

The Treasury

Overseas Investment Act 2005 – Phase One Review Policy Advice (2017/18) Information Release

March 2019

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- [2] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [3] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [4] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
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Treasury Report: Overseas Investment in Forestry: Follow-up from Consultation with Māori and Iwi

Date:	Monday 14 May 2018	Report No:	T2018/1199
		File Number:	IM-5-8-1

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	Note the contents of this report	Prior to Tuesday 15 May
Associate Minister of Finance (Hon David Parker)	<p>Agree on an option to respond to outstanding concerns and uncertainty about the impact of the forestry proposals on iwi and Māori groups</p> <p>Note that no action is recommended in relation to CFL land that is included in Treaty settlements currently in train</p> <p>Refer this report to the Minister for Crown/Māori Relations, the Minister for Treaty of Waitangi Negotiations, Minister for Māori Development, the Minister for Land Information and the Minister of Forestry</p>	Prior to the meeting scheduled for 12pm Tuesday 15 May

Contact for Telephone Discussion (if required)

Name	Position	Telephone		1st Contact
Emily O'Connell	Senior Analyst, Overseas Investment	[6]	[6]	✓
Thomas Parry	Team Leader, Overseas Investment	[6]	[6]	

Actions for the Minister's Office Staff

Forward this report to the Ministers' offices listed above, subject to confirmation by the Associate Minister of Finance.

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes

Treasury Report: Overseas Investment in Forestry: Follow-up from Consultation with Māori and Iwi

Executive Summary

This report provides analysis about the outcome of the recent consultation process with Māori and iwi on the proposals to introduce screening for overseas investment for some forestry rights and possible responses to the issues that have been identified as a result.

It also clarifies implications of the proposals for Crown Forestry Licenses, including links to Treaty settlements currently in train and possible impacts on the Crown accounts.

This report is intended to feed into or inform consideration of the final proposals for inclusion in the draft Cabinet paper *Overseas Investment in Forestry – Further Design Details following Select Committee Public Submissions and Consultation Hui with Iwi/ Māori* that is scheduled to go directly to Cabinet on Monday 21 May.

We understand a meeting is scheduled on Tuesday 15 May between the Associate Minister of Finance (Hon David Parker), the Minister for Crown/Māori Relations, the Minister for Treaty of Waitangi Negotiations and the Minister for Māori Development to discuss Crown-Māori issues relating to these proposals. A draft agenda for this meeting is attached at **Annex D**.

Feedback from engagement with iwi and Māori groups was mixed...

A second round of consultation with Māori and iwi has recently been completed on proposals to include forestry rights as an interest in 'sensitive land' under the Overseas Investment Act 2005 via a Supplementary Order Paper (SOP) to the Overseas Investment Amendment Bill. The objectives of this consultation included updating these stakeholders on the changes that have been made to these proposals since the first round of consultation in January and to get feedback on the extent to which these changes address the feedback received in January [T2018/984 refers].

Overall, across the engagement process, feedback was mixed, with participants seeming to sit roughly in even proportions across the following camps in terms of their views on the proposals:

- supportive of the proposals, especially in light of the changes since January
- uncertain about the implications for them or ambivalent, and
- uncomfortable or opposed.

At the hui that were attended by Hon David Parker most of the participants had a positive response to the additional round of engagement, appreciated the broader context that was articulated and indicated greater comfort with the revised proposals. However, written feedback provided from iwi and Māori groups that could not attend was generally not supportive of or was concerned about the proposals, as even if the screening process is made more light-handed, any cost, delay or uncertainty for overseas investment in forestry rights would impact on their commercial arrangements. The concerns particularly focused on the potential impacts on value of forestry rights held by iwi or Māori, and on the potential cost, delay and level of certainty for overseas investors going through the screening process.

A benefit identified by some participants in the engagement process was that screening, particularly the investor test component, may protect some landowners from entering into commercial arrangements with unreliable overseas investors.

Feedback on some aspects of the proposals though the consultation process has resulted in proposed changes to the SOP. These changes range from clarifying some provisions through to more substantive changes such as transitional provisions enabling some types of changes to be made to existing Crown Forestry Licenses and forestry rights without triggering a requirement for overseas investor screening.

Another significant theme of the feedback was the broader context of historical Crown action that has impacted negatively on Māori economic development. A possible response to this would be for the Treasury to clearly communicate how the current work programmes in the forestry and regional economic development portfolios, including the billion trees programme and provincial growth fund will be able to support Māori, when the Treasury provides the other additional information we have committed to providing to Māori stakeholders. We would work with relevant agencies to develop this response.

...and insights provided indicate the impacts for iwi and Māori groups is uncertain, but could be negative

Although there is no empirical evidence, based on the issues of concern that were raised and the scenarios that were outlined in the consultation, it is likely that the net impacts of the proposals for most Māori and iwi stakeholders will be negative, although the magnitude of this is unknown. This is because most Māori and iwi landowners do not intend to sell their land due to cultural values or legal impediments, and prefer using forestry rights as an alternative to leasing due to the ability to retain access to wāhi tapu, kaimoana and overall kaitiakitanga (guardianship). Based on the feedback we received from some participants, there is also a risk that due to the complexity of the changes and their differential impact on different types of transactions (sale of freehold or leasehold, compared to forestry rights) they may not have accurately understood the potential implications for them.

