

# **Overseas Investment Amendment Bill Commitment to Reside in New Zealand**

## **Release Document**

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Chair  
Cabinet

## **Overseas Investment Amendment Bill: Commitment to Reside in New Zealand Requirements**

### **Proposal**

1. This paper seeks Cabinet agreement to the requirements that residence class visa holders must meet to purchase residential land. The proposals are a subset of wider reforms under the Overseas Investment Amendment Bill (Bill) to restrict overseas buyers of residential land. The proposed requirements for residence class visa holders would be set out through changes to the Bill and through regulations.
2. The Minister of Finance, as portfolio Minister, agrees with the submission of this paper.

### **Executive Summary**

3. The Bill establishes a pathway for residence class visa holders to purchase a residential property as their main home in New Zealand if they satisfy *Commitment to Reside in New Zealand* requirements to be set out in regulations.
4. Under the Immigration Act 2009, residence class visas comprise permanent resident visas and resident visas. All persons with these visas are entitled to reside in New Zealand indefinitely if they meet visa conditions. Approximately 80 per cent of resident visa holders obtain permanent resident visas within five years.
5. The key requirements I propose for the *Commitment to Reside in New Zealand* pathway are:
  - a. *Eligibility for Commitment to Reside in New Zealand pathway.* A person holding any category of residence class visa is eligible for the *Commitment to Reside in New Zealand* pathway to purchase residential property.

- b. *Commitment to residing in New Zealand test.* The requirement for showing commitment to reside in New Zealand would comprise a declaration from each relevant person that they intend to spend 183 days in New Zealand of each 12-month period from the date of consent. The 183-day threshold is consistent with requirements a residence class visa holder would need to meet to progress to being 'ordinarily resident in New Zealand' as defined in the Bill. Broadly speaking, being present in New Zealand for 183 days in the past year is also one of the grounds for being deemed to be a tax resident.
- c. *Change in visa status trigger event.* A person's visa expiring or being cancelled would constitute a "trigger event". Once a trigger event occurs, the on-selling condition in the Bill would require them to dispose of their interest in the property within 12 months. However, if the person regains a residence class visa within the 12-month period following the trigger event, the requirements to on-sell would be lifted (the "trigger event is resolved"). Decisions on whether to cancel a person's visa will continue on the same basis as they are currently made, and will not take into account consequential impacts from a person being required to dispose of a property.
- d. *Absence from New Zealand trigger event.* A trigger event would occur if a person is absent from New Zealand for 183 days in a 12-month period. Once a trigger event occurs, the on-selling condition in the Bill would require them to dispose of their interest in the property within 12 months. However, the trigger event would be resolved if the person is present in New Zealand for 183 days in the 12-month period following the trigger event, or can demonstrate they have not severed their commitment to New Zealand.
- e. *Application of existing investor test.* The existing investor test criteria that apply to purchases of sensitive land, such as requirements for business acumen and demonstrated financial commitment, would not apply for the *Commitment to Reside in New Zealand* pathway.

## Background

- 6. On 14 December 2017, the Government introduced the Bill. The Bill implements our 100 day commitment to "ban overseas buyers from buying existing homes".
- 7. As a Government, we welcome foreign investment in new, productive assets, which add to the productivity of our economy. We also welcome those who have been granted residence and who live here and contribute to our country. Purchases of homes by foreign nationals not resident in New Zealand, which do not add to the stock of existing houses, do not add substantially to our economy.
- 8. Our objective is to ensure that New Zealanders have the right to buy our houses and to ensure that foreigners who are not resident in New Zealand cannot own residential property (unless they are increasing the housing stock or providing other benefits to New Zealand).

