

The Treasury

Amending the Overseas Investment Act 2005 to Support Investment in Build-to-Rent Information Release

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[36] 9(2)(h) - to maintain legal professional privilege

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Office of the Associate Minister of Finance

Cabinet

Amending the Overseas Investment Act 2005 to Support Investment in Build-to-Rent

Proposal

- 1 This paper seeks agreement to amend the Overseas Investment Act 2005 (the Act) to better enable build-to-rent (BTR) housing, and approval to issue a Ministerial Directive Letter to the regulator, Land Information New Zealand – Toitū te Whenua (LINZ).
- 2 Consistent with paragraph 2.39 of the Cabinet Manual, I submit this paper with the knowledge and approval of the Minister of Finance.

Relation to government priorities

- 3 This paper delivers on the Government's 100-day plan to take policy decisions to amend the Act to make it easier for BTR housing to be developed in New Zealand [CAB-23-MIN-0468].
- 4 I have developed this paper in accordance with the Coalition Agreement between the National Party and New Zealand First not to repeal the foreign buyers residential property ban.

Executive Summary

- 5 The Act was amended in 2018 to classify residential land as a “sensitive asset”, imposing broad screening requirements and restrictions on foreign ownership of residential land (“the foreign buyers ban”). This generally prohibits overseas investment in residential land and housing in New Zealand unless the investor is eligible to live here, or the land will be used for a supported purpose, such as to run a business or add housing supply.
- 6 While the Act attempts to provide a streamlined pathway to overseas investment that supports housing supply and other productive uses of residential land, it does so poorly. The Act requires investors to obtain a consent from LINZ through a process that introduces potential delays, added cost, and uncertainty for development.
- 7 These barriers are particularly acute for the business model behind BTR developments as they are held (and traded) as one asset, rather than being on-sold as individual dwellings. BTR investors need confidence in their ability to liquidate the investment through on-sale of the asset as part of an exit strategy.

- 8 Such confidence rests on the ability to attract sufficient capital. The scarcity of domestic capital and the Act's high barrier to foreign investment in residential housing provides insufficient assurance in the liquidity of BTR assets, hindering the sector's growth.
- 9 I have considered three main ways we could make it easier to support overseas investment in BTR developments:
- 9.1 **Option 1:** A new streamlined consent pathway for the purchase of existing BTR assets. This would mean investors would have access to a consent process designed to support BTR investments.
- 9.2 **Option 2:** An exemption for the development of new and purchase of existing BTR assets. This would allow overseas investors to buy and sell BTR developments without needing to apply for a residential land consent under the Act, and
- 9.3 **Option 3:** As for Option 2, but:
- 9.3.1 also enabling the development and purchase of other types of large-scale housing developments, and
- 9.3.2 expanding the exemption to cover investment in other types of assets on residential land that the Act currently aims to enable via bespoke 'pathways' which include investments that result in new dwellings or are used for business purposes (the "increased housing", "incidental-residential use" and "non-residential use tests").
- 10 On balance, I recommend Option 3.
- 11 This option has been designed to be consistent with the intent of the existing carve outs to the foreign buyers ban but provide the additional certainty that potential BTR developers and investors require.
- 12 The exemptions under Option 3 are targeted to investments that benefit New Zealand and will be subject to certain conditions to ensure consistency with the foreign buyers ban. Overseas investors would continue to be prohibited from developing housing to reside in themselves (including holiday homes) or becoming small-scale speculative landlords.
- 13 To ensure consistency with the foreign buyer ban, investors that rely on an exemption must comply with conditions to avoid speculation and land banking, including:
- 13.1 Investors cannot purchase residential land unless building additional dwellings or (in general terms) operating a business or purchasing a large scale development.
- 13.2 Investors who build fewer than 20 dwellings must on-sell them within 1 year of completion (unless running a long-term accommodation facility such as a retirement village or student accommodation)