[5]

We recommend a combination of further targeted engagement and establishing a formal mechanism to get input from iwi and Māori to inform implementation and upcoming legislative reform

The Treasury recommends that options be considered to address these concerns, including the level of uncertainty of impacts for iwi and Māori groups. The following options have been identified:

- Option 1: Continue as planned with the current process
- Option 2: Conduct a further round of information provision and targeted engagement ***(recommended by the Treasury in combination with Option 3)***
- Option 3: Establish an advisory group that includes representatives of iwi and Māori interests to advise on the impact of the changes to enable negative impacts to be mitigated through upcoming legislative reform ***(recommended by the Treasury in combination with Option 2)***
- Option 4: Remove the investor test from the special benefits test for forestry rights

Option 5: Do not proceed with bringing forestry rights into the ambit of the Overseas Investment Act

Based on the original policy objectives for these proposals of regulatory coherence and [1] the Treasury recommends a combination of options 2 and 3. This would combine further engagement and establishment of an advisory group to support implementation and enable the Government to mitigate negative impacts through the remaining stage of the legislative process and upcoming legislative reform. The group could also provide advice on wider issues as they relate to forestry, such as the One Billion Trees Programme and any proposed changes to the Emissions Trading Scheme. We consider this approach [5]

Te Puni Kōkiri (TPK) is of the view that further work should be undertaken to understand the implications of the changes to the screening regime and how the effect on Māori land owners could be mitigated. However, if Ministers decide to continue with the proposal to bring forestry rights into the Overseas Investment Act prior to the enactment of the Comprehensive and Progressive Trans Pacific Partnership (CPTPP), TPK consider that, at minimum, the Crown should undertake options 2 and 3 to be seen as acting in good faith following the feedback received at the consultation hui.

After clarifying the implications for land subject to Crown Forestry Licenses, some transitional provisions are proposed

On land subject to Crown Forestry Licenses (CFL), officials have now clarified that once either the terms of the CFL are amended or the CFL expires or terminates, the arrangement would be subject to the new screening regime, with the same implications as for forestry rights as outlined above.

Transitional provisions are proposed in the draft Cabinet paper due for Cabinet consideration on Monday 21 May to allow for some changes to be made to existing CFLs and forestry rights without triggering the screening requirement for overseas investors.

...and while there may be impacts on the value of CFL land, no action is recommended at this time.

It is possible that the proposals in the SOP may impact on the value of CFL land that is included in Treaty settlements that are still in train. Officials do not recommend any action be taken at this stage. While a technical appropriation may be required for any write-down on the value of the Crown's interest in CFL land, this would not impact on the Crown's operating or capital allowances if it were to eventuate.

Consultation on this report

The following agencies were consulted on the contents of this report with limited time to provide feedback and their comments have been reflected: Crown Law Office, the Crown-Māori roopu at the Ministry of Justice, Te Puni Kōkiri, Land Information New Zealand, the Ministry of Foreign Affairs and Trade, and the Ministry for Primary Industries.

Recommended Action

We recommend that you:

- a **note** that consultation on the forestry proposals include a series of hui around the country, submissions through the Select Committee process and ad hoc conversations with some of the groups likely to be impacted
- b **note** that some participants in the recent engagement with iwi and Māori groups remain concerned or uncertain about the implications of the proposed inclusion of forestry rights within the overseas investment screening regime
- c **agree** to one of the following options for addressing these outstanding concerns:

Option 1: Continue as planned with the current process

[5]

Agree/disagree.

Option 2: Conduct a further round of information provision and targeted engagement (recommended by the Treasury in combination with Option 3)

Agree/disagree.

Option 3: Establish an advisory group that includes representatives of iwi and Māori interests to advise on the impact of the changes on implementation to enable negative impacts to be mitigated

(recommended by the Treasury in combination with Option 2)

Agree/disagree.

Option 4: Remove the investor test from the special benefits test for forestry rights

Agree/disagree.

Option 5: Do not proceed with bringing forestry rights into the ambit of the Overseas Investment Act

Agree/disagree.

- d **agree** that the Treasury, in consultation with relevant agencies, communicate to iwi and Māori stakeholders how the current work programmes in the forestry and regional economic development portfolios will support Māori economic development

Agree/disagree.

- e **note** that under the current proposals, if either the terms of a Crown Forestry License (CFL) are amended or the CFL expires or terminates, the screening requirement for overseas investors may be triggered in relation to new forestry rights arrangements

- f **note** that transitional provisions are proposed in the draft Cabinet paper for consideration on 21 May to allow for some changes to be made to existing CFLs

and forestry rights without triggering the screening requirement for overseas investors

- g **note** that no action is recommended in relation to potential impacts of the proposals on the value of land subject to CFLs that is included in Treaty settlements that are currently in train, and
- h **refer** this report to the Minister for Crown/Māori Relations, the Minister for Treaty of Waitangi Negotiations, the Minister for Māori Development, the Minister for Land Information and the Minister of Forestry prior to Tuesday 15 May.

Refer/not referred.

Thomas Parry
Team Leader, Overseas Investment

Hon Grant Robertson
Minister of Finance

Hon David Parker
Associate Minister of Finance

Treasury Report: Overseas Investment in Forestry: Follow-up from Consultation with Māori and Iwi

Purpose of Report

1. This report provides a summary of the feedback from the second round of consultation with iwi and Māori groups on the proposals to bring forestry rights within the ambit of the Overseas Investment Act, and advice about possible responses to the issues that were raised.
2. It also provides information about implications of the proposals for land subject to Crown Forestry Licenses (CFL), including for CFL land that is included in Treaty settlements currently in train and the impact of any valuation changes on the Crown accounts.

Background

3. A second round of consultation has recently been completed with iwi and Māori groups on proposals to include forestry rights as an interest in 'sensitive land' under the Overseas Investment Act 2005 via a Supplementary Order Paper (SOP) to the Overseas Investment Amendment Bill. This process was prompted by discussion at Cabinet on 12 March 2018 about the potential impacts of the proposals on Māori economic interests [CAB-18-MIN-0084 refers]. Advice provided prior to the consultation set out the objectives for the consultation process, the schedule of hui and other supporting material [T2018/984 refers].
4. The context for this consultation is that thirty per cent of the land under New Zealand's plantation forests is in Māori ownership, forming a significant component of the Māori economic base, and as such they may be disproportionately impacted by any changes. Thirty-three settlements of historical Treaty of Waitangi claims include forestry land redress thus far and most CFLs are currently held by overseas investors. The proposal to include forestry rights in the OIA screening regime also impacts Māori freehold land outside of Treaty settlements.
5. On Friday 4 May, we advised that development of this advice had been delayed due to interagency discussions that highlighted some areas that required further analysis [T2018/1236 refers]. This further analysis has now been completed and is included in this report.

