that may be required that are not resolved by the legislative changes (***recommended if timely change is the priority***).
- c **Note** that, if timely change is the priority, the Treasury prefers Option 3 as it would better balance Treasury resourcing demands and Ministers' preference for timely action, while also being able to essentially deliver on stakeholders' expectations for the Forestry Review (i.e., improvements to the operation and effectiveness of the 2018 forestry changes to the Overseas Investment Act 2005).
- d **Note**, that Option 3 would require a revised Terms of Reference where the scope of the Forestry Review would be expanded to include forestry conversions and encompass legislative change to improve the operation and effectiveness of the Act's forestry provisions.

- e **Note** that there are risks associated with either legislating change without comprehensive consultation, or expanding the scope of the Forestry Review to encompass this issue, including [1] a Treaty of Waitangi risk, risks to Māori-Crown relations and to the durability of Treaty settlements involving Crown forest licensed land.
- f **Note** that because overseas companies are a major part of the New Zealand forestry sector, the Ministry for Primary Industries advises there is a risk that the afforestation levels laid out in the Climate Change Commission’s emissions reduction pathway may not be reached if confidence of overseas investors is undermined.
- g **Note** that progressing Options 1 or 3 would require the Treasury to have a prioritisation discussion with you and the Minister of Finance to either: discuss what work could be stopped, reprioritised, or deferred to manage these demands, or to discuss seeking additional funding via the Cabinet paper.
- h **Note** that if you choose to progress Options 1 or 2, the Treasury will not provide a draft discussion document for the 8 December Cabinet paper as it is not feasible to do so given current uncertainty on direction; any discussion document would instead be submitted to DEV in early February 2022 for approval to release.
- i **Agree** to seek Cabinet’s agreement to remove forestry conversions from the special forestry test via one (or more) of the following options:

| Option | Agree/Disagree |
|--|----------------|
| Option 1: Introduce legislation to remove forestry conversions (in addition to the ongoing Forestry Review) | |
| Option 2: Consult on removing forestry conversions as part of the ongoing Forestry Review (by expanding the Review’s Terms of Reference) <i>(Te Arawhiti preferred)</i> | |
| Option 3: Rescope the 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, after which officials would consider any further operational changes that may be required that are not resolved by the legislative changes <i>(recommended if timely change is the priority)</i> | |

- j **Refer** this report to the Minister for Land Information and the Minister of Forestry.
Refer/not referred.

k **Note** that you may wish to discuss this report with the Minister for Māori Crown Relations: Te Arawhiti and the Minister of Climate Change.

Conor McBride
Acting Manager, International

Hon Grant Robertson
Minister of Finance

Hon David Parker
Associate Minister of Finance

Treasury Report: Overseas Investment Act Forestry Review: Options to progress removing forestry conversions from the special forestry test

Purpose of Report

1. This report provides advice on options to give effect to Ministers' decisions to remove land for conversion from farmland to production forestry ('forestry conversions') from the special forestry test¹ under the Overseas Investment Act 2005 (the Act).
2. This report seeks your agreement to recommend to Cabinet one (or more) of the following three options:
 - **Option 1:** Introduce legislation to remove forestry conversions (in addition to the ongoing Forestry Review) *Resourcing discussion with the Minister of Finance and Associate Minister of Finance required*
 - **Option 2:** Consult on removing forestry conversions as part of the ongoing Forestry Review (by expanding the Review's Terms of Reference) *(Te Arawhiti preferred)* *No resourcing discussion required*
 - **Option 3:** Rescope the 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, after which officials would consider any further operational changes that may be required that are not resolved by the legislative changes *(recommended if timely change is the priority)* *Resourcing discussion required*
3. 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 New Zealand, the Ministry for the Environment, the Ministry of Foreign Affairs and Trade, Te Arawhiti and Te Puni Kōkiri.

Background

Forestry Review currently under way

4. In March 2021, Cabinet agreed to conduct a tightly focussed review (the Forestry Review) of the operation and effectiveness of the 2018 changes relating to how overseas investments in forestry are screened under the Act.

¹ The 'special test relating to forestry activities', commonly known as the 'special forestry test'. 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.