*Overseas persons to whom the Commitment to Reside in New Zealand pathway applies*

9. Under the Bill, there are no restrictions on acquiring residential land for New Zealand citizens or permanent residents 'ordinarily resident in New Zealand' (ie, they are not captured by the Overseas Investment Act). For residential land, an individual will be ordinarily resident here if they hold a permanent resident visa; have been residing in New Zealand for at least 12 months; and have been present in New Zealand for at least 183 days in the past 12 months. Other residence class visa holders are not considered 'ordinarily resident in New Zealand' for the purposes of purchasing residential land.
10. The Bill establishes a pathway for residence class visa holders (who are not 'ordinarily resident in New Zealand') to purchase a residential property as their main home in New Zealand if they satisfy *Commitment to Reside in New Zealand* requirements to be set out in regulations. The purpose of the *Commitment to Reside in New Zealand* pathway is to enable certain visa holders to purchase a residential property as their main residence in New Zealand.
11. The *Commitment to Reside in New Zealand* pathway is not available to temporary entry class visa holders. This was decided by a group of Ministers authorised with power to act on detailed policy matters and endorsed by Cabinet Business Committee on 13 December 2017 [CBC-17-MIN-0083 refers].

*Residence class visas: permanent resident visas and resident visas*

12. The Bill provides for regulations prescribing the types of residence class visa holders that can purchase residential property through the *Commitment to Reside in New Zealand* pathway. Residence class visas include permanent resident visas and resident visas. It is important to note that both types of residence class visas allow people to remain in New Zealand indefinitely. In general, there is no differentiation with regard to access to government services and other rights and benefits between the two types of residence class visas - they are treated the same as citizens, for example they have the right to vote and serve on juries.

Permanent resident visas

13. Permanent resident visa holders who are 'ordinarily resident in New Zealand' are not an 'overseas person' and are therefore not subject to any Overseas Investment Act restrictions on purchasing residential property. A permanent resident would be 'ordinarily resident in New Zealand' if the individual:
  - a. holds a permanent resident visa;
  - b. has been residing in New Zealand for the immediately preceding 12 months; and

- c. has been present in New Zealand for 183 days or more in the immediately preceding 12 months.<sup>1</sup>

### Resident visas

14. Resident visas are usually granted as the first residence class visa to people who meet criteria specified in immigration instructions for specific visa categories. The overall objectives and numbers of resident visas that are granted are determined under the New Zealand Residence Programme (Residence Programme). The objective of the Residence Programme is to meet New Zealand's ongoing skill needs and enhance human capability, maximise social cohesion and family connections, and meet our humanitarian commitments. The current Residence Programme planning range is 85,000 to 95,000 people between July 2016 and June 2018.
15. Resident visa holders are entitled to stay in New Zealand indefinitely provided they are granted entry permission the first time they arrive on a resident visa and their visa is not cancelled. This type of visa typically has travel conditions attached allowing the visa holder to travel to New Zealand multiple times, and expires if the visa holder is outside New Zealand when the travel conditions expire, or leaves New Zealand after those conditions expire. All residence class visas provide a pathway to become a permanent resident.
16. Table One summarises categories of resident visas.

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<sup>1</sup> The requirements are designed to enable a person to be deemed 'ordinarily resident' even if they are absent from New Zealand for some of that period, provided they are present for 183 days or more in the immediately preceding 12 months.

## Table One: Summary of New Zealand Residence Programme Streams

\* The table below shows the approximate number of approved places for each stream. The number of places available to migrants under the Residence Programme is reviewed by Cabinet periodically. Currently, under the overall Residence Programme a maximum of 85,000 to 95,000 people are approved to be in New Zealand between July 2016 and June 2018. As is said elsewhere, about 80% of these people have historically moved on to permanent residency. We do not know how many currently purchase a home during their time here before permanent residency, but some do. Home buyers are most likely skilled/business or family sponsored.

