The Treasury

Proactive release - Regulatory Impact Statement: Overseas investment screening settings for forestry conversions

May 2022

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Regulatory Impact Statement: Overseas investment screening settings for forestry conversions

Coversheet

Purpose of Document	
Decision sought:	*Whether to amend current settings relating to how overseas investment in forestry conversions is screened through the Overseas Investment Act 2005*
Advising agencies:	*The Treasury – Te Tai Ōhanga*
Proposing Ministers:	*Hon David Parker, Associate Minister of Finance*
Date finalised:	*9 February 2022*

Problem Definition

Overseas investment into New Zealand, including for forestry, is managed under the Overseas Investment Act 2005 (the Act). In 2018, Government amended the Act to introduce the special forestry test[1] which made investment in production forestry, including for forestry conversions, easier for overseas investors. This was in recognition of the importance of inward investment to forestry and in support of the Government's broader forestry priorities.

Since the Government introduced the special forestry test in 2018, the operating context for the forestry sector has changed. There has been a significant shift in the economics of investing in production forestry, driven by the additional revenue from carbon credits (as a result of the ~$40 / tonne increase in the carbon price since 2018), Emissions Trading Scheme (ETS) reforms and government afforestation schemes. These drivers appear to be resulting in:

- Anecdotally, more speculative investment in production forestry (both from domestic and international investors), reflecting that the value proposition for investment in production forestry comes from both wood and fibre production, as well as the carbon credits investors can claim.
- Afforestation of pastoral land (or land that is important to local economies and communities), which changes the patterns of economic activity and employment, creates spillover losses from farmland conversion in terms of farming-related support activity, and has broader wellbeing impacts, including the loss of indigenous biodiversity on some of the land.

The more recent increase in afforestation of pastoral land has highlighted that the Act does not require forestry conversions to demonstrate benefits in the same way the Act does for other land-based investments. In particular, the special forestry test, by design, does not provide decision-makers sufficient discretion under the Act to collect the right information as to the impact of a proposed investment or allow consideration of the trade-offs related to proposed overseas investment in forestry.

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

Executive Summary

In 2018 the Government made amendments to the Overseas Investment Act 2005. These amendments included introducing the special forestry test for overseas investors looking to invest in forestry. The introduction of the special forestry test was intended to create an easier pathway for overseas investors looking to invest in forestry in New Zealand. These changes were made in recognition of the importance of inward investment to forestry and in support of the Government's broader forestry priorities.

Since the Government introduced the special forestry test in 2018, the operating context for the forestry sector has changed. There has been a significant shift in the economics of investing in production forestry driven by the additional revenue from carbon credits (as a result of the ~$40 / tonne increase in the carbon price since 2018), Emissions Trading Scheme (ETS) reforms and government afforestation schemes. As a result of these (and other) factors, New Zealand has seen an increase in farmland conversions to forestry (both permanent and production) by local and overseas investors. There is increasing concern, expressed by industry stakeholders, about the negative spill-overs from whole farm conversions, particularly in relation to the use of pastoral land (or land that is important to local economies and communities).

At the same time as the operating context for the forestry sector has changed since 2018, the overseas investment regulatory regime has also evolved. Several of the issues and concerns with the old benefits test that precipitated the need for a streamlined special forestry test have been addressed in recent changes to the overseas investment regulatory regime via the Phase 2 reforms.

There is a broad range of ways that overseas investment can influence New Zealanders' wellbeing and the purpose of the Act is to enable overseas investment while minimising the potential harms to New Zealand that such investment may bring. It is important to recognise that these aspects are often in tension – for example, if there is a reduction in decision makers' ability to manage the risks associated with overseas investment, then certainty for overseas persons will generally increase. Conversely, increasing decision makers' flexibility to decline prospective investments will often erode certainty.

Conversion from pastoral farming to forestry changes the patterns of economic activity and employment, as well as having broader wellbeing impacts and financial implications, including spill-over losses from farmland conversion in terms of possible loss of farming-related employment and exports, and associated community impacts of forestry conversions. However, the Act does not require forestry conversions to demonstrate benefits in the same way the Act does for other land-based investments. In particular, the special forestry test, by design, does not provide decision-makers sufficient discretion under the Act to collect the right information as to the impact of a proposed investment or allow consideration of the trade-offs related to proposed overseas investment in forestry.

The Government is therefore considering introducing legislation to require overseas investment in forestry conversions to pass through the Benefit to New Zealand test. This would provide decision-makers greater oversight of these types of investments and ensure that overseas investments into forestry conversions demonstrate benefits by aligning their assessment with the approach taken under the Act for most other land-based investments. If progressed this would not apply to acquisitions of existing production forestry or domestic investment.

The Benefit to New Zealand Test assesses whether the investment provides benefit to New Zealand, based on seven benefit factors set out in the Act. A current state assessment is applied to ensure the benefit is additional to what currently exists. This process is stricter than the special forestry test, without being as complex as the Farm land benefit test (another alternative). The Government has proposed that this be achieved through rescoping the ongoing Forestry Review so that it is focussed 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.

There are other parallel policy workstreams being undertaken by the Ministry for Primary Industries and the Ministry for the Environment to consider options that would (if progressed) impact on afforestation and investment signals, which are not covered by this regulatory impact analysis. These existing government programmes will continue to manage the wellbeing impacts of land use change to forestry over time.

Making changes to the overseas investment regime in forestry is not without risk. For example, a stricter overseas investment regime may cause a decrease in overseas investment. Overseas investors would be likely to see an increase in processing times for applications and increased uncertainty as to the outcome of their applications. [1]

Overall, any changes may be perceived as New Zealand tightening its investment regime to reduce overseas investment and therefore impact New Zealand's attractiveness for foreign direct investment more generally. In addition, any reduction in overseas investment into New Zealand's forestry sector may cause a decrease in the value of land held by landowners.

A clear risk would be to Māori interests. Māori own at least 30 per cent of the land containing New Zealand's plantation forests (but not always the trees themselves) and iwi are often partners for overseas forestry investors. [25]

In addition, this could hamper efforts to convert historically under-developed Ahu Whenua trust-land to production forest, including through aggregation arrangements. [25]

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In mid-January 2022, the Associate Minister of Finance led the first of two targeted hui with key Māori leaders and representatives in the forestry sector so that they could advise on the potential impacts of the proposed changes. Overall, the Māori representatives that were consulted indicated support for the direction of the policy proposal, due to the changing operating context for forestry, largely driven by the increase in the carbon price and ETS settings, as well as the impact of forestry conversions on rural communities.

The main concerns raised by Māori representatives included the potential economic and financial losses that could occur as a result of the proposed changes, including potential lost opportunities to partner with overseas investors, reduced access to capital, and a reduction in available land use options. This reflects that Māori and iwi being able to achieve their aspirations for their land is reliant on being able to access capital, skills, technology and overseas connections for forestry investment.

