

Office of the Associate Minister of Finance (Hon David Parker)


Chair, Cabinet Economic Development Committee

Consultation on a Proposed Fee Structure for the Overseas Investment Regime

Proposal

1. This paper seeks Cabinet Economic Development Committee (DEV) authorisation to undertake public consultation on a proposed fees structure for the overseas investment regulatory regime. This consultation would take place from late February 2021.

Executive summary

2. The administration of the overseas investment regime is largely funded by revenue from application fees which are set in Regulations. The level of fees has consistently been insufficient to meet the costs of operating the Overseas Investment Office. A previous fee review in 2015/16 did not increase fees to fully recover the costs of the expanded regulatory functions expected by Ministers and the public. As well, a declining trend in applications had an impact on the fee revenues.
3. The 2018 reform to the Overseas Investment Act 2005 introduced new application pathways for One Home to Live In, residential land, and forestry transactions. The cost of the new functions to administer the pathways have not been fully recovered from the respective fees, largely due to lower than expected application volumes.
4. A 2020 review of overseas investment fees found the costs of operations are not being recovered. These costs include the initial quality assurance of applications before they are accepted, the significant number of complex applications which require a higher level of investigation and assessment, and the costs of monitoring compliance by investors with consent conditions.
5. 
6. I propose a differentiated fee structure and increased fees to ensure revenue meets operating costs. These increases will vary in significance depending on the assets being sought for purchase. For example, for the 75 per cent of applications which are 'standard', total fees for significant business asset applications would increase by just over one-fifth, and total fees for sensitive land applications would increase by three-quarters. For the around 25 per cent of applications which are 'complex', total fees for significant business asset applications would nearly triple, and total fees for sensitive land applications would more than triple from current levels.

7. I propose an approach of maintaining the 'One Home to Live In' individual fees at the current rates (that is, \$2,040 GST inclusive). This maintained level of fees may imply that any monitoring compliance costs required will not be recovered from these applicants. The level of monitoring required will be determined based on further experience and will be included in a subsequent fee review.
8. Recent and current legislative change will affect operating activities and fees. The Overseas Investment Amendment (Urgent Measures) Act 2020 introduced a national interest assessment. The revised fees include an updated national interest assessment fee, based on operational experience since July 2020. The Overseas Investment Amendment Bill (No 3) will also have consequences for application assessments, and these changes will be addressed in a fee review in 2022/23.
9. The Overseas Investment Office Legal Reference Group has indicated there may be a negative reaction from investor representatives to the proposals, as the proposed fees would appear higher than the fees applied in Australia for lower-value transactions. The increased fees might have an adverse effect on smaller value transactions (for example, to purchase small forestry blocks), and could affect, at the margin, how investors choose to structure their transactions.
10. A process of public consultation from late February 2021 will be important to better understand the potential negative effects of a new fee structure for the Overseas Investment regime. These potential effects include whether there could be any deterrent to inward investment into New Zealand.

Policy


11. The Overseas Investment Office is a business unit within Land Information New Zealand (LINZ). The business unit is largely funded by fees charged to applicants seeking a consent decision for investment transactions. The Overseas Investment Regulations 2005 (Schedule 2) now specify a total of 60 fees (and three charges) for the application types. For each application type a single fee is applied, at the point when the application is accepted for assessment.
12. It is appropriate to fund the bulk of the costs of the overseas investment regime from fees charged to applicants (i.e. overseas investors). This is because applicants are seeking a substantial private benefit from their investment. For example, the net value of approved overseas investments during the 2019/20 financial year was \$1.25 billion. The total Overseas Investment Office operating expenses of \$10.6 million for the 2019/20 financial year (excluding Crown funding) was about 0.8 per cent of the net value of approved overseas investments.