<p><b>Skilled/Business Stream</b></p> <p><i>The purpose of the Skilled/Business stream is to help skilled and entrepreneurial migrants gain residence in New Zealand.</i></p> <p>approximately 50,500 to 57,500 places (from July 2016 to June 2018)</p>	<p><b>Skilled Migrant Category</b> A points based system, with points awarded for age, qualifications, work experience and skilled employment or offer of employment in New Zealand.</p> <p><b>Business Categories</b> Includes Investors and Entrepreneurs.</p> <p><b>Residence from Work categories</b> For people who have held a work to residence visa for two years under Talent (Arts, Culture and Sports), Talent (Accredited Employer), Long Term Skill Shortage List, or South Island Contribution.</p>
<p><b>Family Sponsored Stream</b></p> <p><i>The purpose of the Family Sponsored stream is to help reunite families in New Zealand by granting residence to the family members of New Zealand citizens and residents.</i></p> <p>approximately 27,000 to 29,000 places (from July 2016 to June 2018)</p>	<p><b>Family Category</b> Partnership, Dependent Child, Parent and Parent Retirement residence categories.</p>
<p><b>International/Humanitarian Stream</b></p> <p><i>The purpose of the International/Humanitarian stream is to fulfil New Zealand's obligations as a good international citizen. Included in this stream are United Nations mandated refugees who are approved under the annual Refugee Quota and asylum seekers who claim refugee status in New Zealand.</i></p> <p>approximately 7,500 to 8,500 places (from July 2016 to June 2018)</p>	<p><b>Samoa Quota Scheme</b> Applicants who are citizens of Samoa can be granted residence through the ballot provided they have a job in New Zealand.</p> <p><b>Refugees</b> Includes Refugee Quota, Refugee Family Support Category, and successful asylum claimants.</p> <p><b>Pacific Access Category</b> Applicants who are citizens of target countries can be granted residence through the ballot provided they have a job in New Zealand.</p> <p><b>Other</b> Includes victims of domestic violence, victims of people trafficking, and various other special policies for specific countries.</p>

## Comment

### *Proposals for regulations and for minor amendments to the Bill*

17. This section sets out proposed requirements for the *Commitment to Reside in New Zealand* pathway. The Bill outlines the core components for this pathway and provides for regulations to be made that would contain further detail.
18. Most of the proposals outlined in this paper relate to regulations that will be enabled by the Bill. Specific clauses of the Bill will also need to be amended for regulations to set effective requirements on residence class visa holders. Therefore, I intend for the proposals in this paper to be delivered through a combination of regulations and minor amendments to the Bill.

### *Objectives*

19. The proposed requirements under the *Commitment to Reside in New Zealand* pathway reflect the following objectives:
  - a. Policy effectiveness: The policy provides an effective mechanism for residence class visa holders with a commitment to reside in New Zealand to purchase a residential dwelling to live in, has the intended coverage and minimises any unintended consequences.
  - b. Minimising compliance and administration costs: The policy is supported by clear and simple rules that create certainty for applicants and the regulator ('bright lines') where possible. The preferred approach should minimise the cost of administering the regime for the regulator, and compliance costs for applicants. In addition it should facilitate easy and cost-effective enforcement. <sup>[3]</sup>

### *Overview of core elements for the Commitment to Reside in New Zealand pathway*

20. The Bill sets out the following core elements for the *Commitment to Reside in New Zealand* pathway:
  - a. The person must have an applicable residence class visa specified in regulations to be eligible for the *Commitment to Reside in New Zealand* pathway.
  - b. To be granted consent:
    - i. A person must meet requirements for showing commitment to reside in New Zealand that are set out in regulations.

- ii. Relevant Ministers must be satisfied the person would comply with mandatory conditions that (i) the property will be the person's main home in New Zealand, and (ii) the person would dispose of a property within 12 months if they cause a 'trigger event'.
  - c. Regulations can set out 'trigger events' (relevant to whether a person continues to be committed to residing in New Zealand). A trigger event can be resolved if certain requirements are met.
  - d. If a person causes a trigger event that is not resolved, the mandatory 'on-selling condition' requires them to dispose of a property within 12 months of the trigger event.
21. The proposed details for each of these core elements are set out below. Appendix One provides an overview of the proposals as a complete package.

*Element A: Applicable residence class visas*

22. I propose that all holders of residence class visas are eligible for the *Commitment to Reside in New Zealand* pathway. All residence class visas provide a pathway to become 'ordinarily resident in New Zealand' and therefore any one person with this type of visa is potentially committed to reside in New Zealand.
23. Because in some circumstances, a residence class visa holder may not be committed to residing in New Zealand, visa category alone is insufficient to determine an application. The *Commitment to Reside in New Zealand* test in Element B addresses this.
24. The proposed approach would meet the policy effectiveness objective by providing appropriate coverage for a person who is committed to residing in New Zealand to purchase a residential property. It would also minimise costs by providing a bright line test tied to visa category.

