

The Treasury

Te Arai Development Advice Release

Release Document

July 2018

<https://treasury.govt.nz/publications/information-release/residential-land-changes-overseas-investment-amendment-bill>

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Cabinet

Minute of Decision

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Overseas Investment Amendment Bill: Residential Land

Portfolio **Associate Finance (Hon David Parker)**

On 3 April 2018, following reference from the Cabinet Economic Development Committee, Cabinet:

Background

- 1 **noted** that on 13 December 2018, the Cabinet Business Committee approved the Overseas Investment Amendment Bill (the Bill) for introduction [CBC-17-MIN-0083];
- 2 **noted** that:
 - 2.1 the Finance and Expenditure Select Committee is currently considering the Bill, and is scheduled to report back to the House on 31 May 2018;
 - 2.2 written submissions on the Bill ended on 16 February 2018;
- 3 **noted** that based on the submissions made on the Bill and further consideration by officials, a number of changes to the Bill are proposed;

Proposed amendments

Who requires consent to buy a house to live

- 4 **agreed** to expand the Bill's definition of "ordinarily resident in New Zealand" to also include all resident visa holders who have resided in New Zealand for the past 12 months and have been present in New Zealand for at least 183 days in the past 12 months;

The operation of the new builds test for large apartment developments

- 5 **agreed** to allow developers of multi-storied apartment buildings of 20 new units or more to apply for consent to sell a proportion of those units to overseas buyers without the requirement that the buyer on-sells (on the basis that the overseas buyer cannot occupy the unit). The proportion would initially be set at 60 percent, with flexibility to adjust this through regulations between zero and 100 percent;

Treatment of residential and shared equity housing developments

- 6 **agreed** to allow large investors and property management firms in the business of providing rental housing or housing through shared equity arrangements to continue to own dwellings developed under the new builds test provided that they develop 20 dwellings or more, and rent out or maintain them as a shared equity housing;

Tax residency

- 7 **agreed** to amend the definition of “ordinarily resident in New Zealand” in the Bill to introduce the 183 day rule for tax residency as an additional element of the test to be met in order for a non-New Zealand citizen to be excluded from the requirement to obtain consent to purchase residential land;

Residential tenancies

- 8 **agreed** to clarify that a residential tenancy of five years or more (including rights of renewal) be covered by the Overseas Investment Act (the Act);
- 9 **agreed** to clarify that a periodic lease (including a residential tenancy) with an initial term of less than five years (regardless of actual duration) be not covered by the Act;

Treatment of commercial uses of residential land

- 10 **agreed** to amend the Bill to introduce a new simplified screening pathway for a business to acquire residential land for a non-residential purpose or a residential purpose that is incidental to a core business purpose;
- 11 **agreed** that the proposed new simplified screening pathway should contain safeguards to prevent exploitation, including:
- 11.1 the investor test;¹
 - 11.2 clear tests for demonstrating the residential land would be used for either:
 - 11.2.1 non-residential use; or
 - 11.2.2 residential use incidental to core business;
 - 11.3 the ability of the Overseas Investment Office to impose conditions on a consent to ensure mandatory outcomes are achieved within a specified period;

Hotels developed under a lease-back model

- 12 **agreed** to provide an exemption in the Bill allowing hotel developers and overseas investors to enter into lease-back arrangements without either the developer or overseas investor requiring Overseas Investment Office consent;
- 13 **agreed** that to be eligible for the exemption, the following criteria must be met:
- 13.1 the lease-back arrangements are contractually agreed at the point of sale;
 - 13.2 the overseas investor cannot reside in the room, or reserve the room for their own interest, for more than 30 days per annum;
 - 13.3 the hotel development has 20 or more units; and
 - 13.4 the room must be used for the general purposes of operating the hotel;

¹ Set out in section 16(1) of the Act. It requires an assessment of the prospective overseas investor’s business experience and acumen, financial commitment to the investment, good character and eligibility for visas and entry permission under the Immigration Act.

Treatment of network utilities businesses

- 14 **agreed** to amend the Bill to provide a new exemption from Overseas Investment Office consent requirements for telecommunications, electricity distribution, gas distribution and transmission network operators acquiring residential (but not otherwise sensitive) land for the purpose of their business;