5. During targeted stakeholder engagement on the Forestry Review, officials heard from stakeholders that the 2018 changes are achieving their primary policy intent: facilitating overseas investment in forestry (T2021/1911 refers).² The key message we heard was that the changes have improved investor confidence by providing greater certainty and improved timeframes than would have occurred if investors were only able to access the Benefit to New Zealand pathway.
6. Stakeholders identified some technical issues and suggestions to improve the operation of the regime. Some of these issues would be most effectively addressed through legislative change, while others may be able to be addressed through operational change or guidance.

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

7. The Associate Minister of Finance, Minister of Land Information, and Minister of Forestry met on 28 October 2021 to discuss whether to initiate work to consider removing forestry conversions from the special forestry test (T2021/2512 refers).
8. Ministers agreed to remove forestry conversions from the special forestry test. 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 (which has a higher benefit threshold). Both tests come into effect on 24 November. Ministers indicated that they have a preference for action and that they prioritise timely legislative change.
9. This change would [1] _____ for forestry conversion investments, above and beyond what investors must do under the special forestry test. It would increase application processing timeframes and create some uncertainty for investors, making the process for forestry conversions more complex and therefore reducing the option value of land for landowners.

Options to progress removing forestry conversions from the special forestry test

10. Ministers directed officials to prepare a Cabinet paper for Cabinet Economic Development Committee (DEV) on 8 December 2021, which would seek Cabinet agreement to either:
 - **Option 1:** Introduce legislation to remove forestry conversions (in addition to the ongoing Forestry Review), or
 - **Option 2:** Consult on removing forestry conversions as part of the ongoing Forestry Review (by expanding the Review's Terms of Reference)
11. The Treasury has considered the options that Ministers requested be put to Cabinet against current resourcing available for the Forestry Review, and stakeholders' expectations of the outcomes for the Forestry Review. These expectations include improvements to the operation and effectiveness of the 2018 forestry-related changes to the Act, most (if not all) of which have already been surfaced through the targeted stakeholder consultation.

² The 2018 changes also intended to improve the coherence of the screening regime.
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12. We have developed an alternative option (Option 3), which would manage Treasury resourcing demands better than Option 1, while still supporting Ministers' preference for timely action and addressing operational issues. Under this option, the DEV paper would seek Cabinet agreement to:
 - **Option 3:** Rescope the Forestry Review so that it is focussed on legislative change to remove forestry conversions and improve the operation and effectiveness of the Act's forestry provisions, after which officials would consider any further operational changes that may be required that are not resolved by the legislative changes.
13. Under Option 3, the DEV paper would seek Cabinet's approval to a revised Terms of Reference where the scope of the Forestry Review would be expanded to include forestry conversions and encompass legislative change to improve the operation and effectiveness of the Act's forestry provisions. In addition, the process outlined in the Review's Terms of Reference would no longer include the release and consultation on a discussion document.
14. Unlike Option 1, the rest of the Forestry Review (as currently scoped), including release of the discussion document, would not be progressed under Option 3. However, there would be consultation through the select committee process. At the conclusion of legislative change, officials would consider any further operational changes that may be required that are not resolved by the legislative changes.

Comparison of options

The Treasury recommends Option 3, recommended if timely change is the priority

15. Our recommended approach is Option 3, which delivers on Ministers' desire for timely legislative change, but requires less additional resource than Option 1. In addition, this option would essentially deliver on stakeholders' expectations for the Forestry Review (i.e., improvements to the operation and effectiveness of the 2018 forestry changes to the Act). There are communication and Māori-Crown relations risks associated with this option (as with Option 1), however proposed approaches to managing these are provided below.
16. Te Arawhiti prefers Option 2 as it better manages risks to Māori Crown relations. This is because there is a Treaty of Waitangi risk if this policy change were not progressed in a way that is consistent with the principles of the Treaty of Waitangi. See Te Arawhiti's comment from paragraph 40 below for more details on Te Arawhiti's views.
17. If either Option 1 and Option 3 were progressed, we propose to support Māori Crown relations by conducting a series of engagements immediately after the announcement of any Cabinet decision to progress legislative change, to provide further information on the changes and to understand and assess the potential impacts of change on Māori.
18. **Annex A** provides the Treasury's assessment of these options against a range of criteria.

