

A new fee structure for the Overseas Investment regime

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|---------------------|---|
| Advising agencies | Toitū Te Whenua - Land Information New Zealand |
| Decision sought | <i>Approve a new fee structure and increased fees for the overseas investment regulatory regime</i> |
| Proposing Ministers | <i>Associate Minister of Finance (Hon David Parker)</i> |

Summary: Problem and Proposed Approach

Problem Definition

Cost recovery from third parties (that is, fees paid by overseas persons) ensures that New Zealand's overseas investment regime is funded from investors which benefit from the privilege of purchasing sensitive New Zealand assets.

A Toitū Te Whenua – Land Information New Zealand (LINZ) review of third-party funding has found that the level of fees is insufficient to meet the costs of administering the overseas investment regime.

This Cost Recovery Impact Statement – 2 (CRIS2) addresses the problem that the current fee structure does not recover the costs of administering the overseas investment regime.

Summary of Preferred Option or Conclusion (if no preferred option)

Toitū Te Whenua - LINZ proposes the Government approve a new fee structure and increased fees for the overseas investment regime, to recover the costs of administering the regime following a series of legislative amendments.

The new fee structure would introduce a lodgement fee for applications, the introduction of 'standard' and 'complex' assessment fees for accepted applications to purchase land, business, forestry, and fisheries assets, and a monitoring compliance fee.

The proposed changes are to reflect the costs of assessing applications for transactions for residential land development, significant business assets and sensitive land, forestry assets and fishing quota.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

Monetised and non-monetised benefits

The expected beneficiary is the New Zealand public, as represented by Toitū Te Whenua – Land Information New Zealand in its role as regulator of the overseas investment regulatory regime. New Zealanders (as taxpayers) will benefit from proposals to recover costs of the regime from overseas persons.

The following table sets out the expected total revenue impact from implementing the proposals for new and updated fees, according to the current application pathways. Based on the trend of applications for the first quarter of the 2020/21 financial year, the projected figures for revenue from 'residential and otherwise sensitive land' and 'fishing quota' applications are zero. The total fees revenue is projected to be \$8.56 million annually on the current forecast volume of applications.

Table 1: Projected total annual revenue from a new overseas investment fee structure

| Overseas investment regime Application Pathways | Projected total annual fees revenue (\$ million) |
|--|---|
| One Home to Live In (OHTLI) | 0.45 |
| Residential and Otherwise Sensitive Land | 0 |
| Non-Residential Sensitive Land | 2.50 |
| Significant Business Assets | 1.00 |
| Forestry | 0.93 |
| Fishing Quota | 0 |
| Variations and Exemptions | 0.77 |
| National interest assessments | 2.91 |
| Total (excluding GST) | 8.56 |

Where do the costs fall?

The costs of the fees fall on overseas persons applying for consent to purchase sensitive New Zealand assets. The total costs are the same as the projected total annual fees revenue (that is, \$8.56 million excluding GST).

During the 2019/20 financial year (from 1 July 2019 to 30 June 2020) the Overseas Investment Office (a business unit of LINZ) approved consents for investments worth \$1.25 billion (net).

The Overseas Investment Office operational costs (excluding Crown funding) of \$10.59 million for the 2019/20 financial year amounted to about 0.8 percent of the \$1.25 billion net value of approved overseas investments during the 2019/20 calendar year.

What are the likely risks and unintended impacts? how significant are they and how will they be minimised or mitigated?

Risks and unintended impacts for the Overseas Investment Office

Two risks to the proposed fee revenues are the possibility of legislative changes affecting the activities of the Overseas Investment Office, and the uncertainty around the volume of future applications.

Regarding legislative change, the Overseas Investment (Urgent Measures) Amendment Act 2020 introduced a new national interest test for some applications which meet the legislated criteria. The Overseas Investment Amendment Bill (No 3) proposes further reform to the overseas investment regulatory regime.

Another risk is the impact of COVID-19 on overseas investment applications and Overseas Investment Office fee revenues. It is likely there will be a significant financial impact from reduced application volumes in 2020/21.

A potential unintended impact of the proposed differentiated fee structure is that it may incentivise some risk-averse behaviour in the application of fees for assessing applications. This could result in a higher proportion of applications being classified as 'complex' (and so applying a higher fee to recover expected costs). This risk would be reduced through clear published guidance on the operational criteria for classifying applications for fee-setting purposes.

Risks and unintended impacts on overseas persons who pay the fees

The proposed differentiated fee structure (and increased fees) may discourage potential investors from lodging applications for transactions, particularly if these are considered likely to be complex. This risk would be mitigated by publishing clear guidance on the objective tests and criteria for classifying applications, and information and education activities targeted to investor groups. These tests can be based on existing published requirements in the Overseas Investment Act 2005 and the [2018 Ministerial Directive Letter](#).

As a result of the new differentiated fee structure, more prospective investors may choose to engage with LINZ (via the Overseas Investment Office) at an earlier stage of planning their transaction, to determine the likely level of assessment. LINZ encourages early contact, and no fee is charged for an initial pre-assessment meeting. This practice will continue.

A risk is that some prospective investors may be disincentivised by the new fee structure (and higher fees) in undertaking lower-value transactions, including for (e.g.) forestry and fishing quota assets.

Another risk is that New Zealand's overseas investment regime may be viewed as more expensive to comply with than the systems in place in other Western countries with comparable investment approval systems. Although not directly comparable, this risk can be mitigated by noting that total fees for standard applications would still be less than the maximum comparable fees applied by the United Kingdom and the USA (see Appendix 1).

A potential unintended impact is that more investors may choose not to comply with the overseas investment regime in undertaking transactions to purchase New Zealand assets. This risk would be managed through the enforcement activity undertaken by LINZ, which is Crown-funded and so not reliant on application volumes.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

Toitū Te Whenua – LINZ has high confidence in the evidence underpinning the cost model of Overseas Investment Office activities. This cost model was developed internally and was independently tested by PricewaterhouseCoopers.

Toitū Te Whenua – LINZ has high confidence in the information on the numbers and declared value of overseas investment applications.

Toitū Te Whenua – LINZ has medium confidence in the forecast for annual application fee revenues. Application volumes are historically small and highly variable, and the impact of COVID-19 on economic activity and overseas investment is uncertain.

Toitū Te Whenua – LINZ has low confidence in (unofficial) surveys of overseas investors which attempt to gauge investor confidence in New Zealand economic sectors. These surveys have limited sample sizes and may have selection bias.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

Toitū Te Whenua - Land Information New Zealand

Quality Assurance Assessment:

A Quality Assurance Panel comprising of representatives from 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 Land Information New Zealand and dated 7 May 2021. The review panel considers that it meets the Quality Assurance criteria.

Impact Statement: A new fee structure for the Overseas Investment regime

Section 1: General information

1.1 Purpose

Toitū Te Whenua – Land Information New Zealand is solely responsible for the analysis and advice set out in this Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by the Cabinet Economic Development Committee (DEV).

1.2 Key Limitations or Constraints on Analysis

Scope

The scope of the third-party funding review of the administration of the overseas investment regulatory regime is limited to the structure and scale of fees applied to overseas investors, sufficient to recover the costs of administering the overseas investment regulatory regime following significant changes to the governing legislation (that is, the Overseas Investment Act 2005).

The scope does not include the policy and legislative rationale for the overseas investment regime, or further changes to the governing legislation.

Problem definition

Under the existing Overseas Investment Regulations 2005 (Schedule 2 – Fees and charges), LINZ (via the Overseas Investment Office) currently charges one fee to applicants, when their application is accepted for assessment.

There is no lodgement fee for assessing the quality (including checking the completeness) of applications, and no follow-up additional fees for services (for example, to recover the costs of monitoring compliance with consent conditions).

Essentially, a 'one touch-point' payment system is operated for all applicants. The application fees are based on a simple weighted average cost model, using the methodology developed for a previous [fees review in 2015/16](#).

This means the existing fees tend to under-recover the costs of applications and especially the costs of more complex applications (for example, applications to purchase sensitive land or fishing quota). LINZ (via the Overseas Investment Office) does not currently operate an hourly charging system to calculate the fees which are charged to applicants.

Evidence

In recent years LINZ (via the Overseas Investment Office) costs of administering the overseas investment regulatory regime have considerably exceeded the fee revenues from applicants, particularly from 2016. The goal of this review is to implement a fees

system that ensures applicants pay the full costs of assessing their applications, to ensure the efficient and effective administration of the Overseas Investment Act 2005.

LINZ operates a memorandum account for the Overseas Investment Office, which is an accumulation of the annual surpluses or deficits from operations. Figure 1 outlines the trend of Overseas Investment Office income and expenses from the 2014/15 to 2019/20 financial years. This information is sourced from published [LINZ Annual Reports](#).

For the year ended 30 June 2020 the Overseas Investment Office operating deficit (excluding Crown funding for monitoring and enforcement) was \$3.35 million, down from a deficit of \$3.83 million for the year ended 30 June 2019.

