

## **Proposed new fee structure to improve cost recovery in the overseas investment regime**

### **Proposal**

1. I seek agreement to improve cost recovery arrangements in the overseas investment regulatory regime by amending the relevant fees regulations.

### **Executive summary**

2. New Zealand benefits from overseas investment. These investments can also pose risks that need to be considered, such as ensuring investment is not contrary to the national interest. The Overseas Investment Act 2005 (the Act) and Regulations provide a framework for screening certain types of foreign investments to ensure that such investments benefit New Zealand.
3. The administration of the overseas investment regime is largely funded by revenue from application fees, which are set in regulations. This model of third-party funding reflects the private benefits investors gain from the ability to invest in New Zealand. Functions with public benefit, such as monitoring and enforcement to ensure investments come through the regulator, are Crown-funded.
4. Fees have not recovered costs for some years. There was an operating deficit of \$3.3 million for the 2019/20 year. This deficit is due partly to the variation in application volumes, which are difficult to predict. There have been significant changes to services through a range of recent policy reforms. These changes have increased activities in assessing applications, and fees have not yet been adjusted to recover the costs of these changes.
5. A review of fees for the overseas investment regime has been intended to set fees to recover the costs of administering the regime, according to the cost recovery objectives of being fair, effective, efficient, sustainable, and transparent/predictable for applicants. These objectives are drawn from Treasury and Auditor-General guidance.
6. There is a trade-off in increasing fees to recover the costs of administering the overseas investment regime, and the potential for higher fees to be perceived as reducing New Zealand's relative attractiveness as an investment destination.
7. To ensure that cost recovery arrangements in the overseas investment regime are sustainable and apportioned appropriately, Cabinet agreed that Land Information New Zealand (LINZ) consult on [CAB-21-MIN-0022 refers]:

- Four options for funding of the overseas investment regulatory regime: existing fees, updated fees, Crown funding, or a levy system.
  - Three proposals for changes to update the fee structure to help ensure cost recovery, improve transparency, and ensure equitable distribution of costs, through higher single application fees (Option A), a new differentiated fee structure (Option B), or a new fee structure combined with an hourly charge (Option C).
  - One proposal to update the interim fee for national interest assessments.
8. Consultation was thorough and included meeting with stakeholder groups alongside digital communications. A total of ten submissions were received and feedback was generally supportive of recovering costs through fees. Specific concerns and suggestions focused on the proposed differentiated fee structure, and of the potential disincentive effect of the higher 'complex' fees for some transactions to purchase sensitive land and fishing quota.
  9. Stakeholders raised a concern that the application of complex application fees will need to be transparent and predictable, including to limit any possible risk-averse behaviour by the regulator in over-applying complex fees. A set of objective tests will address the risk of any over-recovery, but may involve a small and uncertain amount of under-recovery.
  10. The proposed fee structure will have a modest impact on most overseas investors. Fees and costs of the regulator form less than 1 per cent of the net value of approved overseas investments. Overall, the proposed fee structure is expected to result in approximately \$1.3 million in increased fees revenue annually, an 18 percent rise from the total fees revenue in 2019/20. This increase takes account of a projected decline in application volumes due to the impact of Covid-19.
  11. The proposals will have a particular impact on three groups of applicants, which could at the margin reduce New Zealand's attractiveness to certain types of investment. These groups are:
    - For the 180 to 200 standard applications each year, there will be a low impact. Total fees would range from \$35,000 to \$82,700 (GST inclusive), up from current fees of between \$34,100 to \$54,000 (GST inclusive)
    - For the fewer than 50 complex applications per year, there will be a medium level impact. Total fees would range from \$54,100 to \$146,200 (GST inclusive), up from current fees of between \$34,100 to \$54,000 (GST inclusive)
    - For the one or two applications for consent to purchase fishing quota each year, the total fee will substantially increase from \$40,000 to \$136,300 (GST inclusive). The proposed increase reflects the complexity of assessing the relatively rare applications from overseas investors to purchase fishing quota.
  12. Having carefully considered all feedback, I propose to implement Option B (a new differentiated fee structure) as consulted. A new differentiated fee structure best

meets the objectives of recovering the costs of administering the overseas investment regulatory regime, while being consistent with Treasury and Auditor-General guidance on cost recovery and providing a relatively transparent and predictable fees system for applicants. A further review of overseas investment fees will be undertaken in 2022/23.