Limitations and Constraints on Analysis

Ministers wish to progress this policy change at pace, which has resulted in limitations and constraints for the overall policy process. In particular, officials have not undertaken broad consultation to get a better evidence base on the impact of current screening settings on broader wellbeing outcomes. Relatedly, there are other parallel policy workstreams being undertaken by MPI and MfE to consider options that would (if progressed) impact on afforestation and investment signals.

The limits of data available and time provided in the delivery of this regulatory impact analysis is reflected in some parts, for example there is minimal data available to fully demonstrate the link between external factors such as the ETS and rising log prices, with levels of overseas investment in forestry, as well as the potential impact of this proposal on afforestation and land use.

The desire to introduce legislation at pace means that there is not time for comprehensive consultation with Māori regarding the proposed policy changes, though two targeted hui were held with key Māori leaders and representatives in the forestry sector so that they could advise on the potential impacts of the proposed changes. This limited consultation causes some risk for Māori-Crown relations.

Since the 2018 reforms, officials from the Treasury have conducted an initial round of targeted consultation with key users and stakeholders to inform policy development and determine where changes may be needed to address issues with the operation and effectiveness of the regime, which has informed advice to the relevant Ministers. However, at the time of this engagement, forestry conversions were specifically out of scope of the Forestry.

[1]

. Where this is the case officials have tried to extrapolate their understanding of effects from this information and from stakeholder discussion, particularly through engagement following Phase 2 reform, and earlier forestry review engagement prior to its proposed change in direction. Feedback from those engagements have informed the policy process leading up to the current direction of the Forestry Review.

Responsible Manager(s) (completed by relevant manager)

Conor McBride

Manager

International

The Treasury – Te Tai Ōhanga

9 February 2022

Quality Assurance (completed by QA panel)

Reviewing Agency:	A quality assurance panel (QA Panel) with representatives from the Ministry for Primary Industries, the Treasury and Toitū Te Whenua Land Information has reviewed the Regulatory Impact Statement (RIS).

Panel Assessment & Comment:	The RIS QA Panel has reviewed the Forestry Review paper prepared by the Treasury and considers that the RIS **meets** the QA criteria. The Panel found officials have done a good job in preparing the RIS against very tight timeframes and with very limited information on which to make a meaningful assessment of the proposed Government legislative changes. Officials have attempted to consult on the proposals within the timeframes provided, including with Māori and other stakeholders. The Panel notes the Treasury's preference for more comprehensive consultation and an intent to undertake this post-Cabinet decision. The RIS clearly notes constraints on the analysis, such as limited evidence of the effectiveness of the size and scale of the problem, and the potential impact the proposed legislative changes may have. The RIS would further benefit from a stronger commitment to how the legislative changes will be implemented and monitored. Consistent with the analysis in the RIS, these constraints indicate uncertainty as to the impact the statutory amendment may have. These constraints are clearly identified and the policy intent is otherwise clear given the very tight timeframes allowed for the completion of the RIS. Notwithstanding the limitations with respect to consultation within the limited timeframes, the RIS provides a fair assessment of the risks and limitations. For this reason, the QA Panel has assessed the RIS as meeting the Quality Assurance criteria.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Overseas Investment Act Forestry Review

1. Officials are currently progressing the Overseas Investment Act Forestry Review. The Treasury – Te Tai Ōhanga, with support from other agencies, began work on this review in 2020 and Cabinet agreed to a Terms of Reference for the review in March 2021. The Forestry Review is a tightly-focused review, mandated by the Overseas Investment Amendment Act 2018, focussed on whether the previous Coalition Government's 2018 reforms to the Overseas Investment Act 2005 (the Act) have delivered on their intent to increase investment in forestry and improve the Act's coherence (by ensuring that the acquisition of forestry rights, like other interests in forestry land, are subject to screening).

2. Ministers are considering changes to the Terms of the Reference for the Forestry Review. The key proposed amendment is to rescope the Review so that it is focused 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. This would allow the Review to continue but on a different track. The Treasury would no longer release a discussion document nor conduct a second round of wider stakeholder engagement, which was scheduled for the first quarter of 2022.

The Overseas Investment Act 2005

3. Overseas investment into New Zealand, including for forestry, is managed under the Act. The overseas investment screening regime recognises that it is a privilege for overseas persons to own sensitive New Zealand assets. The Act is New Zealand's principal tool for regulating overseas investment and seeks to balance the need to support high-quality investment, while ensuring that the government has tools available to manage risks. The Act does so by providing an enduring framework for screening overseas investments in sensitive assets to help ensure that they benefit New Zealand and are consistent with New Zealand's national interest.

4. While the Act is designed to screen these investments, it should not act as an undue barrier to investment which is of benefit to New Zealand. This is important given New Zealand's forestry sector relies on overseas investment for growth and productivity, with up to 70 per cent of forestry plantations being foreign-owned.

2018 changes to the Act

5. In 2018, the Government changed the way overseas investments in forestry are screened under the Act[2] by bringing forestry cutting rights into the screening regime, which improved the regime's coherence, and established streamlined consent pathways for forestry investments, in order to facilitate overseas investment in forestry. This recognised the importance of inward investment to forestry and supported the Government's broader forestry priorities (e.g. the One Billion Trees Programme[3]). As a contrast overseas investment in other land-based investments requires applicants to demonstrate certain benefits to New Zealand, with an elevated benefit threshold for farmland.

6. There were four key elements of the 2018 changes:

   a. **a 'special test relating to forestry activities'** (known as the special forestry test), an alternative to the existing benefits test, which assesses an investment against a "checklist" of requirements and involves a 'counterfactual' analysis (which the special forestry test does not).

   b. **a 'new Benefits test'**, in which the investor uses a modified version of the existing benefits test that assesses the benefits of what a overseas investor proposes to do with the land against what the current owner would do if they continued to own the land.

   c. **standing consents**, a form of pre-approval from the Toitū Te Whenua Land Information / Overseas Investment Office which enables an investor to make multiple investments without having to seek consent each time. To receive a standing consent, an investor must demonstrate a strong track record of compliance with the Act or overseas legislation, amongst other things. Since 2018, six standing consents have been granted, and there are no standing consent applications currently being assessed.

   d. **large acquisitions of forestry rights and forestry-related profits-à prendre** (right to take soil or produce off the land) were brought into the Act's screening regime. Such rights can grant a high degree of control over large parcels of New Zealand land for long periods of time, so their inclusion was considered appropriate to the Act's overarching focus on overseas ownership or control of sensitive New Zealand assets.