Outcome of consultation process and possible responses to issues raised

6. Overall, the hui were constructive with a range of issues raised and perspectives expressed. While some frustration was expressed at the pace of the process for these changes, the efforts in this second round of consultation and the changes that have been made to the proposals since the January consultation ameliorated the concerns of some participants. The advice and support from Te Puni Kōkiri were key in the process going as smoothly as it did, including generating good levels of attendance.
7. The feedback on the revised proposals was mixed, with participants seeming to sit roughly in even proportions across the following camps in terms of their views on the proposals:

- supportive of the proposals, especially in light of the changes since January
 - uncertain about the implications for them or ambivalent, and
 - uncomfortable or opposed.
8. At the hui that attended by Hon David Parker, most of the participants had a positive response to the additional round of engagement, appreciated the broader context and indicated greater comfort about the revised proposals. However at, for example, the Rotorua hui that was fronted by officials, concerns and objections were strongly conveyed from a range of attendees and these were not ameliorated by officials explanations about the changes to the proposals in light of the earlier feedback.
 9. Also, for example, one attendee affiliated to Te Hiku told officials after the Whangārei hui that they had not raised with Hon David Parker the concerns outlined in their written and oral submission to the Select Committee as they felt it was not necessary to do so as they had already put them in writing.
 10. Written feedback provided from iwi and Māori groups that could not attend was generally not supportive of or expressed concern about the proposals, as even if the screening process is made more light-handed, any cost, delay or uncertainty for overseas investment in forestry rights would impact on their commercial arrangements.
 11. A summary of the feedback is set out at **Annex A** and a list of the hui attendees is at **Annex B**.

Summary of issues

12. As stated above, approximately a third of participants indicated support for proposals, particularly in light of the changes since January. This support was indicated in the context of assurances that the proposed changes to the screening regime for forestry would be cheaper, faster and more certain than the current screening process for freehold and leasehold forestry assets.
13. Issues raised by some participants included:
 - Concern, particularly among some Māori or iwi landowners, about not understanding the implications of the changes, given their complexity.
 - Concern about the new costs (financial and time) associated with screening overseas investment in forestry rights being passed on to iwi or Māori landowners or putting-off foreign investors. There was also concern about this impacting negatively on the value of forestry rights, the underlying land and other land transferred in Treaty settlements.
 - The broader context of Crown action impacting returns that can be generated from land returned to Māori as a result of historic grievances.
 - Imposing a screening regime on land that has been returned as part of Treaty settlements undermines iwi commercial sovereignty.
 - Concern or lack of clarity about the impact of some specific provisions, including those relating to replanting requirements, foreshore and seabed and wāhi tapu.
 - A general need for support to build capability around forestry investment and management.
 - Concerns about the ongoing viability of domestic wood processing.
 - Implications of the ongoing viability of domestic wood processing for employment.
14. These issues are addressed, including possible responses, below.

Analysis of issues and possible responses

Uncertainty about implications of changes for Māori and iwi

15. One of the objectives of the consultation process was to ensure that Māori and iwi stakeholders understand the proposals and so can meaningfully engage with the Crown on the merits of the proposals and how they might impact. We heard from some participants that the changes are complex and they were still not clear about what they would mean for them in practice.
- 16.
17. The proposals shift the balance of incentives for foreign investment to make forestry rights less attractive relative to freehold and leasehold assets, compared to the status quo.
18. Most Māori and iwi landowners do not intend to sell their land due to cultural values or legal impediments, and prefer using forestry rights as an alternative to leasing due to the ability to retain access to wāhi tapu, kaimoana and overall kaitiakitanga (guardianship). [1]

Māori and iwi are concerned that the proposals will either reduce the prices that forestry rights sell for, or increase the difficulty in finding a counter-party buy a forestry right. [1]

Changes from the initial proposal, including the 1,000 hectare annual threshold, help focus the impact of the proposals on large transactions, where the screening costs will be a smaller proportion of the total costs of the transaction.

19. These concerns remain despite Māori and iwi landowners potentially indirectly benefiting from other initiatives such as the liberalisation of the screening regime for freehold and leasehold land, the billion trees programme. A further benefit identified by some participants in the engagement process was that screening, particularly the investor test component, may protect some landowners from entering into commercial arrangements with unreliable overseas investors.
20. Based on the feedback we received from some participants, there is a risk that due to the complexity of the changes and their differential impact on different types of transactions (sale of freehold or leasehold land, compared to forestry rights) they may not have accurately understood the potential implications for them. Participants were advised that the screening process is intended to be cheaper, faster and more certain than the process for freehold and leasehold forestry assets at present, but some participants may not have fully understood that for forestry rights, these will be new costs.
21. Moreover, a sense of scale around the cost, time and level of certainty was not conveyed due to uncertainty. One of the cost drivers will be due to the investor test in the special benefits test (or 'checklist'). We have, subsequent to the hui, clarified the current costs and average time for consideration of the investor test required for overseas investment in Significant Business Assets, which the Overseas Investment Office (OIO) advises is the best comparison to the applicants for the investor test under the forestry proposals. The costs and average time are estimated at:
 - an application fee of \$32,000, excluding the cost of legal fees, and
 - an assessment period by the OIO of 49 working days (or approximately 10 weeks), excluding any time taken for the applicant (the overseas investor) to

respond to any requests for information or queries from OIO (average of 40 additional working days or approximately 8 weeks).

