

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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Treasury Report: Treasury Report: Overseas Investment Amendment Bill - Residential land - Cabinet Paper for Lodgement

Date:	21 March 2018	Report No:	T2018/757
		File Number:	IM-5-1-1

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	Note the contents of this report	22 March 2018
Associate Minister of Finance (Hon David Parker)	Sign the attached Cabinet Paper Lodge this with the Cabinet Office Agree to the recommendations in this report	22 March 2018

Contact for Telephone Discussion (if required)

Name	Position	Telephone		1st Contact
Robbie Taylor	Senior Analyst	9(2)(k) (wk)	N/A (mob)	✓
Thomas Parry	Team Leader, Overseas Investment	9(2)(k) (wk)	9(2)(k) (mob)	

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.

Lodge the attached Cabinet Paper

Note any feedback on the quality of the report

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Enclosure: Yes (attached)

Treasury Report: Treasury Report: Overseas Investment Amendment Bill - Residential land - Cabinet Paper for Lodgement

Purpose of Report

1. The purpose of this report is to provide you with a final version of the Cabinet paper 'Overseas Investment Amendment Bill – Residential land' to sign for lodgement on Thursday 22 March, to be considered by DEV committee on Wednesday 28 March. The paper seeks policy decisions to inform the departmental report for the Overseas Investment Amendment Bill.

Changes to the Paper

2. You were provided with a consultation draft of the Cabinet paper on 15 March 2018 (T2018/664). This final version is largely consistent with that draft, but with some material shifts to particular detailed design features. These changes give effect to additional advice we have provided to you earlier this week:
 - Introducing tax residency as an additional limb to the definition of “ordinarily resident in New Zealand” in the Bill, which would need to be satisfied in addition to the existing tests [T2018/664 refers]
 - Requiring that overseas buyers of units in large apartment developments who are using the proposed new option to buy units off-the-plans without the requirement to on-sell are subject to the requirement to apply for consent under the investor test [T2018/664 refers].
 - Providing an exemption to the regime to allow hotel developers to enter into lease-back arrangements with overseas investors without requiring OIO consent, if:
 - The lease-back arrangements are contractually agreed at the point of sale.
 - The overseas investor cannot reside in the room, or reserve the room for their own interests, for more than 30 days per annum.
 - The hotel development has 50 or more units.
 - The room must be used for the general purposes of operating the hotel. [T2018/709 refers]
 - Clarifying that an overseas person entering into a lease of residential land (including a residential tenancy) of three years or more will require consent (T2018/709)
 - Requiring that OIA screening will apply to leases (including residential tenancies) where a fixed term (or term including rights of renewal) exceeds three years, but not to shorter periodic leases that end up being renewed for a cumulative period of more than three years. [T2018/709 refers]

‘Te Arai development’ by Te Uri o Hau, Ngati Manuhiri

3. In our advice to you on Monday 19 March we noted the in particular the situation of Te Uri o Hau, Ngati Manuhiri and Darby Partners, who raised concerns through the select committee about the impact of the Bill on their plans for the Te Arai property developments in Mangawhai, North of Auckland (T2018/709).
4. Our recommendation in the report was that there should not be any exemption from the Overseas Investment Amendment Bill for land acquired through a Treaty settlement.
5. Through further discussions with Minister Parker’s office we understand that the Cabinet paper should be drafted to provide an exception for the Te Arai property developments due to the specific circumstances around recent historical events relating to the land and the extent of consultation and progress that has been made on this particular proposition. Specifically, the exemption should have the following design features:
 - The exemption will be in the schedule of transitional provisions in the Bill
 - Using the transitional provisions this would effectively limit the exemption in law to this group and this particular parcel of land. We note that this approach would make the exemption publicly visible during the remaining stages of the legislative process and others may still seek similar treatment. However, including the provision in transitional provisions is consistent with the policy intent of recognising the specific circumstances of this case, rather than a broader policy objective, for example, of alleviating the impact of the regime on Treaty redress.
 - The exemption will be limited to a period of 15 years
 - This approach would allow the iwi to continue with their current transaction, and would also allow them to transfer this exemption to a new owner within the 15 year period. In effect this approach will provide the iwi with certainty that their transaction can go ahead.
 - We note that by not connecting the exemption to only the current owners, future owners will be able to benefit from this designation. However the arrangement does give the iwi additional options in how they might want to manage this asset in the medium term, including divesting themselves of the land. Having a finite term also avoids creating a permanent special zone.

Other issues with ‘Te Arai development’ exemption

6. The main risk to be aware of with this exemption is that similar treatment is likely to be sought by other landowners, Māori and non-Māori, who may have well progressed plans for developments. For example, Triple Star Management, a property development and construction company in Quenstown, submitted that its clients have cancelled three major projects since the Government announced the overseas buyers of residential land policy.
7. Te Puni Kōkiri (TPK) has identified a particular risk that providing this exemption may be perceived as preferential treatment by other iwi. To manage this risk, it will be important that you are clear about this special circumstances relating to this development. TPK has not identified other specific developments that are similar, but considers a small number of iwi may find the Bill to be a barrier to some of their development plans.

8. We also note that by providing this exception we change the balance of incentives for the current land owners in favour of increasing the number of houses from the 106 currently proposed, increasing the housing supply available to foreign buyers. This may draw skills and resources away from other housing development underway, impacting on the pace and/or price of those other developments.
9. An option for addressing this would be to put a cap on the number of housing sites that can be created as part of this development, for example, at 200.
10. As this is a detailed design issue officials can explore this issue further and recommend such a cap via the departmental report if this is considered appropriate.

Agency comments

11. We have had limited time to consult with agencies on some of the proposals contained in the Cabinet Paper. As a result we have updated the consultation section of the Cabinet Paper to include the following paragraph:

“...many of the proposals in this paper have been developed under significant time pressure, with limited opportunities to fully consult on new proposals, including to obtain legal advice. As a result, there may be unforeseen policy and legal risks associated with some of these proposals.”

Next Steps

12. If you are satisfied with the attached final version of the Cabinet paper then it should be lodged on Thursday 22 March

Recommended Action

We recommend that you:

- a **note** on Thursday 15 March you were provided with a draft Cabinet paper “Overseas Investment Amendment Bill – Residential land” for consultation (T2018/664 refers)
 - b **note** the attached final version of the Cabinet paper “Overseas Investment Amendment Bill – Residential land” is broadly consistent with the consultation draft but gives effect to further policy decisions you made through Treasury reports provided over the last week (T2018/709, T2018/664 refer)
 - c **note** that, further to subsequent discussions with Minister Parker’s office, this report seeks confirmation of the treatment of Treaty settlement redress and the Te Arai property development in Mangawhai, to be included in the Cabinet paper
 - d **agree** that the Cabinet paper includes an exemption to be provided in the Overseas Investment Amendment Bill in relation to the Te Arai property development in Mangawhai for a period of 15 years from commencement of the Bill
- Agree/disagree*
Hon Parker
- e **note** the main known risk with the proposal in recommendation d is the precedent effect that this proposal may have (i.e. that other landowners may seek similar treatment).

- f **note** we have had limited time to consult with agencies on some of the new proposals contained in the Cabinet Paper and have updated the consultation section to reflect that there may be unforeseen risks as a result.
- g **sign** the attached Cabinet Paper and lodge it with the Cabinet Office by 10:00am on Thursday 22 March 2018.

Thomas Parry
Team Leader, Overseas Investment

Hon David Parker
Associate Minister of Finance