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[2] RIS; Amendment to the Overseas Investment Act: Forestry land and other profits a pendre - 20 March 2018 - Regulatory Impact Statement - The Treasury and https://www.treasury.govt.nz/sites/default/files/2018-08/ria-tsy-aoi-aug18.pdf

[3] One Billion Trees Programme. Ministry for Primary Industries (MPI). https://www.mpi.govt.nz/forestry/funding-tree-planting-research/one-billion-trees-programme/

The special forestry test and revised benefit to New Zealand test

7. The table below provides an overview of the special forestry test and the revised Benefit to New Zealand test.

The special forestry test	**Revised Benefit to New Zealand test**
The special forestry test is a 'checklist' type of test for an investor who wants to either establish a new forest, or acquire an interest in an existing forest and operate it with specified existing arrangements remaining in place (such as public access arrangements). Investors are required to demonstrate that they will: • use the land exclusively, or nearly exclusively, for forestry activities • replant after harvesting, unless they are exempt • only use the land for accommodation to support forestry activities. Investors also need to implement and maintain certain arrangements for the land, including: • public access • protection of habitat for indigenous plants and animals • protection of historic places, and • log supply arrangements. *Benefits* Under the special forestry test there is no requirement to demonstrate the benefits of the investment compared against investment from the vendor or a New Zealand investor.	The Benefit to New Zealand test, which was revised in November 2021, assesses whether the investment provides benefit to New Zealand, based on seven benefit factors set out in the Overseas Investment Act 2005. A current state assessment is applied to ensure the benefit is additional to what currently exists. The "current state" comparison has replaced the counterfactual assessment that was previously required (which involved considering what would occur "with and without" the investment). The regulator will only generally be able to take into account negative impacts of an investment where these are directly comparable to aspects of the same factor (for example the loss of jobs against the gain of jobs) but not against non-directly comparable aspects of a factor (for example, the loss of jobs against the gain of technology). *Changes to 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 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).

The forestry sector

8. Forestry is a significant industry for New Zealand, accounting for around 1.6 per cent of New Zealand's GDP ($6.9 billion[4]), and was New Zealand's third largest export in 2020, behind dairy and meat. Forestry contributes an annual gross income of around $5.0 billion to the economy, directly employs 38,000 people in production, processing and commercialisation, and accounts for around 7.0 per cent of land use in New Zealand.

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[4] As at September 2020.

9. Forestry provides a critical input for New Zealand's wood processing and manufacturing sector. In addition to being economically important, forestry also has environmental and social significance. Investment in forestry can contribute to climate change mitigation, freshwater quality, and biodiversity outcomes.[5] Increasingly, forestry investment decisions are driven by incentives, including New Zealand Units (the primary unit of trade in the Emissions Trading Scheme), that are not income from timber.

10. The following graph from StatsNZ outlines the use of land for primary production purposes over the period 2002-2019.[6] There has been a declining trend in forestry land use from 2002 to 2017, with a slight increase in 2019.

Overseas investment in forestry

11. Overseas investment is important to the overall health of New Zealand's forestry sector, with 70% of forestry in New Zealand being foreign owned. The total value of investments through the special forestry test is nearly $1.9 billion, of which nearly $260 million is for conversion related applications.[7]

12. While there is significant overseas investment into New Zealand each year, the current overseas investment settings for forestry are unlikely to be the driving factor in the increase in overall forestry conversions since 2018. Roughly 80% of overall land converted to plantation forestry takes place outside of the special forestry test (most of which would be via domestic investment).[8]

13. Since the special forestry test came into effect in 2018, there have been 93 one-off consents and six standing consents granted (as at 31 December 2021). Of the 93 one-off consents, 40 related to the conversion of farmland to forestry, all of which involve New Zealand vendors. Nearly 37,000 hectares of land have been acquired for forestry conversion under the special forestry test, with over 23,000 hectares of proposed new planting.[9] The proposed new planting under the special forestry test is 0.25% of the over 9 million hectares used for beef cattle, dairy cattle, and sheep in 2019. Total land use of forestry amounted to nearly 1.6 million hectares in 2019, so the proposed new planting of 23,000 hectares would add 1.44% to the existing stock.

14. The total land size of investments through the special forestry test is 212,000 hectares, of which nearly 54,000 relates to land to be transferred from New Zealand ownership into overseas ownership.

15. The following page provides forestry investment data from Toitū Te Whenua Land Information. It covers:

- the breakdown of consents under the special forestry test (2018 -2021), including geographic location and conversions,

- special forestry test consents, how many were for existing or conversion related investments, including hectares involved. The conversion-related data also

[5] Including the One Billion Trees programme, the Emissions Reduction Plan, the National Environmental Standards Plantation Forestry settings and *Te Mana o Te Taiao* - the Aotearoa New Zealand Biodiversity Strategy (ANZBS) among others.

[6] Data source: Stats NZ Agricultural Production Survey (updated April 2021). Accessed at: https://www.stats.govt.nz/indicators/agricultural-and-horticultural-land-use

[7] Data provided by Toitū Te Whenua Land Information.

[8] The available data is not directly comparable in that there is a lag between Toitū Te Whenua Land Information / Overseas Investment Office approval, purchasing of land and eventual planting. For completeness, there may be some ancillary planting of native forestry under the special forestry test, in the form of riparian boundaries or set-backs that are unsuitable for exotic forestry. Since 2018, there have been four consents granted under the Benefit to New Zealand test for conversion-related investments, of which approximately 2,042 hectares is expected to be new planting.

[9] Data provided by Toitū Te Whenua Land Information

includes a 'new planting' figure – which outlines how much of that land will likely be planted, and

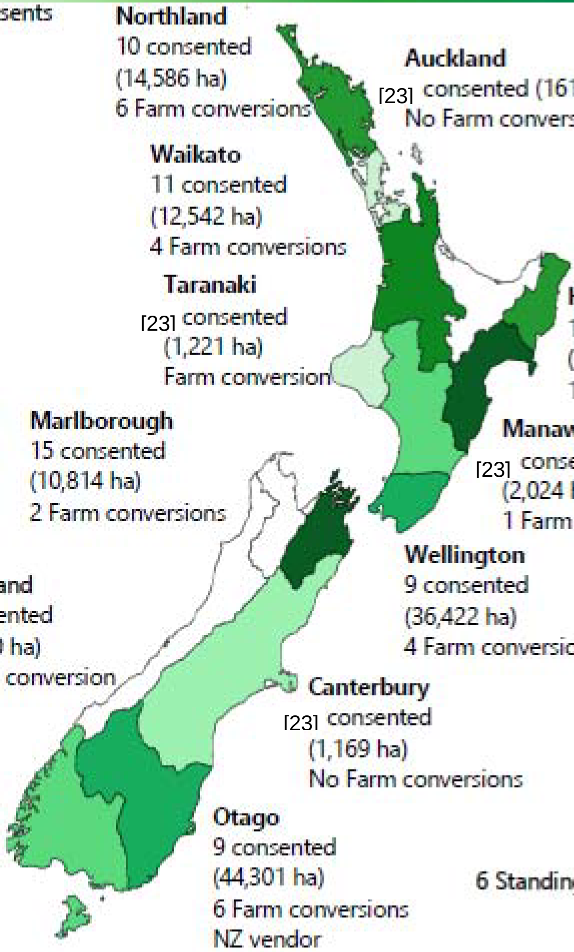
- breakdown on a yearly basis for investments in the special forestry test, compared with forestry investments under the Benefit to New Zealand test (2014 -2021), and hectares.

