

The Treasury

Overseas Investment Act Forestry Review Information Release

June 2022

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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
- [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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Reference: T2022/3 IM-5-8-4-1

Date: 13 January 2022

To: Associate Minister of Finance (Hon David Parker)

CC: Minister of Finance (Hon Grant Robertson)

Deadline: 17 January 2022
(if any)

Aide Memoire: Overseas Investment Act Forestry Review Māori Engagement Hui, 17 January 2022

Purpose

You (Hon David Parker) will be leading the first of two Overseas Investment Act Forestry Review hui, on Monday 17 January from 2:00-4:00PM. A second hui, led by senior Treasury officials will be held on Wednesday 19 January from 2:00-4:00 PM.

The purpose of the two hui is to consult key Māori representatives from the forestry sector, from a range of regions across the country, on proposed changes to the scope of the review (T2021-3029 refers).

The hui demonstrate the Crown's willingness to engage with and consider perspectives of key sector representatives.

This Aide Memoire provides supporting material, as well as talking points for the hui (**Annex 1**).

Background

Māori engagement context

In February 2022, you intend to take a paper to Cabinet that would seek agreement to:

- remove forestry conversions from the 'special forestry test'¹ via legislative change, which will specify that forestry conversions instead go through the revised Benefit to New Zealand test and

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.

- minor and technical legislative changes to improve the operation and effectiveness of the 2018 forestry changes to the Overseas Investment Act. The latter changes will not be a priority for discussion in the upcoming hui.

The proposed changes will affect Māori economic interests, as key stakeholders in the forestry sector. Māori own at least 30 per cent of the land containing New Zealand's plantation forests (but not always the trees themselves), and large areas of indigenous forest. Tangata whenua have more than \$2 billion of assets in the sector, and forestry is also a significant employer of Māori. Tangata whenua have kaitiaki responsibilities and partner in the management of forests as part of the conservation estate.

Engagement process and feedback to Cabinet

There will be two tranches of Māori engagement: pre-Cabinet decision-making and post-Cabinet decision-making. The pre-Cabinet decision-making engagement entails two hui, the first of which will be led by you (Hon David Parker) on 17 January.

This first tranche of engagement will give a targeted and representative group of key Māori stakeholders the opportunity to consider and provide feedback on the impact of removing forestry conversions from the special forestry test (**Annex 2** provides a detailed list of confirmed Māori representatives and their biographical information). This will support Cabinet in making an informed decision on the policy proposals, as well as support the Crown in acting as a good Treaty partner.

Following the two hui, officials will consider the key messages or areas of concern among Māori and provide advice to you on recommended next steps. Officials will then update the draft Cabinet paper to include key messages from the hui, and any consequent proposed policy changes as a result of the engagement.

Subject to Cabinet approval of the proposed changes, officials will further engage with a wider group of Māori stakeholders after the announcement of Cabinet's decision. This will provide another opportunity for officials to understand and assess the potential impacts of change on Māori, and discuss how the settings could improve outcomes for them.

Risks to Māori interests

[25]

The change could also hamper efforts to convert historically under-developed Ahu Whenua trust-land² to production forest, including through aggregation arrangements.

² Established under Te Ture Whenua Māori Act 1993, Ahu whenua trusts are land administration trusts designed to manage whole blocks of Māori freehold land.

Any reduction in sector attractiveness risks a capital or revenue hit to significant iwi investments. There are currently very few forestry conversion applications under the 'special forestry test' that relate to Māori freehold land. However, this may not necessarily be the case in the future if current policy settings were retained, given drivers such as Emissions Trading Scheme (ETS) settings and the impact of the rising carbon price.

Broader risks

We have previously advised on broader risks associated with removing forestry conversions from the 'special forestry test' (T2021/2764 refers). These 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.

Video introduction for the 19 January hui

As you are unable to attend the second hui, scheduled for Wednesday 19 January, Treasury officials are coordinating with your Office on your availability to record a brief (2 minute) video introduction. Treasury Deputy Secretary Bryan Chapple will lead this hui.

You recorded a similar video introduction for the 2018 forestry hui (as part of Phase One of the Overseas Investment Act reform), which was well received. It helped to focus the hui and demonstrate the Crown's willingness to hear feedback from Māori representatives.

Subject to your availability, we have provided you with suggested lines for the video recording (see **Annex 7: Suggested Video Recording Lines for Minister Parker**), which is a condensed version of your talking points for the 17 January hui.

Next steps

As outlined in the timeline below, following the two hui, officials will consider the key messages or areas of concern raised and provide advice to you on recommended next steps. Officials will then update the draft Cabinet paper to provide an overview of the outcomes of the hui, including the key messages or areas of concern among Māori, and any consequent proposed policy changes as a result of the engagement.

Officials will also engage with Māori post the public announcement of these changes, with a wider group of Māori with economic interests in forestry.