- 13.3 Investors must comply with the terms of the exemption as soon as practicable, with guidelines and/or regulations defining what is reasonable for the range of different development types.
- 13.4 Investors must notify the regulator of their reliance on their exemption and pay a fee that funds monitoring activities to ensure compliance with their obligations under the exemption as set out above.
- 14 Option 3 has several advantages over a BTR-exclusive exemption (Option 2) because it:
 - 14.1 would have the greatest potential impact on housing supply by reducing restrictions on a wider range of business models,
 - 14.2 provides greater regulatory coherence and will be easier to communicate to investors,
 - 14.3 reduces the potential for distortion of the housing market and inefficient land use, and
 - 14.4 limits opportunities for (intentional and unintentional) breaches of the Act.
- 15 Legislative change is required, which I intend to be in force before the end of 2024. In the interim, I propose issuing a Ministerial Directive Letter to send a strong signal that New Zealand is open to overseas investment that increases housing supply. This letter will be issued alongside an announcement of these decisions, which I will develop with the office of the Prime Minister.

Background

Growing the build-to-rent sector could increase housing supply...

- 16 Build-to-rent refers to privately owned rental housing of 20 dwellings or more. These are typically financed by institutional investors (such as pension funds), purpose-built, and developed for long-term management.
- 17 BTR developments have a different business model to other large-scale housing developments, which are primarily built for sale as individual dwellings. BTR developments are intended to be held over the long-term as one asset, providing more stable, low-yield returns which can be attractive to investors seeking patient capital.
- 18 Growing the BTR sector represents an opportunity to increase the supply of secure, affordable and quality rental developments in New Zealand, placing downward pressure on rents. The sector is currently small in New Zealand with only 22 registered developments.
- 19 Domestic developers are interested in expanding the BTR sector. Reflecting broader economic challenges such as limited available capital and experience

with BTR models in New Zealand, developers seek foreign capital to finance such developments.

...but foreign investment into the sector is regulated...

- 20 Inflows of foreign capital are regulated by the Act. The 2018 foreign buyers ban amended the Act to classify residential land as a “sensitive asset”, imposing broad screening requirements and restrictions on foreign ownership of residential land. The intent of the foreign buyers ban is to restrict foreign ownership unless it provides benefit to New Zealand, to “lead to a housing market with prices shaped by New Zealand-based buyers”.¹
- 21 As a result, foreigners are broadly restricted from purchasing residential land in New Zealand unless they intend to:
- 21.1 live in the home as their primary residence, or
 - 21.2 build additional housing supply, or
 - 21.3 operate a non-residential business or use housing incidentally to a business purpose, or
 - 21.4 provide another benefit to New Zealand as determined by Ministers.
- 22 In these cases, foreigners are required to apply for a consent from the regulator, LINZ, through one of the pathways or “tests” provided within the Act.
- 23 The Act attempts to expressly enable overseas investment that increases the supply of residential housing or long-term accommodation facilities (‘LTAs, which include retirement villages and student hostels) through “the increased housing test”, a bespoke consent pathway for new development. This test is relatively bright line (requirements explained further below), but still involves legal complexity and imposes a range of administrative and regulatory costs on investors.²
- 24 Most importantly, this pathway does not facilitate purchases of established developments – to purchase an existing asset, overseas investors must go through a more onerous consent pathway (the benefit to New Zealand test), which involves significant Ministerial discretion and uncertainty over the potential outcome of a consent application. This restricts divestment opportunities for developers, discouraging them from investing.

...which creates two main problems for BTR developments

- 25 Stakeholders have raised a range of concerns about the Act’s treatment of BTR assets.

¹ Bill aims to make houses more affordable for New Zealanders - New Zealand Parliament (www.parliament.nz)

² The application fee is \$35,000 for a new application under the increased housing test, which does not include legal and other costs investors may incur in the process.

- 25.1 For new BTR developments: despite the intent to provide a streamlined ‘increased housing test’ for new BTR investments, there are technical issues that create legal ambiguity and inconsistencies with other asset types (such as a perception that it is easier to invest in LTAs), and
 - 25.2 Substantial issues for divesting existing BTR developments: the BTR investment model requires confidence in the ability to liquidate the asset as part of any exit strategy or if the investor becomes fiscally distressed. Under current settings, any investor in BTR must either:
 - 25.2.1 sell to a domestic investor – New Zealand’s low level of domestic capital presents a barrier to this (and artificially reduces the price), or
 - 25.2.2 sell to an overseas investor – in which case the Act’s more onerous benefit to New Zealand test applies. Investors report they are not confident they would obtain consent.
- 26 These issues pose substantial barriers to overseas investment in the BTR sector. I note New Zealand’s broader housing and infrastructure challenges (such as resource management reform and progression of fast-track consenting) also play a role, which we have committed to addressing.