22. The other factors in the special benefits test will also have cost and time implications but these are currently uncertain. This test will be faster and simpler than the existing 21 factors in the benefits test that currently applies to freehold and leasehold forestry assets, but the cost and time implications under the special benefits will be material compared to no screening for forestry rights. The more efficient the screening regime is in terms of cost, time and uncertainty, the lower any negative effects will be. We will continue to work with the OIO on implementation issues.
23. The absence of empirical evidence to help quantify the negative and positive impacts on Māori and iwi, means impact assessments rely heavily on analysis, judgement and stakeholder feedback. Therefore opinion on the impacts varies among stakeholders.
24. While the OIO costs and processing time are expected to reduce due to economies of scale, the extent of these reductions are uncertain. [1]

Therefore it is likely that the net impacts of the screening proposals for most Māori and iwi stakeholders will be negative, although the magnitude of this is unknown. Without further engagement with Māori and iwi stakeholders, it is difficult to assess for how many of these stakeholders would be materially affected and the magnitude of that impact.

25. [5]

26.

27.

28. A range of options to address the outstanding uncertainty about impacts on iwi and Māori groups, as follows.

Option 1: Continue as planned with the current process

[5]

Option 2: Conduct a further round of information provision and targeted engagement

This could include providing further information, including worked examples, based on the scenarios identified through consultation and additional information that has subsequently been obtained (for example,

regarding Crown Forestry Licenses) and providing further advice based on feedback received.

[5]

Option 3: Establish an advisory group that includes representatives of iwi and Māori interests to advise on impact of the changes on implementation to enable negative impacts to be mitigated

This option could include the advisory group feeding into Phase 2 of the reforms to the Overseas Investment Act, ^[1]

Terms of Reference for Phase 2 are expected to go to Cabinet in mid-2018. The group could also provide advice on wider issues as they relate to forestry such as the One Billion Trees Programme and any proposed changes to the Emissions Trading Scheme.

*The Treasury considers that, combined with Option 2 above, ^[5]
with its policy objectives of
regulatory coherence and ^[1,5]*

Option 4: Remove the investor test from the special benefits test for forestry rights

This option would potentially reduce some of the cost, time and uncertainty associated with the proposals, but would substantially undermine the policy objectives of regulatory coherence ^[1] Not recommended by the Treasury or the Overseas Investment Office.

Option 5: Do not proceed with bringing forestry rights into the ambit of the Overseas Investment Act

This option would remove the ability of the current and future governments to achieve regulatory coherence between investment in forestry rights and other types of forestry assets.

29. The Treasury considers a combination of Options 2 and 3 would ^[5] and those other policy objectives. A full options analysis is set out at **Annex C**.
30. The impacts associated with these options will play out in the broader context of the Government's other policy processes that have the potential to impact on Māori rights and interests, such as the Tax Working Group and environmental policy proposals. The dynamics of the Crown-Māori relationship tend to impact across the full range of areas of engagement, unlike other stakeholder relationships. Careful consideration of how to maintain the quality of the Crown-Māori relationship is likely to support the Government's other policy objectives.
31. You may also wish to be aware that links may be drawn between Treasury advice regarding requiring overseas investors to satisfy the investor test to acquire a unit in a

large apartment development and statements about the impact of bringing forestry rights within the overseas investment screening regime in this recent consultation process with Māori and iwi (T2018/1118 refers). The Treasury report provided shortly after the recent consultation was completed advised that, in the context of the value of units in apartment complexes (estimated at \$600,000-700,000), [1]

There is a risk that this could be perceived to be materially different to statements that the new special benefits test (the 'checklist') for forestry assets, which includes the investor test, will be cheaper, faster and more certain than the current benefits test.

32. The Treasury report is clear that the judgements relate to the context of individual apartment units, which is substantially different compared to the value of, and processes around, investment in forestry land, leases or rights. It is also important to be clear that the statements about forestry assets are compared to the current benefits test. As such, we do not think there is any contradiction between the report and the messages communicated in the consultation process.

Broader context of historical Crown action impacting on Māori economic development

33. Some participants put the proposals in the broader context of a history of Crown action related to land returned by the Crown that has exacerbated Māori economic disadvantage. To respond to this, the Treasury proposes to clearly communicate how the current work programmes in the forestry and regional economic development portfolios will be able to support Māori in a future update to iwi and Māori groups (see the 'Next Steps' section). We will work with relevant agencies to develop this response.
34. A need for support to build capability around forestry investment and management was also raised. The Ministry for Primary Industries (MPI) is in the early stages of work to develop decision support tools for Māori landowners. This includes developing advice and tools on the key considerations and information to negotiate an effective commercial forestry agreement or joint venture, and could also incorporate additional considerations relating to OIO changes and screening criteria.

Impact on Māori commercial sovereignty over land returned in Treaty settlements

35. A small number of participants articulated a view that by returning land in Treaty settlements and then putting in place new rules impacting who can invest in that land, the Crown is undermining the commercial sovereignty of iwi. The Crown's position this is that the redress provided through Treaty settlements does not affect the Crown's general mandate to govern (kāwanatanga), including through regulation and, in carrying out this mandate, the need to balance a range of public and private interests. This includes balancing the Crown's obligation to recognise and actively protect Māori interests.

Specific provisions being amended in light of feedback

36. Below are three areas of concern or uncertainty around the provisions in the special benefits test that were generally alleviated once the policy intent was understood. Revisions are being made to improve the drafting, consistent with the policy intent, of provisions relating to:
- replanting requirements
 - 'special land' including, foreshore, seabed or a bed of a river or lake, and
 - wāhi tapu (including an extension to include wāhi tapu that are protected under Te Ture Whenua Māori Act 1993 or are included in the contract between the overseas investor and the land owner).

37. Concerns raised about the interaction of the modified counterfactual test with the standing consent process has been the focus on further policy work and is addressed in the draft Cabinet paper.
38. A small number of participants also expressed concern that the Crown may use the exemption of CFLs as a back-door way to avoid the need for screening for overseas investors in the One Billion Trees Programme. It was explained that decisions on this have not been taken yet, but that this is not the Crown's intent. MPI has subsequently confirmed that the Government is not intending to create CFLs for the One Billion Trees Programme.