## **Background**

### *The overseas investment system*

13. New Zealand benefits from overseas investment. Between 2017 and 2020, the total stock of foreign direct investment in New Zealand increased from \$387.9 billion to \$481.0 billion. In 2020, just over 58 percent of this investment was from Australia, the United Kingdom, and the USA, and 54 percent of investment was in financial and insurance services. About 15 percent of the value of all foreign investment into New Zealand has been subject to the overseas investment regime.
14. Overseas investment in sensitive New Zealand assets is regulated by the Overseas Investment Act 2005 (the Act) and Regulations and, in respect of fishing quota, the Fisheries Act 1996. These provisions seek to balance the need to support high-quality investment and ensure the Government has tools to manage risks appropriately. They do so by providing a framework for screening certain types of overseas investments to help ensure such investments benefit New Zealand.
15. Overseas persons require consent to acquire sensitive assets. Sensitive assets include residential land, significant business assets (generally those worth more than \$100 million), certain types of non-residential land (such as farm land), forestry assets, and fishing quota.
16. LINZ administers the overseas investment regime through a business unit (the Overseas Investment Office). This business unit is largely funded by application fees charged to applicants seeking a consent for asset transactions. Some Crown funding supports functions in monitoring and enforcement.
17. The level of applications and fees have been insufficient to meet the increasing costs of operating the regime, despite ongoing efforts to streamline and simplify assessments. LINZ reported an operating deficit for the Overseas Investment Office of \$3.3 million in the 2019/20 financial year. As of 30 June 2020, the balance of the Overseas Investment memorandum account was a deficit of \$8.5 million. This deficit is projected to rise to between \$10 - \$12 million by 30 June 2021.
18. There have been a series of recent reforms to the Act. In November 2017, the Ministerial Directive Letter introduced a new set of factors governing investment in rural land. In October 2018, the Act was amended to introduce new application pathways for 'One Home to Live In' individual house purchases, residential land, and forestry transactions. A 2020 urgent reform to the Act introduced a new national interest assessment, and the Overseas Investment Amendment Act 2021 introduces further reforms to streamline the regime.

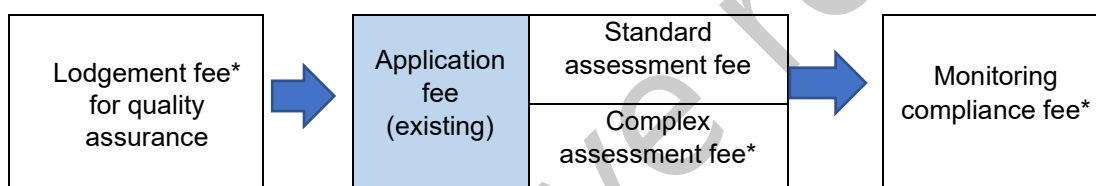
19. There is a trade-off involved in setting fees for overseas investors which recover the costs of operating the regulatory regime, and the potential for higher fees to be perceived as a barrier to investment. These proposals strike a balance in supporting the regulatory regime to carry out the required activities, while ensuring that New Zealand remains an attractive investment destination.

## Consultation on fee proposals

### *A revised fee structure for the overseas investment regime*

20. LINZ has developed a cost model that allows a determination of the costs of assessments according to the complexity of applications. The cost model is based on a calculation of 75 per cent of applications being 'standard', and 25 per cent being 'complex'. 'Complex' applications are calculated to require three to four times as much assessment effort as 'standard' applications.
21. To ensure an adequate level of cost recovery from applicants, I propose a new differentiated fee structure, summarised in Table 1. This structure would move from the existing, single application fee, to three different fees charged at different stages of an application. Appendix One lists the fees.