Overseas Investment Forestry

Special Forestry approved consents (2018-2021)

92	6	212,346	53,781
One-offs	Standing consents	Gross Area*	Net Area

No consents — Most consents



Special Forestry Existing vs Conversion

Special Forestry Test consents: 2018 – 2021

Number of Consents

Total Area

Special Forestry pathway (2018 - 2021)

One-off consents

Year	Consents	Gross area
2018	-	-
2019	35	76,684
2020	23	60,637
2021	34	75,026

Total consents: 92
Total Gross Area: 212,346

Benefit to New Zealand pathway (2014 - 2021)

Year	Consents	Gross area
2014	12	13,386
2015	13	42,390
2016	11	398,095
2017	7	46,421
2018	8	81,467
2019	3	4,379
2020	-	-
2021	1	147

Total consents: 55
Total Gross Area: 586,285

"Gross area (ha)" represents the total land area of all consented applications.
"Net Area (ha)" figures represent the dollar value and land area that is being transacted from a New Zealand company or owner to an overseas company or person only (e.g., it excludes where an overseas entity is acquiring land or business assets from another overseas entity).

Related government work programmes

16. There are existing government programmes affecting domestic regulation of land use that would (if progressed) impact on afforestation and investment signals. These include the development of policy to manage the wellbeing impacts of land use change to forestry over time, including policy work programmes to consider options such as potential upcoming changes to the National Environmental Standards for Plantation Forestry (NES-PF), [33]
and potential changes to the ETS to remove incentives relating to restricting permanent exotic forests (e.g. permanent pine).There is also work underway preparing a Forestry and Wood Processing Industry Transformation Plan for consultation, as well as implementation of the proposed national policy statement for indigenous biodiversity (NPS-IB).

17. Subject to Cabinet approval, the changes to the ETS could be delivered by early next year. The changes to the resource management system have a longer delivery and lead in time.

What is the policy problem or opportunity?

18. The special forestry test was intended to facilitate more overseas investment in plantation forestry than would be facilitated under the previous version of the Benefit to New Zealand test. The creation of a more permissive test streamlined the process of applications and created more certainty for investors.

19. At the time the changes were introduced, the Government considered that a strong forestry sector contributes to multiple Government priorities, including regional development and employment, and climate change policy. In particular, it was difficult for mature, well-managed forests to meet the then-Benefit to New Zealand test. This was due to the benefit factors an overseas person had to demonstrate, as well as the hypothetical counterfactual analysis required at the time, where forestry investors struggled to show a ‘point of difference’ from the current owner or a New Zealand investor.

20. Since the Government introduced the special forestry test in 2018, the operating context for the forestry sector 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), ETS reforms and government afforestation schemes.

21. As a result of these (and other) factors, New Zealand has seen an increase in farmland conversions to forestry (both permanent and production) by domestic and overseas investors. These external factors drivers are likely to be influencing the level of overseas investment in the forestry sector, and in particular in forestry conversion where versatile land or farmland is converted into forestry.

22. At the same time as the operating context for the forestry sector has changed since 2018, the overseas investment regulatory regime has also evolved. Several of the issues and concerns with the old benefits test that precipitated the need for a streamlined special forestry test (e.g. a complex counterfactual assessment, a large number of factors, and no timeframes for decisions) have been addressed in recent changes to the overseas investment regulatory regime via the Phase 2 reforms. In addition to the changes to the Benefit to New Zealand test (discussed below), other changes include the introduction of statutory timeframes for decision-making, new rules to clarify and strengthen requirements around ‘Fresh or Seawater Areas’[10], and a revised investor interest test.

[10] Fresh or Seawater Areas are the foreshore, seabed or the beds of rivers, streams or lakes. These were previously known as ‘Special Land’

23. The proposals in this paper do not address domestic investments in forestry. The majority of conversions of land into plantation forestry (production and permanent) do not utilise the Act's special forestry test, with available data suggesting around 80 per cent of overall land converted to plantation forestry (most of which via domestic investment) takes place outside of the special forestry test (though the data are not directly comparable).[11] Over the past three years, nearly 37,000 hectares of land have been acquired for forestry conversion under the special forestry test, with over 23,000 hectares of proposed new planting (the majority, if not all, of the land planted for production forestry will be planted with exotic species).[12] This compares to an estimate of 105,200 hectares of exotic afforestation in New Zealand since the beginning of 2019.

24. Some of the land (23 per cent, or nearly 8,000 ha) acquired through the special forestry test since 2018 for forestry conversion investments is versatile land (Land Use Capability (LUC) classes 1-5). However, 90 per cent of the area currently being assessed for ETS registration is LUC 6-8 (37,260 hectares)[13]. While areas of land acquired through the special forestry test in lower LUC classes are more likely to be subdivided and sold off, some of that land will be converted to plantation forestry and the special forestry test does not allow decision-makers to ensure that forestry conversions on pastoral land demonstrate benefits to New Zealand.[14]

25. High quality overseas investment in forestry and a strong forestry sector remain important. However, the value proposition for facilitating increased overseas investment in land to be converted to forestry is no longer as compelling and the settings need reconsidering. In particular, the Act does not require forestry conversions to demonstrate benefits in the same way the Act does for other land-based investments.

26. The overseas investment screening regime recognises that it is a privilege for overseas persons to own sensitive New Zealand assets, but the Act does not provide decision-makers sufficient discretion to collect the right information as to the impact of a proposed investment or allow consideration of the trade-offs related to proposed overseas investment in forestry. This is because the special forestry test is very limited in its ability to allow discretion in decision-making by Ministers on particular investments and their delivery of benefits.

27. By considering forestry conversion investments under the revised Benefit to New Zealand test, decision-makers would assess whether the proposed forestry conversion, compared to the current state, will or is likely to:

    1. result in economic benefits

    2. result in benefits to the natural environment

    3. result in continued or enhanced public access within or over the sensitive land or the features giving rise to sensitivity

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11 The available data are not directly comparable in that there is a lag between Toitū Te Whenua Land Information / Overseas Investment Office approval, purchasing of land and eventual planting. For completeness, there may be some ancillary planting of native forestry under the special forestry test, in the form of riparian boundaries or set-backs that are unsuitable for exotic forestry. Since 2018, there have been four consents granted under the Benefit to New Zealand test for forestry conversion-related investments, of which approximately 2,042 hectares is expected to be new planting.

12 As above, some of the land acquired through the special forestry test can be subdivided and sold off, or may not be suitable for afforestation.

13 Land unsuitable for arable cropping and of decreasing versatility of use.

14 Collection of Land Use Capability (LUC) classification information has been collated for forestry conversion related consents granted under the special forestry test. The Toitū Te Whenua Land Information does not record new planting against LUC data. The land of lower LUC classification is more likely to be the parts of the land that are subdivided and sold; but in other cases, it will be a mixture as LUC classes are 'marbled' through the land (i.e., not uniform).