Background

Existing fees are not recovering the costs of the Overseas Investment Office

13. The level of application fees has consistently been insufficient to meet the costs of operating the Overseas Investment Office. The Overseas Investment Office reported an operating deficit of \$3.3 million in the 2019/20 financial year (excluding Crown funding for monitoring and enforcement). As at 30 June 2020, the balance of the Overseas Investment Office memorandum account was a deficit of \$8.5 million.

14. A 2015/16 fees review did not establish fees that fully recovered the costs of the additional functions required to enable the Overseas Investment Office to undertake monitoring and enforcement activities, provide information to investors, and support ongoing regulatory change. Shortly after the 2015/16 fees review LINZ was directed to increase staffing numbers to address concerns about application timeliness.
15. In November 2017 the new Ministerial Directive Letter introduced a new set of factors governing investment in rural land, the costs of which were not reflected in the existing application fees.
16. The 2018 reform to the Overseas Investment Act 2005 introduced new application pathways for One Home to Live In, residential land, and forestry transactions. The cost of the new functions to administer the pathways have not been recovered from the respective fees, largely as a result of the lower than expected applications for the new pathways.
17. The Overseas Investment (Urgent Measures) Amendment Act 2020 introduced a new national interest assessment, and a specific fee was authorised in Regulations. This Act also introduced a Crown-funded emergency notification regime for all overseas investment proposals. This regime is subject to regular review by the responsible Ministers.
18. Past and recent consultation on the Overseas Investment Act reforms has found that overseas investors are primarily concerned with the timeliness of application assessment, and consistency of decision-making, and less so with the level of overseas investment fees. However, the Overseas Investment Office Legal Reference Group has indicated there may be a negative reaction to proposed fee increases.

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19. LINZ operates a memorandum account to track fee revenues and operational costs which are funded from fees. The deficit of the Overseas Investment Office memorandum account has increased from \$1.5 million as at 30 June 2016 to \$8.5 million as at 30 June 2020. The implementation of a new fee structure will be intended to prevent the deficit increasing.

20.



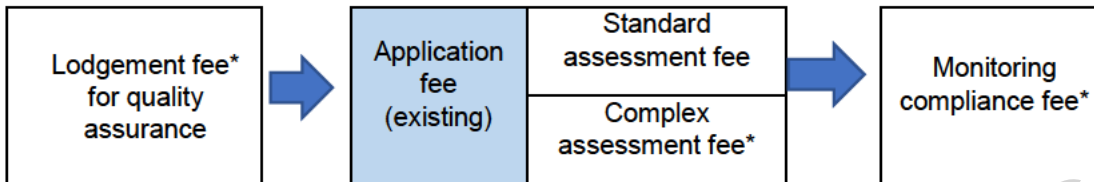
I propose a revised fee structure for the Overseas Investment regime

21. LINZ has developed a cost model that allows a determination of the costs of assessments according to the complexity of applications. This cost model has been

independently tested by PricewaterhouseCoopers. The existing fee structure and fee levels are not recovering the costs of quality assurance, the assessment of complex applications, and of monitoring compliance with consent conditions.

22. To ensure an adequate level of cost recovery from applicants, I propose a new differentiated fee structure, summarised in Table 1.

Table 1: A proposed differentiated fee structure for Overseas Investment applications



*Not to be charged to 'One Home to Live In' (OHTLI) applications

Lodgement fee for quality assurance (charged once, when an application is provided. There would be no charge for a pre-assessment meeting with applicants)

Application assessment fee, differing for 'standard' and 'complex' applications (charged once, when an application is accepted)

Monitoring compliance fee, to assess compliance with consent conditions (charged once, before consent is approved).

Alternative options have been considered

23. LINZ considered the following alternative options for Overseas Investment fees:

- **Higher single application fees:** While increasing the current fees (and not changing the fee structure) would be easier to administer, this approach would not recover all costs of quality assurance and monitoring, and would likely continue to under-recover the costs of assessing Complex applications.
- **Fees and an hourly charge:** While this approach would recover costs, it would more likely lead to significant variability of fees, and very high and unanticipated fees for Complex applications (including for applications of lower investment value which may have high price/fees sensitivity). This would risk reducing the transparency and predictability of the overseas investment regime.