Activity	Due date
Hui with targeted and representative groups of Māori forestry representatives	17 January 2022, 2:00-4:00pm 19 January 2022, 2:00-4:00pm
Treasury advice, revised draft Cabinet paper and draft regulatory impact statement. Treasury advice will cover: <ul style="list-style-type: none"> the outcome of the Māori engagement minor / technical legislative changes to be included in the draft Cabinet paper updated talking points. 	28 January 2022
Ministerial consultation on revised draft DEV paper	Late January / early February 2022 (indicative)
DEV paper to be lodged	3 or 10 February 2022 (TBC)
DEV Meeting	9 or 16 February 2022 (TBC)
Cabinet Meeting	14 or 21 February 2022 (TBC)
Announcement	Mid-late February 2022 <i>(indicative only)</i>
Post-announcement engagement with Māori	Mid-late February 2022 <i>(TBC – subject to date of announcement)</i>
Officials to initiate work for legislative change and prepare an Overseas Investment Act Amendment Bill for Cabinet consideration in 2022 <i>(subject to Cabinet agreement)</i>	Ongoing

Brent Bautista, Analyst, International, [39]
Conor McBride, Manager, International, [39]

Attachments:

- Annex 1: Talking Points and Run Sheet
- Annex 2: Agency representative details
- Annex 3: Hui Attendees' biographical information
- Annex 4: Hui Slidepack
- Annex 5: Q+A
- Annex 6: Other work programmes
- Annex 7: Suggested Video Recording Lines for Minister Parker
- Annex 8: Run Sheet including Officials' Talking Points

Annex 1: Talking Points

Minister, please note your talking points follow a whakatau and introductions, and a brief overview of the hui to be delivered by Officials, as outlined in the Hui Runsheet below.

Minister Parker's opening remarks

Tēnā koutou, (provide mihi here, if the Minister wishes to provide one)

- Thank you for taking the time to attend this hui on the Overseas Investment Act Forestry Review, especially at this time of year when many New Zealanders are taking time off over the summer holiday period.
- We have called you together today, as Māori leaders with key interests in the forestry sector, to hear your views on proposed policy changes to the overseas investment screening for forestry, and how they may impact you and the groups you represent.

The Government is undertaking the Overseas Investment Act Forestry Review

- As you may 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), it also required a review of the operation and effectiveness of the 2018 changes to be initiated within two years.
- 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 New Zealand Emissions Trading Scheme (NZ ETS) settings and the rising carbon price are likely to be influencing overseas investment in forestry. These drivers may be more strongly encouraging overseas investment than the original policy intended, and may result in more speculative overseas investment than originally envisaged. Relatedly, rising carbon prices appear to be incentivising greater establishment of permanent exotic carbon forestry.
- 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.

In light of the changing context around forestry, I am proposing that the Forestry Review focus specifically 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. 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.

Officials are actively considering how to best address minor and technical issues, although this is not a focus for this hui.

- Stakeholders raised a number of minor and technical issues through targeted engagement last year regarding the operation and effectiveness of the 2018 forestry changes to the Act.
- Government is actively considering how best to address these issues, consistent with the Forestry Review Terms of Reference.

The Government is aware that changes to the 'special forestry test' disproportionately impact Māori because of the importance of forestry to Māori, economically and culturally.

- We want to hear from you, how these changes may impact you and the groups you represent, as Māori leaders and users of the overseas regime.
- I will shortly hand over to government officials to lead the rest of the hui. With you today are officials from Te Tai Ōhanga - the Treasury, supported by officials from the Overseas Investment Office and Te Uru Rākau – New Zealand Forestry Service / Ministry for Primary Industries (MPI).

Officials will consider the feedback from the hui, which will inform Ministerial and Cabinet decision-making.

- I will report to Cabinet in early 2022 on the outcome of Māori engagement and recommended policy proposals.

- Officials will also report to me on any operational changes that may be required for issues not resolved, or appropriate to be addressed by the legislative changes, six months after the conclusion of any legislative change.

We appreciate your time and input; I want to thank you again for attending this Forestry Review hui. Tēnā koutou, tēnā koutou, tēnā tātou katoa

Officials to take over.

Hui Runsheet

NB: There may be changes to what section each Treasury official speaks to

Hui Slide pack Agenda	
Speaker	Agenda Item
Trevor Moeke	1. Whakatau and introductions (5 mins) Slide 1
Trevor	Karakia o Te Tai Ōhanga Slide 2
Trevor	Overview of this hui Slide 3 and Purpose of this hui
Minister Parker	2. Welcome by Hon David Parker, Associate Minister of Finance (5 mins)
Bryan Chapple	3. Purpose of this hui Slide 4
Conor McBride	4. Background on the Overseas Investment Act Forestry Review (5 mins) Slides 5-6
Conor	5. Policy proposal (10 mins) Slides 7-10
Trevor	6. Discussion (20 mins) Slides 11
Conor	Minor and Technical changes Slide 12 <i>Note that this is not a formal item</i>
Trevor	7. Process from here (5 mins) Slide 13
Trevor	Hei whakakapi

Annex 2: Agency representative details:

The Treasury:

- **Bryan Chapple** (Deputy Secretary, Macroeconomics & Growth),
Bryan.Chapple@treasury.govt.nz, [39] [35]
- **Trevor Moeke** (Poutiaki – Director Te Ao Māori Strategy and Performance),
Trevor.Moeke@treasury.govt.nz, [35]
- **Conor McBride** (Manager, International),
Conor.McBride@treasury.govt.nz, [35]
- **Sarah Key** (Senior Analyst, International),
Sarah.Key@treasury.govt.nz, [39]
- **Jemma Jackson** (Analyst, International)
Jemma.Jackson@treasury.govt.nz, [39]
- **Brent Bautista** (Analyst, International),
Brent.Bautista@treasury.govt.nz, [39]
- **Lachy Stark** (Analyst, International),
Lachy.Stark@treasury.govt.nz, [39]

The Overseas Investment Office:

- **Michael Appleyard** (Acting Head of Regulatory Practice and Delivery),
mappleyard@linz.govt.nz, [39]

Ministry for Primary Industries:

- **Alastair Cameron** (Director, Primary Sector Policy),
Alastair.Cameron@mpi.govt.nz ***NB: attending Monday hui only***
- **Anna Tyler** (Manager, Forests and Land Use),
Anna.Tyler@mpi.govt.nz, [39]
- **Phil Holland** (Senior Policy Analyst, Data, Insights and Forestry),
Phil.Holland@mpi.govt.nz, [39]

Annex 3: Hui attendees' biographical information

Hui Attendee	Role/Location	Biographical information
<p>[23]</p>  <p>Ngāti Porou</p>	<p>[23] Ngāti Porou Forests Limited (NPFL)</p> <p>Based in Ruatōria, Gisborne</p>	[23]
<p>[23]</p>  <p>Raukawa ki te Tonga</p>	<p>[23] Raukawa ki te Tonga AHC Limited.</p> <p>Iwi/hapu: Ngāti Raukawa, Ngāti Tūwharetoa, Ngāti Hauiti, Ngāti Rangi, Ngāti Apa.</p> <p>Based in the Central North Island</p>	

Hui Attendee	Role/Location	Biographical information
<p>[23]</p> <p>Federation of Māori Authorities (FOMA)</p>	<p>FOMA</p> <p>Wellington-based office</p> <p>Iwi/hapu: Te Ātiawa, Taranaki, Ngāti Ruanui</p>	<p>[23]</p>
<p>[23]</p>  <p>Ngāti Tūwharetoa</p>	<p>[23] Tūwharetoa Māori Trust Board</p> <p>The Trust Board administers assets for Ngāti Tūwharetoa, Lake Taupo</p>	<p>[23]</p>

Hui Attendee	Role/Location	Biographical information
<p data-bbox="180 324 225 349">[23]</p>  <p data-bbox="199 1075 422 1142">Ngāti Koata in Te Tau Ihu</p>	<p data-bbox="466 336 651 403">[23] Wakatū Incorporation</p> <p data-bbox="466 470 798 616">Wakatū is owned by four iwi; Ngāti Koata, Ngāti Rārua, Ngāti Tama, and Te Ātiawa.</p> <p data-bbox="466 683 782 750">Iwi/hapu: Ngāti Rārua and Te Mahurehure</p> <p data-bbox="466 817 798 842">Based in Whakatū (Nelson)</p>	<p data-bbox="826 324 871 349">[23]</p>

Hui Attendee	Role/Location	Biographical information
<p>[23]</p>  <p>Ngāti Hine, as part of wider Ngāpuhi</p>	<p>Ngāti Hine Forestry Trust</p> <p>Iwi/hapu: Ngāti Hine and Ngāpuhi</p> <p>Based in Moerewa and Kawakawa</p>	<p>[23]</p>
<p>[23]</p>  <p>Te Uri o Hau as part of wider Ngāti Whatua</p>	<p>[23] Te Taumata (deeper MFAT-Māori Engagement Entity), [23]</p> <p>Iwi/hapu: Te Uri o Hau, Ngāti Whatua, Ngāti Porou</p> <p>Based in Whangarei</p>	

Hui Attendee	Role/Location	Biographical information
<p>[23]</p>  <p>Te Rarawa</p>	<p>[23]</p> <p>Te Rarawa</p> <p>Based in Kaitaia</p>	<p>[23]</p>
<p>[23]</p>  <p>Te Arawa</p>	<p>[23] Te Taru White Consultancy</p> <p>Iwi/hapu: Te Arawa (Rotorua and Bay of Plenty), Tainui (Central North Island) and Ngāti Porou (East Cape and Gisborne)</p> <p>[23] from Rotorua.</p>	

Annex 4: Hui Slidepack

(attached)

Annex 5: Q+A

Section 1: Forestry Review

Why are you doing this Review now?

The Overseas Investment Amendment Act 2018, which changed the way overseas investments in forestry are screened, also required a review of the operation and effectiveness of these changes to be initiated within two years of their taking effect.

This was because of the pace and timing of the changes taking place. These were driven by the need for the legislation to be passed into law prior to the Comprehensive and Progressive Trans Pacific Partnership coming into force.