Each of these options has resourcing implications

19. As this was initially out of scope of the previously agreed Terms of Reference, all three options to address forestry conversions will require resourcing beyond what the Treasury has allocated to the Forestry Review.
- Option 1 creates a new legislative work programme, in addition to the existing Forestry Review. The Treasury currently has no capacity to resource this. Even with additional funding, there are challenges in recruiting additional resources with appropriate skills within the timeframes needed to meet Ministers' expectations.
 - Option 2 manages Treasury resourcing demands in the short term, but any resulting legislative change would need to be resourced in the medium term (as officials currently working on the Forestry Review would otherwise be reprioritised). In addition, this option does not deliver on Ministers' preference for timely action.
 - Option 3 requires additional resourcing but for a shorter period of time. In addition, it would be an opportunity to address improvements (both legislative and operational) to the operation and effectiveness of the 2018 forestry changes that had been surfaced through targeted stakeholder engagement (T2021/1911 refers).
20. For the specified duration of resourcing for Options 1 and 3 (see Annex A), this assumes that a stand-alone bill would be required and is dependent on the bill's priority on the legislative programme. We have considered whether there are other legislative vehicles available, but there do not appear to be any either before the House or in development.
21. Note that if you choose to progress Options 1 or 2, the Treasury will not be able to provide a draft discussion document for the 8 December 2021 DEV paper. Given current uncertainty on direction to progress this issue, it is not feasible to finalise two sets of discussion documents, and undertake agency and Ministerial consultation on this material, before the DEV paper is due to be lodged on 2 December 2021. Any discussion document would instead be submitted to DEV in early February 2022. In practice, this would only delay the release of the discussion document by 2-3 weeks (depending on the Cabinet sitting programme for 2022).

If you intend to progress legislative change in the short-term, a prioritisation discussion is required

22. If you (Minister Parker) intend to present either Options 1 or 3 to Cabinet, the Treasury would need to have a prioritisation discussion with you and the Minister of Finance to either:
- i. discuss what work could be stopped, reprioritised, or deferred to manage these demands, or
 - ii. discuss seeking additional funding via the DEV paper.
23. The Treasury Executive Leadership Team (ELT) has a catch up with you scheduled for 10 November 2021 (next week), and a further discussion with the Minister of Finance scheduled for early December 2021. These meetings provide an opportunity to discuss resource pressures and reprioritisation.

There are risks with introducing legislative change ahead of consultation

24. There are risks associated with either legislating change without comprehensive consultation, or expanding the scope of the Forestry Review to encompass this issue. These risks would need to be carefully managed. They include:
- [1]
 - risks to Māori-Crown relations
 - a Treaty of Waitangi risk if this policy change were not progressed in a way that is consistent with the principles of the Treaty, and
 - risks to the durability of Treaty settlements involving Crown forest licensed land.
25. Announcing this change could create uncertainty as to the role of overseas investment in forestry more generally. In addition, there are risks that announcing this change may impact investment in afforestation that is important to meet New Zealand's climate change obligations. Both of these communication risks could be partially mitigated by clear Government messaging.
26. Signalling (or announcing) this change would create an expectation that overseas investment in forestry conversions would become more difficult. We would therefore expect to see a spike in applications and a corresponding increase in forestry conversions through the special forestry test ahead of any changes being implemented.
27. The Ministry for Primary Industries advises that as overseas companies are a major part of the New Zealand forestry sector³, there is a risk that the afforestation levels laid out in the Climate Change Commission's emissions reduction pathway may not be reached if the confidence of overseas investors is undermined.
28. Agency officials will engage with Ministers' offices to manage communications on these issues and any announcement.
29. See Annex B for an overview of the impact for overseas investors of removing forestry to farmland conversions from the special forestry test, from an overseas investment screening perspective.