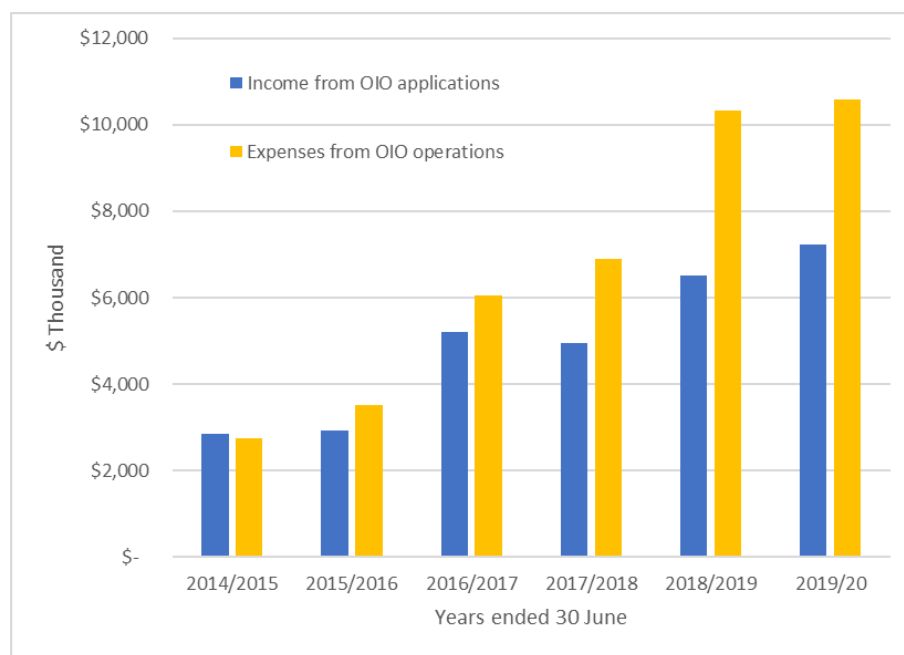


Figure 1: Trend in the Overseas Investment Office income and expenses, 2014/15 to 2019/20

1.3 Responsible Manager (signature and date):

Ruth Fischer-Smith

Manager Policy - Property System and Investment

Toitū Te Whenua – Land Information New Zealand

13 May 2021

Section 2: Problem definition and objectives

2.1 What is the current state within which action is proposed?

Supporting investment in New Zealand

Overseas investment in New Zealand's commercial sector, primary industries, and new residential building, can contribute directly to the growth and improvement of physical and financial capital.

Overseas investment makes a substantial contribution to New Zealand's economy. Statistics New Zealand business demography statistics report that as at February 2020, there were 11,490 enterprises operating in New Zealand with some overseas equity (2 percent of all 557,685 enterprises), and these firms employed around 514,600 people (22 percent of the total 2,317,300 employee count). Economic analysis has found a positive effect on wages from foreign ownership, although there is little evidence of substantial positive spill-over effects from foreign direct investment to local firms' productivity¹.

Most enterprises with overseas equity operate in the finance and insurance services industry. The [stock](#) of foreign direct investment (FDI) in New Zealand was \$121 billion at 31 March 2020, a 6 percent rise from 2019 (Statistics NZ).

There are regular public concerns raised in respect of the 'social licence to invest' by overseas investors in sensitive areas of the New Zealand economy, e.g. sensitive land (such as farm land), existing residential property, and commercial and infrastructure assets viewed as important to the national interest.

Completion of a review of third-party funding arrangements

LINZ has undertaken a review of third-party funding arrangements for the Overseas Investment Office. This review ensured a principled, consistent and transparent approach to cost recovery, and ensured that arrangements align with best practice guidance from the Treasury and the Controller and Auditor-General.

This Impact Statement includes information about the drivers of Overseas Investment Office operational costs and service (application) volumes. LINZ proposes a series of changes in the third-party funding system which were identified in the review. Subject to the outcome of consultation and Government decisions, these changes are intended to take effect later in 2021.

This review focused on recovering the operational costs of the reform to the Overseas Investment Act 2005 which was implemented on 22 October 2018. This reform introduced pathways for applications to purchase residential property, residential land and forestry assets.

¹ Foreign Acquisition and the Performance of New Zealand Firms (WP 11/06). New Zealand Treasury Working Paper. The results suggest that foreign firms tend to target high-performing New Zealand companies. Acquired firms then exhibit higher growth in average wages and output, relative to similar domestic firms, but do not appear in general to increase their productivity or capital intensity [Fabling, R. and Sanderson, L. (2011)]

This review also proposes cost recovery of the proposals approved in the Overseas Investment (Urgent Measures) Act 2020 which came into force on 16 June 2020.

The proposals are based on a financial model of the operational costs incurred by the Overseas Investment Office in delivering its services to applicants. This model does **not** assume recovery of the balance of the Overseas Investment Office memorandum account. The Overseas Investment Amendment Bill (No 3) proposes amendments to the existing fee provisions of the Act (also referenced in section 3.3).

New Zealand does not apply a system comparable to the Australian approach of increased fees depending on the value of each proposed transaction. New Zealand's overseas investment regime attracts a very much smaller number of transactions than does Australia's regime, and a commensurately smaller number of 'higher-value' transactions². This implies that a regime which applied higher fees for higher-value transactions might not be fair or sustainable, according to the five objectives for cost recovery (see section 2.6).

2.2 What regulatory system(s) are already in place?

Legislative settings

Investment in sensitive New Zealand assets is managed through the Overseas Investment Act 2005 (the Act) and its associated Overseas Investment Regulations 2005.

The Minister of Finance is responsible for the Act, and has delegated particular roles to the Associate Minister(s) of Finance. The Minister of Finance has designated the Chief Executive of Land Information New Zealand (LINZ) as the regulator under the Act. The Treasury is responsible for policy in respect of overseas investment under the Act.

LINZ operates a business unit (the Overseas Investment Office) to carry out the regulator's functions under the Act. The Overseas Investment Office administers the Overseas Investment regulations and administers sections 56 to 57J of the Fisheries Act 1996.

Under the Overseas Investment Act 2005, LINZ:

- assesses applications to acquire sensitive New Zealand assets including sensitive land (most farmland, forestry land, and houses), high value business assets, and fishing quota
- monitors and gathers intelligence on potential overseas investors, applicants, and those who have been given permission to buy, lease or invest in sensitive New Zealand assets
- carries out enforcement actions to uphold the provisions of the Act and conditions of consent.

The parties who meet the definition of an Overseas Person under the Act and who need consent:

- generally, are not New Zealand citizens or are people who do not ordinarily live here.

² In the 2019/20 financial year, LINZ (Overseas Investment Office) accepted 451 applications for assessment, and approved consents worth a net NZ\$1.25 billion. In 2018/19 Australia's Foreign Investment Review Board considered 9,466 applications, and approved 8,724 applications for A\$231.0 billion of proposed investment.

- are bodies, such as companies, trusts and joint ventures, with more than 25 percent overseas ownership or control.
- can include associates (including New Zealanders) of overseas investors.

The monitoring and enforcement activities of LINZ in respect of the overseas investment regime seek to ensure that the provisions of the Act are complied with, including that overseas investors:

- submit applications before investing
- comply with any conditions that come with consent, to ensure the expected benefits of the investment occur.

Sections 23 and 27 of the Act require applicants to pay fees when lodging applications. Section 61 of the Act allows for fees to be set in regulations. Regulations 33 and 34, and Schedule 2 of the Overseas Investment Regulations 2005 set out the existing application fees.

From 22 October 2018, extensive changes to the Act in respect of overseas investment in residential housing and forestry were put into effect (the 'Phase One' reform). On 19 November 2019, a further series of changes to the Act were proposed by the Government, following work lead by the Treasury (the 'Phase Two' reform). The Overseas Investment Amendment Bill (No 3) was subsequently introduced for consideration by Parliament.

On 28 May 2020, Parliament passed the Urgent Measures Act which was part of the Government's economic response to the COVID-19 pandemic, and the pandemic's impact on the foreign investment risk environment. With the passing of the Urgent Measures Act, the Government is better placed to manage the escalating security and economic risks caused by the COVID-19 pandemic and to protect domestic living standards in the long term.

For substantially New Zealand firms, the changes in the Urgent Measures Act introduced an automatic standing consent. This is expected to significantly 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.

Policy rationale for a cost recovery review

Why LINZ receives third-party funding for the overseas investment regime

The Act states it is a privilege for overseas persons to own or control sensitive New Zealand assets. The rationale for LINZ receiving third-party funding, through fees, is that services lead to a private benefit for the overseas person (that is, an application to purchase sensitive New Zealand assets).

Given the significant nature of this private benefit, it is more appropriate for the overseas applicant to pay for the cost of services, than it is for these costs to be paid through Crown funding. This rationale is consistent with the guidance on charging fees from the Treasury and the Auditor-General. Conversely, if the Crown was to largely or fully fund the operations of the Overseas Investment Office, then this would mean that taxpayer funds were being used to support a private benefit to overseas persons.

Why third-party funding is important to administer the overseas investment regime

Third-party funding through fees is only undertaken when there is a lawful authority provided for in legislation and regulations. LINZ receives its operating funding for the overseas investment regime from third parties, in the form of fees charged to applicants. These fees support an assessment system based on consideration of the risks which overseas investment can present to New Zealand's interests.

Third-party funding plays an important role in ensuring that LINZ (that is, the Overseas Investment Office) is resourced to provide services to overseas persons and investors, on behalf of the New Zealand public. These services include providing information and advice for prospective applicants, assessing applications, consenting transactions (in line with the Ministerial Directive Letter), monitoring compliance with consent conditions, and taking enforcement action against non-compliant investors.

In the case of monitoring and enforcement activities by LINZ, the significant element of public good has supported a case for some taxpayer funding for these activities. The public good is a result of maintaining the integrity of the overseas investment regulatory system, by ensuring compliance with the system by all overseas investors.

2.3 What is the policy problem or opportunity?

The existing fees regime substantially under-recovers the costs of administering the overseas investment regime, and especially the costs of assessing more complex applications (for example, applications to purchase sensitive land or fishing quota).

If no action is taken to address the level of fees applied for the overseas investment regime, then LINZ will continue to incur significant operating deficits for the administration of the overseas investment regime which will then need to be funded by the Crown (i.e. taxpayers).

The opportunity is to introduce a new fee structure which meets the objectives of recovering costs, while also having the potential to incentivise improved standards of information provision by applicants.

2.4 What is the evidence for the policy problem?

The costs of administering the overseas investment regime

Since 2009 the application fee revenues paid to the Overseas Investment Office have not met the operating costs of assessing applications, resulting in ongoing operating deficits (see Figure 1).