The two-year period was chosen to ensure the changes were reviewed quickly (given their significance), while providing enough time for insights into the functioning and use of the new regime.

Why did the Review not commence two years after the changes were brought into force (Oct 2020)?

The Treasury and other agencies did begin work on this review in 2020, including developing the draft terms of reference.

The review is currently focused on assessing the operation and effectiveness of the forestry-related amendments introduced by the Overseas Investment Act 2018, and whether the changes are achieving their original policy intent.

The Terms of Reference that Cabinet agreed to in March 2021 specified that the Review must not enquire into, determine or report on the original policy rationale and intent underpinning the changes and would not enquire into the appropriateness of applications to convert farmland to forestry using the 'special forestry test'.

Why is government considering a change in focus for the Forestry Review?

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 (as a result of the ~\$40 / tonne increase in the carbon price since 2018), 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 among stakeholders about the negative spillover effects of whole farm conversions, particularly in relation to the use of pastoral land (or land that is important to local economies and communities).

While high quality foreign investment in forestry and a strong forestry sector remain important, [1]

[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.

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, the Minister is considering proposing to remove forestry conversions from the 'special forestry test' under the Act.

The proposed changes would require overseas investors looking to acquire land for conversion to forestry to access the Benefit to New Zealand pathway. The Benefit to New Zealand test assesses the likely benefits of a proposed overseas investment in seven broad categories or 'factors' compared 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 and involves 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'.

What are the objectives of the Review?

Subject to Cabinet approval, the Forestry Review would be rescoped as follows:

- the Forestry Review is rescoped to focus on legislative change to remove forestry conversions from the 'special forestry test' and to improve the operation and effectiveness of the Act's forestry provisions, and
- Officials will no longer release a discussion document nor conduct a second round of wider stakeholder engagement in the first quarter of 2022. Officials will engage with Māori, whom these changes disproportionately impact. There will be two tranches of Māori engagement. The hui which the Minister (Hon David Parker) is leading on 17 January is part of the first tranche of engagement, which is prior to the announcement of the proposed changes. The first tranche of engagement will give a small group of key Māori stakeholders the earliest opportunity to consider the impact of the changes.

Who is responsible for the Review?

The Review lead is the Treasury - Te Tai Ōhanga, in collaboration with the Overseas Investment Office / Toitū Te Whenua Land Information New Zealand and Te Uru Rākau – New Zealand Forestry Service / Ministry for Primary Industries (MPI).

**What is the timeline for the Review? /
When will decisions from the Review be made?**

Legislative change is expected to commence in 2022. The Associate Minister of Finance has proposed that the Bill should be a Category 3 Bill – to be passed if possible in 2022. Officials will report to the Minister on any operational changes that may be required for those issues not resolved, or appropriate to be addressed by the legislative changes, six months after the conclusion of any legislative change.

Activity	Due date
Hui with targeted and representative groups of Māori forestry representatives	17 January 2022, 2:00-4:00pm 19 January 2022, 2:00-4:00pm
Treasury advice, revised draft Cabinet paper and draft regulatory impact statement. Treasury advice will cover: <ul style="list-style-type: none"> • the outcome of the Māori engagement • minor / technical legislative changes to be included in the draft Cabinet paper • updated talking points. 	28 January 2022
Ministerial consultation on revised draft DEV paper	Late January / early February 2022 (indicative)
DEV paper to be lodged	3 or 10 February 2022 (TBC)
DEV Meeting	9 or 16 February 2022 (TBC)
Cabinet Meeting	14 or 21 February 2022 (TBC)
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Post-announcement engagement with Māori	Mid-late February 2022 <i>(TBC – subject to date of announcement)</i>
Officials to initiate work for legislative change and prepare an Overseas Investment Act Amendment Bill for Cabinet consideration in 2022 <i>(subject to Cabinet agreement)</i>	Ongoing

Will the Review consider farmland to forestry conversions?

Ministers are considering seeking Cabinet approval to remove forestry conversions (primarily used for farmland conversions) from the 'special forestry test'.

The proposed change would require overseas investors looking to acquire land for conversion to forestry to access the Benefit to New Zealand pathway. The Benefit to New Zealand test assesses the likely benefits of a proposed overseas investment in seven broad categories or 'factors' compared 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 and involves greater discretion for decision-makers.

- These changes are proposed in order to: improve government's ability to manage risks and to ensure proposed overseas investments in land for conversions to forestry demonstrate benefits, and
- ensure that forestry conversions through the overseas investment screening regime demonstrate benefits to New Zealand, by aligning the assessment of forestry conversions with the approach taken under the Act for most other land-based investments.

These changes 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'.

Will the Review consider carbon farming/permanent forestry?

The Review is focused on whether the 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).

Will the Forestry Review consider the impacts of proposed changes for Māori?

The government is 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 which the Minister (Hon David Parker) is leading on on 17 January is part of the first tranche of engagement, which is prior to the announcement of the proposed changes. The first tranche of engagement will give a small group of key Māori stakeholders the earliest opportunity to consider the impact of the changes.