4. result in continued or increased protection of historic heritage within the relevant land

5. give effect to or advance a significant government policy

6. involve oversight of, or participation in, the overseas investment or any relevant overseas person by persons who are not overseas persons

7. result in other consequential benefits to New Zealand.

28. A proposed investment may have different levels of likely benefits in each of the factors above depending on the nature of the investment. There is no requirement to show likely benefit in every factor. The Act requires a proportionate approach to considering the Benefit to New Zealand test, both to the sensitivity of the land and the nature of the overseas investment transaction. The decision-maker will only generally be able to take into account negative impacts of an investment where these are directly comparable to aspects of the same factor (for example the loss of jobs against the gain of jobs) but not against non-directly comparable aspects of a factor (for example, the loss of jobs against the gain of technology).

29. The revised Benefit to New Zealand test would also give decision-makers the discretion to impose conditions (should consent be granted) to ensure that particular forestry investments in land being converted align with the benefit factors relevant to the overseas investment, along with conditions that are aligned with the overseas investment and business plan. The decision-makers' assessment can only be against the specific benefit factors (and not any broader).

30. [1]

The Government is therefore considering introducing legislation to require overseas investment in forestry conversion to pass through the Benefit to New Zealand test to ensure that overseas investments into forestry conversions demonstrate benefits by aligning the assessment of forestry conversions with the approach taken under the Act for most other land-based investments.

31. The proposals would not apply to acquisitions of existing production forestry by overseas investors.

Stakeholder engagement and affected parties

32. As part of the Overseas Investment Act Forestry Review, officials conducted targeted engagement with forestry stakeholders in mid-2021. This included iwi, as well as law firms, investors and industry groups.

33. Stakeholders considered that changes to the Act introduced in 2018 were achieving their primary policy intent - facilitating overseas investment in forestry.[15] This had been achieved through the provision of greater certainty in the process and through reduced timeframes for consent decisions.

34. Stakeholders also noted that overseas investment in forestry conversions were a 'hot button' issue and in particular, some raised concern that the use of the special forestry test could result in increased afforestation of arable land beyond the desired effect of the changes.[16]

[15] The 2018 changes also intended to improve the coherence of the screening regime.

[16] The level of engagement on this issue was minimal as at the time the engagement was conducted the question of overseas investment in forestry conversion was not part of the review process.

Engagement ahead of Cabinet decisions

35. Officials have considered a more comprehensive consultation with:

- a broader group of Māori
- the forestry industry, and
- the rural / farming community.

36. In particular, consulting with the forestry industry and the rural / farming community would present an opportunity to hear about the impact of the proposals on these sectors ahead of Cabinet's consideration of the proposals. Further, broader consultation would better manage government reputational risks and would support government in managing its relationship with these sectors. [1]

37. In the absence of time constraints, broader consultation would have been the Treasury's preferred approach, however, this would not align with Ministers' preference for timely change as it would not be feasible to conduct comprehensive consultation in the timeframe available. Additionally, there were risks of information leakage with more broad consultation.

Targeted Māori engagement

38. Māori own at least 30 per cent of the land containing New Zealand's plantation forests (but not always the trees themselves) and iwi are often partners for foreign forestry investors. 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.

39. 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.

January 2022 hui

40. In mid-January 2022, officials conducted two Forestry Review hui, the first of which the Associate Minister of Finance led. These hui were focussed on providing a targeted and representative group of key Māori leaders and representatives in the forestry sector the opportunity to consider and provide feedback on the impact of removing forestry conversions from the special forestry test.[17] Although the Forestry Review's focus on minor and technical changes was signalled to Māori representatives, this was not the focus of the hui discussion.

[17] There were 17 attendees across the two hui. Attendees included members of the previously-concluded Forestry Iwi Reference group, iwi that are key users of the regime (with their overseas partners) and representative Māori land owning groups.

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

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

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

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

Summary of issues

In-principle support for policy proposal

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

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

Impact on Māori economic interests and commercial sovereignty

46. Officials heard that Māori and iwi being able to achieve their aspirations for their land is reliant on being able to access capital, skills, technology and overseas connections for forestry investment. A number of participants expressed concern over the potential economic and financial losses that could occur as a result of the proposed changes, these included potential lost opportunities to partner with overseas investors, reduced access to capital, and a reduction in available land use options.

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

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

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

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

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

51. There was clear and consistent views on participants' desire to see these broader work programmes inform the ongoing Forestry Review, for government to address these issues in a more holistic manner, and for cohesion amongst officials across the relevant government agencies involved in the forestry (and the wider primary industries) sector.

Engagement process

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

53. As a result of this feedback, officials have considered options to manage the impact of the policy proposal on Māori economic interests (see Annex A for more details). However, the Treasury did not recommend changes to the Forestry Review policy proposals.

Engagement post-Cabinet decisions

54. Subject to Cabinet decisions, officials will engage with a wider group of Māori / iwi stakeholders immediately after the announcement of Cabinet's decision, to enable Māori to advise on the potential impacts of the changes. Officials will also engage with other industry stakeholders. If that engagement reveals significant issues from a Māori perspective that cannot be addressed through operational responses, the Associate Minister of Finance will report back to Cabinet and consider seeking further policy decisions to address those issues.

What objectives are sought in relation to the policy problem?

55. The primary objective is that forestry conversions through the overseas investment screening regime benefit New Zealand. In addition, the overseas investment screening regime provides greater flexibility to collect the right information as to the impact of a proposed investment or sufficient discretion to decision-makers to allow consideration of the trade-offs related to proposed overseas investment in forestry.

56. Additional minor and technical changes have been identified to improve the operation and effectiveness of the 2018 amendments to the Act. If legislative change to remove forestry conversions from the special forestry test is progressed, these minor and technical changes will be progressed via changes to the legislation (as appropriate), and potentially to the regulations. This will be followed by consideration of any further operational changes that may be required that are not resolved by the legislative changes. These changes are not considered by this regulatory impact analysis.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

57. The below criteria reflect the broad range of ways that overseas investment can influence New Zealanders' wellbeing and the purpose of the Act, which is to enable overseas investment while minimising the potential harms to New Zealand that such investment may bring.

58. It is important to recognise that these criteria are often in tension – for example, if there is a reduction in decision makers' ability to manage the risks associated with overseas investment, then certainty for overseas persons will generally increase. Conversely, increasing decision makers' flexibility to decline prospective investments will often erode certainty.

