

# Regulatory Impact Statement: How to reduce timeframes for application decisions under the Overseas Investment Act

Purpose of Document	
Decision sought:	<i>How to reduce timeframes for application decisions under the Overseas Investment Act</i>
Advising agencies:	<i>The Treasury</i>
Proposing Ministers:	<i>Hon David Seymour</i>
Date finalised:	<i>8/05/2024</i>
Problem Definition	
<p>The time taken for decisions on consent applications under New Zealand’s overseas investment screening regime creates uncertainty and additional costs for investors and other parties, such as vendors. It can be perceived as a barrier to overseas investment and is likely limiting New Zealand’s attractiveness as a destination for overseas investment, thereby reducing foreign direct investment.</p>	
Executive Summary	
<p>To encourage overseas investment in New Zealand, the Government committed “to limit ministerial decision making to national security concerns and make such decisions more timely” under the Overseas Investment Act 2005 (the Act) as part of the National-Act coalition agreement. The responsible Ministers delegated all decisions except for those relating to the national interest and national security and public order regime to, Toitū te Whenua - Land Information New Zealand (LINZ), as the Regulator under the Act, on 8 April 2024.</p> <p>Stakeholders have reported that long timeframes for consent decisions pose a barrier to overseas investment. Both the actual time taken for consent decisions to be reached and the length of timeframes in the Overseas Investment Regulations 2005 (the Regulations) have been raised by stakeholders.</p> <p>Three options were considered to reduce the time taken for decisions on consent applications.</p> <p>Option One: Status quo – leave timeframes unchanged.</p> <p>Option Two: Establish a risk-based approach to timeframes (the Proposal). This includes:</p> <ul style="list-style-type: none"> <li>• issuing a new Ministerial Directive Letter to set an expectation that LINZ, will process 80% of consent applications within half of the statutory timeframes,</li> <li>• amending the reporting requirements in the Regulations to provide that the regulator must report against whether the 80% benchmark has been met in its annual report, and</li> </ul>	

- directing LINZ in the new Ministerial Directive Letter to administer the regime in a manner that focuses on realising the benefits from investment, while taking a risk-based approach to administer the Act, to enable the new timeframes to be met.

Option Three: Shorten statutory timeframes for all applications across delegated application categories. This will include:

- amending the timeframes in the Regulations for all delegated applications, and
- issuing a new Ministerial Directive Letter to reduce scrutiny of all delegated applications to enable the regulator to meet new timeframes.

The proposal (Option Two) will encourage investment in New Zealand by reducing the time taken for decisions to be reached on the majority of consent applications. Directions contained in the Ministerial Directive Letter will also reduce the information required of applicants in some low-risk transactions and reduce the demand for applicants to provide and demonstrate minor benefits associated with their proposed transaction.

The proposal will also increase administrative efficiency through encouraging LINZ to focus scrutiny on high-risk applications, including first-time investors, those with poor compliance histories, transactions involving high public interest, involving especially sensitive assets, or where obviously unrealistic claims are being made.

LINZ has indicated that halving timeframes for 80% of applications will be achievable under the directions contained in the Ministerial Directive Letter, subject to the scale and complexity of consent applications and resourcing continuing at similar levels.

This proposal is operational in nature. However, due to interest in the overseas investment regime, more broadly, this proposal may garner public interest. Any proposal to facilitate overseas investment may raise concerns around the impact of foreign ownership of New Zealand assets. There may also be concerns that this proposal will reduce opportunities for creating additional benefits through overseas investment such as walkway access. The proposed changes will impact administrative processes and will not affect the criteria by which decisions are made.

### **Limitations and Constraints on Analysis**

The proposal was designed to deliver the Government's commitment to amend "the Overseas Investment Act 2005 to limit ministerial decision making to national security concerns and make such decisions more timely," as outlined in the National-Act coalition agreement.

Associate Minister of Finance Hon David Seymour, who has delegated responsibility for policy under the Act, directed officials to quickly progress the objectives that can be fulfilled in the commitment without changes to the Act. Delegating ministerial decision-making to the regulator has already been implemented and is not part of this proposal.

Relevant central government agencies were consulted on this proposal. LINZ, the regulator under the regime was closely consulted and provided comment on this Regulatory Impact Statement. Select members of the legal community experienced in the operationalization of the Act were engaged on issues relating to the regime (although not directly on the proposal itself).

