

# The Treasury

## Overseas Investment Act Forestry Review Information Release

June 2022

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## Treasury Report: Overseas Investment Act Forestry Review: Draft Cabinet Paper and Terms of Reference

<b>Date:</b>	22 February 2021	<b>Report No:</b>	T2020/3315
		<b>File Number:</b>	IM-5-8-4-1

### Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	<b>Note</b> the contents of this report.	N/A
Associate Minister of Finance (Hon David Parker)	<p><b>Agree</b> to the timeline for the Forestry Review.</p> <p><b>Agree</b> to consult your colleagues on the draft Cabinet paper and Terms of Reference for the Forestry Review at the Forestry Ministers Meeting on 1 March 2021 and to take this to Cabinet Economic Development Committee on 17 March.</p> <p><b>Agree</b> to send the letter attached as Annex 4 to members of the Iwi Forestry Reference Group thanking them for their contribution.</p>	24 February 2021

### Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Jemma Jackson	Analyst, International	[39]	No (mob) ✓
Thomas Parry	Manager, International		N/A (mob)

### Minister's Office actions

**Return** the signed report to Treasury by 24 February.

Subject to Minister Parker's agreement, **email** signed thank you letters to Forestry Reference Group members.

Note any feedback on the quality of the report

**Enclosure:** Yes: draft Cabinet paper, draft Terms of Reference, talking points and draft letter all annexed.

# Treasury Report: Overseas Investment Act Forestry Review: Draft Cabinet Paper and Terms of Reference

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## Purpose of Report

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1. This report seeks your (Minster Parker's) agreement to:
  - a) a draft Cabinet paper for the Economic Development Committee seeking approval of the Terms of Reference (ToR) and timeline for the statutory review of the forestry-related changes made to the Overseas Investment Act 2005 (the Act) ('Forestry Review') (Annex 1), and
  - b) the draft ToR (Annex 2) and review timeline.
2. It also provides:
  - a) a summary of the fourth and final meeting of the Iwi Forestry Reference Group (FRG), which took place on 18 February 2021,
  - b) a letter that we propose you send to FRG members thanking them for their contribution (Annex 3), and
  - c) talking points to support consultations on the Cabinet paper and ToR with your colleagues at the Forestry Ministers meeting on Monday 1 March (Annex 4).

## Background

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3. In 2018, the Government changed how overseas investments in forestry are screened under the Act. The changes brought forestry cutting rights into the screening regime and established streamlined consent pathways for forestry investments (including the 'special forestry test').
4. As these changes were developed at pace to align with the passage of Comprehensive and Progressive Agreement for Trans-Pacific Partnership, the Act provided for a review of their operation and effectiveness, to begin within two years of commencement (i.e. by 22 October 2020).<sup>1</sup>
5. The Forestry Review began in early 2020 with the development of a draft ToR (T2020/130 refers). However, while the draft was agreed by Forestry Ministers (you, Minister Sage and Minister Jones) in March 2020, all further work was paused due to COVID-19.

## Draft Terms of Reference

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6. In your meeting with Forestry Ministers in March 2020, you agreed to a review tightly focussed on the operation and effectiveness of the changes and excluding consideration of:

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<sup>1</sup> The review is mandated by Clause 10, Schedule 1AA of the 2005 Overseas Investment Act (the Act).

- a) the first principles question of the role of overseas investment in achieving the Government's forestry priorities,
- b) whether investments in permanent forestry should be able to access the special forestry test, and
- c) whether applications to convert farmland to forestry should be unable to access the special forestry test.

7. [1]

8. We note that this issue was raised in six of a total 46 submissions on both Phase 2 Overseas Investment Act Amendment Bills. Most submitters were concerned that the special forestry test, along with the proposed more stringent requirements for farmland, would incentivise the conversion of farm land to forestry, which would have adverse social, environmental and economic impacts on rural communities. [1]

9. We are providing the draft for you to review again due to the extended time since the draft ToR were agreed and the new group of Forestry Ministers.

## Updated Review Timeline

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10. We provided you with a timeline for the Forestry Review in February 2020 (T2020/13 Refers). Following delays caused by COVID-19, we have revised the timetable and now seek your agreement to the following:

Cabinet consideration and approval of ToR and review timetable	17 March 2021
Targeted consultation to inform discussion document and preparation of discussion document	April – September 2021
Cabinet consideration and approval of discussion document	October 2021
Public consultation on discussion document	November 2021 – February 2022
Submissions analysis and policy development (including some concurrent with discussion document consultation)	December 2021 – April 2022
Cabinet agreement to reform package	May 2022
Depending on Cabinet decisions, either: <ul style="list-style-type: none"> <li>• Embedding operational changes</li> <li>• Developing and passing new regulations</li> <li>• Developing and introducing new legislation</li> </ul>	June 2022 onwards