59. Finally, no weighting has been applied to these criteria when assessing proposed options.

Criterion A: Supports overseas investment in forestry

60. This criterion considers whether an option supports confidence in New Zealand as an attractive destination for investment in forestry. This criterion is particularly relevant to assessing an option's likelihood of increasing the financial/physical, social and natural capitals. This criterion considers two related aspects:

- *Minimises burden* - This aspect includes considering whether an option minimises the burden (monetary and non-monetary) involved in preparing applications and complying with consent conditions, and in administering and enforcing the regime. The criterion is important as it considers whether an option supports New Zealand's openness to investment, which is crucial to the success of the forestry sector while at the same time ensuring decision makers have sufficient oversight. It is therefore most directly concerned with an option's likelihood of increasing the financial/physical and human capitals.

- *Encourages more predictable, transparent and timely outcomes* - This aspect considers whether the option achieves its objectives in a way that makes the law more predictable and transparent, and encourages timely decision making. This aspect is important as it considers whether options will support investor and public confidence in the overseas investment regime.

Criterion B: Manages the risk of overseas investment in forestry to New Zealanders' wellbeing

61. This criterion considers whether an option provides decision makers with the flexibility to effectively manage or protect against current and emerging risks from overseas investment in forestry to New Zealanders' wellbeing. It includes considering whether an option may create or increase opportunities for restructuring transactions to gain access to lighter touch pathways or so that transactions do not require consent. This criterion is therefore important for assessing how an option would likely manage any negative effects of overseas investment on the four capitals – financial/physical, human, social and natural.

Criterion C: Supports a coherent screening regime

62. This criterion considers whether an option supports a coherent overseas investment screening regime. Regulatory coherency is important for ensuring that the overseas investment screening regime does not unintentionally distort decisions about land use or the choice of investments pathway e.g. the special forestry test, or the Benefit to New Zealand test.

What scope will options be considered within?

63. The option analysis is limited to changes to the Act's forestry screening tests. Ministers have expressed a desire to progress this policy change at pace, which has resulted in limitations and constraints for the overall policy process. There has not been time to fully consider methods for managing the risk that overseas investment brings to forestry, outside of changes to the Act (such as changes to ETS settings) though this is being progressed outside of this process.

64. The draft Forestry Review Cabinet Paper also proposes to amend the Terms of Reference for the Forestry Review. The key amendment is to rescope the Review so that it is focused 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. This would allow the Review to continue but on a different track.

65. There were several other minor and technical issues raised through the first tranche of engagement on the operation and effectiveness of the 2018 changes. Many of these issues can be addressed through operational and regulatory change. However, should Cabinet agreed to progress legislative change to remove forestry conversions from the special forestry test, there are a number of minor and technical issues that would be best addressed via the same legislative vehicle. Making the proposed minor/technical changes to the Act will improve the operation and effectiveness of the forestry related provisions, consistent with the Forestry Review Terms of Reference.

66. Given these issues' expected impact, this regulatory impact analysis only considers legislative options involving amendment to the Act to remove forestry conversions from the special forestry test (and specify that forestry conversions instead go through the revised Benefit to New Zealand Test). Alternative options to address the problem definition, for example involving changes to guidance or similar non-legislative alternative, were given short consideration based on this Ministerial direction. A brief outline of additional options identified, but not progressed, are included as an Annex to this regulatory impact analysis.

What options are being considered?

Option One – *Status Quo (continue to assess overseas forestry conversion investment through the special forestry test)*

67. Under this option (the status quo), forestry conversion investments by overseas investors would continue to be screened through the special forestry test.

Option Two – *Apply the Benefit to New Zealand Test to overseas investments into forestry conversions*

68. Under this option, the Act would be amended so that overseas investment into forestry conversions is assessed via the amended Benefit to New Zealand Test which came into effect on 24 November 2021.

69. The Benefit to New Zealand Test requires a counterfactual position which compares the current state of the asset against what is likely to occur as a result of the investment. The Benefit to New Zealand Test requires a higher threshold to be met than under the special forestry test which increases the burden on overseas investors, but also grants decisions makers far greater scope to assess the potential benefits and risks to an investment.

70. By considering forestry conversion investments under the revised Benefit to New Zealand test, decision-makers would assess whether the proposed forestry conversion, compared to the current state, will or is likely to:

- result in economic benefits
- result in benefits to the natural environment
- result in continued or enhanced public access within or over the sensitive land or the features giving rise to sensitivity
- result in continued or increased protection of historic heritage within the relevant land
- give effect to or advance a significant government policy
- involve oversight of, or participation in, the overseas investment or any relevant overseas person by persons who are not overseas persons
- result in other consequential benefits to New Zealand.

71. A proposed investment may have different levels of likely benefits in each of the factors above depending on the nature of the investment. There is no requirement to show likely benefit in every factor. The Act requires a proportionate approach to considering the Benefit to New Zealand test, both to the sensitivity of the land and the nature of the overseas investment transaction.

72. The revised Benefit to New Zealand test would also give decision-makers the discretion to impose conditions (should consent be granted) to ensure that particular forestry investments in land being converted align with the benefit factors relevant to the overseas investment, along with conditions that are aligned with the overseas investment and business plan. The decision-makers' assessment can only be against the specific benefit factors (and not any broader).

73. Overseas investors looking to acquire land for conversion to forestry would still be able to access the revised Benefit to New Zealand pathway.[18] However, under this option, the regime would be better able to manage or protect against current and emerging concerns or risks from overseas investment in forestry to New Zealanders' wellbeing by forcing investors to seek consent under the Benefit to New Zealand test (as for investments in permanent (carbon-only) forestry).

74. [1]

[18] As noted above, overseas investors would not require consent for a transaction of forestry rights, whether relating to existing forestry or land for conversion to forestry, where the area of the relevant forestry right is less than 1,000 hectares each calendar year, as the screening regime provides for this exemption.

[1]

Option 3 - *Apply the Farm land benefit test to overseas investments into forestry conversions*

75. The Farm land benefit test is a modified version of the Benefit to New Zealand Test which applies to farmland of more than 5 hectares. In addition to the conditions applied in Option 2, the Farm land benefit test requires:

- higher relative importance for economic and participation and oversight factors, and
- that the benefits under one or more of those factors are likely to be substantial for New Zealand. Other factors may also be given high relative importance by the decision maker.

76. Of the three options the Farm land benefit test is the most rigorous screening process. This allows Government to ensure that potential risks are being managed, but imposes the greatest barriers to investment.

How do the options compare to the status quo/counterfactual?

The following options are alternatives to the status quo which are assessed in a spectrum of moderately to strongly positive or negative, or neutral impacts.

	Option 1 – *Status Quo*	**Option 2 – *Apply Benefit to New Zealand Test to forestry conversions***	**Option 3 - *Apply Farm land benefit test to forestry conversions***
Supports overseas investment in forestry	0	– Compared with the status quo the Benefit to New Zealand Test is a more complex process for investors in forestry conversions. However, it is not expected to be a significant barrier to investment in the sector more generally. The change will have a lower impact on established investors with existing standing consents. All investors will also continue to be able to use the special forestry test for investment in existing forestry.	– – When compared with the status quo, the increased limitation placed on investment by the Farm land benefit test there would likely be a decrease in overseas investment in New Zealand. This would be caused by the higher threshold and greater complexity of the process. The unique characteristics associated with the forestry asset class mean that there is more limited scope for overseas forestry owners to demonstrate the required significant economic benefits (or participation and oversight) from their investment in forestry.