LINZ engages closely with these stakeholders and shared their feedback with Treasury. Submissions on previous amendment bills<sup>1</sup> to the Act also provided an indication of stakeholder perspectives on the issues assessed under this proposal, including timeframes. Treasury also attends a Legal Reference Group, coordinated by LINZ, which provides ongoing feedback on the operation of the regime.

The level of consultation and analysis undertaken was commensurate with the potential impacts of the options considered. Limited consultation also reflected that this proposal is operational in nature. The Ministerial Directive Letter is secondary legislation that the regulator must follow. The Ministerial Directive Letter is an operational mechanism and must be consistent with the detailed Act and Regulations. The Ministerial Directive Letter does not change what is screened or the statutory tests laid out in the Act and Regulations, it provides direction on the administrative approach taken to implement these tests.

There are no consequences for failing to meet the timeframes in Regulations, apart from reputational risk. The statutory timeframes do not create any legal right enforceable in a court of law.

While the level of analysis and consultation was appropriate for this proposal, should further consultation have taken place with investors, vendors, and other stakeholders of the regime it could have identified additional matters requiring guidance in the Ministerial Directive Letter. It also may have given greater certainty on the relative benefit to stakeholders of reducing the length of time taken for the regulator to make decisions on the majority of applications compared to reducing the timeframes in Regulations. While past and present engagement on the broader Act and Regulations indicate that both time taken to process applications and statutory timeframes are important to stakeholders, explicit feedback on these approaches and their relative trade-offs would have provided additional certainty.

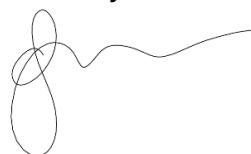
#### **Responsible Manager(s) (completed by relevant manager)**

*Conor McBride*

*Manager*

*International*

*Treasury*



*07/05/2024*

#### **Quality Assurance (completed by QA panel)**

Reviewing Agency:

Treasury

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<sup>1</sup> Particularly submissions on the Overseas Investment Amendment Act 2021, which introduced statutory timeframes for application decisions.

**Panel Assessment & Comment:**

A quality assurance panel with members from the Treasury have reviewed the Regulatory Impact Statement (RIS). The panel considers that the RIS partially meets the quality assurance criteria.

The RIS provides convincing and complete analysis of the different high-level options for reducing timeframes for application decisions under the Overseas Investment Act. As noted in the limitation section, the RIS only considers options that do not require changes to the Overseas Investment Act.

The RIS outlines how previous engagement with stakeholders has informed the analysis. There has been limited public consultation on the specific options in the RIS, commensurate with their potential impact and operational nature. This means the impact analysis doesn't fully incorporate stakeholders' views on how the specific options will reduce their compliance cost and improve certainty and there is a risk that stakeholders will raise operational issues with the options.

## Section 1: Diagnosing the policy problem

### Context

#### *The overseas investment regime*

The Overseas Investment Act 2005 (the Act) is New Zealand's principal tool for regulating foreign investment. It seeks to balance the need to support high-quality investment, while ensuring that the Government has tools to manage risks associated with foreign investment. This includes risks to New Zealand's national and economic security.

The Act requires overseas persons<sup>2</sup> to get consent before acquiring sensitive land<sup>3</sup>, significant business assets<sup>4</sup>, or fishing quota. To support Toitū te Whenua - Land Information New Zealand (LINZ) to administer the regime and to provide investor certainty, the Act empowers the Minister responsible for the Act to issue a Ministerial Directive Letter, which is a form of secondary legislation that LINZ must follow.

Ministers responsible for consent decisions can also provide direction to LINZ on how to administer the Act through more informal channels, including through discussion on individual applications and how to implement the regulatory framework more broadly. This applies even if they have delegated consent decisions to LINZ.

As well as managing risks from overseas investment, the Act also seeks additional benefits from the purchase of some types of sensitive land by overseas investors under the 'benefit to

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<sup>2</sup> Broadly speaking, non-New Zealand citizens and residents, and bodies corporate, trusts and other unincorporated entities that are more than 25% owned or controlled by overseas persons.

<sup>3</sup> This includes non-urban land over five hectares, residential land and lifestyle land, and land adjoining sensitive areas such as the foreshore.

<sup>4</sup> Broadly speaking, this applies to securities, businesses and assets valued at \$100 million, or higher amounts where the investor is from a country with which New Zealand has a relevant free trade agreement.

New Zealand test', such as walkway access through private property, increased employment and the application of new technology or productivity gains.

Conditions can be imposed on consents to manage risks and ensure the proposed benefits of an investment, on which the decision to grant consent was based on, are delivered.