*Element B: Commitment to Reside in New Zealand test*

25. I propose that the requirement for showing commitment to reside in New Zealand should comprise a declaration<sup>2</sup> from a person that they intend to be present in New Zealand for at least 183 days in each 12-month period from the date of consent, unless they become ordinarily resident in New Zealand or a New Zealand citizen. The 183-day threshold is consistent with requirements a residence class visa holder would need to meet to progress to being 'ordinarily resident in New Zealand' as defined in the Bill. Broadly speaking, being present in New Zealand for 183 days in the past year is also one of the grounds for being deemed to be a tax resident.

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<sup>2</sup> It is intended that the Overseas Investment Office would prescribe the form of the declaration and it could be made part of the application process rather than a stand-alone statutory declaration. An applicant must make a statutory declaration verifying that the information contained in their application is true and correct, unless the OIO waives this requirement. Even when the OIO waives the statutory declaration requirement, making a false or misleading statement in the application would still be an offence under the Overseas Investment Act.



26. In contrast to temporary entry class visa holders, all residence class visa holders have an entitlement to indefinitely reside in New Zealand. Approximately 80 per cent of resident visa holders become permanent residents within five years.
27. There is a risk that some applicants would complete a declaration despite not having a legitimate commitment to reside in New Zealand. However, the requirements a person must meet to obtain a residence class visa require a form of commitment to New Zealand (as summarised in Table One above). Furthermore, as outlined below, I propose that a person who is absent from New Zealand for 183 days out of 12 months would cause a trigger event requiring them to dispose of a property within 12 months. This requirement and the government's monitoring of compliance would deter a person who did not intend to reside in New Zealand.
28. The proposed approach achieves both of the relevant policy objectives. First, it provides policy effectiveness by delivering on the intended coverage for entitlement to purchase a residential property. Second, it minimises compliance and administration costs.
29. An alternative approach would be to establish a more-intensive upfront test to attempt to identify residence class visa holders that are not committed to residing in New Zealand, and declining consent for them to purchase residential property. Later in this section, I have outlined an alternative option if a more-intensive upfront test is desired.

*Element C: Change in visa status triggering on-selling requirement*

30. Once a consent is issued, the Bill provides for 'trigger events' that trigger the 'on-selling requirement' to dispose of a residential property within 12 months. Trigger events are to be set out in regulations.
31. I propose that the first type of trigger event should be if a person's visa expires or is cancelled (or if one of a number of persons with control has their visa expire or cancelled). If a person no longer holds a residence class visa, they would not have an entitlement to stay in New Zealand indefinitely. Therefore, they would no longer have clear grounds to assert their commitment to reside in New Zealand.
32. I propose that a 'change in visa status' trigger is deemed to be resolved if the person regains a residence class visa. If they regain a resident class visa, they would once more be entitled to reside in New Zealand indefinitely.
33. If a person creates a trigger event that is not resolved, the 'on-selling condition' would require them to dispose of the property within 12 months of the trigger event. If they did not comply with the on-selling condition, they would trigger the normal penalty provisions, including potential liability to pay a penalty not exceeding the higher of \$300,000 or three times the quantifiable gain.

*Element D: Absence from New Zealand triggering on-selling requirement*

34. I propose that the second type of trigger event should be significant absence from New Zealand, which indicates a person is not committed to residing in New Zealand. Under this approach a trigger event would be deemed to occur if a person was absent from New Zealand for more than 183 days in a 12-month period. This would be assessed based on 12-month periods, with each period commencing from the date of consent or its anniversary. The deemed date of the trigger event would be the final date of the 12-month period.
35. Although a significant absence indicates a person may no longer be committed to residing in New Zealand, there are circumstances where a person may have been absent but are still committed to residing in New Zealand. Therefore, I propose two types of 'resolutions' for this trigger event:
- a. *Resolution by sufficient presence in New Zealand.* A trigger event would be resolved if a person meets the 183 day test prior within the 12 month disposal period. This provides a bright line test with certainty for a person who has been absent from New Zealand but is subsequently present in New Zealand for the majority of their time. It would also be efficient to administer, because it can be monitored through Immigration New Zealand data without the need for substantial discretionary judgement.
  - b. *Resolution where person demonstrates they have not severed their commitment to New Zealand.* This mechanism would provide a safety-valve, where the trigger event could create undesirable outcomes. A trigger event would be resolved if relevant Ministers were satisfied that, despite the absence, the person has not severed their commitment to reside in New Zealand (taking into account the reason for not meeting the 183 day test and whether they still intend to reside in New Zealand). This would be assessed by consideration of specified factors or tests, for example:
    - i. working overseas for the New Zealand Government or accompanying their partner working overseas for such purpose;
    - ii. working for an international organisation that the New Zealand Government belongs to, like the United Nations or accompanying their partner working overseas for such purpose;
    - iii. employed by a person or organisation based in New Zealand or accompanying their partner working overseas for such purpose;
    - iv. seeking medical treatment overseas;
    - v. exceptional family circumstances; and/or
    - vi. any other matter deemed satisfactory by relevant Ministers.