**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).

22. In February 2021, Cabinet authorised the release of the consultation document *Review of Third-Party Funding for the Overseas Investment Office: Proposals for a new fee structure and fee levels* that included four options to fund the administration of the overseas investment regime and three proposals for a fee system, including a preferred proposal of a differentiated fee structure [CAB-21-MIN-0022]. The cost recovery objectives for the review were fair, effective, efficient, sustainable, and transparent/predictable. These objectives were drawn from Treasury and Auditor-General guidance.
23. Consultation was open from 24 February to 19 March 2021. LINZ published the consultation document on its website and emailed 1,474 subscribers to its monthly overseas investment newsletter. Advisory emails were sent to eight representative Māori iwi and economic organisations, and a virtual meeting was held with a group of

legal representatives. The key themes of the 10 submissions received are set out in Appendix Two, together with LINZ comment.

**The proposed changes are low risk and expected to have minimal financial impact on most overseas investors**

24. I consider the proposed new fee structure and updated fees to be low risk with minimal financial impact on most overseas investors. The proposals will have a particular impact on three groups of applicants.
- For the 180 to 200 standard applications each year, there will be a low impact. Total fees would range from \$35,000 to \$82,700 (GST inclusive), up from current fees of between \$34,100 to \$54,000 (GST inclusive)
  - For the fewer than 50 complex applications per year, there will be a medium level impact. Total fees would range from \$54,100 to \$146,200 (GST inclusive), up from current fees of between \$34,100 to \$54,000 (GST inclusive)
  - For the one or two applications for consent to purchase fishing quota, the total fee will substantially increase from \$40,000 to \$136,300 (GST inclusive). The proposed increase reflects the complexity of assessing the relatively rare applications from overseas investors to purchase fishing quota.

*‘One Home to Live In’ individual purchase fees should be maintained*

25. The policy objectives of the ‘One Home to Live In’ application pathway are to restrict the overseas persons who can purchase New Zealand residential property and restrict to whom existing overseas homeowners can sell their properties. Both objectives appear to be met by the current assessment process. There is a regulatory risk that if the fee for individual house purchases increases, then some prospective applicants could choose to operate outside the regime.
26. On balance, I recommend maintaining the existing fee for individual house purchases in the proposed revised fee structure. The next fees review in 2022/23 will assess whether actual monitoring and compliance activities for ‘One Home to Live In’ applicants will need to be cost-recovered.

*Criteria to define standard and complex applications for fee-setting purposes*

27. The 'standard' and 'complex' distinction within the application assessment fee is designed to attribute fees to account, as far as is practicable, for the diverse types of applications that attract different processing costs. Forecasts from current application volumes and types indicate that 75 to 80 per cent of applications will be standard, with 20 to 25 per cent of applications being complex.
28. The differentiation between standard and complex applications for fees purposes will be stated in amended Overseas Investment Regulations. LINZ operates a streaming assessment system which is based on a range of factors, including estimates on the investor risk profile, corporate structure, and sensitivity of the asset being sought for purchase. From June 2020, the determination of possible risks to the national interest has been replaced by a national interest assessment process with a specific fee.

29. The need is to balance the intent for improved cost recovery with clear criteria to provide a legally defensible, transparent and predictable system for applicants. I recommend using a set of objective tests stated in the Overseas Investment Act 2005, informed by the criteria stated in the Ministerial Delegation Letter of October 2018. These tests are well-known to investors and will support a transparent and predictable regulatory regime.
30. Stakeholders have raised a concern that the application of standard and complex application fees will need to be transparent and predictable, including to limit any possible risk-averse behaviour by the regulator in over-applying complex fees. The objective tests will address the risk of any over-recovery, but may involve a small and uncertain amount of under-recovery.
31. Appendix Three sets out the proposed objective tests, which focus on non-residential sensitive land transactions with known aspects of assessment complexity, residential standing consents, and particular forestry applications subject to Ministerial approval.

## **Risks**

### *Objective tests and the cost model*

32. The new fee structure is based on a cost model developed in the 2019/20 year. The model was based on experience, up to that time, of the activities and costs involved in assessing applications. As in any cost model, there is a risk that past experience is not a robust predictor of future assessment activities and costs. A further review of overseas investment fees in 2022/23 will have data to assess operational experience and can then propose updated fees.