The operating costs of the Overseas Investment Office have substantially increased since the 2015/16 financial year. A 2015/16 fees review did not fully recover the subsequent costs of additional functions for the Overseas Investment Office (including monitoring and enforcement). A declining trend in applications also had an impact on the fee revenues.

In recent years the Overseas Investment Office has recorded a declining total number of applications, until the implementation of the 2018 legislative reform to the Overseas

Investment Act 2005. Total applications reduced from 168 in the 2014/15 financial year to 153 in 2017/18, before increasing to 409 in 2018/19 and 451 in 2019/20 (Figure 2).

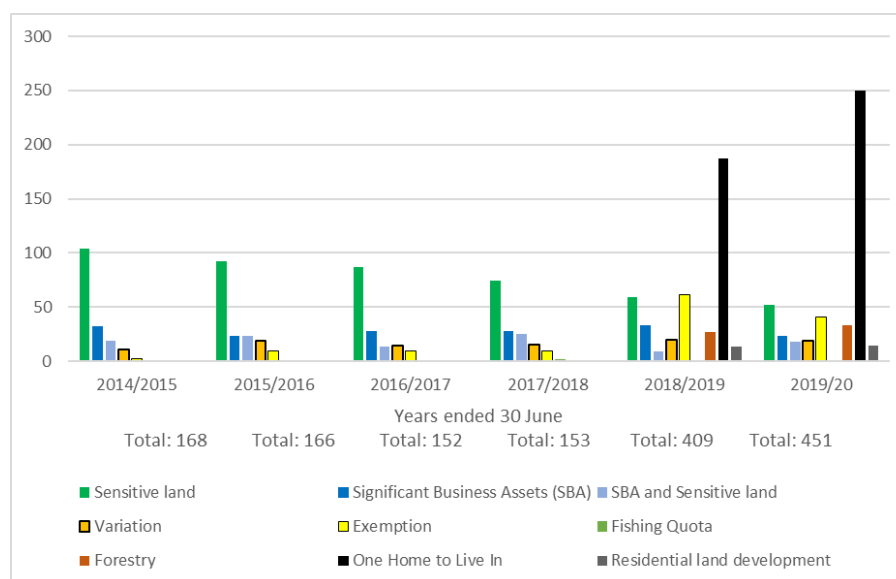


Figure 2: Trend of accepted applications, 2014/15 to 2019/20

During 2019/20 LINZ undertook an internal cost-modelling assessment of the activities of the Overseas Investment Office. This focused on the costs of staff time to quality assure, and assess, applications, and then to monitor compliance with consent conditions. The Overseas Investment Office does not currently operate a time charging system for fees.

LINZ carried out a series of workshops with all staff to determine the activities and time required to complete steps in the application process. This information formed the basis of a cost model, which was independently tested by PricewaterhouseCoopers to ensure that it operated as intended.

This section describes the key findings of the cost model in respect of the current Overseas Investment Office activities. The current fees system has the following limitations:

- There is not a fee to recover costs for the quality assurance of applications
- The application fees do not vary according to the complexity of the assessment required for a proposed investment
- There is not a fee to recover costs for monitoring compliance with consent conditions.

Note: The cost model was 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 perfect 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 may then propose updated fees (see sections 7.1 and 7.2 of this Impact Statement).

Composition of an hourly cost

The cost model has determined that the average hourly cost of Overseas Investment Office operations (across all staff) is \$293 per hour excluding GST, composed of personnel and business support costs including corporate, accommodation, and information technology (Figure 3).

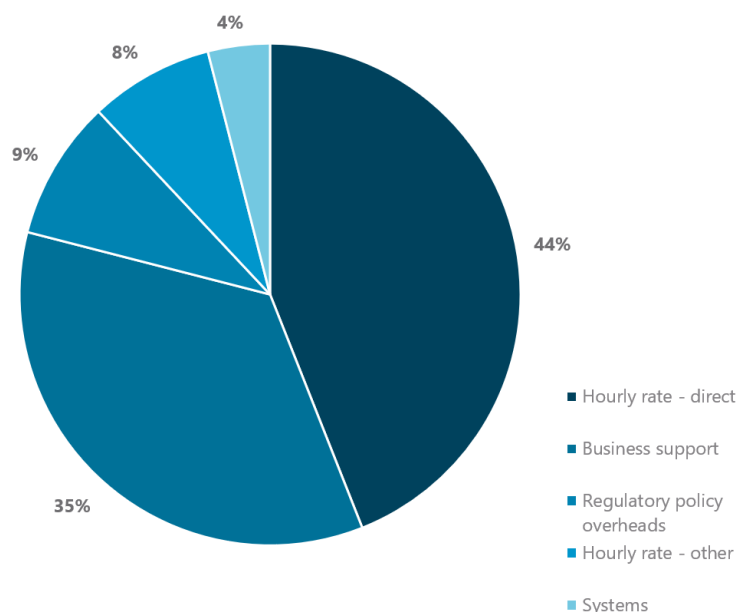


Figure 3: Composition of an Overseas Investment Office hourly cost (ex GST), 2019/20

A lodgement fee for quality assurance

Quality assurance consists of staff reviewing applications, providing feedback and requests for further information, and undertaking often multiple additional reviews as needed, before a final application is accepted for assessment. In some cases, applicants do not proceed with a formal application after initial quality assurance and completeness checks, meaning that the Overseas Investment Office costs are not recovered.

The main cost drivers for the quality assurance and completeness checks in the application pathways are personnel and business support costs. The average staff time required for this function is 25 full-time equivalent hours per application; 56 percent of this time is quality assurance of the draft application, and 26 percent is due diligence risk assessment. The remaining 18 percent is spread across five other activities (Figure 4).

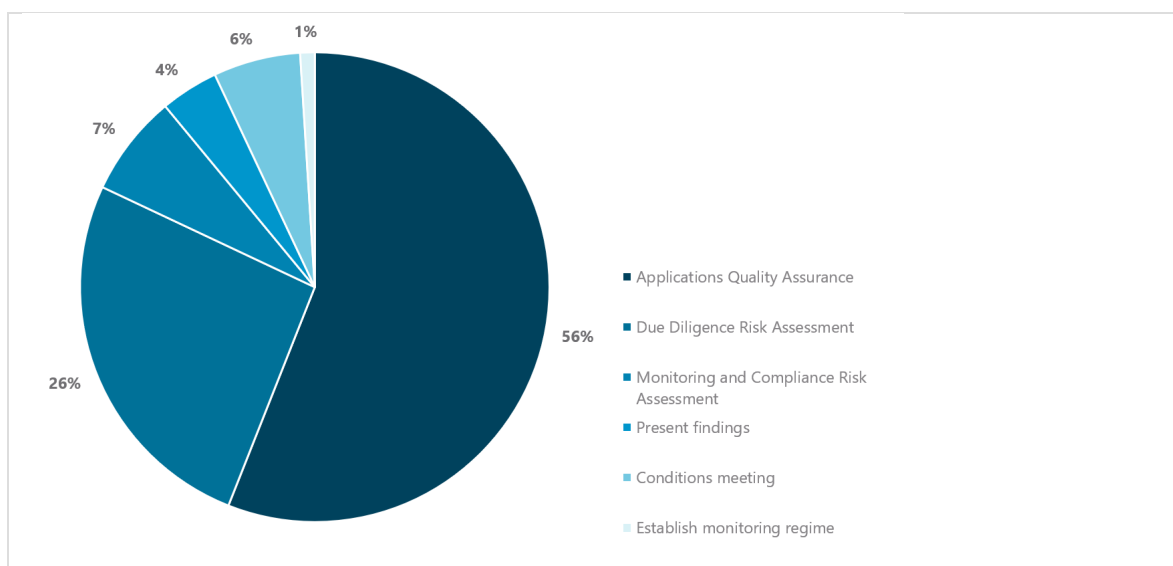


Figure 4: Quality assurance of applications - average time by activity, 2019/20

The costs of staff time increase rapidly depending on the level of complexity, from around \$2,000 for 'small' applications, up to approximately \$60,000 for the fewer expected numbers of 'extreme' complex applications (Figure 5).

These costs include quality assurance across all application pathways, including One Home to Live In (OHTLI) applications which tend to cluster towards the small and medium levels of complexity. For the proposed new fee structure, the standard category includes small and medium complexity applications, whereas the complex category includes large and extremely complex applications.

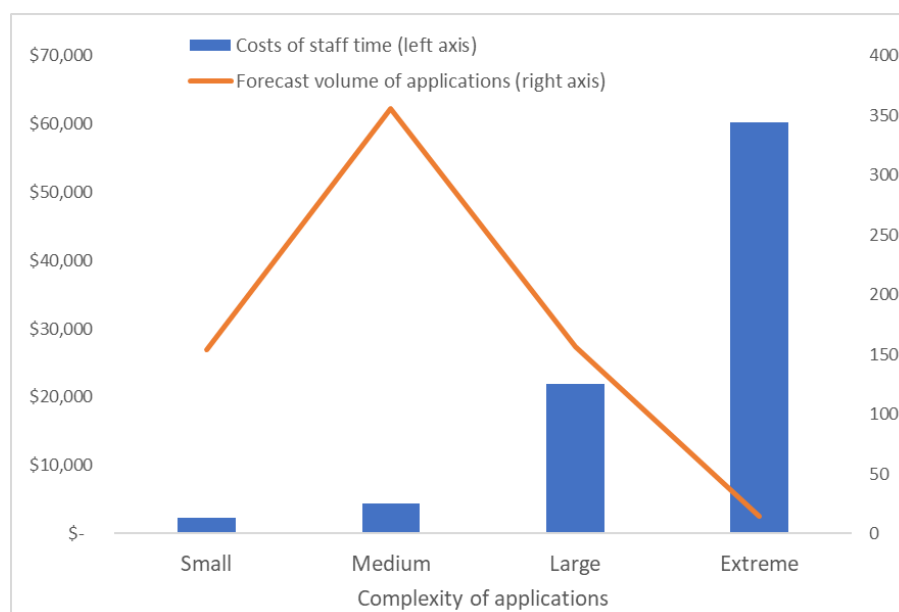


Figure 5: Quality assurance of applications - costs by level of complexity, 2019/20

Assessment of applications

The main cost drivers for the assessment service in the application pathways covered in this proposal are personnel and business support costs. These costs apply to the assessment processes for all residential land, sensitive land, significant business asset,

forestry, and fishing quota applications.