Non-binding assessment timeframes were introduced in the Overseas Investment Amendment Act 2021 and commenced through the Regulations on 24 November 2021. The regulator can apply a pause to the timeframe during a 15-day initial assessment. The pause is applied during the initial assessment when a request is made for additional information from the applicant, to fulfil the requirements of an application, or a payment fee is outstanding. The regulator can receive extensions to these timeframes for specified circumstances set out in the Regulations, where the circumstances have changed the nature of the application. For example, if the regulator considers an application to be of significant complexity.

The tables below contain information on the status of consent applications in each category between 24 November 2021 and 14 April 2024 with respect to the target of applications being processed within 50% of the statutory timeframe. The statutory timeframe for individual applications includes any extensions received. The table shows that time taken for decisions to be reached ranges considerably across consent pathways. This reflects that a range of factors influence the number of days to reach a decision under the status quo. These include the complexity of the transaction, whether there is ministerial interest or involvement in the transaction, relative urgency of the application type (for example, exemptions and variations are not often time-sensitive), and the direction the minister has provided the regulator through the current Ministerial Directive Letter.

**Table 1: Residence-based applications/one home to live in applications**

Type of application	Number of applications	Statutory timeframe (days)	Average number of days to reach a decision	% of decisions made within 50% of the statutory timeframe
One home to live in-residential land	674	10	2.6	90.36%
One home to live in – residential and otherwise sensitive land	20	30	10.3	80%
Intention to reside – otherwise sensitive land	4	55	68.5	0
Total/average	698			89.54%

**Table 2: All other consent applications**

Type of application	Number of applications	Statutory timeframe (days)	Average number of days to reach a decision	% of decisions made within 50% of the statutory timeframe
Benefit to New Zealand test – general	31	70	69.9	0
Benefit to New Zealand – farm land	47	100	90.5	14.89%
Benefit to New Zealand test – forestry	17	70	123.6	5.88%
Fishing quota	0	200	N/A	N/A
Residential land development	29	55	44.3	10.34%
Significant business assets	69	35/55 <sup>5</sup>	33	24.62%
Special forestry test – one off consent	85	55	53	12.2%
Standing consent – forestry or residential	10	100	204	0%
Standalone investor test	1	30	0	N/A
Total	295			13.17%

### ***Foreign investment supports economic growth***

The Government has signalled its ambition to support economic growth, including through increasing Foreign Direct Investment (FDI).

Foreign capital is necessary to bridge the gap between New Zealand’s low domestic capital stock and the country’s investment needs. It increases economic growth and has a range of other positive impacts including:

- increasing the efficiency of capital markets by allowing New Zealand businesses to match with a wider range of investors
- encouraging domestic innovation through international risk-sharing

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<sup>5</sup> 55-day statutory timeframe for when a national interest assessment is also applied.

- providing a stable source of financing relative to some alternatives such as short-term debt, and
- providing domestic firms with access to new skills, new technologies and innovations, and participation in global distribution networks and value chains – all of which can increase productivity and, over time, disperse through the wider economy.

FDI can also strengthen New Zealand's international connectivity to help to overcome the constraints of New Zealand's small size and remoteness.

New Zealand's total stock of FDI is approximately \$150.27 billion and equates to approximately 38% of GDP. This is lower than the OECD average of approximately 50% and compared with other small, advanced economies, New Zealand's total stock of FDI grew the second least (21.07%) behind Finland (-7.26%) between 2014 and 2021.

This may be contributing to the New Zealand's economic challenges – particularly low capital intensity, slow adoption of productivity enhancing innovations used by other advanced economies, and broader productivity trends. Productivity is critical for economic performance, but New Zealand has experienced lower labour productivity growth compared to other advanced economics since the 1970s.

### ***Foreign investment can also pose risks and raise community concerns***

Foreign investment can sometimes pose risks to national and economic security. For example, overseas ownership or control of certain assets, such a critical infrastructure or strategically important businesses (such as media entities) can present opportunities for foreign interference.

Foreign investment can raise strong community concerns, including that certain assets should always be owned and controlled by New Zealand. Note, this proposal does not impact the 'foreign buyers ban'.

## **Policy Problem**

### ***Challenges with attracting overseas investment***

There is not one single determinant of the level of FDI because there are a range of factors that affect incentives to invest. The degree of regulatory openness to foreign investment is a critical factor<sup>6</sup>, but others include the extent to which a target economy has well-functioning public and economic institutions, the size of the target market, and its tax treatment of foreign firms. Investors compare economies on these bases which makes attracting foreign direct investment highly competitive.