Issues relating to land subject to Crown Forestry Licenses

39. There are a specific set of issues relating to Crown Forestry Licences. Crown Forestry Licences (CFLs) are established under the Crown Forest Assets Act 1989 (CFA Act). CFLs are over land that is, or was, Crown forest land. A licensee under a CFL typically owns the trees, has rights to maintain and harvest them, and has rights to access the land.

The impact of the proposed changes on Crown Forestry Licenses

40. In a briefing last week we noted that it had been challenging to clarify the impact of the proposed changes on CFLs due to interactions between the CFA Act, the Overseas Investment Amendment Act and Treaty settlement legislation (T2018/1236 refers).

[5]

41. There were originally at least 90 CFLs, of which most have been transferred through Treaty settlements to iwi. A significant number of these CFLs will be with overseas investor partners. Of the 30 CFLs administered by Land Information New Zealand (LINZ), all of the licensees are ultimately owned by overseas-based companies (some directly and others through intermediary New Zealand-based companies, however, all the overseas companies have a New Zealand-based company listed as the licensee on LINZ's Computer Interest Register). This means that iwi/Māori that have made or seek changes to CFLs could be exposed to the potential implications identified above in relation to forestry rights more broadly (impacts relating to the cost and time associated with screening that may impact negotiations and overall value, all of which are uncertain).
42. In light of these potential impacts, even in circumstances where the modifications to the arrangements might be minor, officials have recommended some changes be made in the draft Cabinet paper that is scheduled for Cabinet consideration on Monday 21 May. These include:
 - Grand-parenting provisions which allow an existing CFL to be converted to a forestry right and not to be subject to screening under the OIA.
 - Changes to the commercial terms of a CFL not being subject to screening under the Act (commercial terms exclude changes to increase land area and extend duration).
 - The term of forestry rights being able to be extended by three years and not subject to screening under the Act.

43. The CFL return provisions in Treaty settlements mean that the CFL can be progressively be substituted with a forestry right. Return of land follows the harvest profile of the forest, meaning that for up to 35 years as the crop is harvested, land can be progressively removed from the CFL and added to the forestry right. [One of the grand-parenting provisions relates to this matter.
44. Any overseas investor entering into an agreement relating to forestry rights once these above arrangements expire would be subject to the OIA regime. This is consistent with the policy intent of the overseas investment proposals.

Possible implications of value impacts for Treaty settlements that are currently in train

45. A number of iwi have agreed the price they will pay for CFL land out of their financial redress from the Crown, but will not purchase that land until after the Overseas Investment Amendment Act comes into force. All licences for CFL land are currently owned by overseas-based companies, so could be impacted by the new requirements in any future forestry rights arrangements that may be considered, with potential flow on effects to the value of the land. Although there is no empirical evidence, if these regulatory changes result in a negative impact on the value of that land, it would raise an issue about whether the price for the land could be reviewed prior to purchase. Concern about such value impacts could also be raised in relation to existing Treaty settlements that have included CFL land as redress.
46. Most CFL land transferred in settlements is 'pre-1990' forest land for the purposes of the Climate Change Response Act 2002, meaning it must be replanted or regenerated to meet Emissions Trading Scheme obligations, and the value of such land has generally been negatively impacted as a result of these obligations. For post-settlement groups, this obligation falls on the Māori landowners who will generally have to rely on investors to be able to meet the obligation, so it is possible that new obligations in relation to overseas investment in forestry rights could compound this prior Crown action that has impacted on the value of CFL land. CFL land is the single largest commercial land asset class transferred through Treaty settlements by area (and possibly value) and many iwi rely on rental streams to grow their wealth.
47. There are a number of countervailing factors to take into account that may impact on the value of CFL land and the outcome is highly uncertain as it is unclear how overseas investors would respond to the proposed screening requirements.
48. Until a Deed of Settlement is signed, the parties are technically able to revalue the land (though this is not necessarily straightforward). The situation is different in relation to concluded Deeds of Settlement where there is an implied understanding the parties will bear the risk of a change in value in return for certainty of purchase price at the time of agreement. Should Ministers decide at some point in the future to revalue and adjust the previously-agreed price an iwi would pay the Crown for CFL land, a technical appropriation would be required for the reduction in value directly attributable to the policy change. The reduction in value would reduce the Crown's net worth, but would not impact on the Crown's operating or capital allowances if it were to eventuate. If this option were to be progressed, Cabinet approval would be required and, to inform this, we would recommend advice be sought on the precedent effect of revaluing land returned by settlement.

Possible impacts on the Crown accounts

49. Any negative impact on the value of CFL land could also flow through to the Crown accounts if it is considered to directly result from a government policy decision (as opposed to market movement). In this scenario, a technical appropriation would be required, for transparency, for the write-down expense in the value of the land directly attributable to the policy decision. The fiscal impacts would be the same as above.

Next Steps

50. The Treasury is following up with stakeholders thanking participants for their feedback and setting out the process from here as it currently stands. This includes commitments to provide:
- information on the implications of the proposals on Crown Forestry Licenses as soon as this is available followed by some targeted stakeholder engagement
 - a summary of the feedback and the Government's response to key issues raised, and
 - updates on the legislative process, including changes recommended to the Select Committee in the Departmental Report, including those resulting from the consultation process.
51. The decision on the options presented in this report will be incorporated into the Cabinet paper for consideration by Cabinet on 21 May 2018 and follow up advice on the preferred option will be provided, if necessary.

Consultation on this report

52. The following agencies were consulted on the contents of this report with limited time to provide feedback and their comments have been reflected: Crown Law Office, the Crown-Māori Roopu at the Ministry of Justice, Land Information New Zealand (including the Overseas Investment Office), the Ministry of Foreign Affairs and Trade, and the Ministry for Primary Industries.
53. Te Puni Kōkiri has provided the following comment:

Te Puni Kōkiri remains of the view that bringing forestry rights into the screening regime is going to have a significant and potentially disproportionate impact on Maori and is likely to add further to the challenges that many groups are already facing in trying to generate an economic return from their land. The consultation confirmed that Māori generally favour the use of forestry rights as it maintains ownership of the land for future generations so they will not benefit from the decision to liberalise of the rest of the regime for forestry. While some of the issues raised at the recent hui have been able to be addressed through the changes that will be recommended to Cabinet shortly, there remains significant uncertainty about what impact the decision to screen forestry rights will have on the value of Maori land, the costs that will be incurred in meeting the screening requirements and time taken for OIO to process the application.