36. The proposed approach for both the 'change in visa status' and 'absence from New Zealand' trigger events meet the policy effectiveness objective. This is achieved by removing property ownership entitlements for persons who do not intend to reside in New Zealand and providing a discretionary mechanism to prevent unintended consequences. It also achieves the objective of minimising compliance and administration costs, by setting bright line tests that will apply for the majority of visa holders.

*Amendment to the Bill for defining trigger event resolutions*

37. At present, the Bill provides for regulations to define trigger events. However, the circumstances that constitute 'resolution' of a trigger event are prescribed in the Bill. This is potentially unworkable and prevents regulations from being effective. For example, the current Bill provisions would enable a person who has been absent from New Zealand to avoid the on-selling requirement to dispose of a property by submitting a new declaration that they intend to be in New Zealand for 183 days in the subsequent 12 months.
38. Because trigger events and resolutions operate as a package and need to be coordinated, I propose a change to the Bill to provide for regulations that define 'resolution' circumstances. The departmental report on the Bill could recommend this change, depending on consideration of submissions on the Bill.

*Application of the 'investor test' for Commitment to Reside in New Zealand pathway*

39. At present, the Bill requires applicants under the *Commitment to Reside in New Zealand* pathway to meet general 'investor test' criteria that apply for purchases of sensitive land, such as land on islands and non-urban land. The criteria include the person having relevant business acumen, the person having demonstrated financial commitment to the investment, and the person being of good character.
40. I propose amending the Bill so the general 'investor test' criteria will not apply to the *Commitment to Reside in New Zealand* pathway. The requirements specific to this pathway set an appropriate standard for applicants seeking to purchase residential property. Other tests, such as the requirement to have relevant business acumen are not relevant for purchases of residential property. General requirements for a person to obtain a residence class visa include demonstrating they are of good character.
41. The investor test would continue to apply if a transaction met other thresholds under the Act to require screening as sensitive land (eg, involving coastal land adjoining foreshore). In the event a purchase involved 'significant business assets', the relevant tests under the Act would also apply. There is the potential to streamline consent application processes by removing investor test requirements for all purchases under the *Commitment to Reside in New Zealand* pathway, even if that land is defined as sensitive for characteristics other than being residential. Officials will

investigate the potential for streamlining application processes as part of any future changes.

*Requirements when a person becomes 'ordinarily resident in New Zealand' or a New Zealand citizen*

42. At present, the Overseas Investment Act and regulations provide that a person does not require consent to purchase a property if they are 'ordinarily resident in New Zealand' or a New Zealand citizen. Likewise, a person does not require consent to purchase relationship property if, at the time of purchase, their spouse, civil union partner or de facto partner is ordinarily resident or a New Zealand citizen. I propose the following detailed design aspects for the *Commitment to Reside in New Zealand* pathway, to ensure it is consistent with the wider regime:
- a. Mandatory conditions of consent will not apply if a person's spouse, civil union partner or de facto partner meets the test of being 'ordinarily resident in New Zealand' or a New Zealand citizen, after the purchase. I intend that regulations will reduce the risk of potential avoidance where a person separates from their partner. This could include a requirement that if a person separates from their partner, they will be subject to mandatory conditions unless they themselves become ordinarily resident or a New Zealand citizen.
  - b. A person who becomes ordinarily resident in New Zealand or a New Zealand citizen after the purchase would not be capable of creating a trigger event. If a trigger event has occurred, becoming ordinarily resident in New Zealand or a New Zealand citizen would resolve the trigger event.
43. This may require changes to the Bill, as well as regulations.