The National-Act coalition agreement committed to "amend the Overseas Investment Act 2005 to limit ministerial decision making to national security concerns and make such decision making more timely". As discussed earlier in this Regulatory Impact Statement (RIS), this proposal is only to progress the second component of this commitment – to increase the timeliness of decisions, and to achieve this without amendment to the Act. Investors have reported the following key issues with the regime:

- the time taken to prepare for and obtain consent, and to manage compliance with consent conditions

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<sup>6</sup> OECD, 2019. *The Determinants of Foreign Direct Investment: Do Statutory Restrictions Matter?* OECD Working Papers on International Investment 2019/01.



- high costs of engaging with the regime, including legal costs, application fees, and costs associated with delays, and
- uncertain outcomes.

Stakeholders, including lawyers engaged with the regime, have noted that the statutory timeframes introduced in November 2021 have provided a meaningful improvement for applicants, including relating to certainty. However, it has also been reported that the time taken to reach decisions is long and that ongoing uncertainty, including relating to the possibility of extensions, poses a barrier to overseas investment. Long timeframes can impose delay costs and create uncertainty for investors and other parties with an interest in the transaction, and create challenges for commercial timelines, including the drafting of commercial contracts.

LINZ has reported that directions received both through the Ministerial Directive Letter and how Ministers approach individual applications has an impact on timeframes. For example, previous Ministers have wanted a significant level of information to support decision-making. This impacts how much and what type of information LINZ collects and the level of analysis undertaken in the first instance. Occasionally LINZ receives requests from Ministers for additional information and analysis.

### ***If no action is taken***

If no action is taken to reduce timeframes for applications, this issue will continue to impact New Zealand's attractiveness to investors, and to broader perceptions of New Zealand's openness to foreign investment, limiting FDI to New Zealand.

### **What objectives are sought in relation to the policy problem?**

This proposal was guided by the principles for decision making set out in the National-Act coalition agreement, of which two are most relevant:

- lifting New Zealand's productivity and economic growth to increase opportunities and prosperity for all New Zealanders, and
- improving the efficiency and effectiveness of the public service and of government-funded services.

The proposal was also guided by the commitment expressed in the Speech from the Throne to implement the Government's priority to:

- signal that New Zealand is open for business and outwardly engaged,
- make New Zealand a participant in major global and regional developments (not a spectator), and
- grow trade and prosperity.

This proposal aims to fulfil the timeframes aspect of the coalition agreement and progress the Government's objectives above. It aims to increase the administrative efficiency of the regime and reduce the time taken for consent decisions to be reached. The broader objective is to contribute to the effort to increase New Zealand's attractiveness as a destination for FDI which is required to meet its significant investment needs.



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

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

The criteria used to evaluate options are:

<b>Compliance costs</b>	The policy is effective at reducing the compliance cost for investors, including through reducing the time taken to receive a consent decision as well as certainty around timeframes. This criterion increases the attractiveness of investing in New Zealand. Other significant factors for increasing the attractiveness of New Zealand as an FDI destination are out of scope.
<b>Risk management</b>	The policy supports the regulator to effectively manage risks associated with overseas investment within current resourcing.

## What scope will options be considered within?

The option analysis is limited to progressing the Government’s commitment to "amend the Act to limit ministerial decision making to national security concerns and make such decision making more timely" (National-Act coalition agreement).

Specifically, only options that can be delivered via the Ministerial Directive Letter and amending regulations were considered here. Other operational improvements, such as delegating powers and functions to the regulator<sup>7</sup>, were or will be identified and implemented separately. At this stage, the Associate Minister of Finance directed officials to progress what can be achieved from the government commitment without amendment to the Act.

While the Ministerial Directive Letter can provide direction on other matters, the options considered looked at increasing certainty and timeliness.

Priorities for types of overseas investment were not considered as this would require significant consultation and analysis. The options were therefore designed to increase certainty and timelines across the regime, irrespective of the characteristics of the investment.

## Options considered

This section outlines the options that were considered. These are:

- Option One: Status quo – keeping timeframes the same.
- Option Two: Establish a risk-based approach to timeframes (the proposal).

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<sup>7</sup> Responsible Ministers delegated all decisions under the Act, apart from those relating to national interest and national security, and public order, to LINZ on 8 April 2024.