The Crown has a responsibility to ensure it understands the overall impact on Maori from these changes. Therefore, we are of the view that further work should be undertaken to understand the implications of the changes to the screening regime and how the effect on Maori land owners could be mitigated. However, if Ministers decide to continue with the proposal to bring forestry rights into the Overseas Investment Act prior to the enactment of CPTTP then we consider that at minimum the Crown should undertake options 2 and 3 to be seen as acting in good faith following the feedback received at the consultation hui. In regards option 3, it is important that the advisory group has strong Ministerial and agency commitment to ensure that the engagement is meaningful, and has the ability to influence policy with respect to wider issues as they relate to forestry such as the One Billion Trees Programme and any proposed changes to the Emissions Trading Scheme.

About the hui

1. Six hui were held in total, in the following locations: Wellington, Whangārei, Whanganui, Gisborne, Rotorua and Nelson. Three of these were attended by Hon David Parker (Wellington, Whangārei, Gisborne). Alongside Treasury officials, representatives from Te Puni Kōkiri and the Ministry for Primary Industries attended every hui.
2. Attendance typically was been 10-20 stakeholders at each of the hui, which were predominantly representing Māori or iwi, but also included representatives from domestic wood processors, overseas investors and law firms.
3. The aims of the consultation were to:
 - ensure that iwi and Māori groups with interests in forestry understand the proposed changes and what they mean for them
 - ensure that the Government understands the impact of the changes on iwi and Māori groups, recognising that there will be a range of differing circumstances and implications
 - understand the extent to which the changes that have been made address the concerns raised in the January consultation, and
 - understand any remaining concerns and any proposals on how they might be addressed.

Issues raised in the consultation process

4. Overall, the feedback on the revised proposals was mixed, with participants seeming to sit roughly even proportions across the following camps in terms of their views on the proposals:
 - supportive, particularly in light of the changes since January,
 - uncertain about the implications for them or ambivalent, and
 - uncomfortable or opposed.
5. The main focus for those that participated in the consultation process was trying to **understand the proposals and what the impact would be** for them. There were a lot of questions about what the proposals would mean in practice, particularly the scenarios in which overseas investment screening would be required, what the cost and time implications of this would be, and what impacts would be on the value of forestry assets. While officials and the Minister (when attending) were able to clarify some of these impacts, some participants were not satisfied with some of the areas uncertainty, such as cost and time impacts of overseas investment screening, potential value impacts particularly on forestry rights, and implications of the changes for Crown Forest Licenses. Some participants feedback that they still found it **difficult to understand what the proposals would mean for them**,
6. There was concern about the **pace of the process**, but many participants said this was ameliorated to some extent after the efforts made in this second round of consultation.
7. Some of the Māori/iwi participants indicated they were **comfortable with the proposals in light of the changes that have been made** since January. These participants considered the changes to make the regime more 'light touch' substantively addressed the concerns they had expressed. A theme from these participants was that certainty is very important investors, so

implementation by the Overseas Investment Office will be key to the new regime working from their perspective.

8. A few participants **challenged the need for the proposals**. They argued that there was not a strong enough case for change to justify the imposition of a new constraint on investment. These participants articulated a view that preserving 'option value' was not sufficiently significant.
9. There were a lot of questions about what the proposals meant for **Crown Forestry Licenses (CFL)**. Officials explained that CFLs are exempt but we are still working through some issues, such as the legal position on whether CFLs remain exempt if changes to the terms of the CFL are made after transfer in a Treaty settlement.
10. Concern was expressed by some participants about the **impact that changes would have on the value of forestry rights**, including rights relating land formerly under CFLs. It was noted by these participants that while the regime is being made more streamlined, which may have an upward pressure on the value of freehold and leasehold forestry land, screening would still be a new imposition for foreign investors. Many of these participants made the point that Māori and iwi typically do not sell their land, so they will be affected by downward pressure on the value of forestry rights and will not benefit from the upside pressure on land value.
11. For example, CNI Iwi Holdings Limited commented in written feedback:
Although public statements made by the Government, including various comments in the Explanatory Note to the Supplementary Order Paper, refer to "a very light-handed checklist screening regime" and the stimulation rather than inhibition of forestry investment overall, it is clearly intended to impose a screening regime in circumstances where one did not previously exist in relation to forestry rights and forestry-related profits à prendre. This can only result in an additional layer of cost, complexity, uncertainty and risk which must create a potential for a significant loss in value for both overseas investors in forestry rights and a landowner in the situation of the Trust that is directly exposed to the market pricing for forestry rights.
12. Concern was also expressed by some participants **about the potential impact on the value of land** underlying forestry rights or CFLs and other Treaty settlement assets. In response, it was explained that the liberalisation of the regime for freehold and leasehold forestry land and land to be converted into forestry may put upward pressure on value of that land.
13. Some participants put these proposals in the **broader context of a history of Crown action** related to land returned by the Crown that exacerbates Māori economic disadvantage. This context was expressed as follows: Māori are disproportionately invested in land as an economic base; forestry arrangements, which often have low-returns, were often entered into by the Crown; the land was often broken up into small parcels limiting productivity due to scale; subsequent policy changes which, while having some benefits, have negatively impacted returns, such as the Emissions Trading Scheme, limits on nitrogen run-off and health and safety requirements. The perception that the Crown was now trying to restrict who Māori can go into business with was seen by some as a further example of this.
14. A small number of participants went further, expressing a strong view that **imposing a screening regime on land that has been returned as part of Treaty settlements undermines iwi sovereignty**. This was also a theme in some earlier submissions to the Treasury and to the Finance and Expenditure Select Committee.
15. One attendee articulated the view that forestry rights are distinctly different from leases and are consistent with an 'Ao Māori' perspective on land use and investment, and as such, should not be screened. This is because forestry rights enable iwi with limited capital to generate a return on the land, while retaining access to wahi tapu, kaimoana and overall kaitiakitanga (guardianship) over the land.