### *Possible impact of a new fee structure on investor applicants*

33. There may be a risk that the introduction of complex application fees could affect how some investors choose to structure their transactions. To mitigate this risk, LINZ will clarify its fees guidance in respect of the charging policy for the overseas investment regime. This will provide clear guidance on additional charges for applicants who provide incorrect information. There will also be a refund provision for any applications which are mis-classified and are charged a higher assessment fee.
34. 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. These risks can be mitigated through the enforcement function, which is funded by the Crown.

### *Potential impact of higher fees on New Zealand's investment attractiveness*

35. There is a risk that a differentiated fee structure, and the accompanying higher fees for certain complex applications, may lead to perceptions that New Zealand's overseas investment regime is more complex and expensive than in other countries. It is unclear if such a view may then affect investment activity.

36. Consultation on the overseas investment reforms has consistently found that rapid and transparent decision-making on applications is the most important concern for prospective investors. Communications on the introduction of the Overseas Investment Amendment Act 2021 will occur in the same period as communications on the new overseas investment fees structure. These communications will be aligned to promote the range of efficiency changes to support simpler processes for applicants and faster application assessment.

#### *Forecast of application volumes and revenues*

37. The proposed new fee structure and updated fees are projected to increase total fee revenues for the overseas investment regime by \$1.3 million annually, compared to total fee revenues of \$7.2 million for 2019/20. To estimate the impact of Covid-19 on application volumes, LINZ has projected that volumes are likely to reduce by about 18 per cent in 2020/21 compared to 2019/20. If application volumes reduce by (for example) 25 per cent, then the operating deficit will continue into 2021/22. LINZ will monitor and report on trends in application volumes and fee revenues.

#### **Progressing the proposals**

38. Cabinet has delegated authority to me as the Associate Minister of Finance to make additional policy decisions that arise during the implementation of the Overseas Investment Amendment Bills and the regulations [DEV-20-MIN-0066].
39. Having carefully considered all feedback, I propose implementing the preferred proposal as consulted. A differentiated fee structure best meets the objectives of recovering the costs of administering the overseas investment regulatory regime, while providing a relatively transparent and predictable fees system for applicants.
40. Although not part of public consultation, I propose reordering some fees for non-residential sensitive land applications in order to maintain consistency with the logic of the existing fee system (where applications subject to a succession of tests and Ministerial consideration attract higher fees).

#### **Regulatory implications**

41. Cabinet has previously authorised me to make decisions on any additional policy or drafting issues that arise during the implementation of the overseas investment reform legislation, and the Regulations, including minor technical changes, in consultation with relevant portfolio Ministers as necessary [DEV-20-MIN-0066, 6 May 2020].
42. The proposals in this paper will amend the Overseas Investment Regulations 2005 (Schedule 2 – Fees and charges). Amended Regulations will be provided to the Cabinet Legislation Committee (LEG). Following Royal Assent, implementation of the amended Overseas Investment Fee Regulations is scheduled for late 2021.
43. The Overseas Investment Amendment Act 2021 received Royal Assent on 24 May 2021. LEG is soon to consider the Overseas Investment Amendment Regulations

2021. These Regulations introduce five new fees (and a discount from fees) to recover the costs of new regulatory activities. Appendix One states these proposals.

## **Regulations Review Committee**

44. There are no grounds for the Regulations Review Committee to draw the proposed fee structure to the attention of the House, under Standing Order 319.

## **Consultation**

45. 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 provided comments on the proposals in the consultation document and on this paper. The Department of Prime Minister and Cabinet has been informed.

## **Climate Implications of Policy Assessment**

46. 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.

## **Impact Analysis**

47. A Quality Assurance Panel comprising of representatives from Toitū Te Whenua - Land Information New Zealand and Treasury's Regulatory Impact Analysis Team has reviewed the Regulatory Impact Statement "A new fee structure for the Overseas Investment regime" produced by LINZ dated 7 May 2021 (and approved on 13 May 2021). The review panel considers that it meets the Quality Assurance criteria. Appendix Four is the approved Impact Statement.