- Option Three: Shorten regulatory timeframes for all delegated applications.

### **Option One – Status quo**

The status quo (keeping timeframes the same and not issuing a new Ministerial Directive Letter) would not address the policy objectives and would not progress the Government's commitment to decrease timeframes for decisions on applications.

### **Option Two (the proposal) – Establish a risk-based approach to timeframes**

Option Two includes issuing a new Ministerial Directive Letter to set an expectation that the regulator will process 80% of applications within 50% of statutory timeframes and report on this requirement. This 80% target is at the aggregate level – not at the category of application level. This provides that LINZ can prioritise resources to use additional resource and/or the full statutory timeframe for complex and higher-risk applications. High-risk applications include first-time investors, those with poor compliance histories, transactions involving high public interest, involving especially sensitive assets, or where there are obviously unrealistic claims. Other circumstances which might require the full statutory timeframe include the discovery of significant new information late in the assessment process, or a delegated decision that is 'called up' for decisions by Ministers.

It will also assist LINZ in managing variability in the complexity and volume of applications to enable this risk-based approach to be met within current resourcing.

LINZ will be required to report separately for consents under the 'one home to live in' pathway. The 'one home to live in' pathway refers to the commitment to reside in New Zealand test (which applies to residential land) and the intention to reside in New Zealand test (which applies to non-residential land). These are straightforward applications for, generally, recent migrants buying a home to live in. These are typically processed within several days, with nearly 90% of applications already being determined within 50% of the statutory timeframe.

Option Two also includes creating a legal requirement to report against this risk-based approach to timeframes and increase transparency, through amending the reporting requirements in the Regulations to provide that LINZ must report against whether the 80% benchmark has been met for consents under the 'one home to live in' pathway and across remaining consent categories in its annual report.

LINZ and Treasury will jointly report to the Associate Minister of Finance and the Minister for Land Information on:

- options for reporting to Ministers and the public on this framework for timeframes, including on frequency of reporting and reporting on individual categories of consent, and
- whether other decisions made under the Act (such as exemptions) could also be made more quickly.

To enable reduced timeframes for the majority of applications LINZ requires clear ministerial direction on how to administer the Act in a manner that facilitates faster-decision making. Without this direction, it will continue to administer the Act in line with the previous Ministerial Directive Letter and other directions or signals previously given. For example, significant information required even on some low-risk applications.

The new Ministerial Directive Letter in Option Two directs LINZ to administer the regime in a manner that focuses on realising the benefits from foreign investment, while taking a risk-based approach to verifying information and streamlining consent processes, to enable the new timeframes to be met.

This RIS received a partial exemption and only needs to cover the following directions and guidance in the Ministerial Directive Letter:

*A risk-based approach to assessing applications*

The Ministerial Directive Letter directs the regulator to take a risk-based approach to assessing applications for consent by generally relying on an investor's statutory declarations as the accuracy of the information for low-risk transactions and otherwise targeting scrutiny towards higher risk transactions.

*Guidance on when LINZ should consult with other agencies*

The Ministerial Directive Letter indicates the circumstances in which consultation is appropriate. These are to verify risks to national security or the national interest, assessing other significant risks or significant benefits, to confirm whether the Act's tests have been met in borderline cases, or to ensure compliance with international obligations. While this is expected to reduce consultation with other agencies, the regulator will still be able to consult as it sees appropriate (as provided by s 31(c) of the Act), including circumstances outside of what is identified in the directive letter.

*Avoid assessing risks already covered by other domestic regulatory regimes*

The Ministerial Directive Letter directs the regulator that if it identifies a risk that is covered by a domestic regulatory regime, that the risk should generally be considered sufficiently mitigated unless there is compelling evidence to the contrary. Sometimes the benefit to New Zealand test overlaps with requirements of domestic regimes. Under the NZ benefit test, LINZ considers if the investment poses any risks (that might offset the claimed benefits) under the specific factor being assessed.

For example, LINZ considers competition when considering economic benefits to New Zealand. The Commerce Commission also considers this risk for whether a merger will decrease competition.

### **Option Three – Shorten statutory timeframes for all delegated applications**

Option Three is to shorten the statutory timeframes for all delegated application decisions and issue a new Ministerial Directive Letter to reduce scrutiny of these applications to enable reduced timeframes.