*Alternative option: more-intensive upfront test to determine commitment to reside in New Zealand*

44. An alternative approach would be to have a more-intensive upfront test instead of the declaration. This would provide a further layer of assurance, in addition to trigger event mechanisms, through the ability to scrutinise an individual's circumstances that demonstrate a commitment to reside in New Zealand.
45. The more-intensive upfront test could be that relevant Ministers are satisfied a person intends to become ordinarily resident in New Zealand. There would be discretion for relevant Minister's to be satisfied of this commitment through the person providing a declaration, as well as discretion to request additional information on certain factors. If a person has been in New Zealand for the previous 183 days, relevant Ministers may choose to base the assessment on a declaration. However, if a person has not been sufficiently present in New Zealand previously, then Ministers may choose to seek additional information.
46. Examples of relevant factors for which additional information may be sought are:

- a. significant period of time spent in New Zealand;
  - b. tax residence status in New Zealand;
  - c. investment in New Zealand;
  - d. establishment of a business in New Zealand;
  - e. base established in New Zealand; or
  - f. other relevant factors.
47. Alternatively, instead of the more-intensive upfront test, a person could be assessed as committed to residing in New Zealand if they submit a declaration that they intend to become ordinarily resident in New Zealand. This approach is based on subsequent trigger event mechanisms being adequate to restrict residential property investment from overseas persons that are not committed to residing in New Zealand.
48. Determining commitment to reside in New Zealand through a declaration would also minimise compliance and administration costs, and provide certainty for residence class visa holders seeking to apply under this pathway.
49. There are pros and cons for both options. If monitoring of the regime indicated there were issues associated with property investment from people that did not intend to reside in New Zealand, it would be possible to amend *Commitment to Reside in New Zealand* criteria requirements at a later stage <sup>[3][5][6]</sup>

*Impact on residence class visa holders that do not spend significant time in New Zealand*

50. The Ministry of Business Innovation and Employment (MBIE) notes that proposed requirements for *Commitment to Reside in New Zealand*, create some inconsistency between entitlements to reside in New Zealand indefinitely and entitlements to purchase a residential property. For example, permanent resident visa holders are not required to be present in New Zealand to maintain their visa status and Investor 1 Resident Visas only require a visa holder to spend 44 days per year in New Zealand to gain a permanent resident visa. All residence class visa holders are eligible to vote and serve on juries on the same basis as New Zealand citizens. However, under these proposals a person on one of these visa types may be required to dispose of a residential property if they are absent from New Zealand for more than 183 days in a 12 month period.
51. This could work against the aims of the immigration system, making New Zealand a less attractive location for migration under certain visa categories. MBIE notes that there are some migrants who make an exceptional contribution to New Zealand both economically and socially, but who may not spend more than 183 days here each year. This is particularly the case for Investor and Global Impact Visa holders (who number no more than a few hundred migrants at any time). For example,

MBIE considers that investor migrants who have chosen to invest \$10m or more (many in New Zealand businesses and communities), have signalled a demonstrable commitment to New Zealand over the longer term. MBIE notes that the effect of the proposed regulations would be to prevent these migrants from purchasing a residence in New Zealand, which would significantly impact on New Zealand's ability to attract these high-impact migrants.

52. If it was desirable to avoid this impact, the *Commitment to Reside in New Zealand* test could be redesigned into a broader 'commitment to New Zealand' test, that was not exclusively tied to time spent in New Zealand or the time period that people are required to spend in New Zealand could be reduced and other factors considered.

#### *Next steps*

53. This paper seeks agreement to the proposals to enable minor amendments to the Bill and regulations to come into force alongside the Overseas Investment Amendment Bill. Once the Bill is passed, residence class visa holders will require consent to purchase residential property and relevant regulations are necessary to set out requirements for consent.
54. Where these proposals require changes to the Bill, I intend to enable officials to recommend those changes through the departmental report to the Finance and Expenditure Select Committee. This would be subject to consideration of submissions on the Bill.
55. I intend to report back to Cabinet Legislation Committee by March seeking approval of regulations to reflect these proposals.

