

# Departmental Disclosure Statement

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Overseas Investment (Build-to-rent and Similar Rental Developments) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Treasury.

The Treasury certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

15 May 2024

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## Part One: 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 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 are able to apply for consent under multiple pathways.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>

<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	<b>N/A</b>

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<i>Overseas Investment screening for build-to-rent developments</i> Treasury, <a href="https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments">https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments</a>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
No. Policy decisions were undertaken as part of the Coalition Government's 100-day plan. The requirement for quality assurance of RISs was suspended for decisions relating to 100-day plan proposals taken within the 100 days.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
No, but full impact analysis was only conducted on the Treasury's preferred option in the RIS, which is not the option that is being implemented via the Bill.	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
No. Full impact analysis was only conducted on the Treasury's preferred option in the RIS, which is not the option that is being implemented via the Bill. Multi-criteria analysis on the policy delivered by the Bill was undertaken in the RIS, however.	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
There are compliance risks associated with the use of the new pathway, as there are for the other pathways established under the Act. Monitoring and enforcement of compliance with consent conditions established under the pathway will be undertaken in accordance with established compliance strategy of the regulator – Land Information New Zealand. This can be found at: <a href="https://www.linz.govt.nz/guidance/overseas-investment/enforcement/our-compliance-approach">https://www.linz.govt.nz/guidance/overseas-investment/enforcement/our-compliance-approach</a>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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The Treasury worked closely with the Ministry of Foreign Affairs and Trade to ensure the policy was consistent with New Zealand's international obligations. No risks were identified.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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Treaty of Waitangi issues were considered throughout the policy development process. Te Puna Rōia (the Treasury Legal Team) and Treasury's Te Ao Māori Strategy and Policy Team were consulted. No significant risks were identified.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at
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<a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/</a>
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
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### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
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### External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>NO</b>
No, there was no consultation as this Bill implements a 100-day commitment.	

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
No. This Bill modifies regulations to establish application fees for the new pathway. However, the powers to establish and modify these are already in the Act.	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>

### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>



### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>