Making it easier to develop BTR housing in New Zealand

- 27 I have considered three main ways we could make it easier to support overseas investment in BTR developments:
- 27.1 **Option 1:** A new streamlined consent pathway for the purchase of existing BTR assets. This would mean investors would have access to a consent process designed to support BTR investments.
 - 27.2 **Option 2:** An exemption for the development of new and purchase of existing BTR assets. This would allow overseas investors to buy and sell BTR developments without needing to apply for a residential land consent under the Act, and
 - 27.3 **Option 3:** As for Option 2, but:
 - 27.3.1 also enabling the development and purchase of other types of large-scale housing developments, and
 - 27.3.2 expanding the exemption to cover investment in other types of assets on residential land that the Act currently aims to enable via bespoke ‘pathways’ which include investments that result in new dwellings or are used for business purposes (the “increased housing”, “incidental-residential use” and “non-residential use tests”).
- 28 I also considered minor technical amendments to clarify existing consent pathways within the Act. I dismissed this option as it would be insufficient to address the key barriers to BTR investment posed by the Act.

- 29 In developing these options, I have sought to balance the following objectives:
- 29.1 **Policy effectiveness:** the option is effective in reducing investor uncertainty in BTR development, reduces application costs for investors, and supports desired housing market outcomes.
 - 29.2 **Regulatory coherence:** the policy minimises complexity and inconsistencies within the Act to ensure attractiveness to investors and avoid market distortions.
 - 29.3 **Risk management / implementation:** the policy minimises the risk of avoidance and unintended consequences and is simple for the regulator to implement and administer.
- 30 I have also ensured these options are consistent with the foreign buyers ban. The options, including my preferred option, primarily streamline existing processes in place, with some additional changes necessary to support the BTR sector.
- 31 The options retain the core restrictive features of the ban – that is, restrictions on foreigners who wish to buy existing, small-scale housing stock, or want to purchase land to reside in New Zealand (unless they are eligible to live here). The options also incorporate a number of features designed to reinforce the intent of the current restrictions.

An exemption for building or acquiring large-scale residential development

- 32 Based on these factors, I recommend we provide an exemption rather than design a new consent pathway as it provides greater certainty to investors (either Option 2 or 3).
- 33 A new consent pathway (Option 1) would establish a consent process that requires investors to apply to the regulator if they wished to purchase land with intention of building a new BTR development or purchasing an existing one. This would incur costs and potential delays and create uncertainty as a result of discretion in the decision-making process.
- 34 In contrast, an exemption will reduce regulatory burden by minimising investors' interactions with the Act and the regulator.
- 35 I propose a broad exemption (Option 3) that enables the development and purchase of large-scale housing developments generally. Large-scale housing would include all developments with over 20 dwellings and comprise a number of subsectors including BTR, long-term accommodation including retirement villages and student accommodation, and apartments for sale.
- 36 As outlined below, this broader exemption better meets each of the objectives.

Exempting all new housing, incidental and non-residential uses, while upholding the intent of the foreign buyers ban