Following that, officials will engage with a wider group after the announcement of Cabinet's decision, to enable Māori to advise on the potential impacts of the changes. 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.

The upcoming engagement will focus on seeking Māori feedback on the proposal to remove forestry conversions from the 'special forestry test' and note that government will be proposing minor and technical legislative changes to improve the operation and effectiveness of the 2018 changes to the forestry-related provisions of the Act.

The Treasury will engage with stakeholders impacted by the 2018 changes, including iwi. Stakeholder feedback will have a critical role in informing Treasury's final advice to Ministers.

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.

What do the recent changes to the Benefit to New Zealand test mean for the modified benefits test?

The recent amendments to the Benefit to New Zealand test do not change the operation of the modified benefit test for forestry. To the extent that some investors may prefer the new benefit to New Zealand test's 'status quo' counterfactual over the modified benefit test's 'current owner' counterfactual, the Act continues to give investors choice about which pathway they would like to use when applying for consent.

Were there other Amendments to the Act that impact investment in forestry?

Statutory timeframes

The Phase 2 reform introduced statutory timeframes for application decisions under the Act, which took effect on 24 November 2021. This brings New Zealand into line with other jurisdictions and provides greater certainty for investors. The timeframes are ambitious and will require decision-makers to arrive at decisions more quickly than they previously would. The timeframes will therefore provide a meaningful improvement to investors and improve New Zealand's attractiveness to high quality foreign investment.

Fresh and seawater areas

In addition, new rules clarified and strengthened requirements around 'Fresh or Seawater Areas' which is the foreshore, seabed or the beds of rivers, streams or lakes. These were previously known as 'Special Land'.

If an overseas investor is purchasing a freehold or Crown pastoral lease interest in property that includes this type of land, the fresh or seawater areas must be offered to the Crown. The Crown has the right to acquire these areas, but may decide not to.

A Revised National Interest Test

This test applies to foreign governments and Social Impact Bonds, and now applies automatically if a non-New Zealand government investor takes a more than 25% ownership or control interest in the relevant entity (up from 10%).

A Revised Investor Interest Test (Standing Consents)

A new provision is introduced for repeat investors and standalone investors. Repeat investors which have previously met the investor test and whose circumstances have not changed, will not need to be reassessed resulting in a lower application fee and the assessment process may be shorter.

Farm Land advertising rules strengthened

Requirements have been updated and strengthened for the way 'Farm land' is advertised to New Zealanders before an overseas investor can buy it. The new rules require that a farm is advertised online and in print for at least 30 days before an agreement with an overseas buyer can be entered into.

An exemption to this requirement is available and some of the current class exemptions will continue to apply.

When and how can the public engage with the Review?

If progressed, the public will have an opportunity to engage with the changes recommended as a result of the Forestry Review when any legislation reaches select committee. If progressed, the Bill is likely to be considered at select committee likely to be in early 2022 (*indicative only*).

Section 2: Impact of proposals on Māori economic interests

Will the review consider the impacts of the 2018 amendments on Māori?

The Treasury will continue to engage with stakeholders impacted by the 2018 changes, including further engagement with iwi, throughout the review. Stakeholder feedback will have a critical role in informing Treasury's final advice to Ministers on the risks and benefits to Māori of the proposed changes.

What specific Māori interests have you identified in the forestry sector?

Māori own at least 30 per cent of the land containing New Zealand's plantation forests, and large areas of indigenous forest. Tangata whenua have more than \$2 billion of assets in the sector, and forestry is also a significant employer of Māori. Tangata whenua have kaitiaki responsibilities within their rohe and partner in the management of forests as part of the conservation estate.

What risks have you identified for Māori as a result of these new proposals?

Removing forestry conversions from the 'special forestry test' may impact negatively on the value of New Zealand forestry land and assets, to the extent that this change would deter overseas investment partners. Given the significant Māori ownership of these types of assets, there is a risk of disproportionate impacts on Māori. In addition, this could hamper efforts to convert historically under-developed Ahu Whenua trust-land³ to production forest, including through aggregation arrangements. Any reduction in sector attractiveness risks a capital or revenue hit to significant iwi investments.

There are currently very few forestry conversion applications under the 'special forestry test' that relate to Māori freehold land. However, this may not necessarily have been the case in the future if current policy settings were retained, given drivers such as ETS settings and the impact of the rising carbon price.

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

Section 3: Other proposed changes to improve the operation and effectiveness of the regime

Why are you making changes in addition to the removal of forestry conversions from the 'special forestry test' and what are they?

When conducting targeted engagement on the 2018 changes we heard that these changes are achieving their primary policy intent – facilitating overseas investment in forestry.

However, stakeholders also raised a number of minor and technical issues during the first tranche of engagement regarding the operation and effectiveness of the 2018 forestry changes to the Act. They commented that some of the requirements for investors may not be facilitating overseas investment in forestry as effectively as they could be or may be having unintended consequences. Many of these comments related to key design features of the 2018 changes that were put in place to address wider issues such as trade obligations and to avoid creating loopholes for the residential land rules.