**Table 2 – LINZ impact statement in brief**

<b>What attributes does a fees framework need?</b>
LINZ sought fees that were fair, efficient, effective, financially sustainable and transparent. These cost recovery objectives are sourced from the Treasury (Guidelines for Setting Charges in the Public Sector, April 2017) and the Auditor-General (Charging fees for public sector goods and services, June 2008).
<b>What is the problem with current fees?</b>
LINZ (via the Overseas Investment Office) is not recovering all the costs it incurs in carrying out the quality assurance of applications, monitoring compliance with consent conditions, and assessing applications.
<b>What is the proposal?</b>
The proposal is to fund the overseas investment application assessments through updated fees, including a new, differentiated fee structure. This would be a shift away from the current system of a single fee for applications. The new structure would introduce three separate fees: a lodgement fee, either standard or complex fees for application assessment, and monitoring compliance fees.



**How does the proposal rate against attributes of good fee setting?**

The impact analysis finds that the proposal rates the best against the five cost recovery objectives, compared to a set of feasible alternatives for third-party funding of the regime.

**Who pays the fees?**

Overseas persons (investors) who are screened by LINZ in its role as regulator of the overseas investment regime.

**What is the impact of the fee changes on fee payers?**

- More prospective investors may choose to engage with LINZ at an earlier stage of planning their transaction, to determine the likely level of assessment.
- There is a low and untested risk that higher fees, particularly for complex applications, may discourage some potential investors from lodging applications for transactions.
- Some investors may choose not to comply with the overseas investment regime in undertaking transactions to purchase New Zealand assets. The Crown-funded enforcement function will continue to address such risks.

**What do fee payers get in return?**

Overseas persons gain a significant private benefit from complying with the overseas investment regulatory regime, by lodging an application to purchase sensitive New Zealand assets. A fee structure which supports the efficient and sustainable administration of the regulatory regime will benefit overseas persons, including by ensuring assessment and decision processes are undertaken as efficiently as possible.

**Treaty of Waitangi principles and engagement with Māori**

48. The Overseas Investment Act 2005 applies only to overseas persons seeking consent to transactions for sensitive New Zealand assets. Consequently, the setting of fees under the Act forms part of the Government's conduct of foreign affairs and trade and is consistent with the Crown's duty of active protection.
49. As part of public consultation, LINZ specifically advised eight Māori representative organisations of the proposals. One response was received from Sealord, a major fisheries company which is half owned by iwi through Moana New Zealand.

**Human rights, Gender, Implications and Disability Perspective**

50. There are no human rights, gender or disability implications resulting from the proposals set out in this paper.

**Proactive release**

51. I propose to publish this Cabinet paper and CRIS2 on the LINZ website, subject to redactions as appropriate under the Official Information Act 1982.

**Recommendations**

52. I recommend that the Cabinet Economic Development Committee:

1. **Note** that, following agreement from Cabinet in February 2021 [CAB-21-MIN-0022], Land Information New Zealand publicly consulted from 24 February to 19 March 2021 on proposals to ensure cost recovery of the overseas investment regime.
2. **Note** that submissions raised concerns about the implementation of a proposed differentiated fee structure, and the increase in fees for complex applications to purchase sensitive land and fishing quota.
3. **Note** that Land Information New Zealand has developed a set of criteria for defining complex applications, based on objective tests in the Overseas Investment Act 2005.
4. **Note** that Cabinet has previously authorised the Associate Minister of Finance (Hon David Parker) to make decisions on any additional policy or drafting issues that arise during the implementation of the overseas investment reform legislation, and the Regulations, including minor technical changes [DEV-20-MIN-0066, 6 May 2020].
5. **Agree** to implement the following proposals to amend the Overseas Investment Regulations 2005 (Schedule 2 – Fees and charges), which are fully detailed in the Cost Recovery Impact Statement and Appendix One:
  - a. specify the criteria to be applied by the Regulator to define applications subject to a complex assessment fee, involving objective tests in the Overseas Investment Act 2005 and the Ministerial Delegation Letter
  - b. a new lodgement fee of \$13,300 (GST inclusive) for quality assurance of applications to undertake transactions for residential land, significant business assets, forestry assets, non-residential land, and fishing quota
  - c. replace the existing, single application fees for consent to undertake transactions for residential land, significant business assets, forestry assets, non-residential land, and fishing quota
  - d. specify fees for standard applications for consent to undertake transactions for residential land, significant business assets, forestry assets, non-residential land, and fishing quota; standard assessment fees to range from \$16,800 to \$56,100 (GST inclusive)
  - e. specify fees for complex applications for consent to undertake transactions for residential land, significant business assets, forestry assets, non-residential land, and fishing quota; complex assessment fees to range from \$35,900 to \$119,600 (GST inclusive)
  - f. specify fees for monitoring compliance with consent conditions to undertake transactions for residential land, significant business assets, forestry assets, non-residential land, and fishing quota; monitoring compliance fees to range from \$2,900 to \$13,300 (GST inclusive)
  - g. increase the national interest assessment fee from \$52,000 to \$83,700 (GST inclusive)
6. **Invite** the Associate Minister of Finance (Hon David Parker) to issue drafting instructions to the Parliamentary Counsel Office to give effect to recommendation 5.