- 37 I also recommend expanding the exemption to cover investment in other types of assets on residential land that the Act currently aims to enable via bespoke pathways (the “increased housing”, “incidental residential use” and “non-residential use” tests), by converting these pathways to exemptions.
- 38 This would mean, in addition to exempting purchases of existing large-scale housing assets, investments in residential land would be exempt from the Act where overseas investors acquire land with intent to:
- 38.1 develop new housing (including increasing housing by a single additional dwelling)
 - 38.2 use land for a non-residential purpose (such as supermarkets) or
 - 38.3 use land for a residential purpose that is incidental to another business (such as for staff accommodation).
- 39 The above transactions are already enabled under current settings through consent pathways.
- 40 The increased housing test allows investors to acquire residential land if they will:
- 40.1 increase the number of residential dwellings constructed on the residential land (including an increase from 0),
 - 40.2 construct or increase the number of dwellings in a long-term accommodation facility (which includes retirement villages, rest homes, and student hostels), or
 - 40.3 commence development works on the land to support the above.
- 41 The “non-residential use test” currently enables investors to obtain a consent if they are acquiring residential land for a non-residential purpose (such as the operation of a supermarket). This applies to both new and existing assets, and primarily only requires overseas investors to continue to use the land for a non-residential purpose.
- 42 The “incidental residential use test” similarly enables purchases of residential land for residential purposes, where this use is incidental to business operations (such as for staff accommodation).
- 43 Converting the increased housing test to an exemption means investment in new housing (including small-scale developments) would not require a consent. However, for developments under 20 dwellings, the exemption will be conditional on the investor on-selling dwellings within one year (unless they are for the purpose of operating a long-term accommodation facility). This means overseas investors could not use the exemption to become small-

scale landlords in New Zealand. Further conditions will apply as set out later in this paper.

- 44 To maintain consistency with the intent of the foreign buyers ban, purchases of housing for overseas investors to live in would not be exempt under the Act. To purchase land for this purpose, overseas investors would still need to apply for a consent through the existing “one-home-to-live in” pathway. A summary of how this proposal treats different asset types, in comparison to the status quo, is provided in Annex Two.

Conditions of the exemptions

- 45 The exemptions will be subject to additional conditions to ensure productive use of the residential land and to maintain consistency with the foreign buyers ban. I recommend that:
- 45.1 the investor cannot occupy the residential land (unless using it incidentally to a business purpose) – this condition is to ensure consistency with the intent of the Act’s residential land restrictions,
 - 45.2 the investor must utilise the residential land for one of the exempt purposes ‘as soon as reasonably practicable’,
 - 45.3 if it is no longer viable for the investor to utilise the residential land for an exempt purpose, they must divest their interest in residential land, and
 - 45.4 the investor must notify the regulator that they have relied on an exemption.

Defining ‘as soon as reasonably practicable’ (refer 43.2)

- 46 There are two options for defining ‘as soon as reasonably practicable’ to ensure conditions are adhered to, notably that land will be used to increase the housing supply (i.e. to avoid land-banking):
- 46.1 The regulator can issue guidelines approved by the Minister of Finance as to what it considers ‘reasonably practicable’. A ministerial directive letter could also set out expectations for how the regulator enforces this guidance, and
 - 46.2 In addition to guidelines, timeframes can be established in regulations.
- 47 Under either option, the guidelines and/or regulations could:
- 47.1 set out maximum timeframes for different development types and milestones. These could set out times for completion (e.g., five years for completing a small development, ten years for completing a large development) or starting construction within a set period, and
 - 47.2 provide for the regulator to extend deadlines.

- 48 The key trade-off between guidelines and regulations are that:
- 48.1 Guidelines are likely to provide the regulator more flexibility as to how they apply and enforce conditions with regard to an individual property, allowing for a wider range of investment circumstances. They can also be more easily updated.
 - 48.2 Regulations can set clearly enforceable limits, such as a timeframe in which an investor must start a development. Beyond this period, enforcement could proceed more easily given there has been a clear breach of the regulatory time period.
- 49 I also considered defining this further in the Act but there are many factors that influence what is 'reasonably practicable' which would make the legislation unduly complex and rigid. Doing so through primary legislation would preclude flexibility for the regulator to respond to external factors affecting development completion timeframes, such as constraints on construction market capacity or delays in local government consents.

Implementation and enforcement

- 50 Notification by the investor would support the regulator to monitor and enforce compliance with conditions. Notification would be accompanied by a fee to recover the regulator's costs. Whilst fees are subject to further policy decisions, the regulator currently estimates that it would be a significant reduction from the current application fee.
- 51 The regulator will be able to use its existing enforcement and monitoring powers to ensure investors comply with the proposed exemptions. These powers were comprehensively overhauled in 2021 and provide the regulator with a wide range of options for addressing noncompliance, including disposal notices, enforceable undertakings, court action or seeking criminal or civil pecuniary penalties.