The average staff time for processing land and asset applications is approximately 164 full-time equivalent hours, which consists of pre-application review activities (5 percent), assessment (65 percent), recommendation and review (21 percent), and issuing the decision (3 percent). A significant number of applications require Ministerial engagement, which can add up to 5 percent of average assessment and decision-making time (Figure 6).

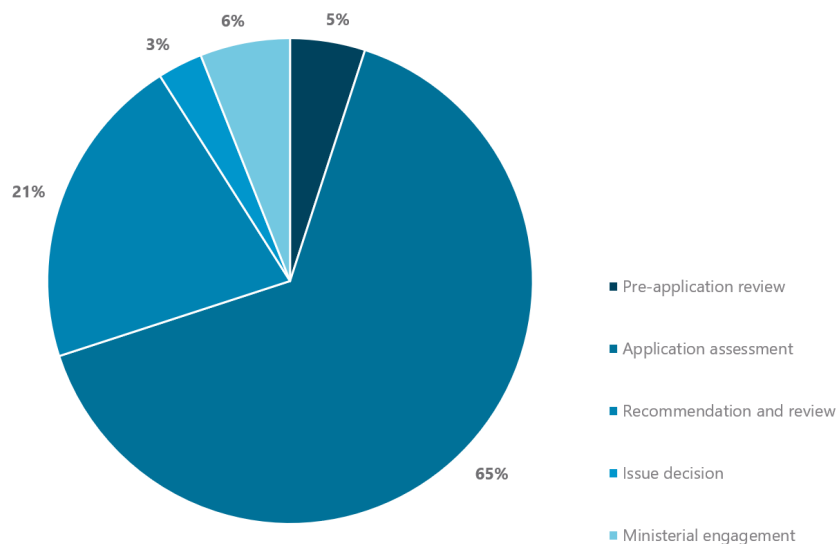


Figure 6: Land and asset application pathways - average processing time, 2019/20

The staff time required to assess, and process, land and asset applications varies considerably depending on the complexity of applications. The LINZ review has found that about 75 percent of applications are standard, and 25 percent are complex. Complex applications require about three times as many assessment hours as standard applications. The activities of recommendation and review, and Ministerial engagement, also take about three times longer for complex applications (Figure 7).

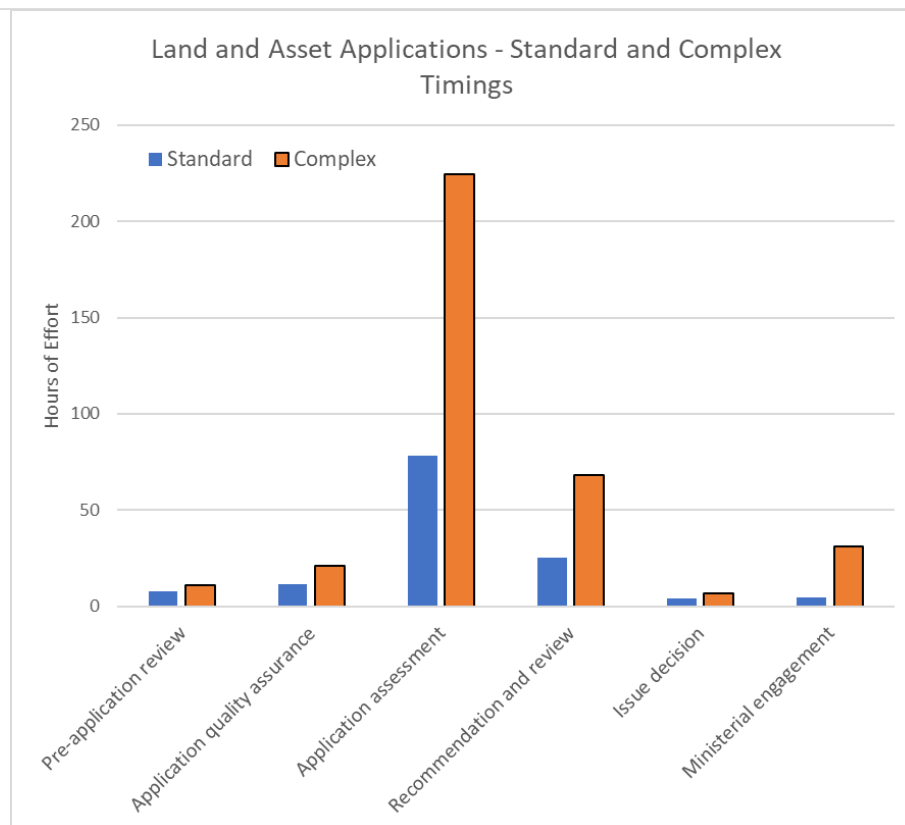


Figure 7: Land and asset application pathways - hours for standard and complex applications, 2019/20

Complex applications are not dependent on the value of the transaction, or necessarily on the type of assets being purchased. Under a new fee structure, the complexity factors will be outlined in published guidelines for all applicants. This will provide clarity to applicants as to how their application will be assessed.

The costs of staff time for application assessments increase rapidly depending on the level of complexity, from around \$20,000 for 'small' applications, to a high of nearly \$170,000 for 'extreme' applications (Figure 8).

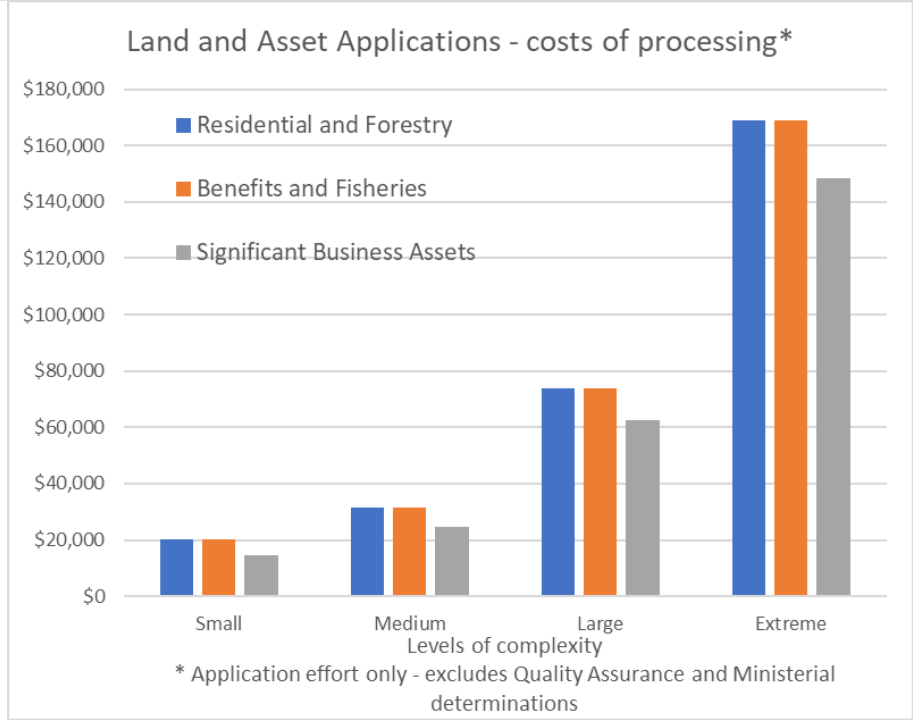


Figure 8: Land and asset application pathways - costs by level of complexity, 2019/20

For significant business asset applications, the relative operational costs of assessing these applications tends to be at the ‘medium’ level of complexity. This results in a relatively limited change to the proposed total fee for assessing applications for consents to purchase significant business assets.

For forestry applications, the relative operational costs of assessing these applications tends to be at the ‘medium’ level of complexity. However, the expected costs of assessing *profits à prendre*³ applications and using the modified benefits test would be at the ‘extreme’ level of complexity, resulting in substantial changes to the fees for these types of applications.

For fishing quota applications, the operational costs of assessing these (relatively rare) applications are at the ‘extreme’ level of complexity given the high sensitivity of this asset. The complexity also reflects the additional tests required under section 57 of the Fisheries Act 1996.

Monitoring compliance with consent conditions

During a cost assessment from 1 July to 1 November 2019, the monitoring compliance services operated by the Overseas Investment Office required 900 full-time equivalent (FTE) hours for monitoring and intelligence activities. This means that on a full-year basis, approximately 2,700 FTE hours are expected to be required for the monitoring compliance service. Average monitoring compliance fees for significant business asset, residential land development, sensitive land, and forestry applications can be calculated based on the annual number of those applications (excluding OHTLI, due to the compliance requirements for that application pathway).

³ Profits à prendre refers to a right to take produce from another’s land (in this case timber).

The great majority of monitoring compliance activity is dedicated towards assessing compliance with the 'Benefit to New Zealand' test required by the Act. Around 84 percent of compliance activity is dedicated to this test, primarily in 'medium' and 'high' complexity cases. The next highest level of monitoring compliance is for significant business assets, which is about seven percent of activity (Figure 9). The relatively small (annualised) number of 'extreme complexity' cases make up a disproportionately high level of compliance activity.