#### **Consultation**

56. The following agencies were consulted: Land Information New Zealand; Ministry of Business, Innovation and Employment; Ministry of Justice; Ministry of Foreign Affairs and Trade. The Department of the Prime Minister and Cabinet (Policy Advisory Group) was informed.

#### **Financial Implications**

57. Implementing the overseas screening regime for the purchase of residential property will have financial implications. Cabinet was given a preliminary indication of costings when initial policy decisions were taken, however these were based on high level assumptions stemming from preliminary design decisions. Joint Ministers were delegated authority to approve funding to implement the overall policy for the first two years [CAB-17-MIN-0489]. <sup>[4]</sup>
58. The Minister for Land Information intends to bring a paper to Cabinet in late January/early February seeking decisions on funding the ongoing operation of the regime. <sup>[4]</sup>

59. The overall cost of implementing this regime will depend on the volume of applicants, and the complexity of assessing each application. Funding is intended to be based on cost recovery principles. The current estimate from Land Information New Zealand is that there will be 5,650 applications per year through the commitment to reside in New Zealand pathway and approximately an additional 700 through the new build and benefit pathways. Additional funding will also be needed for enforcement of the regime.
60. The proposals in this paper have been assessed against the criteria of minimising compliance and administration costs. Therefore increasing the complexity or degree of subjectivity required will also increase the overall resourcing required to administer the regime.

### **Human Rights**

61. The proposals contained in this Cabinet paper have implications concerning consistency with the New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993. Specifically, the proposals affect the right to freedom from discrimination on the grounds of national origin. The limitation on the freedom is connected to the objective of the Overseas Investment Amendment Bill and is proportionate.

### **Legislative Implications**

62. The proposals in this paper will require minor changes to the Overseas Investment Amendment Bill. The Bill was referred to the Finance and Expenditure Select Committee on 19 December 2017 and the committee report-back is scheduled for 20 February 2018.
63. The proposals in this paper will also require regulations under the Overseas Investment Act. The Parliamentary Counsel Office has been consulted.

### **Regulatory Impact Analysis**

64. Treasury Regulatory Quality Team's comments are based on revised expectations for Regulatory Impact Assessments covering 100 day priorities.
65. The Regulatory Impact Statement clearly sets out the implementation options to give effect to a pathway for New Zealand residents that are neither citizens nor "ordinarily resident in New Zealand" to purchase a single residential dwelling, and the reasoning for the selection of preferred options from among those. Within the constraints set out in the section "Key Limitations or Constraints on Analysis", the analysis of the likely impact of the proposed approach on the New Zealand housing market is more limited, and the range of options considered has been limited to residence class visas only. There is also a lack of consultation with private sector organisations or the general public to inform the development of this policy.

66. It will be important to continue to focus on effective ways of monitoring the impact of this policy on overall housing market outcomes, including understanding the unintended consequences and the extent and nature of the behavioural responses to this policy.

## **Publicity**

67. The proposals in this paper are dependent on the progress of the Overseas Investment Amendment Bill. The Bill was referred to the Finance and Expenditure Select Committee on 19 December 2017 and the committee report-back is scheduled for 20 February 2018.
68. Given the close connection with the Bill, I do not intend to have any standalone publicity for the proposals in this paper. I will consider publicity for the proposals in this paper as part of wider communications in relation to the Bill when it is reported back from select committee. I also seek agreement to proactively release this paper as part of communications related to the Bill.