A differentiated fee structure will increase fees for some applicants more than others

24. Table 2 below shows the Overseas Investment Office fees for applications submitted in 2019/20, and the proposed new total fees resulting from the preferred option to introduce a new differentiated fee structure.

25. For the 75 per cent of applications which are 'standard', total fees for significant business asset applications would increase by just over one-fifth, and total fees for sensitive land applications would increase by three-quarters. For the 25 per cent of applications which are 'complex', total fees for significant business asset applications would nearly triple, and total fees for sensitive land applications would more than triple from current levels.

26. A single fee is proposed for the relatively rare applications to purchase fishing quota assets. The process for assessing these applications is particularly complex given the high sensitivity of this asset and the additional tests required under section 57 of the Fisheries Act 1996.
27. The Overseas Investment Office fees would be more than those charged by other government agencies which have similar regulatory expectations, such as the Commerce Commission and the Financial Markets Authority. The difference in fees is largely because the other agencies receive a greater proportion of their funding from the Crown or through industry levies.

Table 2: Impact of a differentiated fee structure on Overseas Investment Fees

Transaction asset type considered by the Overseas Investment Office	Application pathway	Application volumes (2019/20 year): Total of 451*	Current application fees (GST inclusive)	New differentiated fee structure – total fees (GST inclusive)	
				Lodgement + standard assessment + monitoring compliance	Lodgement + complex assessment + monitoring compliance
Residential	One Home to Live In	247	\$2,040	\$2,040	
	Property to inhabit	2	\$24,600	\$16,900	\$32,000
	Apartments off the plans	0	\$2,040	\$2,040	
	Increasing supply	5	\$34,100	\$35,000	\$54,100
	Non-residential	3	\$34,100	\$35,000	\$54,100
	Land used incidentally for residential purposes	1	\$34,100	\$35,000	\$54,100
	Standing consent	4	\$13,000 (transaction)	\$16,800	\$29,900
Sensitive Land	Benefit to New Zealand	70	\$41,500	\$72,500	\$141,200
	Intention to reside	1	\$22,500	\$47,300	\$97,700
Business Asset	Significant Business Assets	23	\$32,000	\$38,800	\$86,700
Forestry	Special forestry test	31	\$34,100	\$30,800	\$57,100
	Standing forestry consent	2	\$34,100	\$31,200	\$54,700
Fishing quota	Quota, or Annual Catch Entitlement	1	\$40,000	\$174,300	
National Interest assessment		n.a.	\$52,000	\$83,700	

*excluding variations and exemptions, and National Interest assessments.

The following sections explain the proposed differentiated fee structure.

A lodgement fee for quality assurance

28. Currently, each application requires an average of 25 hours to quality assure (QA). The current single application fees under each pathway do not recover this cost. QA is not a one-off activity, as some applications can require multiple reviews and feedback cycles before they meet the information requirements.
29. Creating a lodgement fee would make the cost of the QA activity transparent and may also improve the quality of applications. In future, education and information activities could support an improved quality of applications, so reducing staff time requirements. There is potential for efficiency improvements, and a reduced

lodgement fee, to be considered in a subsequent fees review. LINZ will develop business rules on the application of a lodgement fee.