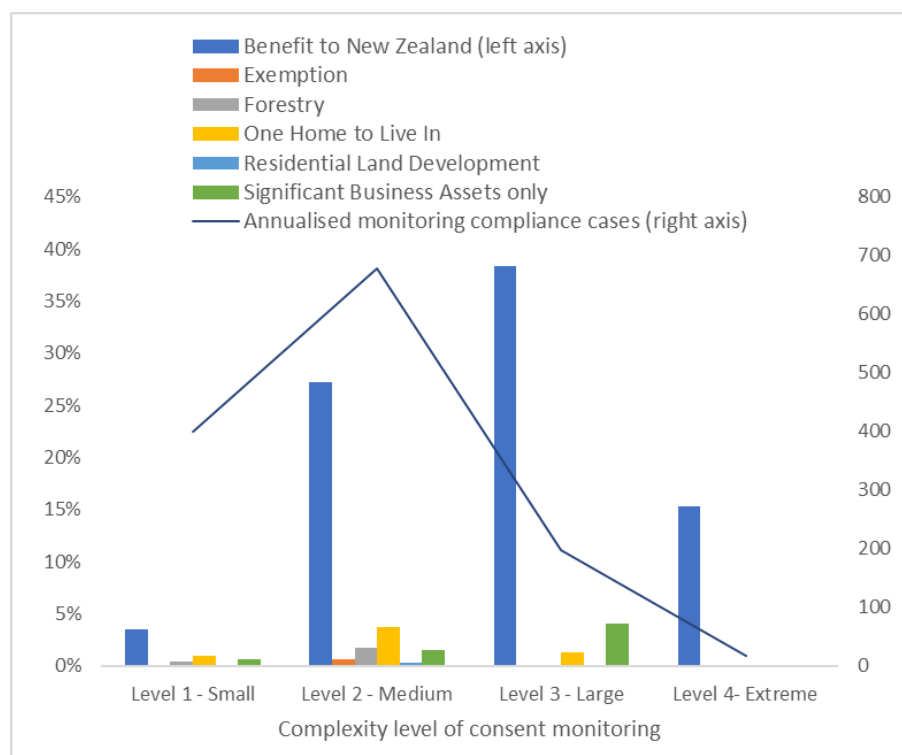


Figure 9: Monitoring compliance activity by level of complexity, 2019/20

The costs of enforcement activities, which may result from monitoring compliance with consent conditions, are incorporated in the application assessment fee. This reflects the fact that all applicants bear the risk, and costs, of some applicants choosing not to comply with the conditions of their consent (that is, consent compliance is a club good).

Since 2018 the Crown has provided some funding to meet the costs of enforcement on those investors who have chosen not to comply with the requirements of the Act and Regulations (that is, they have not applied for approval of their investment proposals).

This funding reflects the fact that these investors have not paid fees to have their transaction assessed, and so it would not be appropriate to use general fee revenues to meet the costs of undertaking enforcement activities in these cases.

National interest assessments

As part of implementing the changes in the Overseas Investment (Urgent Measures) Amendment Act 2020, the Government approved a national interest fee of \$52,000 (including GST), to be applied to those applications which require a national interest assessment. This fee was authorised in the Overseas Investment Amendment Regulations (No 2) 2020. This initial fee was based on an existing fee specified in the

Overseas Investment Regulations 2005 (fee code 28).

At the time the initial fee was approved, the Overseas Investment Office had no experience of operating the new assessment process. There was also uncertainty about the volume of transactions which would require a national interest assessment, and the administrative processes to be undertaken.

The Overseas Investment Office has subsequently recorded its experiences of operating the national interest assessment process, and has developed a revised cost model. This model shows that a higher fee is required to recover the costs of operating the national interest assessment process.

2.5 What do stakeholders think about the problem?

Consultation with government stakeholders on the proposals was undertaken over December 2020 – end January 2021.

On 15 December 2020 Toitū Te Whenua – LINZ undertook initial testing of the proposals with the Overseas Investment Office Legal Reference Group, an expert body of legal representatives of overseas investor interests. This testing informed subsequent advice to responsible Ministers and to the Cabinet Economic Development Committee on 17 February 2021.

Public consultation began on 24 February 2021 and concluded on 19 March 2021. Ten submissions were received. **Appendix 2** summarises the submissions in relation to the proposals stated in the consultation document.

The external stakeholders for the overseas investment regime are set out as follows:

| <i>Stakeholder</i> | <i>Interest/functions in respect of the overseas investment regime</i> |
|--|--|
| New Zealand public | The overseas investment regime is operated to help protect sensitive New Zealand assets. |
| Overseas Investment Office Legal Reference Group | Lawyers and law firms which specialise in representing overseas persons seeking to invest in New Zealand/purchase sensitive assets |
| Companies with significant overseas investment or seeking such investment | Changes to fees may affect investment decisions at the margin, for some assets |
| Māori iwi and economic organisations (that is, Federation of Māori Authorities, Te Ohu Kaimoana, Māori Women's Welfare League, New Zealand Māori Council, Te Rūnanga o Ngāi Tahu, WaikatoTainui, Te Tumu Paeroa, Te Hunga Roā) | The principles of the Treaty of Waitangi, as expressed in the Te Ture Whenua Māori Act 1993, recognises the significance of Māori land as a taonga tuku iho of special significance to the Māori people. |

2.6 What are the objectives sought in relation to the identified problem?

The objectives of the overseas investment regulatory regime are to acknowledge that it is a privilege for overseas persons to own or control sensitive New Zealand assets by requiring overseas investments in those assets, before being made, to meet criteria for consent; and imposing conditions on those overseas investments.

This regulatory regime also has the purpose of managing certain risks, such as national security and public order risks, associated with transactions by overseas persons.

The objectives for the overseas investment fee structure are to recover the costs of administering the overseas investment regulatory regime, by LINZ through the Overseas Investment Office.

The following five cost recovery objectives inform the proposals for a new fee structure and increased fees to recover the costs of the administration of the overseas investment regime. The objectives are sourced from Treasury guidance ([Guidelines for Setting Charges in the Public Sector](#), April 2017) and the Controller and Auditor-General ([Charging fees for public sector goods and services](#), June 2008).

- 1 **Fair:** Users of services should pay unless there is a good reason for them not to. Costs to be recovered should be allocated according to those who receive the service.
- 2 **Effective:** The funding approach or method should support the objectives and/or reasons as to why the service is provided.
- 3 **Efficient:** The funding approach should help ensure service offer value-for-money. This can be defined as administrative efficiency (that is, more of the service cannot be provided without sacrificing provision of another service) and economic (allocative) efficiency (that is, the service provides a marginal benefit to the user equal to the marginal cost of operating the service).
- 4 **Sustainable:** The funding approach must support the long-term financial sustainability of services. Reliance on taxpayer funding should be minimised.
- 5 **Transparent / predictable:** There must be a clear line of sight between the service provided and the costs to be recovered. It must be clear to the user as to what service the fees are being collected for, from whom, and why.

The application of these five objectives for cost recovery constrain the approaches that can be taken in designing a fees system for the overseas investment regime (see **Section 3**).

Section 3: Option identification

3.1 What options are available to address the problem?

The options in this Impact Statement are intended to address two distinct problems:

- a) A requirement to receive enough revenue (through fees) to recover the costs of administering the overseas investment regulatory regime
- b) A requirement to revise the fees structure to ensure the cost recovery objectives are met, as far as is practicable.

Options for funding the overseas investment regime

LINZ identified four high level options for how the administration of the overseas investment regime could be funded. Each option is summarised in terms of its advantages, disadvantages and risks, and an overall assessment is stated in **Section 4A**.

Option 1: Maintain the existing fees for the Overseas Investment Regime

Option 2: Fund the Overseas Investment Office through updated fees (preferred)

Option 3: Adopt a fully Crown-funded model

Option 4: Adopt a levy system

Preferred option

The five cost recovery objectives for the review are then applied to the four options for third-party funding of the Overseas Investment Office (Section 4A, Impact Analysis). This assessment shows that the preferred option is to **fund the Overseas Investment Office through updated fees**. The second-best option would be to adopt a fully Crown-funded model.

Three options for a fee structure

The review has developed three options for changing the fee structure, assuming a continued reliance on third-party fees to fund Overseas Investment Office activities.

Option A: Higher single fee application system

Option B: A new differentiated fee structure

Option C: New fee structure combined with an hourly charge

The preferred option is '**Option B**'. Section 4B presents an assessment of the three options. Appendix 3 presents a list of the proposed new differentiated fee structure and fee levels according to the current application pathways LINZ is responsible for administering.

3.2 What criteria have been used to assess the likely impacts of the options under consideration?

The possible impact on overseas investors' perceptions of New Zealand's overseas investment attractiveness was referenced by submitters as part of the public consultation process (see **Section 4C**).

A key consideration for the assessment was the (financial) impact of the proposed new fee structure, and fee levels, on overseas persons who pay the fees. This assessment was disaggregated according to the particular application pathways currently administered by the Overseas Investment Office.

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. LINZ acknowledges there is a risk that there may be a disincentive effect from higher fees for some lower-value transactions.

One Home to Live In (OHTLI)

The gross value^[1] of OHTLI approved investments in the 2019/20 financial year was \$210 million. Gross rather than net value is used because these are the figures declared to the Overseas Investment Office by overseas purchasers of residential properties.

The fees are not expected to have a significant financial impact on OHTLI applicants. In the most common cases of consent for an individual to purchase a house, the proposed (and current) fee of \$2,040 (GST inclusive) represents about 0.3 percent of the late 2020 median house price of \$600,000 across New Zealand (excluding Auckland), and 0.2 percent of the median house price in Auckland of \$1,000,000^[2].