## **Recommendations**

69. The Associate Minister of Finance, Hon David Parker, recommends that Cabinet:
1. **note** the Government's 100 day commitments include "Ban overseas buyers from buying existing homes";
  2. **note** the Overseas Investment Amendment Bill had its first reading on 19 December 2017 and has been referred to the Finance and Expenditure Select Committee;
  3. **note** that regulations would be required to come into force alongside the Bill to provide a pathway for residence class visa holders (who are not ordinarily resident in New Zealand) to purchase a residential property as their main home or residence in New Zealand;

### *Scope of Commitment to Reside in New Zealand Pathway*

4. **note** the Bill provides an entitlement for a person to purchase a residential property if they are the holder of a residence class visa specified in regulations, or a person with a nationality status specified in regulations, who meets the requirements for showing commitment to reside in New Zealand that are set out in regulations;
5. **note** under the Bill, temporary entry class visa holders are not eligible to purchase residential property through the commitment to reside in New Zealand pathway;
6. **agree** the commitment to reside in New Zealand requirements set out in this paper be delivered through amendments to the Overseas Investment Amendment Bill and through regulations;



*Policy: Eligible residence class visa holders and Commitment to Reside in New Zealand test*

7. **agree** all holders of residence class visas are eligible for the *Commitment to Reside in New Zealand* pathway to purchase a residential property as their main home or residence in New Zealand;
8. **EITHER** [preferred option]
  - 8.1 **agree** a person is deemed to have shown commitment to reside in New Zealand if they provide a declaration that they intend to be present in New Zealand for at least 183 days in each 12-month period from the date of consent, unless they become ordinarily resident in New Zealand or a New Zealand citizen;

**OR** [alternative option]

  - 8.2 **agree** a more-intensive upfront test that a person is deemed to have shown commitment to reside in New Zealand if relevant Ministers are satisfied a person intends to reside in New Zealand;
  - 8.3 **authorise** the Associate Minister of Finance and Minister for Land Information to determine factors to be set out in regulations for relevant Ministers to be satisfied a person intends to reside in New Zealand;
9. **note** the Bill provides for regulations to define trigger events that would require a person to dispose of a residential property within 12 months unless a trigger event is resolved;

*Policy: Trigger events and resolutions*

10. **agree** that a trigger event occurs if a person's visa expires or is cancelled;
11. **agree** that a change in visa status trigger event is resolved if a person regains a residence class visa;
12. **agree** that a trigger event occurs if a person was absent from New Zealand for more than 183 days in a 12-month period, with each period commencing from the date of consent or its anniversary;
  - 12.1 **agree** that an absence from New Zealand trigger event is resolved if a person meets the 183 day test within the 12-month disposal period;
  - 12.2 **agree** that an absence from New Zealand trigger event is resolved if relevant Ministers are satisfied that despite the absence, the person has not severed their commitment to reside in New Zealand;

12.3 **authorise** the Associate Minister of Finance and Minister for Land Information to determine factors or tests to be set out in regulations for relevant Ministers to be satisfied that a person has not severed their commitment to reside in New Zealand;

13. **agree** that becoming ordinarily resident in New Zealand or a New Zealand citizen would mean a person cannot create a trigger event and any pre-existing trigger events are resolved;
14. **agree** that mandatory conditions of consent will generally not apply if a person's spouse, civil union partner or de facto partner becomes ordinarily resident in New Zealand or a New Zealand citizen;

*Policy: Application of the 'investor test'*

15. **agree** that a person seeking consent under the *Commitment to Reside in New Zealand* pathway does not have to meet existing investor test criteria under section 16 of the Overseas Investment Act;

*Legal*

16. **authorise** the Associate Minister of Finance, Hon David Parker, to make decisions about further details for, and minor and technical changes to, commitment to reside in New Zealand requirements;
17. **invite** the Associate Minister of Finance, Hon David Parker, to issue drafting instructions to the Parliamentary Counsel Office;

*Financial Implications*

18. **note** that <sup>[4]</sup>

[4]

20. **invite** the Minister for Land Information to seek approval from Cabinet for funding the operation of the regime;
21. **note** that increasing the complexity of the application and assessment process will have a direct impact on the resources and costs required to administer the regime;

*Next steps*

22. **invite** the Associate Minister of Finance, Hon David Parker, to present draft regulations for the commitment to reside in New Zealand pathway to Cabinet Legislation Committee;
23. **authorise** the proactive release of this Cabinet paper and the Regulatory Impact Statement.

Authorised for lodgement

Hon David Parker

Associate Minister of Finance

## Appendix One: Summary of proposed commitment to New Zealand requirement

### Requirements for consent