Responsible Ministers delegated all remaining decisions under the Act, apart from those relating to national interest and national security, and public order, to LINZ on 8 April 2024.<sup>8</sup> A range of significant consent decisions were already delegated to LINZ, under the previous

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<sup>8</sup> [Ministerial delegation letter - 8 April 2024.pdf \(linz.govt.nz\)](#)

delegation letter<sup>9</sup>. The remaining applications that were able to be delegated under the new delegation letter were limited and include:

- all fishing quota decisions, and
- remaining land decisions (not already delegated).

Delegations enable LINZ to process consents more efficiently and avoid ministerial time being used to carry out routine functions and powers. It therefore reduces the time taken for decisions to be reached on applications. On average, decisions by LINZ are made about four weeks faster than those made by Ministers.

The delegations do not prevent Ministers from exercising delegated powers and functions. Ministers may, at their discretion, choose to make a delegated decision (that is, 'call in' a decision). The regulator will report to Ministers on significant transactions that may benefit from the exercise of ministerial judgement, for example, if a transaction is particularly sensitive, there is or will be a high level of public interest in the application, or there is a high level of risk associated with the investor or investment. Delegations will therefore not reduce the time taken to process all applications in these application categories, without reducing appropriate levels of scrutiny.

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<sup>9</sup> [Ministerial delegation letter - 24 November 2021 | Toitū Te Whenua - Land Information New Zealand \(linz.govt.nz\)](#)

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

	Option One - <i>Status Quo</i>	Option Two – Risk-based approach to timeframes	Option Three – Shorten statutory timeframes for all delegated applications
<b>Compliance burden (including timeliness and certainty)</b>	0	<p style="text-align: center;">+</p> <p>The approach will speed up timeframes for the majority of consent applications. Currently only 63% of applications are determined within half the statutory timeframe. In order to meet the new Ministerial Directive Letter and reporting requirements in the Regulations, LINZ will need to reduce processing times for a further 17% of applications. Shorter timeframes provide greater investor certainty and reduce transaction costs associated with delay (such as negotiations between parties to the transaction).</p> <p>Certainty will also be improved by the Ministerial Directive Letter providing clear direction on the government’s policy towards overseas investment, including on the benefits and risks of investment. Investors will be able to more easily tailor their applications to the expectations in the letter and minimise the provision of extraneous information. As such, this option means investors will need to provide less information than the status quo (such as detailed information on all parties related to the investment for verification purposes).</p>	<p style="text-align: center;">++</p> <p>Shorter statutory timeframes for all delegated applications will reduce compliance costs associated with uncertainty and delay (including opportunity costs).</p> <p>Generally greater certainty over timeframes, as statutory timeframes will be shortened for all applications, however, there will be a greater likelihood the regulator will exceed the statutory timeframe – which may generate unplanned additional costs for investors and vendors.</p> <p>Faster timeframes will mean LINZ will have less time to seek and verify information and seek benefits from investors.</p>

<p><b>Risk management</b></p>	<p>0</p>	<p style="text-align: center;">+</p> <p>While LINZ currently takes a risk-based approach when assessing applications, the new directive letter provides it with a stronger mandate to do so (such as relying on statutory declarations rather than independent verification). It will be able to reduce the information and analysis required when processing low-risk applications. This will enable it to reprioritise resources to provide greater scrutiny of high-risk applications.</p> <p>However, relying on investor’s statutory declarations may increase the likelihood of higher-risk applications not being identified at the margins.</p> <p>Overall, however, we consider that the ability to reprioritise resources to higher risk applications will likely offset any additional risk. This is because very few applications ultimately pose substantive risks (as demonstrated by the very few transactions that are declined consent).</p>	<p style="text-align: center;">- -</p> <p>A uniform reduction in timeframes doesn’t account for the variation in complexity and risk of different applications. As a result, this option will place undue pressure on the regulator that may result in undetected risks for high-risk applications.</p>
<p><b>Overall assessment</b></p>	<p>0</p>	<p>Preferred option – likely to have minor to moderate positive net-benefits.</p>	<p>Not recommended – positive impact on reducing the compliance burden would be outweighed by an ineffective response to high-risk applications.</p>

**Example key for qualitative judgements:**

- ++ much better than doing nothing/the status quo/counterfactual
- + better than doing nothing/the status quo/counterfactual
- 0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual



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

The preferred option is **Option Two**. It provides the greatest balance reduces timeframes while not compromising effective risk management. It will improve the attractiveness of investing in New Zealand by increasing certainty for investors by halving the upper limit of application processing times for the majority of applications (roughly 80%).