## Summary of Final Iwi Forestry Reference Group Meeting

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11. The Iwi Forestry Reference Group was established to allow for continued dialogue with the Māori forestry sector about the impact of the forestry-related changes. This was in recognition of the particularly important role forestry plays in the Maori economy, and the importance of overseas investment to the forestry sector.
12. The fourth and final meeting of the Group took place on 18 February 2021. The main themes of the discussion were:
  - a) **Concerns around 'existing arrangements'**: members noted that while the special forestry test requires the maintenance of existing arrangements over the land (e.g. those relating to heritage, biodiversity, access, log supply), these must be formally documented. As Māori often rely on unwritten 'gentlemen's agreements', their arrangements – e.g. for hunting, food gathering or access to wahi tapu – are not protected through the test and they need to rely on negotiation with the landowner.
  - b) **Farmland conversions**: members said farmland conversions have not posed a significant problem for Māori and conversions in most cases are generally viewed as favourable as they are beneficial for the whenua (land). However, they thought the government should continue to evaluate the social and community impacts of forestry, including employment outcomes (particularly with technological advancements).
  - c) **Impact of COVID-19**: some members noted investor interest in the Māori forestry sector has increased since the emergence of COVID-19 and that investors are prepared to pay above market prices to secure logs.
  - d) **Iwi consultation**: members also highlighted the need to continue to improve discussion and engagement between the Crown and Māori. Most engagement is taking place at a high level and information does not always filter down. Members pointed out that even when information does filter down, there is a multitude of Government reforms taking place and some Māori do not fully comprehend the changes nor do they have the capacity to respond. We will consider these issues as part of our planning for consultation for the Forestry Review.
13. The Review will give us the opportunity to consider how a range of operational settings have been working in practice including how the existing arrangements provisions are functioning. Following Cabinet's consideration on the ToR, we will also provide you with advice on the best form of engagement with Iwi and Māori.

## Next Steps

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14. Once we have received your feedback on, and agreement to the Cabinet paper, ToR and review timeline, we will:
  - update the documents and return them to you for consultation with your colleagues at the Forestry Ministers meeting on 1 March 2021 (see Annex 3).
  - lodge the Cabinet paper and ToR for the Economic Development Committee (DEV) on 17 March 2021.

## Recommended Action

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- a **Review** the draft Cabinet paper (Annex 1) and Terms of Reference for the Forestry Review (Annex 2), and provide officials with any feedback.

*Agree/disagree*

- b **Agree** to the timeline for the Forestry Review outlined in this paper.

*Agree/disagree*

- c **Agree** to consult your colleagues on the draft Cabinet paper and Terms of Reference for the Forestry Review at the Forestry Ministers Meeting on 1 March 2021.

*Agree/disagree*

- d **Note** we will provide you with a new version of the draft Cabinet paper and Terms of Reference, reflecting your feedback, before the Forestry Ministers Meeting

- e **Agree** to take the Cabinet paper and Terms of Reference to DEV on 17 March.

*Agree/disagree*

- f **Agree** to send the letter at Annex 4 to members of the Iwi Forestry Reference Group, concluding the group and thanking members for their contribution.

*Agree/disagree*

Thomas Parry  
**Manager, International**

Hon Grant Robertson  
**Minister of Finance**

Hon David Parker  
**Associate Minister of Finance**

**ANNEX 1: Draft Cabinet Paper: Overseas Investment Act Forestry Review: Draft Terms of Reference**

**ANNEX 2: Terms of Reference for the Forestry Review**

### **ANNEX 3: Letter to Iwi Forestry Reference Group members**

Tēnā koe [name]

Thank you for your participation in the Forestry Reference Group over the past two years. I know my officials have found their engagement with you helpful for their thinking about the forestry changes made to the Overseas Investment Act in 2018. The meeting summaries I received also demonstrated to me that you have thought deeply about these issues.

I look forward to engaging with you further through the consultation on the review of the forestry changes, which will be taking place later in the year.

Once again, thank you for your time and thoughtful contributions.

Ngā mihi nui

## **ANNEX 4: Forestry Review: Talking Points for Forestry Ministers Meeting**

5pm, Monday 1 March, 2021

### *Context*

- In 2018, the Government made changes to the forestry-related consent pathways in the Overseas Investment Act which:
  - Brought ‘forestry rights’ into the regime - these are the rights to establish, maintain and harvest a crop of trees (without owning or leasing the actual land the trees are on). Prior to the changes, overseas investors didn’t require consent to buy these rights, even though they provide similar levels of control over sensitive land as ownership or leasing.
  - Streamlined the consent process for investments in forestry and land that would be converted to forestry.
- As these changes were developed quickly (due in part to the need to enact changes prior to our CPTPP obligations coming into force), we agreed to begin a review of them within two years of their commencement i.e. by 22 October 2020.
- The Forestry Review began last year with the development of the draft Terms of Reference which were agreed with Forestry Ministers Sage and Jones.
- However, further work in 2020 was put on hold due to COVID-19.

### *Terms of Reference*

- I would now like to restart the Forestry Review, the immediate next step for which is to seek Cabinet approval of the Terms of Reference (ToR), which I plan to do on 17 March (via DEV).
- The current draft ToR which you have received, proposes a tightly focused review that addresses the operation and effectiveness of the changes, in line with the wording of the statutory provision.
- This will be a good opportunity to gauge how the changes have been working in practice.
- I don’t propose to revisit the fundamental position that the government supports overseas investment in the forestry sector and that we provide a streamline ‘checklist’ pathway for some investments.
- I know there has been significant commentary on the issue of whether applications to convert farmland to forestry should be blocked from accessing the special forestry test.

[1]

- I welcome your views on the ToR ahead of me taking them to DEV on 17 March.