

Overseas Investment (Build-to-rent and Similar Rental Developments) Amendment Bill

Government Bill

Explanatory note

General policy statement

Purpose of the Bill

This Bill amends the Overseas Investment Act 2005 (the **Act**) to remove barriers to overseas investment in “build-to-rent” housing (**BTR**). BTR generally refers to medium to large housing developments, designed to operate as professionally managed rentals. For the purposes of this Bill, BTR are large-scale rental developments of at least 20 residential dwellings.

The Bill supports the Government’s objective to fix the housing crisis by increasing housing supply.

The Bill does not change screening requirements for residential land (including those that comprise the “foreign buyers ban”) beyond those for large-scale rental housing.

The Act already contains provisions to support investments in housing supply by providing a streamlined and simplified test for overseas investment in new housing (known as the “increased housing test”). However, the current provisions in the Act do not work well for BTR.

Investors eventually need to sell rental developments, either as part of a planned divestment strategy or if facing fiscal distress. Given the high value of BTR developments (which are held as 1 asset), confidence in their liquidity is dependent on access to sufficient capital, of which the scale required primarily sits overseas.

At present, the Act’s onerous benefit to New Zealand test will generally apply when selling a BTR development utilising overseas capital (in full or part). Housing developers are not confident that a subsequent purchaser would be able to obtain consent under this test, limiting their divestment options. This discourages developers from building BTR developments in the first place.

Reducing barriers to entry for BTR investments

The Bill amends the Act to provide a new streamlined test that allows overseas investors to buy existing large rental developments, providing they meet the requirements of the investor test. This is referred to as the “large rental development test” in the Bill.

In addition to BTR, this test enables other types of large rental developments that are functionally the same as BTR but may be considered different housing types, such as worker accommodation.

These changes will support housing supply by providing developers with the confidence to build BTR developments knowing they can sell them in the future.

This test streamlines the consent process in scenarios where—

- an overseas investor acquires an interest in residential land that includes 1 or more buildings with 20 or more dwellings; and
- at least 20 of the dwellings will be made available for lease to occupiers within a satisfactory time frame.

Consent will be conditional on investors continuing to make available for lease at least 20 of the dwellings; otherwise, they must divest their interest in the asset.

The Bill also makes some minor and technical changes to support the operation and clarity of the Act’s residential consent pathways.

Existing streamlined pathways will continue to apply for other uses of residential land, such as construction of new BTR developments (the “increased housing test”) or commercial uses of residential land (the “non-residential use test”). In circumstances where there are mixed uses of the land, investors can apply for consent under multiple pathways.

Departmental disclosure statement

The Treasury is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2024&no=61>

Regulatory impact statement

The Treasury produced a regulatory impact statement on 7 February 2024 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the day after Royal assent.

Clause 3 provides that the Bill amends the Overseas Investment Act 2005.

Part 1

Amendments to principal Act

Clause 4 amends the interpretation section to include a definition of the new consent pathway, or test, being proposed by the Bill relating to the operation of existing build-to-rent and similar rental developments with 20 or more dwellings (the **large rental development test**).

Clause 5 adds a new criterion for consent if the relevant land is residential (but not otherwise sensitive) land, namely that the large rental development test is met.

Clause 6 amends Schedule 2, which currently sets out tests for the 3 similar existing consent pathways that are only available for overseas investments in sensitive land where the relevant land is residential (but not otherwise sensitive) land, namely, the increased housing test, the non-residential use test, and the incidental residential use test. The amendments have 2 main effects.

First, the amendments provide a new consent pathway for the operation of large rental housing developments. The outcome required is that at least 20 of the residential dwellings will be, or are likely to be, available for use as a dwelling occupied under a residential tenancy to which the Residential Tenancies Act 1986 applies. If that outcome ceases to be met, the overseas person is required to on-sell the relevant land. It is a condition of the new pathway that the overseas person (and certain related persons) cannot occupy the land. The pathway will apply only to overseas investments in residential (but not otherwise sensitive) land.

Second, the last 3 amendments to Schedule 2 make amendments to other existing pathways as follows:

- currently, it is a requirement under both the increased housing and benefit to New Zealand consent pathways that overseas investors must be in the business of providing residential dwellings, in order to be exempt from the requirement to on-sell the dwellings. The amendment that repeals clause 20(2)(c) of Schedule 2 removes the requirement to be in that business:
- currently, overseas investors can seek consent under the main benefit to New Zealand pathway for the acquisition of existing shared equity, rent-to-buy, or rental arrangements and, if they do, they will benefit from the exemption in clause 20 from the requirement to on-sell. The amendments to Schedule 2 clarify the summary of this exemption in item 7 of the table in clause 19 to ensure that the exemption works appropriately if the investor proceeds under the benefit to New Zealand pathway. For example, in that case, the exemption

is not tied to new dwellings (as it would be if the investor proceeded under the increased housing pathway).