Impacts on Māori economic interests and Māori-Crown relations

30. As we had previously advised, any reduction in sector attractiveness risks a capital or revenue hit to significant iwi investments (T2021/1911 refers). Forestry is a major component of the Māori economy, which is heavily reliant on overseas investors. Iwi are often partners for foreign forestry investors and supported the liberalisation of overseas forestry investment screening. Removing forestry conversions from the special forestry test may impact negatively on the value of Māori assets, to the extent that this change would deter overseas investment partners and hamper efforts to convert historically under-developed Ahu Whenua trust-land⁴ to production forest, including through aggregation arrangements.

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

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

31. There are currently very few forestry conversion applications under the special forestry test that relate to Māori freehold land, though this may not be the case in the future, given drivers such as Emissions Trading Scheme settings and the impact of the rising carbon price. Where Māori interests are involved, it is generally for existing forestry, for example joint ventures for existing forestry land, or where forestry land is transferred from the Crown to iwi, and an overseas investor is seeking consent for a forestry right over the relevant land.
32. Progressing Option 1 or 3 (i.e., agreeing to enact legislative change ahead of any comprehensive consultation on removing conversions from the special forestry test) presents risks for Māori, for whom these changes disproportionately impact, due to Māori interest in the sector.⁵ Māori own at least 30 per cent of the land containing New Zealand's plantation forests (but not always the trees themselves).
33. Te Arawhiti advises that there is a Treaty of Waitangi risk if this policy change were not progressed in a way that is consistent with the principles of the Treaty. The particular principles include decision-making informed by good faith, robust engagement and a clear understanding of the impacts of the policy change for Māori combined with measures to address negative impact.
34. [25]

Proposed approach to engagement if Option 1 or 3 were progressed

35. The Forestry Review Terms of Reference outline that the Forestry Review will consult relevant iwi and Māori groups impacted by these changes, consider whether there are specific Māori rights or interests requiring active protection, seek to avoid negative impacts on the interests of Māori and support the full participation of Māori.
36. To support Māori-Crown relations (if options 1 or 3 are progressed), the Treasury would look to conduct a series of engagements immediately after the announcement of any Cabinet decision to progress legislative change, to provide further information on the changes and to understand and assess the potential impacts of change on Māori.
37. We would look to engage with members of the previously-concluded Forestry Iwi Reference group⁶ (with whom we have built up relationships), iwi that are key users of the regime (with their overseas partners), and representative Māori land owning groups. These groups would include ahu whenua trusts and Māori incorporations and representatives of the owners of undeveloped Māori freehold land that do not yet have a trust or incorporation.⁷

5 This is because 40 per cent of the \$50 billion Māori asset base is in forestry. Māori own at least 30 per cent of the land containing New Zealand's plantation forests (but not always the trees themselves). [25]

6 In 2018, the Government established an Iwi Forestry Reference group to allow for continued dialogue with iwi and the Māori forestry sector on the impact of forestry related changes. The fourth and final meeting took place in February 2021 (T2020/3315 refers).

7 We could, for example, consult with the same four iwi that we reached out to engage with as part of the first tranche of the forestry review (targeted stakeholder engagement). These iwi (based in different regions of the North Island) were selected on the basis that they had the most extensive dealings with different aspects of the special forestry test.

38. We are also cognisant of the wider interface of Māori-Crown relations, including the saturation of consultation with the Crown, in addition to tension points across various Government policy areas. The Emissions Reduction Plan, currently being consulted on, also canvasses changes that would, if progressed, materially and disproportionately impact Maori forestry interests. We will consider opportunities to take a more coordinated approach to engagement with Maori on forestry regulatory settings in order to reduce consultation saturation. Any consultation on forestry conversions will take place in good faith and operate within the context of existing tension points (particularly where they relate to environmental matters).
39. We will provide further advice on the strategy to progress this engagement (including entities and groups to engage with) once you have indicated which option you wish to progress.