30. The proposed lodgement fee would be \$13,300 (GST inclusive).

Differentiated fees for standard and complex applications

31. From July 2019 LINZ has classified and streamed land and asset applications into four categories, depending on business rules which consider complexity, quality of the application, risk, and potential interest (public and political). This streaming has resulted in about 75 percent of applications being assessed as 'standard', and 25 percent as 'complex'. Complex applications can require up to three times the effort for assessment, recommendation and review.
32. Complex applications are not dependent on the value of the application to undertake a transaction, or necessarily on the type of assets being purchased. Complexity reflects factors such as the risk profile of the investor, the corporate structure being used to action the proposed investment, and the sensitivity of the asset which is being sought for purchase.
33. The substantial differences in effort required to assess standard and complex applications supports a view that differentiated fees would be a suitable means of reducing the fiscal risk to LINZ. Differentiated fees would also be more equitable for applicants.
34. A decision on whether a standard or complex application fee applies will be decided once the application is accepted. This may impose a modest fiscal risk for LINZ if the circumstances of the application change while it is being assessed (that is, the application becomes complex, while only a standard fee is applied).
35. A new structure will require the existing internal business rules to be expanded and explained as published guidelines for all applicants, particularly to provide certainty to applicants as to how their application will be assessed. LINZ expect the process of assessing standard and complex applications to change once the Overseas Investment Amendment Bill (No 3) is passed.
36. The proposed standard application fees would range from \$16,800 to \$56,100 (GST inclusive). The proposed complex application fees would range from \$35,900 to \$157,600 (GST inclusive). The maximum fee would be for consideration of a complex application to purchase sensitive land.

A monitoring compliance fee

37. LINZ monitors the compliance with consent conditions by investors. The current single application fees under each pathway do not fully recover the cost of undertaking monitoring.
38. The proposed new fee to monitor compliance with consent conditions would be consistent with the use of a monitoring fee which is commonly applied by regional councils, under section 36(1)(c) of the Resource Management Act 1991.
39. The proposed monitoring compliance fee would range from \$2,900 to \$14,600 (GST inclusive), depending on the complexity and risk associated with the consent.

'One Home to Live In' fees should be maintained

40. During the 2018 legislative reform one view was that the fee for individuals should be no more than a conveyancing fee of approximately \$2,000. LINZ anticipate that the time (and cost) for monitoring approved applications and taking compliance action, if required, could result in increasing the current individual fee from \$2,040. In my view any proposed increase in the fee needs to be balanced against the underlying policy intent and any possible effect on discouraging applications.
41. The policy objectives are to restrict the overseas persons who can purchase New Zealand residential property and restrict to whom existing overseas homeowners can sell their properties to. Both objectives appear to be being met by the current application and assessment process.
42. There is a regulatory risk that if the fee for individual house purchases increases, some prospective applicants could choose to operate outside the regime. LINZ has Crown-funded monitoring and enforcement activities which can impose penalties for evasion, and LINZ continues to explore low-cost compliance options.
43. On balance, I recommend maintaining the existing fee in the proposed structure, and so not allocate monitoring compliance costs to these applications. The next fees review will assess the experience of actual monitoring and compliance activities and whether the related costs will need to be recovered from the fees charged to 'One Home to Live In' applicants.

Forecast of application volumes and revenues and the impact of Covid-19

44. In an attempt to estimate the impact of Covid-19 on application volumes, for the period of this review, LINZ has taken a view that application volumes are likely to reduce by about 18 per cent in 2020/21 compared to 2019/20. This is based on actual application volumes for the first quarter of 2020/21.

The costs of the Overseas Investment Office

45. An operational productivity factor has not been adopted as part of the cost model, nor has an inflation factor. However, not recognising an inflation factor is itself an efficiency target as it requires LINZ to absorb cost pressures. The implementation of the Overseas Investment Amendment Bill (No 3) will factor in productivity and regulatory changes that will be addressed in a fees review in 2022/23.
46. In the 2019/20 financial year LINZ exceeded all the Key Performance Indicators for the timeliness of assessing applications. These indicators did not include the operation (from 16 June 2020) of the national interest test or the emergency notification regime, which LINZ has put in place without an increase in permanent staff.

Public consultation on the proposed fees structure

47. LINZ has prepared a consultation document on the proposed fees structure, and a copy is attached to this paper. The consultation document includes the relevant material for a Regulatory Impact Analysis. LINZ will advise stakeholders (including media) through its monthly newsletter about the fee structure proposals, and the consultation document on its website. A three-week consultation period is planned.