7. **Authorise** the Associate Minister of Finance (Hon David Parker) to make decisions on any further minor or technical issues required to implement the revisions as set out in recommendation 5.

Authorised for lodgement

Hon David Parker

Associate Minister of Finance

Proactive release

## Appendix One: A proposed differentiated fee structure for the overseas investment regime

The differentiated fee structure would be made up of three different fees, as follows:

**Lodgement fee** for quality assurance (charged once, when a draft 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 \$119,600 (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 \$13,300 (GST inclusive), depending on the complexity and risk associated with the consent.

Application category summary descriptions	Clause in Schedule 2 of the Overseas Investment Regulations 2005; and existing fee (GST inclusive)	New differentiated fee structure (GST inclusive)				Total Standard fee: lodgement, assessment, monitoring compliance (GST inclusive)	Total Complex fee: lodgement, assessment, monitoring compliance (GST inclusive)
		Lodgement fee	Standard application assessment fee	Complex application assessment fee	Monitoring compliance fee		
One Home to Live In (OHTLI)							
Residential OHTLI - Individual	1a \$2,040			\$2,040		\$2,040	\$2,040
Residential OHTLI – Entity	1b \$3,900			\$5,800		\$5,800	\$5,800
Residential OHTLI – Condition Variation	1d \$550			\$3,400		\$3,400	\$3,400
Residential OHTLI – Waiver	1c \$550			\$3,400		\$3,400	\$3,400
Residential OHTLI and Otherwise	2a and 2b \$24,600 to \$31,600	0	\$8,100	\$23,200	\$8,800	\$16,900	\$32,000

Sensitive Land Residential OHTLI and Otherwise Sensitive Land – Conditions Waiver	2c \$550			\$3,400			\$3,400	\$3,400
Residential Land								
Consent – Apartment Purchase	3a \$2,040			\$2,040			\$2,040	\$2,040
Purchase under Standing Consent	11b \$13,000	0	\$11,900	\$25,000	\$4,900		\$16,800	\$29,900
Exemption Certificate	5 \$27,600			\$14,200			\$14,200	\$14,200
Incidental	7 \$34,100	\$13,300	\$16,800	\$35,900	\$4,900		\$35,000	\$54,100
Increased Housing	3b \$34,100	\$13,300	\$16,800	\$35,900	\$4,900		\$35,000	\$54,100
More than one purpose	10 \$34,100	\$13,300	\$16,800	\$35,900	\$4,900		\$35,000	\$54,100
Non-residential use	6 \$34,100	\$13,300	\$16,800	\$35,900	\$4,900		\$35,000	\$54,100
Standing Consent – Increased Housing, or Non-Residential	11a \$34,100	\$13,300	\$17,300	\$40,700	\$3,500		\$34,100	\$57,500
Sensitive Land								
Overseas person, Intention to Reside	20a, 20b \$22,500	\$13,300	\$29,100	\$79,500	\$4,900		\$47,300	\$97,700
Other land pathway and Significant Business Assets	29 \$34,100	\$13,300	\$27,900	\$67,900	\$4,400		\$45,600	\$85,600