Officials are actively considering how best to address these issues, consistent with the Forestry Review Terms of Reference. It is likely that some of the issues raised would be best addressed through the legislative vehicle to remove forestry conversions from the special forestry test. Other issues may be best addressed through operational change.

Given the minor and technical nature of the proposed amendments, we do not anticipate that they will present risks to stakeholders, including specific risks to Māori. If Cabinet agrees to these minor and technical legislative changes, the legislative process will commence, and the public will be able to make submissions on the changes during the Select Committee stage.

Section 4: Other recent changes to the Overseas Investment Act (Phase 2 reform)

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).

How has the Phase 2 reform of the Act changed the rules for the offer of Special Land to the Crown?

The Overseas Investment Amendment Act (No 3) rationalises and simplifies the process for the Crown's acquisition of fresh and seawater areas (formerly known as special land). It does so by:

- making it compulsory for overseas persons to offer special land to the Crown (where previously it was only compulsory under the special forestry test),
- shifting the acquisition process so that it takes place post-consent, with no participation from the vendor, to ensure that the requirement does not delay transactions, and
- allowing regulations to be set to specify clear compensation amounts and timeframes for the Crown's acquisition of the land, to improve certainty for investors.

What is the scope of benefits to Māori, including cultural benefits that can be considered under the Benefit to New Zealand test?

The Benefit to New Zealand test is designed to ensure that investments in sensitive land and fishing quota will benefit New Zealand. Recognising that the benefits of foreign investment are not just economic, this test allows Ministers to consider a wide range of benefits before granting consent. Of particular relevance to Māori, the test includes whether the investment will:

- result in continued or enhanced access within or over the sensitive land, including for the purposes of undertaking stewardship of, or exercising kaitiakitanga in relation to, historic heritage⁴ or the natural environment;
- result in continued or enhanced protection of historic heritage in or on the relevant land (for example, agreement to support entry to wāhi tūpuna, wāhi tapu, or wāhi tapu areas, or agreement to land being set apart as a Māori reservation); or
- give effect to or advance a significant Government policy (including policies of relevance to Māori/Iwi).

In addition to the above, under the new Benefit to New Zealand test, Ministers will still be able to consider any other benefits arising from the investment before granting consent. This will ensure that other matters of relevance to Māori and any other group within New Zealand can still be considered and weighted highly in any consent application.

⁴ Historic heritage is defined in subsection 6(1) of the Overseas Investment Act. It includes natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, such as sites of significance to Māori (for example, wahi tapu).

Annex 6: Other work programmes:

What other forestry work programmes is government currently progressing?

As included in the original Terms of Reference, there are several work programmes underway across government and the forestry review will be aligned and coordinated with the outcomes of this work. These programmes include the:

- work on addressing afforestation concerns – MPI
 - review of the Emissions Trading Scheme – MfE and MPI
 - Emissions Reduction Plan (ERP) – MfE
 - One Billion Trees Programme – TUR
 - reform of the Resource Management system – MfE
 - industry Transformation Plan (ITP) – TUR/MPI
 - establishment of a mandatory registration system for forestry advisers and log traders – TUR/MPI
 - development of a national Wood Legality Assurance system – MPI / TUR
 - *Te Mana o Te Taiao - the Aotearoa New Zealand Biodiversity Strategy* (ANZBS) – DoC
- a. **Work on addressing afforestation concerns.** This work is ongoing and officials will continue to advise the Minister on how to achieve their objectives, particularly in light of the release of the Climate Change Commission’s draft report.
- b. **The review of the Emissions Trading Scheme**, led by MfE and MPI, concluded in June 2020 with the passing of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (ETR Act). The review resulted in a provisional emissions budget for the period 2021-2025 and changes to Emissions Trading Scheme (ETS) settings including unit supply and price controls. It is now in an implementation phase, with most amendments to improve the forestry aspects of the ETS due to come into effect in 2023. The Government’s decision not to extend averaging accounting to post-1989 forests already registered in the New Zealand ETS will be revisited in 2022.
- c. The first **Emissions Reduction Plan (ERP)**. The ERP will describe how we are going to meet emissions budgets and make progress towards meeting our 2050 target. This work is being coordinated by MfE and involves a range of agencies. The ERP will include sector-specific policies for the role of forestry in meeting climate change targets.
- d. **The One Billion Trees Programme**, led by TUR, the purpose of which is to increase tree planting across New Zealand and support landowners to integrate trees into their land use. TUR is required to report in six monthly intervals on the progress as measured under the programme’s monitoring and evaluation framework. The 24-month report is expected in 2021.