48. There is likely to be limited public interest in this consultation. The 2015/16 review of Overseas Investment Office fees [CAB-15-MIN-0095 refers] resulted in 15 submissions from stakeholders.

Risks

Possible impact of a new fee structure on investor applicants

49. LINZ considers that the introduction of a new fee structure and increased fees is unlikely to have a material or significant impact on the great majority of applicants. This is because the increased fees will still be a very small proportion of the net value of most transactions. LINZ acknowledges there may be a risk that the introduction of complex application fees could affect how some investors choose to structure their transactions.
50. There is a small risk that for applications which are likely to be declined, the lodgement fee and the prospect of a complex application fee could disincentivise prospective applicants to comply with the overseas investment regime. This risk can be mitigated through the enforcement function, which is funded by the Crown.

Impact of fees on New Zealand based firms

51. The proposed increased fees would also be charged to New Zealand founded and based firms which now have a majority overseas ownership (for example, Fletcher Building). The economic impact of Covid-19 has led to calls for reduced government fees and levies.
52. In the case of substantially New Zealand-owned firms, the changes in the Urgent Measures Act introduced an automatic standing consent. This is expected to substantially reduce the overall fees paid by these firms for applications to purchase additional land as they will no longer require consent for the majority of their transactions. This legislative change can be highlighted in the public consultation process.

Financial implications

53. 

Timing

54. I propose that the Committee approve the release of the consultation document in late February 2021. Following a consultation period, Cabinet would then be asked to approve a final amended overseas investment regime fee structure and fee levels. Amended Regulations would be provided to the Cabinet Legislation Committee, and then to the Governor-General. Implementation of the amended Overseas Investment Fee Regulations would be scheduled for late 2021.

Compliance

55. I consider the consultation document complies with:

- 55.1 the principles of the Treaty of Waitangi,
- 55.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993,
- 55.3 the principles and guidelines set out in the Privacy Act 2020,
- 55.4 relevant international standards and obligations.

Climate Implications of Policy Assessment

- 56. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Regulations Review Committee

- 57. There are no grounds for the Regulations Review Committee to draw the consultation document to the attention of the House under Standing Order 319.

Impact Analysis

- 58. The LINZ Regulatory Impact Panel has reviewed and confirmed that the consultation document substitutes for a Regulatory Impact Statement. The consultation document is likely to lead to effective consultation and support the delivery of a quality Regulatory Impact Statement.

Proactive release

- 59. I propose to publish this Cabinet paper on the LINZ website, subject to redactions as appropriate under the Official Information Act 1982, at the same time as the consultation document is published on the LINZ website.

Consultation

- 60. This paper was developed in consultation with the Treasury. The Ministry of Business, Innovation and Employment, the Ministry for Primary Industries, the Ministry of Foreign Affairs and Trade, and New Zealand Trade and Enterprise have been advised of the proposals. The Department of Prime Minister and Cabinet has been informed.
- 61. Given the significant financial deficit that LINZ faces, Treasury support the proposal to review fees and test them with the public through the discussion document consultation process. The scale of the proposed increase is substantial, so this process will be important to better understand the negative effects of higher fees, including whether there would be any deterrent effect on inward investment into New Zealand. Agencies have commented that the proposed increased fees could affect perceptions of New Zealand's overseas investment regime.
- 62. LINZ has undertaken preliminary discussions on the proposed scale of fees with their Legal Reference Group, who raised the following points.
 - 62.1 The proposed fees structure and increased fees would mean New Zealand's overseas investment regime would appear to have higher fees than the

current fees for lower value transactions applied by Australia's Foreign Investment Review Board. This could have a negative impact on relative perceptions of New Zealand's investment climate.

62.2 Whether additional Crown funding could be used to reduce the scale of fee increases. Another question was whether a new lodgement fee would lead to behaviour change by applicants in seeking more guidance.