16. A small number of participants also expressed concern that the Crown may use **CFLs as a back door way to avoid the need for screening** for overseas investors in the One Billion Trees Programme. It was explained that decisions on this have not been taken yet, but that this is not the Crown's intent.
17. At the hui that attended by Hon David Parker, most of the participants had a positive response to the additional round of engagement, appreciated the broader context that was articulated and indicated greater comfort with the revised proposals. However, written feedback provided from iwi and Māori groups that could not attend was generally not supportive of or was concerned about the proposals, as even if the screening process is made more light-handed, any costs, delay or uncertainty for overseas investment in forestry rights would impact on their commercial arrangements. Also, for example, one attendee affiliated to Te Hiku told officials after the Whangārei hui that he had not raised with Hon Parker the concerns they outlined in their written and oral submission to the Select Committee as he felt it was not necessary to do so as they had already put them in writing.
18. There were some specific aspects of the new special benefits test that were discussed:
- Clarity was sought about the implications of the **replanting** provisions. One of the concerns was that the provision might require replanting on land where the landowner may intend to change the use of the land after the forestry right ends.
 - Clarity was sought about the **foreshore and seabed** provisions. Most participants were comfortable with the intent behind this provision once explained.
 - Some participants noted that most **wāhi tapu** are not registered and so would not be covered by the provision in the special benefits test.
19. Some other specific concerns that were expressed included:
- If **joint ventures with foreign investors** are caught by the regime, it may particularly impact on Māori due to often needing access to capital to develop the land.
 - **How conditions to consent will be enforced** and that some may **perceive Overseas Investment Office approval as a 'guarantee'** that the foreign investor is 'safe' and that some landowners, particularly those with low capability, may therefore not do due diligence on potential foreign investors.
 - A concern about the modified counterfactual test interacts with **standing consent** was raised by a couple of law firms. They pointed out some benefits are difficult to self assess, such as proportionality.
20. A number of participants commented on the need to **build capability** in forestry investment and management and that it would be important to have information to help people on the ground understand these changes.
21. Both Māori and non-Māori expressed concern about the ongoing viability of **domestic wood processing** and the impact on employment of a decline in this industry. This was raised repeatedly, particularly by representatives from the wood processing industry that attended the hui. A provision was sought that would require foreign investors to offer logs to domestic processors at fair market value. It was feedback by the Minister that the proposals needed to balance a range of interests and many foreign forestry investors had indicated that such a provision would discourage them from investing in forestry in New Zealand. Officials advised that the work programme of the Ministry for Primary Industries and, in particular, the One Billion Trees programme would be a key lever for addressing this. Hon David Parker advised he would have a follow up discussion with Hon Shane Jones around this.

Annex B Non-Crown hui attendees by location

11 April 2018: Wellington

Attendees	Organisation
[6]	Buddle Findlay
	Public Sector Pension Investment Board
	Rayonier New Zealand Limited
	Rayonier New Zealand Limited
	New Forests Asset Management Pty Ltd
	Russell McVeagh
	Russell McVeagh
	Ngāti Toa Rangatira
	Federation of Māori Authorities
	Federation of Māori Authorities
	Ngāti Awa Holdings Ltd
	Ngāti Awa

16 April 2018: Whangārei

Attendees	Organisation
[6]	Waitangi Forestry Collective
	Wood Processors & Manufacturers Association
	Rosvall Sawmill and Wood Processors & Manufacturers Association Board Member
	North Sawn Lumber
	Waipapa Pine
	Northpine Lumber
	Te Aupōuri
	Ngati Hine Forestry Trust
	Ngati Hine Forestry Trust
	Te Ahuahu Ahuwhenua Trust
	Te Ahuahu Ahuwhenua Trust
	Taitokerau Forest Ltd
	IFS Growth
	Jenksmax Consulting Limited
	Te Rarawa

18 April 2018: Whanganui

Attendees	Organisation
[6]	Morikaunui Incorporation and Federation of Māori Authorities
	Ngati Maru
	Ngaporo Waimarino Forest Trust and Pipiriki Incorporation
	Te Rūnanga o Ngā Wairiki Ngāti Apa
	Te Rūnanga o Tamaupoko
	Nesbitsavage Business Services Ltd

[6]	Ngāti Tuera
	Tamau Poko Community Working Party

19 April 2018: Gisborne

Attendees	Organisation
[6]	Ngāti Porou Forests CE
	Tokararangi Forest
	Tāmanuhiri TuTu Poroporo Trust
	Te Tumu Paeroa
	Te Tumu Paeroa
	Tairāwhiti Māori District Council
	Tairāwhiti Māori District Council
	Tairāwhiti Māori District Council
	Tairāwhiti Māori District Council
	Te Rūnanga o Ngai Tahu
	Harakeke Station, Te Araroa
	Ngāi Tahu
	Tairāwhiti Pharmaceuticals/ Tukairangi Trust

20 April 2018: Nelson

Attendees	Organisation
[6]	Te Rūnanga o Ngāti Rārua
	Nelson Management Ltd (Nelson Forests) (Ngāti Toa, Ngāti Tama and Te Ātiawa)
	Wakatū
	Ngāti Tama
	Tasman Pine Forestry
	Tama Asset Holding Company
	Ngāti Kōata
	Te Rūnanga o Ngāti Rārua