Benefit to New Zealand test – delegated to the Regulator	8(a)(ii), 8(b)(ii) 21(a)R, 21(b)R \$35,500 to \$41,500	\$13,300	\$45,900	\$113,200	\$9,000	\$68,200	\$135,500
Benefit to New Zealand test – Ministerial consideration	8(a)(i), 8(b)(i) 21(a)M, 21(b)M \$37,500 to \$43,500	\$13,300	\$49,000	\$114,600	\$11,700	\$74,000	\$139,600
Benefit to NZ and Substantial & Identifiable and Significant Business Assets – Regulator	9(a)(ii), 9(b)(ii) 22(a)R, 22(b)R 28 \$35,500 to \$52,000	\$13,300	\$51,700	\$119,600	\$9,000	\$74,000	\$141,900
Benefit to NZ and Substantial & Identifiable and Significant Business Assets – Ministerial consideration	9(a)(i), 9(b)(i) 22(a)M, 22(b)M 28 \$37,500 to \$54,000	\$13,300	\$56,100	\$119,600	\$13,300	\$82,700	\$146,200
Significant Business Assets							
Consent	25 \$32,000	\$13,300	\$22,100	\$70,000	\$3,400	\$38,800	\$86,700
Forestry							
Purchase under a Standing Consent	16b \$13,000			\$11,200		\$11,200	\$11,200
Consent	15 \$34,100	\$13,300	\$17,500	\$43,800	\$3,000	\$33,800	\$60,100
Special Benefits test and Standing Consent	16a \$34,100	\$13,300	\$15,000	\$38,500	\$3,000	\$31,300	\$54,800
Consent - profits à	17a \$42,600	\$13,300	\$17,300	\$42,700	\$3,000	\$33,600	\$59,000

prendre (< \$1m)							
Modified Benefits	14a, 14b \$51,100	\$13,300	\$17,300	\$42,700	\$3,000	\$33,600	\$59,000
Consent - profits à prendre (> \$1m)	17b \$49,100	\$13,300	\$17,300	\$42,700	\$3,000	\$33,600	\$59,000
Fishing Quota							
Consent	32 \$40,000	\$13,300		\$119,600	\$3,400	\$136,300	\$136,300
National Interest							
National Interest	34A \$52,000			\$83,700		\$83,700	\$83,700
Variations and Exemptions							
Monitoring	35b \$560/hr			No change			
Schedule 4	35a \$560/hr			No change			
Exemption	19,24,27,31, 34 \$25,500 to \$40,000			\$37,100		\$37,100	\$37,100
Transmission Estate exemption	13 \$25,500			\$3,200		\$3,200	\$3,200
Variation – time extension	12,18,23,26, 30,33 \$13,000			\$10,400		\$10,400	\$10,400
Variation - other	12,18,23,26, 30,33 \$13,000			\$23,000		\$23,000	\$23,000
New fees in the Overseas Investment Amendment Regulations 2021, to be considered by the Cabinet Legislation Committee (LEG)							

Summary description	Clause in Schedule 2	Amount (GST inclusive)
Exemption from national interest definition	34B	\$25,500
Exemptions from farm land offer criterion	34C	\$13,000
Change since investor test	34D	\$13,000
Applicant has not previously met the investor test	34E	\$13,000
Any other application under s29A	34F	\$25,500
Discount from fees (for subsequent application)	34G	\$12,500

## Appendix Two: Themes of 10 submissions from public consultation

Toitū Te Whenua – Land Information New Zealand undertook public consultation on the proposed fee structure for the overseas investment regime from Wednesday 24 February to Friday 19 March 2021. This consultation process involved:

- Release of a [consultation document](#) and media statement on the LINZ website, including an online submission form. During the consultation period a total of 135 unique downloads were made of the consultation document.
- MS Teams briefing to the Overseas Investment Legal Reference Group on 3 March (that is, during a national COVID-19 level two lockdown).
- Advisory to 1,474 recipients of a monthly overseas investment newsletter
- Specific advisory to Māori iwi and economic organisations, including:

Federation of Māori Authorities, Māori Women's Welfare League, Te Ohu Kaimoana, Te Tumu Paeroa, New Zealand Māori Council, Te Rūnanga o Ngai Tahu, WaikatoTainui, and Te Hunga Roia.

### Key themes from submissions

A total of 10 submissions were received on the public consultation document, consisting of four submissions from law firms (Bell Gully, Russell McVeagh, Simpson Grierson, Buddle Findlay), two from individual lawyers, three from companies (Sealord, Woolworths New Zealand, Fletcher Building), and one from a forestry management firm (New Forests).