Implications of the approach

- 52 This option impacts a wider range of asset types than just BTR but has a range of advantages – namely it:
- 52.1 provides greater regulatory coherence by maintaining consistency in the treatment of similarly sensitive assets
 - 52.2 reduces legislative complexity and opportunities for avoidance, minimising the amount of monitoring and enforcement activity required by the regulator to maintain the integrity of the regime,
 - 52.3 minimises risks of artificially distorting the market in favour of BTR over other businesses (such as long-term accommodation and individual apartments for on-sale), and

- 52.4 has the greatest potential impact on housing supply by extending the exemption to a wider range of business models that will support the productive use of residential land in a range of different circumstances and by different investors.
- 53 This option maintains consistency with the core aim of the foreign buyers ban – to prevent foreign ownership of residential land while allowing investment that contributes to housing supply, business operations, or provides other benefits to New Zealand.
- 54 The key restrictive feature of the ban, the inability of overseas investors to purchase individual homes or small scale housing developments and hold them without adding dwellings, remains unchanged. Purchases of housing for overseas investors to live in would also not be exempt. To purchase land for this purpose, overseas investors would still need to apply for a consent through the existing “one-home-to-live in” pathway.
- 55 I also note that under my preferred option:
- 55.1 Screening will still apply to investments if they include ‘significant business assets’³ or land that is sensitive for an additional reason, which is subject to other tests within the Act. I am advised extending the exemption to these scenarios would create a number of inconsistencies and issues that are not resolvable at this pace and would need to await a broader review of the Act.
- 55.2 The Government could no longer decline an exempt investment if it was deemed contrary to the national interest. However, I am advised risks arising from purely residential land transactions are rare and that national security and public order screening would remain available if the transaction included strategically important businesses or assets.
- 55.3 ^[36]

³ For overseas investments over a certain dollar threshold (usually \$100 million but in some cases higher for investors from countries with trade agreements with New Zealand), investors are generally required to meet the “investor test” which is standard for all large overseas investments (see Overseas Investment Act, sections 13 and 18A)

Treaty of Waitangi implications

- 56 Foreign investment policy can engage the rights of Māori under the Treaty of Waitangi (the Treaty), the protection of which are being given careful consideration in the development of this policy:
- 56.1 Overseas investment is an important and growing source of capital for some Māori and iwi. Regulation that could be perceived as adding barriers to the use of land or other assets could be regarded as a limit on rangatiratanga or self-determination (protected under article two of the Treaty), including impeding iwi and Māori economic growth. This issue becomes further heightened when the Crown's foreign investment policy diminishes the value of redress provided through settlements.
 - 56.2 Māori have a close and intrinsically important kaitiaki relationship with natural resources, which is central to the development and persistence of Māori culture. These relationships, at times reinforced through Treaty settlements, can give rise to special interest in particular pieces of land, for example, that with wāhi tapu or wāhi tūpuna (cultural or ancestral sites). The Treaty requires the Crown to identify and consider reasonable steps to actively protect Māori interests and to engage with Māori on decisions that are likely to impact their rights and interests.
- 57 Although public consultation has not been undertaken on this proposal due to the need to move at pace, given the above interests, I expect that this proposal will have positive impacts on Māori and iwi by:
- 57.1 enabling them to express rangatiratanga over their lands by reducing barriers to overseas investment on residential land,
 - 57.2 supporting a more responsive housing market which is better able to address housing inequities experienced by Māori (as noted below), and
 - 57.3 enabling the potential for partnership opportunities for international investment that include iwi / Māori and leverage mutual benefits.

Next steps

- 58 Subject to Cabinet's decision on this paper I propose to work with the Prime Minister's office to announce these changes as part of the Government's 100-day plan.
- 59 Alongside this announcement, I seek your agreement to issue a Ministerial Directive Letter (Annex One) under the Act to provide immediate certainty that New Zealand is open to foreign investment in the housing sector. While this letter is constrained in its effect by the existing rules, it sends a strong signal that will bolster investor confidence pending legislative reform.
- 60 Following the announcement, I will direct officials to notify key stakeholders, including those in the housing sector, representatives of investors, our

international partners, and iwi Māori, of proposed changes. I will report back to Cabinet if any substantive issues arise.