Clause 7 amends Schedule 4, which relates to standing consents. Section 23A of the Act says that a person may apply for a consent (a **standing consent**) for 1 or more transactions in respect of 1 or more overseas investments in sensitive land that have not been entered into at the time when the application is made and when the standing consent is granted, and that fall within a class of transactions described in the application. The amendment provides that a person may apply for a standing consent in respect of residential (but not otherwise sensitive) land if the person applies under the new consent pathway proposed by the Bill for the operation of large rental housing developments.

Part 2

Amendments to regulations

Clause 8 provides that *Part 2* amends the Overseas Investment Regulations 2005.

Clause 9 adds an application for consent on the basis of the large rental development test to the list of tests for which the fee of \$35,000 is payable. *Clause 9* also adds an application for a standing consent on the basis of the large rental development test to the list of tests for which standing consent fees are payable.

Clause 10 adds an application for consent on the basis of the large rental development test to the list of tests for which the statutory timeframe for processing the application is 55 working days.

Hon Chris Bishop

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Contents

	Page
1 Title	1
2 Commencement	2
3 Principal Act	2
Part 1	
Amendments to principal Act	
4 Section 6 amended (Interpretation)	2
5 Section 16 amended (Criteria for consent for overseas investments in sensitive land)	2
6 Schedule 2 amended	2
7 Schedule 4 amended	4
Part 2	
Amendments to regulations	
8 Principal regulations	4
9 Schedule 2 amended	4
10 Schedule 5 amended	4

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Overseas Investment (Build-to-rent and Similar Rental Developments) Amendment Act **2024**.

2 Commencement

This Act comes into force on the day after Royal assent.

3 Principal Act

This Act amends the Overseas Investment Act 2005.

Part 1

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Amendments to principal Act**4 Section 6 amended (Interpretation)**

In section 6(1), insert in its appropriate alphabetical order:

large rental development test means the test set out in **clause 11A** of Schedule 2

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5 Section 16 amended (Criteria for consent for overseas investments in sensitive land)

After section 16(1)(b)(i)(B), insert:

(BA) the large rental development test:

6 Schedule 2 amended

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- (1) In Schedule 2, clause 1(1)(b), after “the increased housing test,”, insert “the large rental development test,”.
- (2) In Schedule 2, Part 3 heading, after “**Increased housing**,”, insert “**large rental development**,”.
- (3) In Schedule 2, clause 10, replace “3 tests” with “4 tests”.
- (4) In Schedule 2, after clause 11, insert:

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*Large rental development test***11A How large rental development test is met**

- (1) The large rental development test is met if the relevant Ministers are satisfied that—
 - (a) the residential land is a single site, or adjacent sites separated by infrastructure (such as roads), with 1 or more buildings that, taken together, consist of 20 or more dwellings suitable for use as, or conversion to, residential dwellings; and
 - (b) at least 20 of the residential dwellings will be, or are likely to be, available for use, within a time frame that is satisfactory to the relevant Ministers, as a residential dwelling occupied under a residential tenancy to which the Residential Tenancies Act 1986 applies or would apply (the **large rental development outcome**); and

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- (c) the non-occupation outcome (as defined in clause 17) will, or is likely to, occur.
- (2) *See also* clause 18 (which sets out certain conditions to be imposed on consents that rely on meeting this test).

(5) In Schedule 2, clause 18(2)(b), table, after item 1, insert:

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1A	Large rental development test	<p>The large rental development outcome (as defined in clause 11A(1)(b))</p> <p>The on-sale outcome (as defined in clause 17), if clause 11A(1)(b) ceases to be met</p> <p>The non-occupation outcome (as defined in clause 17)</p>
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(6) In Schedule 2, clause 19(1), replace “sections 16A(1)(c) and” with “section”.

(7) In Schedule 2, clause 19(2)(c), table, replace item 7 with:

7	<p>Operation of existing shared equity, rent-to-buy, or rental arrangements (as referred to in the next column) in a development of 20 or more residential dwellings</p>	<p>All of the residential dwellings in the development are dealt with under 1 or more of the following arrangements that are satisfactory to the relevant Ministers:</p> <p>(a) joint ownership of the residential dwelling with an occupier (for example, an arrangement commonly referred to as a shared equity arrangement):</p> <p>(b) divestment of ownership of the residential dwelling to the occupier over a period of time (for example, an arrangement commonly referred to as a rent-to-buy arrangement):</p> <p>(c) lease of the residential dwelling to an occupier:</p> <p>(d) divestment of ownership of the residential dwelling</p> <p>The non-occupation outcome (as defined in clause 17)</p>
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(8) In Schedule 2, repeal clause 19(3).

(9) In Schedule 2, repeal clause 20(2)(c).

7 Schedule 4 amended

In Schedule 4, after clause 2(1)(a), insert:

(aa) the large rental development test; or

**Part 2
Amendments to regulations**

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8 Principal regulations

This Part amends the Overseas Investment Regulations 2005.

9 Schedule 2 amended

- (1) In Schedule 2, item 6, after “the increased housing test,” insert “the large rental development test,”. 10
- (2) In Schedule 2, item 7, after “the increased housing test,” insert “the large rental development test,”.

10 Schedule 5 amended

In Schedule 5, clause 2(1), table, item relating to 55 working days, second column, after “(the increased housing test,” insert “the large rental development test,”. 15