- e. The **reform of the resource management system** based on the comprehensive review of the Resource Management Act (RMA) carried out last year. Through stronger national direction, there will be more focus on natural environmental outcomes, enabling more development within environmental limits. The RMA will be replaced by three new acts:
- the Natural and Built Environment Act
 - the Strategic Planning Act to require regional spatial planning and alignment across related planning statutes, and
 - the Managed Climate Change Retreat and Adaptation Act to address specific challenges of managed retreat and adaptation.
- f. The **Industry Transformation Plan (ITP)** for the forestry and wood processing sector. The ITP aims to develop a globally competitive and resilient supply chain and attract investment in wood processing that lifts productivity and accelerates the transition to a low emissions economy by providing low-emissions materials and bioenergy.
- g. The establishment of a mandatory registration system for **forestry advisers and log traders** is being led by MPI and TUR and will support improved professional standards and a more transparent market for log trading.
- h. The development of a national **Wood Legality Assurance system** is being led by MPI and TUR and aims to put in place a robust chain of custody framework for imported and New Zealand grown, processed, and exported wood products.
- i. **Te Mana o Te Taiao - the Aotearoa New Zealand Biodiversity Strategy (ANZBS)**. This was approved in 2020 and meets one of New Zealand's commitments under the UN Convention on Biological Diversity (CBD) to provide an overarching national strategy for biodiversity management to 2050. An implementation plan is being prepared which will include a review of legislative and policy constraints on co-ordination in biodiversity management in government, between central and local government, and with Treaty partners.
- j. **Proposed National Policy Statement on Indigenous Biodiversity (NPSIB)**. The proposed NPSIB would be a regulatory instrument under the RMA that strengthens and clarifies the requirements that are already in place for local authorities to manage Aotearoa New Zealand's indigenous biodiversity, providing clarity and guidance for landowners, iwi/hapū, and local government.

Annex 7: Suggested Video Recording Lines for Minister Parker

Key Messages – 19 January

Subject to your availability, you may wish to record a brief (2 minute) video introduction for the second hui scheduled for Wednesday 19 January, which you are unable to attend.

Suggested Video Recording Lines for Minister Parker

Tēnā koutou katoa,

Thank you for taking time to attend this hui on the Overseas Investment Act Forestry Review, especially at this time of year when most New Zealanders are taking time off over the summer holiday period. Sorry I can't be with you today for this hui.

We are interested in your views on proposed policy changes on some aspects of the overseas investment regime and how they may impact you and the groups you represent. We know and acknowledge the economic and cultural importance of the forestry sector for Māori.

The government is undertaking the statutory Forestry Review of the Overseas Investment Act. As you may know, in 2018, the Government changed the way overseas investment in forestry is screened.

Concerns among some stakeholders were raised from earlier stakeholder engagement following phase 2 reform in early 2021 regarding the negative spill over effects of whole farm forestry conversions, particularly in relation to the use of pastoral land.

Officials are also actively considering how to best address minor and technical issues to improve the effectiveness of the Act's forestry provisions, although this is not a focus for this hui, and there will be further consultation on any proposed changes in early 2022.

In light of the changing operating context for forestry investment, I am proposing that the Forestry Review focus specifically on legislative change to remove forestry conversions from the 'special forestry test' under the Act, as well as continue with changes to improve the operation and effectiveness of the Act's forestry provisions.

The proposed change to the special forestry test 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. This test assesses the likely benefits of a proposed overseas investment in seven broad categories or 'factors' compared 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 and involves greater discretion for decision-makers.

Officials will consider the feedback from the hui, which will inform Ministerial and Cabinet decision-making.

Sorry I can't be with you today. Government officials will answer all your questions for the remainder of the of the hui, to be led by Te Tai Ōhanga – The Treasury.

We appreciate your time and input; I want to thank you again for attending this Forestry Review hui. Tēnā koutou, tēnā koutou, tēnā tātou katoa

Ngā mihi nui.

Annex 8: Run Sheet including Officials' Talking Points

Hui Talking Points		
Speaker	Agenda Item	Talking points
Trevor Moeke	1. Whakatau and introductions (5 mins) Slide 1	<ul style="list-style-type: none"> Tēnā koutou, (Mihi here, if Bryan and/or Trevor wish to provide one)
Trevor	Karakia Slide 2	
Trevor	Overview of this hui Slide 3	<ul style="list-style-type: none"> Trevor to remind the attendees of the confidential nature or of the hui, and set out expectations that by their attendance, they agree to keep all matters discussed in-confidence. Read through slide listing how the hui will run
Minister Parker	2. Welcome by Hon David Parker, Associate Minister of Finance (5 mins)	<ul style="list-style-type: none"> Minister to give his opening remarks. On 19 January, the video introduction from Minister Parker (subject to his availability) will be played here
Bryan Chapple	3. Purpose of this hui (5 mins) Slide 4	<ul style="list-style-type: none"> As the Minister has said, we thank you for taking time to attend this hui on the Overseas Investment Act Forestry Review, especially at this time of year when most New Zealanders are taking time off over the summer holiday period. We are interested in your views on proposed policy changes on some aspects of the overseas investment regime and how they may impact you and the groups you represent.