Residential Land Development

The net value of residential land development approved investments in the 2019/20 financial year was \$417 million. The proposed new and increased fees are not expected to have a significant financial impact on the applicants seeking to purchase residential land. This view is based on the rising price of significant parcels of residential land (as shown by property sale prices). The median sale price for residential properties in New Zealand rose from \$410,000 in July 2014 to \$530,000 in June 2019^[3].

Non-Residential Land

The net value of non-residential sensitive land approved investments (assessed under the Benefit to New Zealand and Intention to Reside pathways) was \$907 million in the 2019/20 financial year. The proposed new and increased fees are not expected to have a significant financial impact on the majority of applicants seeking to purchase non-residential sensitive land.

[1] "Gross value of consideration" represents the total consideration including GST (if any) to be paid for the acquisition of the assets, or the value attributed to those assets, under consents granted during the relevant period

[2] Source: Real Estate Institute of New Zealand, 12 November 2020 (www.reinz.co.nz)

[3] Source: Data Insight information published on <https://figure.nz>

Significant Business Assets

The net value of significant business assets approved investments was (-\$238) million in the 2019/20 financial year, and the gross value of approved investments was \$10 billion. The difference between the (negative) net value and the positive gross value reflects a net change in New Zealand ownership of the assets consented for purchase.

The proposed new and increased fees are not expected to have any significant financial impact on the applicants seeking to purchase significant business assets worth over NZ\$100 million.

Forestry

The proposed new and increased fees are not expected to have any significant financial impact on the applicants seeking to purchase forestry assets. This view is based on the net value of \$178 million for forestry assets consented for purchase during the 2019/20 financial year.

Fishing Quota

The proposed new and increased fees are not expected to have any significant financial impact on most applicants seeking to purchase fishing quota. This view is based on the value of fishing quota reported by Fisheries New Zealand, which was \$3.15 billion as at 30 September 2007. FishServe publishes up-to-date information on the quota owned by stock and quota transfer prices.

For the fishing quota assets application pathway, the amended fees are not expected to result in the Overseas Investment Office recovering any additional revenue, based on a full 12-month volume of applications. This assumption is based on the very low number of applications to purchase fishing quota.

Lodgement fees

The introduction of lodgement fees for applications (excluding OHTLI applications) is not expected to have a material or significant impact on applicants. This is because the lodgement fee (i.e. \$13,300 including GST) will be a very small proportion of the net value of most transactions, particularly transactions for significant business assets over NZ\$100 million.

Monitoring compliance fees

The introduction of fees for monitoring compliance with consent conditions (excluding OHTLI applications) are not expected to have a material or significant impact on applicants. This is because the monitoring compliance fee (\$2,900 to \$13,300, including GST) will be a very small proportion of the net value of most transactions.

National interest assessment fee

The proposed increased fee for a national interest assessment is not expected to have any significant financial impact on the applicants whose applications are subject to such an assessment. This view is based on experience to date where applicants are seeking to purchase significant business assets worth over NZ\$100 million.

3.3 What other options have been ruled out of scope, or not considered, and why?

Consideration was not given to any broader changes to the policy settings stated in the governing legislation for the overseas investment regime (that is, the Overseas Investment Act 2005).

This was because the Overseas Investment Amendment Bill (No 3) is the appropriate instrument for proposing changes to the regime. The Treasury is the lead policy agency for the Overseas Investment Act 2005 and the No 3 Bill.

As part of this third-party funding review, consideration was not given to any cost reduction activities directed towards the LINZ business unit responsible for administering the overseas investment regime (that is, the Overseas Investment Office). This is because any such activities would form part of business-as-usual management by LINZ.

Section 4: Impact Analysis

A) Options to fund the administration of the overseas investment regulatory regime

Each of the following four options are assessed according to the cost recovery objectives stated in section 2.6.

Option 1: Maintain the existing fees for the overseas investment regime

This is the basis for the current system, in which most of the funding for the administration of the overseas investment regime (via the Overseas Investment Office) is from fees charged to third parties (applicants). Under this approach fees would be maintained at current levels, as stated in the Overseas Investment Regulations 2005.

Positives: Fair and Transparent/predictable

- No additional costs for applicants (i.e. overseas persons)
- The existing fee system (i.e. as charged to applicants) is already administratively efficient
- The existing fee system is consistent with user pays / beneficiary pays principles

Negatives: Effective, Efficient (administrative and economic), Sustainable

- Due to the expanded regulatory requirements of the overseas investment regime this option would result in insufficient funds to operate the Overseas Investment Office, leading to ongoing deficits and operational risks to delivery
- The timeliness of assessment of applications would be adversely prolonged

Risks

Likely to lead to significant adverse effects on the timeliness and cost-efficiency of services, as revenues would not meet current operational costs and so staff numbers and capabilities would need to be adjusted and restructured.

Option 2: Fund the overseas investment regime through updated fees (preferred)

Fees would be set at levels that fully recover the costs of each of the Overseas Investment Office functions, duties and outputs from those who benefit. This would result in adjusted fees for each application type and pathway, by amending the rates stated in the current Regulations. Fees would reflect changes in legislative/regulatory requirements and changes in the regulator's costs.

Positives: Effective, Efficient (administrative and economic), Sustainable

- Consistent with Treasury guidelines on charging the users (i.e. overseas persons) for the benefits resulting from the efficient administration of the Act and regulations
- Increased fee revenues would support the full recovery of costs

Disadvantages

- Additional costs (via fees) for applicants, equal to the additional fee revenue paid to LINZ (the Overseas Investment Office)

Risks

An increase in fees will have a greater impact on lower value investments and may impact perceptions of the attractiveness of investment in New Zealand assets. However, the high

value of investment screened by the Overseas Investment Office, and the relatively low level of corresponding fees, suggests the proposals are likely to have little impact on the level of applications from overseas investors.

Option 3: Adopt a fully Crown-funded model

An alternative to third-party funding is to have all Overseas Investment Office outputs funded on an ongoing basis by the Crown through amended baseline funding (and/or a multi-year appropriation). There would be no, or very limited, third-party funding through fees or charges, on a presumption that overseas investment is beneficial to New Zealand.

Positives: Effective, Efficient (administrative)

- Increases the business value proposition for overseas investors relative to our trading partners
- Reduces policy, regulatory and administration costs for LINZ

Negatives: Fair, Efficient (economic), Transparent/predictable

- Removes a primary source of funding for the regulator (users) and imposes the cost on taxpayers
- Lacks transparency, as Crown funding breaks the link between who created the costs and who pays
- Is contrary to Treasury and Auditor-General guidance on charging the users who benefit from services
- Removes any fee price signals for applicants, reducing the incentives to provide high quality applications to the regulator

Risks

Crown funding may not ensure revenues meet the on-going costs for LINZ in administering the overseas investment regime.

Option 4: Adopt a levy system

This option would see the current fee structures replaced with a levy on overseas investors, and would require a substantial amendment to section 61 of the Overseas Investment Act 2005. A levy could be set at a level to cover the costs and outputs of LINZ in operating the overseas investment regulatory regime. The levy could either be structured to require payment upon application (much like current fees), or as a periodic (for example, annual) amount, charged to investors who have obtained consent.

Positives: None according to cost recovery objectives

- Could deliver a more regular ongoing revenue source from consent holders.
- Can be annually adjusted to account for changing costs (up or down).
- Removes (to some extent) policy and administration costs associated with fee reviews and adjustment to regulations.

Negatives: All cost recovery objectives

- A levy is less likely than fees to cover all the activities and costs of the regulator. For example, overseas investors whose applications are denied could not be levied.
- A levy is unlikely to respond efficiently to changes in overseas and local ownership/business structures. For example, it could not be feasible to levy previously approved investors, or investors which have sold their New Zealand investments.

- Business investment and ownership structures regularly change, and it will be difficult for levy setting and administration systems to keep pace.
- Overseas investors are usually based overseas, which means they are not subject to New Zealand law. It is unclear how penalties could be designed or enforced for any non-payment of levies.

Risks

A levy system could be difficult to design and implement because the overseas investment regime does not assume a close and enduring relationship between the regulator and the overseas investor, nor the financial pooling of benefits and risks. There would be significant operational costs and difficulties as a domestic regulator overseeing predominantly overseas persons.

Table 1: Assessment of four options to fund the overseas investment regulatory regime

| | Options for third-party funding for the administration of the overseas investment regulatory regime | | | |
|----------------------------|---|---|-------------------------------------|------------------------|
| | 1) Maintain the existing fee structure and levels for the overseas investment regime | 2) Fund the Overseas Investment Office through updated fees | 3) Adopt a fully Crown-funded model | 4) Adopt a levy system |
| Cost recovery objectives* | | | | |
| Fair | 0 | 0 | - | - |
| Effective | - | + | + | - |
| Efficient (administrative) | - | + | + | - |
| Efficient (economic) | - | + | - | - |
| Sustainable | - | + | 0 | - |
| Transparent/predictable | 0 | 0 | - | - |
| Net assessment | -4 | +4 | -1 | -6 |

Key:

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

*The assessment is on the basis that the objectives have equal weighting. Different weightings of the objectives could lead to different assessments.

B) Options to fund the overseas investment regulatory regime through updated fees

Each of the following three options are assessed according to the cost recovery objectives stated in section 2.6.

Option A: Higher Single Application Fees.

This is the current system with higher fees. It is relatively simple for applicants ('customers') and LINZ (via the Overseas Investment Office) to administer. It is, however, less accurate in costing the actual time required to assess complex applications.

A general rise in fees would maintain the existing issue of under-recovery of costs for quality

assurance activity, for assessing complex applications, and for monitoring compliance with consent conditions.

The updated fees are based on current cost structures and apply a simple weighted average cost (WAC) approach to modelling fees across the application pathways.

Positives: Effective, Sustainable

- Retains the existing system's broad consistency with user pays principles (applies to all options).
- Same fee charging structure as already used.
- Relatively easy to administer, and single fees provide price certainty for applicants.