62.3 The increased fees may have an adverse effect on smaller value transactions (for example, applications to purchase small forestry blocks) and could affect how investors choose to structure their transactions. The proposed substantial increase in the total fee for Fishing Quota applications may deter some investors from seeking to purchase this sensitive New Zealand asset.

Recommendations

63. I recommend that the Cabinet Economic Development Committee:

1. **Note** that Land Information New Zealand administers the overseas investment regime, and that existing application fees are not recovering the costs of administering the overseas investment regime

2.

[REDACTED]

3.

[REDACTED]

4. **Note** that I propose a new fee structure to recover costs, and:

4.1. to introduce a lodgement fee for the quality assurance of applications,

4.2. to introduce fees for standard and complex application assessments, and

4.3. to introduce a monitoring compliance fee for approved applications.

5. **Note** the summary at Annex A of the increase in total fees resulting from the proposed new fee structure and increased fees for the overseas investment regime

6. **Note** the public consultation document at Annex B on the proposed new fee structure and increased fees to recover the costs of the overseas investment regime

7. **Agree** to the release of a public consultation document in late February 2021

8. **Authorise** the Associate Minister of Finance (Hon David Parker) to make minor amendments to a public consultation document, with precise timing for release to be determined by the Minister

9. **Note** that the Associate Minister of Finance (Hon David Parker) will report back to Cabinet seeking approval for final fee decisions following the consultation period.

Authorised for lodgement

Hon David Parker

Associate Minister of Finance

Proactive Release

Annex A: Summary of a proposed new fee structure for the Overseas Investment regime

Impact on key fees specified in Schedule 2 of the Overseas Investment Regulations 2005

Transaction asset type considered by the Overseas Investment Office	Application pathway	Application volumes (2019/20 year): Total of 451*	Current application fees (GST inclusive)	New differentiated fee structure – total fees (GST inclusive) **	
				Lodgement + standard assessment + monitoring compliance	Lodgement + complex assessment + monitoring compliance
Residential	One Home to Live In Property to inhabit (with special land)	247	\$2,040		\$2,040
	Apartments off the plans	2	\$24,600	\$16,900	\$32,000
	Increasing supply	0	\$2,040		\$2,040
	Non-residential purposes	5	\$34,100	\$35,000	\$54,100
	Land used incidentally for residential purposes	3	\$34,100	\$35,000	\$54,100
	Standing consent	1	\$34,100	\$35,000	\$54,100
		4	\$13,000 (transaction)	\$16,800	\$29,900
Sensitive Land	Benefit to New Zealand	70	\$41,500	\$72,500	\$141,200
Business Asset	Intention to reside	1	\$22,500	\$47,300	\$97,700
	Significant Business Assets	23	\$32,000	\$38,800	\$86,700
Forestry	Special forestry test	31	\$34,100	\$30,800	\$57,100
	Standing forestry consent	2	\$34,100	\$31,200	\$54,700
Fishing quota	Individual Transferable Quota, or Annual Catch Entitlement	1	\$40,000		\$174,300
National Interest assessment		n.a.	\$52,000		\$83,700

* Excluding variations and exemptions, and National Interest assessments.

** The differentiated structure would be made up of three different fees, which would be charged separately and at different times, as follows:

Lodgement fee for quality assurance (charged once, when a application is provided. There would be no charge for a pre-assessment meeting with applicants). The proposed lodgement fee would be \$13,300 (GST inclusive).

Application assessment fee, differing for standard and complex applications (charged once, when an application is accepted). The proposed standard application fees would range from \$16,800 to \$56,100 (GST inclusive). The proposed complex application fees would range from \$35,900 to a maximum of \$157,600 (GST inclusive).

Monitoring compliance fee, to assess compliance with consent conditions (charged once, before consent is approved). The proposed monitoring compliance fees would differ between standard and complex and range from \$2,900 to \$14,600 (GST inclusive), depending on the complexity and risk associated with the consent.