Cost-of-living Implications

- 61 While it is difficult to assess the scale of impact, the proposals in this paper may be expected to support greater housing affordability by increasing housing supply, placing downwards pressure on rent and house prices.

Financial Implications

- 62 There are no substantial financial implications arising from this paper. Consent assessments are funded on a cost recovery basis. As a consequence, the regulator will receive fewer applications which will reduce its revenue, however this revenue reduction will be offset by a reduction in workload. Monitoring and enforcement will be funded through a cost recoverable, notification fee.

Legislative Implications

- 63 An amendment to the Act is required. ^[33]
- 64 Drafting instructions will be issued to Parliamentary Counsel Office shortly after Cabinet approves this paper. ^[33]

Impact Analysis

Regulatory Impact Statement

- 65 A Regulatory Impact Statement (RIS) has been completed and is attached. The requirement for quality assurance of RISs has been suspended for decisions relating to 100-day plan proposals taken within the 100 days.

Climate Implications of Policy Assessment

- 66 A Climate Implications of Policy Assessment (CIPA) is not required.

Population Implications

- 67 People with disabilities, Māori and Pasifika peoples are overrepresented in rental statistics and are more likely to experience poor quality housing and housing stress. This proposal will contribute to improving housing supply and encourage positive competition in the rental market, and therefore may be expected to contribute to positive impacts on the living standards and health of these population groups.

Human Rights

- 68 The Act treats people differently depending on their national origins, which triggers consideration of the right to freedom from discrimination (on the grounds of national origin) under the New Zealand Bill of Rights Act 1990. By screening fewer transactions, the proposal in this paper reduces discrimination on the grounds of national origin.

Use of external resources

- 69 One contractor was engaged for four months from November 2023 to February 2024 as surge support for policy development on Overseas Investment Act changes.
- 70 The additional resource was necessary due to the compressed timeframe for advice and existing pressures on the wider international work programme.

Consultation

- 71 The following agencies were consulted on this paper: the Department of Prime Minister and Cabinet (National Security Group and Policy Advisory Group), the Ministry of Foreign Affairs and Trade, the Ministry of Business, Innovation and Employment, the Ministry of Housing and Urban Development, and Land Information New Zealand. The Parliamentary Counsel Office was also consulted.
- 72 As noted above, key stakeholders will be notified of proposed changes following announcement. I will report back to Cabinet if any substantive issues arise.

Communications

- 73 As above, I will work with the office of the Prime Minister to announce the proposals in this paper as part of the Government's 100-day plan.

Proactive Release

- 74 This paper will be proactively released with redactions as appropriate under the Official Information Act 1982.

Recommendations

I recommend the Committee:

- 1 **Note** the Overseas Investment Act 2005's (the Act) restrictions on the ability to sell build-to-rent (BTR) assets to overseas investors pose a barrier to the growth of the BTR sector;
- 2 **Agree** that overseas investors that acquire land to develop or purchase existing large-scale BTR developments with 20 or more dwellings be exempt from the Act's residential land consent requirements;
- 3 **Note** the Act contains consent pathways that allow overseas investors to acquire residential land if they will:
 - 3.1 increase the number of residential dwellings constructed on the residential land (including an increase from 0),
 - 3.2 construct or increase the number of dwellings in a long-term accommodation facility (which includes retirement villages, rest homes, and student hostels),
 - 3.3 commence development works on the land to support construction of the above,
 - 3.4 utilise the land for non-residential (i.e. commercial) purposes, or
 - 3.5 utilise the land for residential purposes but this is merely incidental to business operations (e.g., worker accommodation);
- 4 **Agree** to convert these pathways (i.e. the increased housing, non-residential use, and incidental residential use tests) to exemptions from the Act's residential consent requirements so as to mitigate perverse outcomes and the potential for increased avoidance
- 5 **Agree** that exemptions are conditional on the investor:
 - 5.1 acquiring an eligible large-scale residential development, or otherwise utilising the residential land as soon as reasonably practicable for one of the exempt purposes,
 - 5.2 not occupying the residential land (or have individuals connected to them occupy it),
 - 5.3 notifying the regulator that they have relied on the exemption, providing basic information about the transaction, and
 - 5.4 in the case of residential developments of 19 or fewer dwellings, selling the developments within one year of completion (unless they are used to operate a long-term accommodation facility);