Te Arawhiti comment

40. While this proposal concerns forestry conversions, it could have the effect of reducing overseas investor interest, more generally, in New Zealand forestry operations. If that were to occur, the impact on the Māori economy would be significant, given that forestry is a major component of the Māori economy and is heavily reliant on overseas investors. There would also be a risk to the durability of Treaty settlements involving Crown forest licensed land because all licences are now held by overseas investors and all are pre-1990 forests, where most post settlement governance entities will rely on those investors entering into post-licence forestry rights or leases with them so they can meet their legal obligations to replant.
41. A more direct impact, as noted above, would be to deter overseas investment partners and hamper efforts to convert historically under-developed Māori freehold land to production forest.
42. Given those factors, in addition to those impacts and the acknowledged risks to Māori Crown relations, there is a Treaty of Waitangi risk if this policy change were not progressed in a way that is consistent with the principles of the Treaty. The particular principles include decision-making informed by good faith, robust engagement and a clear understanding of the impacts of the policy change for Māori combined with measures to address negative impact. Negative impacts might include reduced choice (autonomy) for Māori land owners as to how their land is used and developed for the benefit of present and future generations, which would be inconsistent with one of the underlying tenets of Te Ture Whenua Māori Act and with the protection of rangatiratanga by Māori over retained Māori taonga, such as ancestral land.
43. Progressing change without consultation would not be consistent with the Crown's commitment to a healthy and positive Māori Crown relationship nor with the obligation of the Executive (as the organ of the Crown responsible for the Crown's Treaty commitments) to conduct its business in a manner that is not inconsistent with the principles of the Treaty of Waitangi. Te Arawhiti therefore prefers Option 2. For Options 1 and 3, the proposed targeted engagements would not be sufficient to mitigate those risks. A broader engagement is required.

Next Steps

44. If you decide to present either Option 1 or Option 3 to Cabinet, the Treasury will discuss this with you (Minister Parker) at the Treasury ELT catch up scheduled for next week. This would be followed by a discussion with the Minister of Finance (scheduled in early December).
45. The indicative timetable for the development and finalisation of the DEV paper is included in the table below. Note that we have proposed one week for Ministerial consultation. Meeting these deadlines assumes timely direction on the option(s) you wish to present to Cabinet.

| Activity | Due date |
|--|---|
| Agency consultation on draft DEV paper | 15-17 November 2021 (<i>indicative</i>) |
| Final draft DEV paper (and associated material) to Minister Parker | 19 November (<i>indicative</i>) |
| Ministerial consultation on draft DEV paper | 24 November – 1 December 2021 (<i>indicative</i>) |
| DEV paper to be lodged | 2 December 2021 |
| DEV meeting | 8 December 2021 |

Annex A: Assessment of options to progress removing forestry conversions from the special forestry test

| | Option 1: Introduce legislation to remove forestry conversions (in addition to the ongoing Forestry Review) | Option 2: Consult on removing forestry conversions as part of the ongoing Forestry Review (by expanding the Review's Terms of Reference) <i>(Te Arawhiti preferred)</i> | Option 3: Rescope the Forestry Review so that it is focussed on legislative change to remove forestry conversions and improve the operation and effectiveness of the Act's forestry provisions, after which officials would consider any further operational changes that may be required that are not resolved by the legislative changes <i>(recommended if timely change is the priority)</i> |
|--|---|--|---|
| Timely legislative change | This option would meet Ministers' priorities for timely legislative change. Depending on the bill's priority on the legislative programme, this could be enacted by the first quarter of 2023 (this could potentially be brought forward). | According to the timeline for the Forestry Review (as currently scoped), any legislation resulting from the Forestry Review is likely to be introduced at the end of 2022. | As for Option 1, this option would meet Ministers' priorities for timely legislative change. |
| Resourcing implications | Option 1 is challenging given it creates a new legislative work programme, in addition to the existing Forestry Review. It would therefore require additional resourcing. The Treasury currently has no capacity to resource this. Even with additional funding, there are challenges in recruiting additional resources with appropriate skills within the timeframes needed to meet Ministers' expectations. | This option could be managed within Treasury's existing baselines. | This option would require additional resourcing, but for a shorter period of time than Option 1. As for Option 1, the Treasury currently has no capacity to resource this. Even with additional funding, there are challenges in recruiting additional resources with appropriate skills within the timeframes needed to meet Ministers' expectations. |
| Additional FTE required⁸ | 2.5 FTE | 1 FTE | 1.5 FTE |