This approach also reflects stakeholders' views that it is not just the statutory timeframe that matters, but also the certainty that the regulatory will meet this statutory timeframe and the actual number of days taken for consent decisions to be reached. It also reflects the stakeholder view from consultation on the Overseas Investment Amendment Act 2021 (which introduced statutory timeframes) that "timeframes should be set at a level that requires efficiency",<sup>10</sup> Additionally, directions in the Ministerial Directive Letter will reduce the Act's burden on investors by:

- Reducing the information required of investors for low-risk applications, including through relying on statutory declarations for low-risk applications, and
- providing greater certainty to investors as to the likely scale and nature of the benefits required to be demonstrated in order to obtain consent.

While this approach will increase efficiencies of the regime it may expose it to a greater risk of incorrect decisions, non-compliance, and undetected security risks. However, we judge that these risks will be generally offset because:

- the Ministerial Directive Letter provides the regulator with the confidence to reallocate resourcing to higher-risk transactions (i.e., the 20% of applications not subject to the 50% faster direction), and
- supporting information in the Government's National Interest and Foreign Policy guidance, the Ministerial Directive Letter itself, and the regulator's expertise and experience cumulatively mean it is well placed to know what to look for to identify risks that might arise from particular transactions and applications.

While there may be a chance that some risks are not identified, directions in the Ministerial Directive Letter are designed to ensure higher risk transactions will still generally be subject to sufficient scrutiny and risks adequately managed.

Directing LINZ to generally consider that risks are sufficiently mitigated if they are already covered by a regulatory regime which applies to both domestic and foreign investors to be sufficiently managed, unless there is compelling evidence to the contrary, will increase efficiencies through encouraging the avoidance of unnecessary duplication of regulations. It will also provide that risks are addressed through regulatory regimes that were designed or have adapted to manage these risks and are therefore, generally, able to address these risks more efficiently and effectively. Since generally these risks are considered under the benefit to New Zealand test – which focuses primarily on the benefits of an investment - this ministerial directive is likely to only have a minor impact, including to efficiency gains in administering the Act.

Indicating the circumstance in which LINZ should consult with other agencies will likely lead to the loss of some (but not all) opportunities to secure public access to land (such as through walking access easements) and to protect native flora and fauna. However, these

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<sup>10</sup> [35b0d60ef8a86f73bcb3b369a801ed937f3127ae \(www.parliament.nz\)](https://www.parliament.nz), page 51.

objectives are better met through non-discriminatory regulation and, in any case, investors must comply with all of New Zealand's standard rules and regulations relating to these matters. Furthermore, LINZ retains the function under section 31(c) of the Act to consult as the it considers appropriate in relation to an application. If LINZ considers that the benefit or risk is significant and consultation would be beneficial, it will still consult with other agencies.

Reduced consultation may also increase the potential for situations where an investor is approved under the Act and is then not able to secure the relevant resource consents. In these cases, the investor needs to divest the assets that were conditional on obtaining resource consent. This currently occurs infrequently (approximately two to three times a year). LINZ currently only consults with the Ministry for the Environment or/and councils when there is uncertainty. This direction in the Ministerial Directive Letter will likely decrease the instances LINZ consults on resource consents, but it will still consult if there is significant risk or uncertainty. As LINZ currently only infrequently consults on the likelihood an applicant will be able to obtain a resource consent, this change is unlikely to result in a significant increase in the number of investors who are approved under the Act but cannot secure the relevant resource consent for their investment.

In contrast, reducing timeframes for all delegated applications (**Option Three**) would limit verification, consultation and other measures to inform decision-making on all of these consent applications, including the roughly 20% high-risk applications, in order for LINZ to meet timeframes. While delegating consent decisions to the regulator reduces the time needed for decision-making, most decisions were already delegated to the regulator – the further consent decisions delegated on 8 April 2024 will only impact a small minority of consents.

Shortening timeframes for all delegated applications under **Option Three** will broadly reduce compliance costs, through reducing timeliness and providing greater certainty for investors and vendors (as the timeframes are shortened for all applications in these categories).

However, it will likely result in an increase in extensions granted under the Regulations. This is because the regulator may need longer to process complex and higher-risk assessments (approximately 20% of applications) and flexibility to manage variable application volumes.