Negatives:

- Risks continuing to under-recover the costs associated with quality assurance, complex application assessments and monitoring compliance.
- Difficult for fee payers (applicants) to see what level of services were applied to their application.
- Unsuitable to the operating environment where the costs of providing services are dissimilar, and there is a small pool of (investor) applicants. In 2019/20 a total of 451 applications were assessed by LINZ (via the Overseas Investment Office).

Option B: A new differentiated fee structure

This proposal is intended to address the problem that 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 based on their complexity.

LINZ proposes a shift away from the current system of a single fee for applications, to introduce variable standard and complex fees for applications. This fee structure would be intended to reflect the significant additional staff time which is needed to assess complex applications for the purchase of sensitive land, significant business assets, forestry assets and fishing quota. These costs are discussed in Section 2.4.

Fees would be set at levels for each application pathway and for each key function:

- Lodgement fee (charged once, when an application is provided). There would be no charge for the pre-assessment meeting with prospective applicants.
- Application assessment fee, for standard and complex applications (charged once, when an application is accepted).
- Monitoring compliance with consent conditions fee (charged once, before consent is approved).

Positives: Fair, Effective. Efficient (administrative), Sustainable, and Transparent/predictable

- Provides clarity of costs for applicants. Reduced risk of under-recovery of costs.
- Lodgement fee, and complex application fee, provide a (modest) incentive to provide complete applications.
- Deliberation time on proposals to purchase particularly sensitive assets is accounted for by complex application fees.

Negative: Efficient (economic)

- Administration is more complex for both the Overseas Investment Office and applicants.
- Mis-classified applications could mean costs are not fully recovered (for example if an application is assessed as standard, but turns out to be complex). Clear guidance for

applicants and published business rules would need to be developed.

The proposed new fee structure for overseas investment applications is similar to an existing differentiated fee structure applied by NZ Immigration (that is, section 393(5)(b) and (e) of the Immigration Act 2009). An example of this differentiated approach is the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 (Schedule 4 - Fees).

Option C: New fee structure combined with an hourly charge

This option would introduce a lodgement fee, together with a standard application fee, and an hourly charge for assessing applications after a set period. Other comparable New Zealand agencies, such as the Financial Markets Authority and the Environmental Protection Authority, apply hourly-charging systems as the basis for some of their fees to recover costs from applicants.

A lodgement fee to recover the costs of quality assurance would be introduced, together with standard fees for application assessment. For complex applications, hourly charges would be advised to the applicant and imposed after a set period of time (at \$337 per hour including GST).

Positives: Fair and Effective, Efficient (economic), Sustainable

- Based on the actual time required for a complex assessment, and would accurately reflect costs

Negatives: Efficient (administrative), Transparent/predictable

- Could lead to a range of different costs for complex applications regardless of the value or asset type of the transactions. This could be viewed as a reduction in the transparency and predictability of New Zealand's overseas investment regime.
- Initial and on-going cost to implementing an hourly charging system.
- An hourly charging system using monthly invoices could entail debt collection issues (including an increased risk of non-payment if applications are declined).

Table 2: Assessment of options for a fee structure for the overseas investment regime

| Cost recovery objectives * | Option A Higher single application fees | Option B A new differentiated fee structure | Option C New fee structure combined with an hourly charge |
|----------------------------|--|--|--|
| Fair | 0 | + | + |
| Effective | + | + | + |
| Efficient (administrative) | 0 | + | - |
| Efficient (economic) | 0 | 0 | + |
| Sustainable | + | + | + |
| Transparent/predictable | 0 | + | - |
| Net assessment | 2 | 5 | 2 |

Key:

+ better than the status quo

0 about the same as the status quo

- worse than the status quo

*The assessment is on the basis that the objectives have equal weighting. Different weightings of the objectives could lead to different assessments.

Section 5: Conclusions

5.1 What option, or combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

The **preferred option** is a new differentiated fee structure for the Overseas Investment regime (see Section 4B). This conclusion is based on the cost recovery objectives (as stated in section 2.6) and the assessment of options.

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, and providing a relatively transparent and predictable fees system for applicants.

5.2 Summary table of costs and benefits of the preferred approach

| Affected parties (identify) | Comment: nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks | Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts | Evidence certainty (High, medium or low) |
|-----------------------------|--|---|--|
|-----------------------------|--|---|--|

Additional costs of proposed approach compared to taking no action

| | | | |
|---|---|---|--------|
| Regulated parties (overseas persons, and their legal representatives) | Ongoing additional annual total fees paid for assessment of applications (relative to 2019/20 baseline; i.e. \$8.56m c.f. \$7.24m) Compliance costs in preparing applications subject to the new fee structure | \$1.32m Not monetised* (likely to be medium) | Medium |
| Potential investors | Possible disincentive effect from higher fees for some lower-value transactions | Not monetised* (likely to be low) | Low |
| Regulator Toitū Te Whenua – Land Information New Zealand | One-off implementation costs of a new fee structure (as part of BAU operations of LINZ). Not possible to disaggregate from ongoing changes to systems. | Not monetised (likely to be low) | Medium |
| Wider government (MFAT, NZTE) | Possible adjustment costs to communications on NZ's overseas investment strategy. | Not monetised* (likely to be low) | Low |
| Total Monetised Cost | | \$1.32m | Medium |
| Non-monetised costs | | Low | Low |

| Expected benefits of proposed approach compared to taking no action | | | |
|---|---|---------------|--------|
| Regulated parties (overseas persons, and their legal representatives) | Applicants with standard applications (expected to be 75% of applications) will pay lower assessment fees than applicants with complex applications | Not estimated | High |
| Regulator Toitū Te Whenua – Land Information New Zealand | Ongoing additional total fees paid for assessment of applications (relative to 2019/20 baseline), assuming a forecast for application volumes | \$1.32m | Medium |
| Wider government | None identified | n.a. | |
| Total Monetised Benefit | | \$1.32m | Medium |
| Non-monetised benefits | | Low | Low |

*indicates there is insufficient information on which to base a reliable cost estimate.

| 5.3 What other impacts is this approach likely to have? | | |
|---|---|--|
| | Potential impacts | Likelihood and magnitude |
| Toitū Te Whenua (Overseas Investment Office) | Changes to administrative structures and operations lead to increased efficiency of assessments | High. LINZ continually works to optimise the operations of the overseas investment regime, including to reflect changes to be introduced in the Overseas Investment Amendment Bill (No. 3). |
| Overseas persons (legal representatives of applicants) | Compliance costs in designing applications for consent to meet the assessment criteria (i.e. to have a standard fee applied) | Low. LINZ will publish clear guidance on how the new fee structure will be applied. |
| New Zealand businesses/asset owners seeking overseas investment | Overseas perceptions of New Zealand's regime, relative to other countries, may affect the volume of applications for investment | Low. NZ maintains an open, efficient and low-cost regulatory regime. A new fee structure and updated fees are not expected to materially affect investment perceptions and/or returns, for the great majority of investors. |

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

The new fees will be put in place through the following stages:

- Communications to stakeholders and the public on the new fees structure, following Cabinet approval. A communications plan will refer to the changes flowing from the Overseas Investment Amendment Bill (No 3)
- An updated implementation plan (*to be developed, following Cabinet approval to the fee proposals*) setting out procedures, timeframes and responsibilities for implementation of the new fees structure and updated fees
- Operational policy guidance for applicants (to be published on the LINZ website) on the amended fees, and how and when they are to be applied.
- Entry into force of the amended Overseas Investment Regulations, 28 days after Royal Assent.

The regulator (Toitū Te Whenua - LINZ) has significant experience in designing and implementing fees for applications. LINZ already operates a proven invoicing system for overseas investment applications. This system will be modified to reflect the proposed new fee structure and the stages of invoicing specific fees for accepted applications.

Assuming Cabinet approval for the proposals, the amended regulations authorising the new fees structure are expected to be in force from September 2021.

6.2 What are the implementation risks?

Toitū Te Whenua - Land Information New Zealand has identified the following risks to implementation of the proposed new fee structure and adjusted fee levels for the overseas investment regime. These are explained together with planned mitigations.

| | Implementation risks | Mitigation |
|--|---|--|
| Toitū Te Whenua (Overseas Investment Office) | Guidance for applicants on how their applications will be assessed and the fee which will be applied (standard or complex). | LINZ will adapt existing objective tests in the Act and Ministerial Delegation Letter for clarity and legal defensibility, and will continue to advise applicants through public information |
| Overseas persons (legal representatives of applicants) | Compliance costs in designing applications for consent to meet the assessment criteria (i.e. to have a standard fee applied) | Public information on the assessment process will provide guidance for overseas persons |
| Overseas persons (legal representatives of applicants) | Confusion as to whether fees cover the new activities resulting from enactment of the Overseas Investment Amendment Bill (No 3) | Public information on the amendments to the Act will provide guidance for the public and legal professionals |

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

As policy lead agency for the Overseas Investment Act 2005 and legislative amendments, the Treasury is responsible for formal evaluation and review of the overseas investment regime.

LINZ recognises that performance reporting is a critical component of providing transparency to investors and other interested parties, as well as encouraging ongoing system efficiency. LINZ will monitor how many applications are subject to standard and complex assessments under the new fee structure.

LINZ currently publishes a series of trend metrics on performance of the overseas investment regime, including:

- regular updates on the numbers and value of applications and decisions
- percentage of applications returned at quality assurance
- timeframes for application assessment
- decision summaries
- The results of investigation and enforcement actions.

The impact of fees on applicants is indicated by responses to a regular email survey of applicant experiences in dealing with the Overseas Investment Office. These responses are not published.