	Option 1 – *Status Quo*	Option 2 – *Apply Benefit to New Zealand Test to forestry conversions*	Option 3 - *Apply Farm land benefit test to forestry conversions*
Manages the risk of overseas investment in forestry to New Zealanders' wellbeing	0	+ + The Benefit to New Zealand test requires far greater levels of detail on the impact of the investment, and also requires the investor to demonstrate how it will protect historical sites (including those of significance to Māori) and how such investment advances Government policy. This gives decision makers greater oversight of these types of investments and ensure that overseas investments into forestry conversions demonstrate benefits by aligning their assessment with the approach taken under the Act for most other land-based investments.	+ + While similar to the Benefit to New Zealand Test, the Farm land benefit test requires a far greater level of information, and gives a decision maker greater latitude in their decision. This supports a more robust regime.
Supports a coherent screening regime	0	+ Bringing forestry conversion investment into the Benefit to New Zealand Test would improve the coherency of the regime as it would require investment in new production forestry to demonstrate benefits in the same way the Act does for other land-based investments, including for investments in permanent forestry.	+ Placing forestry conversion investment through the Farm land benefit test would streamline the system, by requiring investments in forestry to follow the same process as other investments in farmland.
Overall assessment	0	**+ / ++**	**+**

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

77. As noted above, no weighting has been applied to the criteria. This approach has been taken because the different stakeholders are likely to weight different criterion over another.

78. Option 2, *Apply the Benefit to New Zealand test*, appears to provide the best outcome based on the options available. This option allows decision makers to collect greater information as to the impact of a proposed investment and allows consideration of the trade-offs related to proposed overseas investment in forestry.

79. [1]

Treasury:4614638v1

80. While Option 1 does provide the easiest route for investors, it also does not provide decision-makers sufficient discretion under the Act to collect the right information as to the impact of a proposed investment or allow consideration of the trade-offs related to proposed overseas investment in forestry.

81. Option 3 creates a single pathway for overseas investment in forestry conversions as all applications would have to go through the Farm land benefit test. In addition, this option would give Government the most significant level of oversight and discretion under the Act to allow consideration of the trade-offs related to proposed overseas investment in forestry. However, the process for application through the Farm land benefit test is significantly more restrictive and it may be difficult for forestry investment to meet the higher benefit threshold. This is because the unique characteristics associated with the forestry asset class mean that there is more limited scope for overseas forestry owners to demonstrate the required significant economic benefits (or participation and oversight) from their investment in forestry.

82. Making changes to the regime so soon after the changes introduced in 2018 may create impacts on the desirability of New Zealand as an investment destination. It is not possible within the timeframes available (particularly given that there is no comprehensive consultation) to adequately assess the nature of this impact.

83. [1]

may reduce overseas investor demand for land and therefore the value of land held by current landowners.

84. As overseas companies are a major part of the New Zealand forestry sector, there is a risk that removing forestry conversions from the special forestry test may impact the rate of afforestation and may impact New Zealand meeting its emissions budgets and emissions reduction targets. This is because afforestation could decrease to levels below that required to meet the Government's carbon sequestration targets and the transition to a circular bioeconomy. [1]

- [1]
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-
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What are the marginal costs and benefits of the preferred option?

The following costs and benefits are assessed in a spectrum of low, medium, and high impacts.

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
	Additional costs of the preferred option compared to taking no action		
Overseas investors in forestry	[1]	Medium – some foresters with Forest Stewardship Council or Programme for the Endorsement of Forest Certification will be prepared for parts of this new test, so the impact on these groups will be reduced further.	Low / Medium
Owners of land suitable for afforestation	A low non-monetised cost may be held by those looking to sell land where transactions may take slightly longer to be agreed as a result of new screening processes. The [1] may reduce overseas investor demand for land and therefore the value of land held by current landowners. There may be greater impacts on Māori communities with significant forestry interests. Potential economic and financial losses could occur as a result of the proposed changes, including potential lost opportunities to partner with overseas investors, reduced access to capital, and a reduction in available land use options. Māori are not generally involved in the conversion of pastoral land into forestry. However, during targeted engagement with Māori there was some concern that the proposal may adversely affect New Zealand's reputation as a destination for forestry investment with the possible effect of making it harder for Māori to access foreign capital for other types of forestry ventures.	Low	Low / Medium
Regulators	Requirement to implement changes to screening regime will have costs. There will be operational impacts for Toitū Te Whenua	Low/Medium Up to $0.240m for implementation costs	Low / Medium

	Land Information through the implementation of the proposed legislative change, as well as consequent impacts on the number and type of applications, and monitoring and enforcement of consents. [1] There will be costs or savings associated with the processing of applications, as well as monitoring and enforcement of consents. There is therefore a risk that costs will be over-or-under-recovered from fee payers, affecting Toitū Te Whenua Land Information New Zealand's memorandum account for the overseas investment regime. However, a further review of the costs of administering the overseas investment regime in 2022/2023 will provide an opportunity to update fees as necessary to reflect application volumes. The implementation costs are expected to be modest (up to $0.240 million) and can be met within existing Vote Lands baselines, through reprioritisation from the time-limited funding for monitoring and enforcement against those who have not come through the regime and/or the one year funding for the continued administration of the Emergency Notification Regime.		
Others (eg, wider govt, consumers, etc.)	Industry (forestry and farming) may also see some minor impact as the speed of investment is moderately slowed. However, this is unlikely to be significant when considered across all forms of forestry investment. There will be financial implications for the Treasury associated with the legislative programme required to remove forestry conversions from the special forestry test, and to improve the operation and effectiveness of the Act's forestry-related provisions. The associated Cabinet paper seeks $0.650 million in operating funding to September 2023. There may be savings, depending on the timing of the legislative process. There may be modest costs for the Department of Conservation, and potentially the New Zealand Walking Access Commission and the New Zealand Historic Places Trust, given the anticipated increased consultation on proposed forestry conversion applications under the revised Benefit to New Zealand test by Toitū Te Whenua Land Information New Zealand.	Low/Medium Up to $0.650m for the legislative programme	Medium
Total monetised costs		Up to $0.890 million for the legislative change and implementation	Medium
Non-monetised costs		Medium	Medium