Additionally, delegations under the Act do not prevent responsible Ministers from exercising delegated powers and functions, and it is expected that Ministers would occasionally exercise this right. The regulator will report to Ministers on significant transactions that may benefit from the exercise of ministerial judgement, for example, if a transaction is particularly sensitive, there is or will be a high level of public interest in the application, or there is a high level of risk associated with the investor or investment. Delegations will therefore not reduce the time taken to process all applications in these application categories. There will therefore be a greater incident of extensions if timeframes are shortened for all categories of delegated applications. Extensions can create uncertainty and additional unaccounted for costs to investors and vendors from unplanned delays.

## What are the marginal costs and benefits of the option?

<b>Affected groups</b> <i>(identify)</i>	<b>Comment</b> <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups	Shortened timeframes for low-risk applications carries no costs to regulated groups (overseas investors). As resources free up, high-risk applications may face more scrutiny than under the counterfactual, this may require additional information from these applicants.	Very low	High
Regulator	LINZ has indicated that this would be achievable under the directions contained in the Ministerial Directive Letter, and subject to the scale and complexity of consent applications and resourcing continuing at similar levels.	None	High
Others (eg, wider govt, consumers, etc.)	While there may be a chance that some risks are no longer identified at the margins due to shorter timeframes, the Ministerial Directive Letter includes provisions designed to largely offset this risk – such as freeing up resources to allow the regulator to focus on higher risk transactions.	Low	Medium

	The regime may no longer require investors to demonstrate additional benefits, such as public access through property, if the benefits are already sufficient to meet the statutory threshold.		
<b>Total monetised costs</b>		N/A	N/A
<b>Non-monetised costs</b>		<i>Low</i>	<i>High</i>
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups	Investors report that the timeframes, cost, and complexity of consent under regime are viewed negatively – especially relative to other countries. These changes are designed to address these issues which will benefit investors.	Medium	Medium
Regulator	The regulator will become more efficient because the Ministerial Directive Letter provides it with the mandate to reprioritise its resources towards high-risk applications.	None	High
Others (eg, wider govt, consumers, etc.)	All else equal, the preferred option will increase the attractiveness of investing in New Zealand and over time, overseas investment would be expected to increase, compared to the counterfactual. This will have positive consequences on the NZ economy. However, without more fundamental changes to the Act this will have a relatively minor impact.	Low	Medium

<b>Total monetised benefits</b>		<i>N/A</i>	<i>N/A</i>
<b>Non-monetised benefits</b>		<i>Low</i>	<i>Medium</i>

## Section 3: Delivering an option

### How will the new arrangements be implemented?

LINZ has been working closely with the Treasury through the development of the proposals and understands the operational impacts.

LINZ has indicated that halving timeframes for 80% of consent applications will be achievable, under the directions contained in the Ministerial Directive Letter and subject to the scale and complexity of consent applications and resourcing continuing at similar levels.

An implementation plan is being developed by LINZ as the regulator to ensure that the matters set out in the new directive letter will be implemented effectively by the time the letter has been issued by the Hon David Seymour.

To support implementation, LINZ will develop a communications plan to ensure applicants and stakeholders are informed of and understand the changes in the Ministerial Directive Letter. This will include direct communication with applicants and key stakeholders, a wider announcement through the Pānui e-newsletter, and updates to the LINZ website. LINZ will work alongside Treasury to ensure communications are coordinated and consistent.

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

LINZ monitors and reports on its performance against its statutory timeframes for assessment decisions. The amended Regulations will require LINZ to monitor and report on its performance against the extent to which it assessed at least 80% of the applications under the Act, with half the regulator timeframes (the expectation set in the Ministerial Directive Letter).

LINZ and Treasury will jointly report to the Associate Minister of Finance and the Minister for Land Information on:

- options for reporting to Ministers and the public on this framework for timeframes, including on frequency of reporting and reporting on individual categories of consent; and
- whether other decisions made under the Act (such as exemptions) could also be made more quickly.

This will provide more detailed reporting on the new risk-based approach to timeframes.

LINZ will alert Treasury if any issues arise in administering the directions contained in the Ministerial Directive Letter and meeting the new timeframes. LINZ works directly with investors, which provides an ongoing channel in which LINZ receives feedback on the regime and its administration.

There is also an established Legal Reference Group, which is a forum of legal experts convened by LINZ. This group meets periodically and will likely provide feedback on the proposal and its impact.

Treasury monitors trends in FDI. We expect that this proposal will lead to a slight increase in FDI.

The Ministerial Directive Letter is reviewed periodically, often in response to amendments to the Regulations or Act, or a new government. This will provide opportunity to update the

directions and guidance in the Ministerial Directive Letter, if new information on the impacts of the proposal materialises.