Theme of submissions	Proposals	LINZ comment	Mitigation
Proposal for the Crown to pay a larger share	The Crown should pay a larger share of the costs of administering the overseas investment regime, given the benefits to New Zealand. Suggest option to fund the regime through a mix of increased fees and increased Crown funding.	The Government's cost recovery policy requires that administration of the overseas investment regime be funded from fees paid by overseas persons (investors). This is because overseas persons receive a significant private benefit from consent to purchase sensitive New Zealand assets.	No mitigation action is required. Enforcement and monitoring of consent-holders and evaders is already Crown-funded, as these deliver significant public benefit. Treasury and Auditor-General guidance on cost recovery policy settings support the remainder of services within the overseas investment regime



			to be fee-funded, as these deliver significant private benefit to users.
Proposal for higher value transactions to pay higher fees	LINZ consider charging higher fees for higher value investment applications (as used in Australia).	LINZ receives a much smaller number of applications and high-value investment applications than Australia; cost recovery policy means that application costs should be recovered within the relevant application pathway.	To report back to stakeholders. This will be done as part of communications and a public announcement for the Overseas Investment Amendment Act 2021 and the new fees structure.
Proposal to delay a fee review until after the current legislative reform i.e. the Overseas Investment Amendment Bill (No 3)	That the funding review (and new fees) be delayed until LINZ has experienced the changes to be introduced by the No. 3 Bill.	The cost model for the proposed new fee structure is based on applications and activities data for 2019/20. The annual operating deficit for the overseas investment regime means a further delay would impose additional balance sheet risk for LINZ	A further fee review is planned for 2022/23 to consider the costs of the changes in the Overseas Investment Amendment Act 2021.
Concerns with the challenges of defining 'complex' and 'standard' within the proposed differentiated fee structure	Disagreement with the proposals to introduce standard and complex application fees for the different application pathways. A view is that complex fees will act as a disincentive to investors and will be difficult for LINZ	LINZ will develop and publish clear criteria on how applications will be assessed for fees purposes. These criteria will form part of the amended fees regulations.	To report back to stakeholders. This will be done as part of communications and a public announcement for the Overseas Investment Amendment Act 2021 and the new fees structure.

	to transparently and fairly administer.		
Concerns with charging a monitoring compliance fee	Propose there be no fee for monitoring compliance with consent conditions, and that an initial lodgement fee for quality assurance be split into standard and complex rates.	A monitoring compliance fee is needed to recover the costs of this activity. While consent holders may not directly benefit from monitoring compliance, it is important that the conditions of their consent are monitored as a key part of the overseas investment regulatory regime.	To report back to stakeholders. This will be done as part of communications and a public announcement for the Overseas Investment Amendment Act 2021 and the new fees structure.
Concerns with negative impact on businesses	The proposed new and increased fees could have a negative impact on business. Increased fees may deter investment, particularly investments in sensitive land and fishing quota.	LINZ considers that the introduction of a new fee structure and updated 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 approved transactions.	To provide certainty to investors, LINZ will clearly define what applications will be subject to standard versus complex assessment fees based on the existing tests in the Act and the Ministerial Delegation Letter.

### Appendix Three: Applying objective tests to determine applications subject to a complex fee

Nature of objective test	An application for consent will attract a higher complex assessment fee if it:
<p>Investor profile/corporate structure</p> <p>Sensitivity of asset</p>	<p><b>Either</b></p> <p>Is from 5 or more Relevant Overseas Persons or 10 or more Individuals with Control*</p> <p>and</p> <p>Requires a Benefit to New Zealand test**</p> <p><b>or</b></p> <p>Is for a standing consent for residential land development***</p> <p><b>or</b></p> <p>Is for a standing consent for forestry activities****</p>
	<p>* Section 15 of the Overseas Investment Act 2005</p> <p>** Sections 16(1)(b)(ii), (c)(ii), (d)(ii) or (e) of the Overseas Investment Act 2005</p> <p>*** Clause 2 of Schedule 4 of the Overseas Investment Act 2005</p> <p>**** Clause 3 of Schedule 4 of the Overseas Investment Act 2005</p>

**Appendix Four: Approved Impact Statement (40 pages)**

Proactive release