New Zealand law firms which have experience of representing overseas investors sometimes undertake surveys of this client group. On 18 November 2020 [Simpson Grierson released the key results](#) of a survey of 35 overseas investors, which found that 60% were planning to invest in New Zealand over the next two years.

This survey followed a 16 October 2019 report on a survey of 80 offshore organisations and private equity firms which previously completed investments in New Zealand.

7.2 When and how will the new arrangements be reviewed?

Cabinet has been advised that a further review of fees for the overseas investment regime will be undertaken in the 2022/23 financial year [DEV-21-MIN-0002 refers]. This review will include a formal process of public consultation.

The Overseas Investment Amendment Bill (No. 3) updates the fee provisions in section 61 of the Overseas Investment Act 2005 to allow fees to recover operating deficits incurred in any of the preceding four financial years, over a period of up to the next four financial years (that is, a move to a surplus and deficit recovery fee model). The Bill also requires the relevant Minister to commence a fees review at least every four financial years.

Appendix 1: Fees comparison with similar overseas investment regulatory regimes

New Zealand's third-party funding system for the overseas investment regulatory regime can be compared with the funding systems in place in other Western nations with comparable regimes and legal systems.

Australia

Australia's Foreign Investment Review Board (FIRB), the Treasury's Foreign Investment Division, and the Australian Taxation Office receive extensive third-party funding through application fees. A revised fee structure came into effect on 1 January 2021. The FIRB charges a wide range of fees for specific types of application, depending on the value of the transaction. An online fee estimator provides fee estimates for the different types of foreign investment applications. The FIRB practice of differentiation by value produces different fees to those applied in New Zealand, for example:

| Application category ⁴ | Australia (FIRB) fees (A\$) from 1 January 2021 | New Zealand current fees (NZ\$) | New Zealand <i>proposed</i> (standard) total fee (NZ\$) | New Zealand <i>proposed</i> (complex) total fee (NZ\$) |
|-----------------------------------|---|---------------------------------|---|--|
| Residential purchase | \$6,350 (minimum) \$500,000 (maximum) | \$2,040 | \$2,040 | \$2,040 |
| Significant Business Assets | \$6,350 (\$50m or less) \$500,000 (\$2bn and above) | \$32,000 | \$38,800 | \$86,700 |
| Sensitive (agricultural) land | \$6,350 (\$2m or less) \$500,000 (\$80m and above) | \$41,500 | \$72,500 | \$141,200 |

Canada

The Canadian government's foreign investment policy is administered by the Investment Review Division of Innovation, Science and Economic Development Canada. The Investment Canada Regulations do not specify particular fees for applications for acquisitions and investments.

United Kingdom

Provisions which came into force on 11 June 2018 introduced lower merger control thresholds for transactions in certain sectors. These revised thresholds are designed to provide the UK Government with increased scope to scrutinise foreign investments and transactions that raise national security concerns.

The changes were accompanied by guidance from the UK Competition and Markets Authority (CMA) and the Department for Business, Energy and Industrial Strategy (BEIS) on how they expect the regime to operate in practice.

The CMA guidance of 11 June 2018 refers to the fees payable. There are standard fees depending on the value of the UK turnover of the enterprises being acquired, as follows:

⁴ The updated fees for Australia exclude fees for a national security action. The current and proposed fees for New Zealand exclude a national interest assessment.

| Fee (pounds sterling) | Charge band |
|-----------------------|--|
| £40,000 | Value of the UK turnover of the enterprises being acquired is £20 million or less |
| £80,000 | Value of the UK turnover of the enterprises being acquired is over £20 million but not over £70 million |
| £120,000 | Value of the UK turnover of the enterprises being acquired exceeds £70 million, but does not exceed £120 million |
| £160,000 | Value of the UK turnover of the enterprises being acquired exceeds £120 million |

United States of America

The Committee on Foreign Investment in the United States (CFIUS) is an interagency body administered within the [US Department of the Treasury](#). On 13 January 2020, the Department of the Treasury released two final regulations to implement the changes that the *Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA)* made to CFIUS's jurisdiction and processes, including in respect of filing fees (the full language of FIRRMA and related information can be found on the [CFIUS Laws and Guidance](#) page). All figures below in United States dollars.

Except as otherwise provided, the parties filing a formal written notice of a transaction with CFIUS under § 800.501(a) on or after 1 May 2020, shall pay a filing fee as follows:

- (a) Where the value of the transaction is less than \$500,000: No fee
- (b) Where the value of the transaction is equal to or greater than \$500,000 but less than \$5,000,000: \$750
- (c) Where the value of the transaction is equal to or greater than \$5,000,000 but less than \$50,000,000: \$7,500
- (d) Where the value of the transaction is equal to or greater than \$50,000,000 but less than \$250,000,000: \$75,000
- (e) Where the value of the transaction is equal to or greater than \$250,000,000 but less than \$750,000,000: \$150,000
- (f) Where the value of the transaction is equal to or greater than \$750,000,000: \$300,000.

Appendix 2: Public consultation process and key themes from submissions

Public consultation process

Following Cabinet approval [DEV-21-MIN-0002], 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 document.
- MS Teams briefing to the Overseas Investment Office Legal Reference Group on 3 March (that is, during a national COVID-19 level two lockdown).
- Advisory to 1,474 recipients of the 'Panui' monthly newsletter from the Overseas Investment Office
- 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 Roā.

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, SimpsonGrierson, Buddle Findlay), two from individual lawyers, three from companies (Sealord, Woolworths New Zealand, Fletcher Building), and one from a forestry management firm (New Forests).

Key points of the submissions received are:

- 5 submitters agreed with the proposal to fund the overseas investment regime through updated fees charged to overseas persons; 3 disagreed, and 2 had no opinion.
- 4 submitters proposed that the Crown should pay a larger share of the costs of administering the overseas investment regime, given the benefits that overseas investment brings to New Zealand. It was proposed that a further option to fund the activities of the Overseas Investment Office would be a mix of increased fees and increased Crown funding. It was also proposed that LINZ consider applying higher fees for higher value applications (as used in Australia).
- 4 submitters agreed with the proposed new fee structure (i.e. lodgement fee, standard or complex application fee, and a monitoring compliance fee), 2 preferred the option of higher single application fees, 2 preferred the option of a single fee plus hourly charges, and 2 had no opinion.
- 5 submitters disagreed 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 to transparently and fairly administer by the Overseas Investment Office.

- 7 submitters considered the proposed new and increased fees would have a negative impact on their business. Increased fees were considered to be a deterrent to investment.

Submitters did not state any specific evidence of the potential negative effects of a new fee structure and adapted fee levels, in terms of disincentives for prospective and/or current overseas investors. LINZ acknowledges there is a risk that (higher) fees could disincentivise some lower-value transactions.

Key themes of submissions received and LINZ comment

| Submission's theme | Submitters' proposal | Comment |
|--|---|--|
| 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. |
| Proposal for higher value transactions to pay higher fees | LINZ consider charging higher fees for higher value investment applications (as used in Australia and the USA). | NZ receives a much smaller number of applications and higher-value applications than Australia, so a fees regime would be less likely to be sustainable or fair for applicants. Treasury and Auditor-General guidance seeks to ensure applications are cost-recovered within the relevant application pathway. |
| 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 Overseas Investment Office data for 2019/20. The operating deficit for the OIO means a further delay would present a significant balance sheet risk to LINZ. |
| 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 the Overseas Investment Office to transparently and fairly administer. | 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. |

Key themes of submissions received and LINZ comment

| Submission's theme | Submitters' proposal | Comment |
|--|--|--|
| 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. |
| 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. | <p>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.</p> <p>LINZ acknowledges there is a risk that (higher) fees could disincentivise some lower-value transactions.</p> |

Appendix 3: List of proposed fees according to the new differentiated structure

The differentiated fee structure would be made up of three different fees, which would be charged separately and at different times. The fees would be 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.

In response to stakeholder feedback, LINZ has slightly adjusted and reordered some proposed fees for non-residential sensitive land applications. This adjustment is to maintain consistency with the logic of the existing fee system, where applications subject to a succession of tests attract higher fees.

| 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 (incl GST) | Total Complex fee: lodgement, assessment, monitoring compliance (incl GST) |
|--|--|--|-------------------------------------|------------------------------------|---------------------------|---|--|
| | | 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 Sensitive Land | 2a and 2b \$24,600 to \$31,600 | 0 | \$8,100 | \$23,200 | \$8,800 | \$16,900 | \$32,000 |
| Residential OHTLI and Otherwise | 2c \$550 | | | \$3,400 | | \$3,400 | \$3,400 |

| | | | | | | | |
|--|--|----------|----------|-----------|----------|----------|-----------|
| Sensitive Land – Conditions Waiver | | | | | | | |
| Residential and Otherwise Sensitive 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 \$40,500 to \$52,000 | \$13,300 | \$51,700 | \$119,600 | \$9,000 | \$74,000 | \$141,900 |
| Benefit to NZ and S&I and Significant | 9(a)(i), 9(b)(i) 22(a)M, 22(b)M | \$13,300 | \$56,100 | \$119,600 | \$13,300 | \$82,700 | \$146,200 |

| | | | | | | | |
|--|--|----------|----------|-----------|---------|-----------|-----------|
| Business Assets – Ministerial consideration | 28 \$42,500 to \$54,000 | | | | | | |
| 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 | \$2,900 | \$31,200 | \$54,700 |
| Consent - profits à prendre (< \$1m) | 17a \$42,600 | \$13,300 | \$17,300 | \$42,700 | \$3,000 | \$33,600 | \$59,000 |
| Modified Benefits Consent - profits à prendre (> \$1m) | 14a, 14b \$51,100 | \$13,300 | \$17,300 | \$42,700 | \$3,000 | \$33,600 | \$59,000 |
| | 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 | As above \$13,000 | | | \$23,000 | | \$23,000 | \$23,000 |