- 6 **Note** that the conditions agreed in recommendation 5 are necessary to maintain consistency with the overarching intent of treating residential land as a sensitive asset (i.e. the “foreign buyers ban”);
- 7 **Note** that the inclusion of ‘reasonably practicable’ in recommendation 5.1 is intended to provide flexibility for the regulator to assess reasonable development timeframes in line with the scale of the development undertaken, and to take into account external factors affecting completion;
- 8 **Note** that the regulator will be able to use its existing enforcement and monitoring powers to ensure investors comply with the proposed exemptions;
- 9 **Agree** that to further reduce the risk of land-banking and ensure land purchased under the exemptions is used for an exempted purpose:

EITHER

9.1 the regulator issues guidelines under the Act (following Ministerial approval) to define what is ‘as soon as reasonably practicable’ (as per recommendation 5.1) in various scenarios;

OR

9.2 in addition to guidelines (refer recommendation 9.1), the Minister of Finance be empowered to recommend regulations be made defining what ‘as soon as reasonably practicable’, including to provide for greater enforceability;

- 10 **Agree** that notification incurs a fee set in regulations for the purpose of recovering the cost of monitoring compliance with the exemption;
- 11 **Note** screening under the Act will still apply if residential land is deemed by the Act as sensitive for an additional reason or if the transaction meets the ‘significant business assets’ threshold which is generally \$100 million (or higher in some of our international investment agreements);
- 12 **Note** an exemption removes Ministers’ ability to apply a national interest assessment but we consider that the Act’s national security and public order screening tools will be sufficient to manage most residual risks;
- 13 [36]

Next steps

- 14 **Invite** the Associate Minister of Finance (Hon Chris Bishop) to issue drafting instructions to Parliamentary Counsel Office to give effect to the above proposals by amending the Act and any other legislation or regulations requiring amendment as a result of the changes proposed in this paper;

15 [33]

16 **Note** I will work with the office of the Prime Minister to announce these changes as part of our 100-day plan;

17 **Agree** that the Ministerial Directive Letter attached as Annex One is released alongside this announcement (with any minor and technical changes deemed necessary);

18 **Authorise** the Associate Minister of Finance (Hon Chris Bishop) to make decisions on any additional policy issues that arise during the drafting of the Bill that are consistent with the intent of this paper (including any decisions that require amendments to any regulations made under the Act, transitional provisions;

19 **Authorise** the Associate Minister of Finance (Hon Chris Bishop) and Minister for Land Information (Hon Chris Penk) to make decisions on the notification process and associated fee.

Hon Chris Bishop

Associate Minister of Finance

Annex One: Ministerial Directive Letter

1. This Ministerial Directive Letter is made pursuant to section 34 of the Overseas Investment Act 2005 (the Act). It directs you, as the Regulator, on the Government's policy approach to build-to-rent (BTR) and other investment that supports housing supply.
2. This letter supplements the Ministerial Directive Letter of 24 November 2021, which remains in force.
3. References to the Act and the Regulations in this letter refer to the Overseas Investment Act 2005 and Overseas Investment Regulations 2005, including all amendments in force on and after [DATE] (being the date this letter comes into effect).

Government policy towards overseas investment

4. Increasing productive foreign direct investment and the flow of capital into New Zealand is a priority for this Government.
5. Overseas investment is needed for New Zealand's economic growth, and brings a variety of advantages, including better access to markets, technology and capital, and, as a result, a more productive economy.
6. This directive letter provides interim guidance to encourage investment in the BTR sector in particular, reflecting our initial focus to boost investment that supports greater housing supply and improved rental market outcomes.
7. We expect to provide a more fulsome directive letter in the coming months.

Welcoming BTR and other investment in New Zealand's housing supply

8. Addressing the housing crisis is a key focus for this Government – New Zealand needs more supply across a range of housing models, including private rentals. We consider overseas capital can help unlock development needed to address this challenge, particularly in the BTR sector.
9. BTR refers to privately owned rental housing of 20 dwellings or more. We consider BTR has the potential to increase the supply of quality and secure rental housing and improve the resilience of our housing market. This sector is still emerging in New Zealand and could benefit from overseas capital to build at large-scale.
10. To support investment in BTR and other housing developments in New Zealand, I have directed officials to progress amendments to the Overseas Investment Act to overcome the barriers to growth in the sector.
11. To provide clarity to investors on the operation of existing pathways in the interim, I have set out guidance below on the Government's current interpretation and approach to assessments under the benefit to New Zealand and increased housing tests.