Hui Talking Points		
Speaker	Agenda Item	Talking points
<p>Conor McBride</p> <p>to be supported by other officials present when needed</p>	<p>4. Background on the Overseas Investment Act Forestry Review (5 mins)</p>	<p>Background on the Overseas Investment Act Forestry Review Slide 5-6</p> <p>Talking points</p> <ul style="list-style-type: none"> • The government is undertaking the statutory Forestry Review of the Overseas Investment Amendment Act. • As you may know, the Overseas Investment Amendment Act 2018 changed the way overseas investments in forestry are screened, including the creation of the ‘special forestry test’, to provide a more streamlined pathway for foreign investment into the sector. It also required a review of the operation and effectiveness of the 2018 changes to be initiated within two years of their taking effect. • Treasury and other agencies began work on this review in 2020.
<p>Conor</p> <p>to be supported by other officials present when needed.</p>	<p>5. Policy proposal (10 mins) Slide 7</p>	<p>Operating context for forestry Slide 7</p> <ul style="list-style-type: none"> • Wider contextual changes are potentially impacting the nature of overseas investment in forestry • Since the forestry changes were introduced in 2018, the New Zealand Emissions Trading Scheme (NZ ETS) settings and the rising carbon price have likely increased overseas investor demand for forestry in New Zealand at levels beyond the original policy intent. • The ETS and the increasing carbon price may have also resulted in more speculative overseas investment than originally envisaged. Relatedly, rising carbon prices appear to be incentivising greater establishment of permanent exotic carbon forestry.

Hui Talking Points		
Speaker	Agenda Item	Talking points
Conor	5. Policy proposal (10 mins) Slide 8	<p>Role of overseas investment screening settings for forestry Slide 8</p> <p>Talking points</p> <ul style="list-style-type: none"> Ministers are considering rescoping the Forestry Review so that it is focussed on legislative change to <ol style="list-style-type: none"> remove forestry conversions from the 'special forestry test' under the Act, and to improve the operation and effectiveness of the Act's forestry provisions.
Bryan to be supported by other officials present when needed	5. Policy proposal (10 mins) Slide 9-10	<p>Policy proposal: Remove forestry conversions from the 'special forestry test' Slide 9 and Impact of policy proposal Slide 10</p> <p>Talking points</p> <ul style="list-style-type: none"> 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. This proposed change would apply only to forestry conversions. The Act would, continue to support high-quality foreign investment in existing production forestry by retaining the more streamlined 'special forestry test'. <p>+ Read out text of slide 10</p>

Hui Talking Points		
Speaker	Agenda Item	Talking points
Trevor to be supported by other officials present when needed	6. Discussion (20 mins) Slide 11	<p>Discussion Slide 11</p> <ul style="list-style-type: none"> • What is your experience with forestry conversions under the ‘special forestry test’? • What are your perspectives on the changing operating context for forestry since 2018? • What impact might this change have for your aspirations? <p>Talking points</p> <ul style="list-style-type: none"> • The Government is aware that changes to the ‘special forestry test’ disproportionately impact Māori and presents risks because of the importance of forestry to Māori, economically and culturally. • We want to hear from you on how these changes may impact you and the groups you represent, as Māori leaders and users of the overseas investment regime. • The feedback you provide in this hui will inform government's decisions. Stakeholder feedback will have a critical role in informing Treasury's final advice to Ministers. • Following that, the Minister will report back to Cabinet in early 2022 on the outcome of Māori engagement in addition to other significant changes to be progressed through legislative change.

Hui Talking Points		
Speaker	Agenda Item	Talking points
		<p>○ Questions for discussion:</p> <ol style="list-style-type: none"> 1. What is your general view on the risks of overseas investment through the 'special forestry test'? Are the current settings too permissive or not permissive enough? 2. If you consider that there needs to be some adjustment to the 'special forestry test' (e.g. so that the forestry investments coming through this pathway better benefit New Zealand or align with government policy), what adjustments do you think need to be made? 3. Do you think that the (revised) Benefit to New Zealand test would be better at ensuring the wellbeing of your community and interests relative to the 'special forestry test'? 4. If not the Benefits to New Zealand test, how do you think concerns regarding forestry conversions within the 'special forestry test' should be addressed? 5. Have any of the changes impacted protection of historic or culturally significant sites?
Conor	6. Discussion (20 mins) Slide 12	<p>Minor and technical changes Slide 12</p> <p>Talking points</p> <ul style="list-style-type: none"> • <i>As noted by the Minister, officials are actively considering how best to address minor and technical issues, although this will not be a focus for this hui.</i> • Stakeholders raised a number of minor and technical issues through the first tranche of engagement regarding the operation and effectiveness of the 2018 forestry changes to the Act.

Hui Talking Points		
Speaker	Agenda Item	Talking points
Trevor	7. Process from here Slide 13	<p>Talking points</p> <ul style="list-style-type: none"> • Officials will consider the feedback from the hui, which will inform Ministerial and Cabinet decision-making. • Officials will also report to the Minister on any operational changes that may be required for issues not resolved, or appropriate to be addressed by the legislative changes, six months after the conclusion of any legislative change. • We appreciate your time and input; I want to thank you again for attending this Forestry Review hui. Tēnā koutou, tēnā koutou, tēnā tātou katoa
Trevor	Hei whakakapi Slide 14	