Exemptions

- 15 **agreed** that a transitional exemption be granted in the Bill to allow overseas persons to buy residential (but not otherwise sensitive) land where required to enable compliance with pre-existing Resource Management Act 1991 consent requirements;
- 16 **agreed** to extend the Māori freehold land exemption to all sensitive land, and to include this in the Bill rather than regulations;
- 17 **noted** that the Bill would significantly impact a development being led by Te Uri o Hau and Ngāti Manuhiri (the Te Arai property development) that has already been through planning and community consultation;
- 18 **agreed** that an exemption be provided in the Bill in relation to the Te Arai property development in Mangawhai for a period of 15 years;
- 19 **agreed** to clarify the breadth of the power to make class and individual exemptions by including legislative guidance in the regulation-making power on the sorts of exemptions that could be granted and reasons for which exemptions could be granted;
- 20 **agreed** to amend the Act so that an overseas person who relies on an exemption in the regulations to acquire sensitive assets previously subject to an Overseas Investment Office consent is treated as a “consent holder”;

Enforcement powers

- 21 **agreed** to remove existing requirements in the Bill for conveyancers to certify to the best of their knowledge that a purchaser of residential land will not contravene the Overseas Investment Act 2005 by giving effect to a transaction;
- 22 **agreed** to require purchasers of residential land to provide a declaration that they (and any person upon whose behalf they are purchasing property) comply with the Act;
- 23 **agreed** that before a conveyancing services provider completes the conveyancing for a person acquiring an interest in residential land:
- 23.1 the provider must obtain a declaration from the purchaser that they (and any person upon whose behalf they are purchasing property) comply with the Act; and
- 23.2 the provider’s reliance on the declaration must be reasonable;

Commencement and transitional provisions

- 24 **agreed** to amend the Bill to specify that:
- 24.1 new regulation-making powers, changes to Ministerial directive letter provisions, and other provisions necessary to prepare for full commencement of the regime come into force immediately after Royal Assent; and

- 24.2 the commencement date for other provisions be set at no later than 60 days after Royal Assent, with the actual commencement date set by Order in Council (so, if necessary, that date can be brought forward);

Commitment to reside in New Zealand pathway

- 25 **agreed** that holders of Australian permanent resident visas that are not ordinarily resident in New Zealand are eligible for the Commitment to Reside in New Zealand pathway to purchase residential land;
- 26 **agreed** that an overseas person is exempt from the Act's screening requirements in respect of acquiring or dividing relationship property if their spouse, civil union partner or de facto partner receives consent under the Commitment to Reside in New Zealand pathway;
- 27 **agreed** that relevant Ministers have the ability to grant pre-approval to an individual consent holder that an absence from New Zealand in specific circumstances will not trigger requirements for a consent holder to on-sell their interest in residential land;

Wahi Tapu as sensitive land

- 28 **agreed** to amend Table 2 of Schedule 1 of the Act to broaden the definition of "sensitive land" to include land over 0.4 ha that adjoins land over 0.4 ha set apart as Māori reservation under section 338 of Te Ture Whenua Maori Act 1993 because it is a Wahi Tapu (within the meaning of that Act);

Financial implications

- 29 **noted** that financial implications will arise through the proposed changes to the regime, and that the Overseas Investment Office is assessing costs associated with the changes outlined in the paper under CAB-18-SUB-0118, including appropriate fees;
- 30 **noted** that on 31 October 2017, Cabinet authorised a group of Ministers comprising the Deputy Prime Minister, Minister of Finance, Minister for Housing and Urban Development, Associate Minister of Finance (Hon David Parker) and Minister for Land Information (Joint Ministers) to take decisions around design, implementation and associated charges associated with the government's 100 day commitment to ban overseas speculators from buying existing homes [CAB-17-MIN-0489];
- 31 **noted** that Joint Ministers are currently considering advice from the Overseas Investment Office on the financial and implementation implications of the Bill, as introduced;
- 32 **agreed** that the financial and implementation implications associated with the proposed amendments to the Bill covered in the paper under CAB-18-SUB-0118, be considered by Joint Ministers;
- 33 **noted** that the Overseas Investment Office will provide advice to Joint Ministers on the financial and implementation implications associated with the above proposals, as well as recently agreed changes to forestry rights subject to Overseas Investment Act screening and any changes to non-forestry rights, by mid-June 2018 once the Select Committee has reported back on the Bill;
- 34 **noted** that preliminary analysis indicates that the financial implications of the Bill, including the above proposals, can be managed within the funding set aside in HYEPU to fund the implementation of the non-residents ban as part of the government's 100-Day Plan;

Next steps

- 35 **authorised** the Associate Minister of Finance (Hon David Parker) to take decisions on minor policy changes to the Bill to be made through the Treasury's Departmental Report;
- 36 **noted** that following Cabinet agreement, changes will be incorporated into the Departmental Report on the Bill, which is being prepared by the Treasury;
- 37 **noted** that the Finance and Expenditure Select Committee is currently considering the Supplementary Order Paper to the Overseas Investment Amendment Bill on forestry rights and profits à prendre.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

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