Additional benefits of the preferred option compared to taking no action			
Regulators	Impact on transaction volumes is uncertain. There will be costs or savings associated with the processing of applications, as well as monitoring and enforcement of consents.		
Others (eg, wider govt, consumers, etc.)	The proposed change is an opportunity to improve the management of forestry conversions by overseas investors, and ensure these overseas investments demonstrate benefits. The proposals give decision-makers discretion to ensure forestry investment is undertaken in a way that increases and delivers wellbeing benefits to New Zealanders, in line with broader government priorities and objectives. Recognising that the benefits of foreign investment are not just economic, this test allows Ministers to consider a wide range of benefits (such as benefits to the natural environment, public access, or protection of historic heritage) before granting consent. It is challenging to speculate how any of the forestry conversion investments that have been processed through the special forestry test would have fared under the revised Benefit to New Zealand test, or what additional benefits these investments might have had to demonstrate to meet the test, as applicants under the special forestry test are not required to provide the level of information needed to model alternative outcomes. This change would improve the coherency of the regime to the extent that the Act would require investment in new production forestry to demonstrate benefits as the Act does for other land-based investments, including for investments in permanent forestry.	Medium	Medium
Total monetised benefits			
Non-monetised benefits		Medium	Medium

85. It is difficult to demonstrate the nature of the impact in either monetary or non-monetary terms. [1]

86. The proposals in this paper do not address domestic investments in forestry. However, they do offer a way to manage spill-over effects of whole farm conversions in terms of possible loss of farming-related support activity, and associated community impacts of conversion from farmland to production forestry. The proposals do this by giving decision-makers discretion to ensure forestry investment is undertaken in a way that increases and delivers wellbeing benefits to New Zealanders, in line with broader government priorities and objectives.

87. Overseas investors looking to acquire land for conversion to forestry would still be able to access the revised Benefit to New Zealand pathway. However, this change would allow the regime to manage or protect against current and emerging concerns or risks from overseas investment in forestry to New Zealanders' wellbeing by forcing investors to seek consent under the Benefit to New Zealand test (as for investments in permanent (carbon-only) forestry).

88. At this stage, it is challenging to speculate how any of the forestry conversion investments that have been processed through the special forestry test would have fared under the revised Benefit to New Zealand test, or what additional benefits these investments might have had to demonstrate to meet the test, as applicants under the special forestry test are not required to provide the level of information needed to model alternative outcomes.

89. This change would improve the coherency of the regime to the extent that the Act would require investment in new production forestry to demonstrate benefits as the Act does for other land-based investments, including for investments in permanent forestry. Further, the Act would continue to support high-quality investment in existing production forestry via the special forestry test.

90. [25]

In addition, this could hamper efforts to convert historically under-developed Ahu Whenua trust-land to production forest, including through aggregation arrangements. Any reduction in sector attractiveness risks a capital or revenue hit to significant iwi investments.

91. As discussed above, government conducted two hui with targeted key Māori leaders and representatives in the forestry sector in mid-January 2022 so that participants could advise on the potential impacts of the proposed change to remove forestry conversions from the special forestry test. The Cabinet paper summarises the feedback heard from participants at the hui.

92. Subject to Cabinet decisions, officials will engage with a wider group of Maori representatives to receive further feedback on the potential impacts of the changes, as well as other key industry stakeholders.

Section 3: Delivering an option

How will the new arrangements be implemented?

93. The proposed package requires amendments to the Overseas Investment Act 2005 (and the Overseas Investment Regulations 2005, subject to Cabinet decisions). The timing of any enactment will depend on the Bill's priority on the 2022 Legislation Programme.

94. There were several other minor and technical issues raised through the first tranche of engagement on the operation and effectiveness of the 2018 changes. Many of these issues can be addressed through operational and regulatory change. However, should Cabinet agree to progress legislative change to remove forestry conversions from the special forestry test, there are a number of minor and technical issues that would be best addressed via the same legislative vehicle. These proposed changes to the Act would improve the operation and effectiveness of the forestry related provisions, consistent with the Forestry Review Terms of Reference.

95. Following the conclusion of the legislative process, officials will consider operational change to address any issues raised in early engagement that will not be addressed through legislative or regulatory change and report to Ministers on any proposed changes (by approximately six months following enactment).

Institutional arrangements

96. The Treasury will continue to administer the Act and the Regulations.

97. Toitū Te Whenua Land Information will remain responsible for the ongoing operation of New Zealand's overseas investment regime, including enforcement of the Act and Regulations. It will be supported, as required and consistent with its current approach to granting consent, by other relevant agencies.

98. Toitū Te Whenua Land Information will be responsible for making any necessary alteration to guidance or practice for investors and vendors.

How will the new arrangements be monitored, evaluated, and reviewed?

99. There are two main sets of data collected in relation to overseas investment:

- Statistics New Zealand collects high-level data on overseas investment in New Zealand, including country of origin and industry. This data is not specific to the implementation of the Act (reflecting the fact that the Act screens only a subset of overseas investment in New Zealand)

- Some of the Toitū Te Whenua Land Information's operational data can be used to support analysis of the system-level impacts of the Act's administration. This includes numbers and types of application, approval rates and processing times.

100. These data sets could be used to assess volume of overseas investments into forestry conversions under the current regime, and post-removal of the forestry conversions from the special forestry test, and look into the quality of those investments before and after the change.

101. The Treasury also has a stewardship role over the Act, with work underway to monitor outcomes of the Overseas Investment Act reforms.

Annex A: Other options considered but not taken forward

102. Further options considered to address this issue but rejected at an early stage of development included:

a. *Amending the check-list requirements that apply to forestry conversions under the special forestry test:* This would require legislative change and there are clear limits to how far any amendments could go without becoming a qualitative assessment more akin to the Benefit to New Zealand Test. This option would make the testing regime more divergent and confusing to apply.

b. *Operational change or operational guidance:* Given the check-list nature of the special *forestry* test, there is no opportunity to meaningfully address these issues through operational change or operational guidance. Even amending the type or quantity of checks under the regime would not fundamentally address the issue.

c. *Ministerial Directive Letter:* Using the Ministerial Directive Letter to direct officials to only, for example, consider applications under the special forestry test if the investor also intends to invest in domestic wood processing is also not possible.
[36]

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

e. [36]

103. Following the targeted engagement with Māori in January 2022, officials considered options to manage the impact of the policy proposal on Māori economic interests, for example through permitting the special forestry test to be used for forestry rights related to forestry conversions (for transaction of 1,000 hectares or greater). This option would provide iwi / Māori with the greatest opportunity to utilise Māori freehold land or land returned through Treaty redress for forestry use, as potential overseas investors in forestry rights would have the least burdensome option available to them through the special benefits test. Māori landowners are more likely to utilise forestry rights than freehold or leasehold due to a desire to retain control of the underlying whenua asset.

104. However, due to the length and nature of forestry rights, in practice the impact in the short to medium term is likely to be similar whether purchasing freehold or leasehold, versus purchasing forestry rights. In addition, the screening regime already permits the acquisition of less than 1,000 hectares of forestry rights (both in conversions and existing forestry) in a calendar year.

105. Maintaining the current proposal would therefore support the coherence of the regime in that the overseas investment screening regime can assess the benefits of proposed land use change, irrespective of the nature of interest being acquired. The Treasury did not, therefore, recommend changes to the Forestry Review policy proposals.