⁸ These FTE comprise a range of policy resources (Analyst, Senior Analyst, Principal Advisor,) and legal resources (Solicitor, Senior Solicitor). There will be peaks and troughs for this work, but the FTE impact is averaged across the relevant time horizon. These figures are rounded to the nearest 0.5.

| | | | |
|----------------------------------|---|---|---|
| Prioritisation discussion | <p>If you (Minister Parker) intend to present either options 1 or 3 to Cabinet, the Treasury would need to have a prioritisation discussion with you and the Minister of Finance to either:</p> <ul style="list-style-type: none"> i. discuss what work could be stopped, reprioritised or deferred to manage these demands, or ii. discuss seeking additional funding via the DEV paper. | <p>No prioritisation discussion required.</p> | <p>As for Option 1.</p> |
| Consultation impacts | <p>This option presents a Treaty of Waitangi risk if this policy change were not progressed in a way that is consistent with the principles of the Treaty.</p> <p>Progressing this option presents risks for Māori, for whom these changes disproportionately impact. To support Māori-Crown relations, the Treasury would look to conduct a series of targeted engagement immediately after the announcement of any Cabinet decision, to provide further information on the changes and to understand and assess the potential impacts of change on Māori.</p> <p>This option would exacerbate consultation fatigue among key stakeholders given the need to participate in both the legislative change and the operational Forestry Review.</p> | <p>This option would allow the Government to consult with stakeholders, in order to assess and test analysis on the likely impacts of removing forestry conversions from the special forestry test ahead of Cabinet's decision on a reform package.</p> | <p>As for Option 1.</p> |
| Stakeholder expectations | <p>This option would mostly deliver on stakeholders' expectations for the Forestry Review (i.e., improvements to the operation and effectiveness of the 2018 forestry changes to the Overseas Investment Act 2005). However, it does present risks from a timing alignment perspective, as Government would be progressing with legislative change while at the same time consulting on options that might ultimately be best addressed through legislative change.</p> | <p>This option would deliver on stakeholders' expectations for the Forestry Review (i.e., improvements to the operation and effectiveness of the 2018 forestry changes to the Overseas Investment Act 2005).</p> | <p>This option would essentially deliver on stakeholders' expectations for the Forestry Review (i.e., improvements to the operation and effectiveness of the 2018 forestry changes to the Act).</p> |

Annex B: Overview, from an overseas investment screening perspective, of the impact for overseas investors of removing forestry to farmland conversions from the special forestry test

1. If farmland to forestry conversions were removed from the special forestry test, overseas investors looking to acquire land for conversion to forestry would still be able to access the revised Benefit to New Zealand pathway (consistent with Ministers' decisions), which will come into effect from 24 November 2021.⁹
2. However, [34] for forestry conversion investments, above and beyond what investors must do under the special forestry test. Assessment timeframes under the Benefit to New Zealand test are longer (given the increased complexity of that test) and may create greater uncertainty and increase costs for investors (compared to comparative ease of meeting the current 'check-list' requirements under the special forestry test). This change would not impact permanent forestry investments as these cannot go through the special forestry test.
3. The revised Benefit to New Zealand test requires investors to demonstrate benefits and involves greater discretion for decision-makers. This is a more complex test that requires in-depth consideration of the additionality of the investment. However, it would be easier for forestry investors to demonstrate how the proposed overseas investment will, or is likely to, benefit New Zealand than the current Benefit to New Zealand test (to be replaced on 24 November) in part due to the new counterfactual. It would also increase the number of investments that are escalated to Ministers to be decision-makers.
4. At this stage, it is challenging to speculate if any of the forestry conversion investments that have been processed through the special forestry test would meet the revised Benefit to New Zealand test. Applicants under the special forestry test are not required to provide the level of information needed to model alternative outcomes.

⁹ The modified benefit test for forestry, introduced in 2018, was designed to be less onerous to meet than the current benefit test by comparing 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). There have been no applications under the modified benefits test and we would not anticipate that investors would elect the modified test for forestry activities, where the revised Benefit to New Zealand test is available.