23 April 2018: Rotorua

Attendees	Organisation
[6]	Rotoiti 15 Trust
	Waione Forest GP Ltd
	Tapuika iwi
	Tapuika iwi
	Forest Farm
	Timberlands Limited
	Red Stag Timber
	Kapenga M Trust (Te Arawa Primary Sector, Inc)
	Toitu Te Waonui Limited
	Te Arawa Primary Sector, Inc
	Matariki Forests
	Toitu Te Waonui Limited
	Toitu Te Waonui Limited

[6]	Te Manawa o Tūhoe
	Waione Forest GP Ltd
	Lake Taupō Forest Trust
	Oji Fibre Solutions
	Maraeroa Inc
	Ngāti Manawa
	Waikato Tainui
	PF Olsen Ltd
	Ngāti Porou Forests Ltd
	Dana Ltd

Annex C Options analysis for addressing concerns about the implications of the changes for Māori and iwi stakeholders

A range of options have been identified for addressing on-going concern from some consultation participants that the implications of the proposed changes to bring forestry rights into the Overseas Investment Act are unclear or will have some negative impacts. This is of particular concern as the changes will likely disproportionately impact Māori and occur in a context of a history of Crown action that has negatively impacted on Māori economic development.

Options	Criteria			
	Impact on policy objective purpose of regulatory coherence regarding overseas investment	The Crown acting in good faith as a Treaty partner	Other policy objectives	Minimising compliance costs
Option 1: Continue as planned with the current process	Achieves regulatory coherence (with modifications agreed to date).	<p>In consultation, Māori and iwi have provided feedback that how the policy changes impact them is not clear. Although information about the known impacts of the policy have been provided to date, there are still a number of uncertainties that are not known (and may remain unknown when legislation is enacted), however, there are areas where implications are better understood as a result of consultation.</p> <p>[5]</p>	<p>Depending on the scale of costs, time and uncertainty around screening by the Overseas Investment Office, negative impacts on Māori economic development are possible.</p> <p>This could also flow through to domestic wood processing and associated employment in the sector. Alternatively, lighter screening for freehold and leasehold forestry assets could increase forestry investment.</p> <p>If the proposals impact negatively on investment in forestry rights, this could impact on the Government's forestry and climate change objectives.</p>	<p>The compliance burden in terms of cost, time and certainty is expected to be [1]</p>

		[5]		
<p>Option 2: Conduct a further round of information provision and targeted engagement</p> <p>This could involve providing further information about the implications of the changes for the scenarios identified through the consultation process (eg. worked examples) and seeking feedback.</p>	<p>Depends on outcome of further engagement. Would not need to slow down the process, as any changes desired as a result of engagement could be introduced at Committee of the Whole House stage.</p>	<p>Providing more analysis about the potential implications of the proposals for Māori/iwi would likely to some extent address the current process concern. However, there is still likely to be a number of impacts that remain unknown.</p> <p>[5]</p>	<p>This depends on whether additional consultation resulted in any changes to the process. Otherwise, likely as above.</p>	<p>Similarly, this depends on whether this process resulted in any changes to the process. Otherwise, likely as above.</p>
<p>Option 3: Establish an advisory group that includes representatives of iwi and Māori interests to advise on the impact of the changes on implementation to enable negative impacts to be mitigated</p> <p>This could involve engaging some representatives from iwi and Māori groups to provide feedback to feed into the advice on Phase 2 of the Overseas Investment Act reforms. The group could also provide advice on wider issues as they relate to</p>	<p>This option could support the OIA's policy objectives by providing insights on how implementation is playing out, compared to the original policy intent.</p>	<p>Given the uncertainty about the implications of some aspects of the changes, establishing a formal mechanism to get feedback on how they are playing out would support the Crown's ability to act in good faith in relation to the changes and any subsequent decisions.</p>	<p>Depending on the membership of the group, this option could also provide insights on how the changes are playing out in relation to some of the Government's other policy objectives.</p>	<p>This group's advice could contribute to improving the screening process.</p>

forestry such as the One Billion Trees Programme and any proposed changes to the Emissions Trading Scheme.				
Option 4: Remove the investor test from the special benefits test for forestry rights	<p>This would reduce assurance about the quality of foreign investment in forestry rights, [1,5]</p> <p>It would also go against improving the regime's regulatory coherence.</p>	<p>This would reduce the uncertainty and the extent of potential costs, delay and uncertainty around the inclusion of forestry rights in the OIA. This may respond to Māori/iwi's concern about the possible negative economic impact of the changes and also demonstrate that the Crown is taking into account feedback from the hui.</p>	<p>Reducing the compliance burden for forestry rights would ameliorate some of the risk of negative impacts on foreign investment, with potential flow ons to Māori economic development, forestry, climate change, domestic processing and employment policy objectives.</p>	<p>[1]</p> <p>However this change would represent a decrease in cost, delay and uncertainty in the current SOP.</p>
Option 5: Do not proceed with bringing forestry rights into the ambit of the Overseas Investment Act	<p>The policy intent of regulatory coherence around overseas investment [1]</p> <p>would not be achieved.</p>	<p>[5]</p>	<p>This would avoid the risk of possible negative impacts on foreign investment, with potential flow ons to Māori economic development, forestry, climate change, domestic processing and employment policy objectives.</p>	<p>The compliance burden would be removed.</p>

Annex D Draft agenda for meeting on the Crown-Māori issues on overseas investment in forestry

Time Tuesday 15 May 2018 12-12.30pm

Location L4.1 EW (Parker Office)

Attendees The Associate Minister of Finance (Hon David Parker)
The Minister for Crown/Māori Relations
The Minister for Treaty of Waitangi Negotiations
The Minister for Māori Development
(Officials' attendance to be confirmed)

Agenda

- Recap on what the forestry proposals are
- Discuss feedback from engagement with iwi and Māori groups to date, and possible impacts of reform
- Discuss proposed options for progressing with the Overseas Investment reform:
 - conducting a further round of information provision and targeted engagement, and
 - establishing an advisory group that includes representatives of iwi and Māori interests to advise on impact of the changes on implementation to enable negative impacts to be mitigated.