The Benefit to New Zealand Test

12. The previous Ministerial Directive Letter, dated 24 November 2021, noted in paragraph 18 that the Act explicitly provides that the “reduced risk of illiquid assets” can be considered under the benefit to New Zealand test. It also notes an explicit example of where this might apply is where an overseas person is purchasing an existing built-to-rent development, and that purchase would better ensure the asset remains liquid.
13. I note that in addition to considering it important to minimise the number of stranded assets, I consider overseas investment in BTR, including in existing BTR developments, to be a clear example of a benefit to New Zealand.
14. Unless there is compelling evidence to the contrary, I direct the regulator to consider investment that supports housing supply and the continued operation of an existing large-scale housing development, as a benefit when undertaking assessments under the Benefit to New Zealand test.
15. The benefits that flow from addressing the risk of stranded assets and from the continued operation of an existing large-scale housing development, may be sufficient to satisfy the Benefit to New Zealand test, even if no other benefits will result from the investment.

Increased Housing Test

16. Schedule 2 clause 19 requires that, to get consent for a new or existing build to rent development, an investor must be “in the business of providing residential dwellings” through shared equity, rent-to-buy, or rental arrangements. Consistent with the Regulator’s current approach, when determining whether a person meets that requirement, I direct the Regulator:
 - b. to consider the nature of any existing business (including related entities),
 - c. to consider what overt steps have been taken to commence providing residential dwellings by one or more of the required arrangements (and especially overt steps taken to enter the built-to-rent market), and
 - a. to not require investors to have previously completed a BTR development.

Date this letter takes effect

17. This letter will take effect on **xxx 2024**, and applies in relation to any transaction, application or other matter, where provisions in the Act or the Regulations as they read on or after that date apply.

Yours sincerely,

Hon Chris Bishop

Associate Minister of Finance

Annex Two: Treatment of asset types under status quo and proposal

| Asset / Investor Type | Treatment under the status quo | Treatment under preferred option (Option 3) |
|---|--|---|
| <p>Overseas investor wanting to purchase residential land with 0-19 dwellings with no plans to add additional dwellings. Examples: A single house or multiple townhouses as rental investments</p> | Effectively prohibited. | No change |
| Overseas person wishing to buy a home to live in | Enabled under certain conditions through the 'one home to live in' pathway. | No change |
| Overseas investor wanting to buy residential land and add 1-19 dwellings (with the result being no more than 19 dwellings on that land) | <p>Enabled via bespoke pathway (increased housing test).</p> <p>Investor must sell completed development on a timeframe determined by the regulator (unless running a long-term accommodation facility such as a retirement village or student accommodation).</p> | <p>Existing pathway converted to exemption</p> <p>Investor must sell within one year of development being completed (unless running a long-term accommodation facility such as a retirement village or student accommodation).</p> |
| <p>Overseas investor to purchase large-scale housing (developments with 20 or more dwellings) with no plans to add dwellings Examples: BTR, an apartment for sale</p> | High regulatory barriers – must apply under the Benefit to New Zealand test. | <p>New exemption</p> <p>Investor can hold, rent, or sell, as long as they do not live in the development.</p> |
| <p>Overseas investor wanting to build large-scale housing (developments with more than 20 dwellings)</p> | <p>Enabled via bespoke pathway (increased housing test).</p> <p>Original developer can rent or sell dwellings or operate a long-term accommodation facility.</p> | <p>Existing pathway converted to exemption</p> <p>Investor can hold, rent, or sell, as long as they do not live in the development.</p> |
| Overseas investor purchasing residential land for commercial purposes or incidental residential use | Enabled via bespoke consent pathways (the non-residential use test or incidental residential use test). | <p>Existing pathway converted to exemption</p> <p>Investor must utilise the land for an exempt purpose as soon as practicable.</p> |