
Overseas Investment (Build-to-Rent and Similar Rental Developments) Amendment Bill (Bill) – streamlined Build-To-Rent housing pathway

On 7 March 2024, the Government announced proposed amendments to the Overseas Investment Act 2005 (*Act*) to create a new streamlined approval pathway for build-to-rent (*BTR*) housing developments, and on 11 June 2024, the amendment Bill was introduced.

Build to Rent Developments

BTR developments are a form of privately-owned rental housing comprising 20 or more dwellings, which are ordinarily owned and professionally managed long-term by an institutional investment entity such as a pension fund. The rentals are typically for longer term tenancies, giving tenants increased housing certainty, reliable property maintenance services and access to shared development amenities such as cafes, gyms, media rooms and co-working spaces.

BTR developments are increasingly popular in Australia and the United Kingdom. While it is a newer housing model in New Zealand with only 22 registered developments so far, it is believed there is high potential for growth in the sector.

Industry groups such as the Property Council have been advocating for changes to the Act in order to increase affordable rental stock in New Zealand, and reduce investment barriers for New Zealand and overseas developers and institutional investor owners. BTR developments are currently viewed as a risky investment as a potentially stranded or illiquid asset class. There is little incentive to build or buy a BTR development considering the risk that developers may be stranded with the asset if New Zealand investors have insufficient capital to acquire it, and overseas investors face strict hurdles to entry under the Act. It is hoped that streamlining the test will increase both overseas and New Zealand investor confidence in BTR developments, with greater certainty that investors can exit and on-sell to a larger pool of purchasers.

Current Position

Currently, under the Act, applications for the creation of new BTR developments, or the acquisition of existing BTR developments, must proceed under either:

- the increased housing test - for increased housing on residential but not otherwise sensitive land (section 16(1)(b)(i)(B));
- the more onerous benefit to New Zealand test - for land which is otherwise sensitive (section 16(1)(c)(ii)), or for the acquisition of existing developments where the existing housing stock is not increasing (section 16(1)(b)(ii)); or
- the significant business asset test (section 18) – for the acquisition of qualifying securities in a BTR owning or developing entity.

The Amendment Bill

The much anticipated Bill was released on 11 June 2024, setting out the proposed new streamlined pathway, called the “large rental development test”.

The large rental development test is for residential but not otherwise sensitive land being acquired as an existing large rental development (provided investor requirements are met). It will allow the acquisition of existing developments that are not increasing the housing supply, to proceed under the large rental development pathway, rather than the benefit to New Zealand test. This is intended to reduce the illiquidity risk of developers being unable to on-sell BTR developments where an investor would have to otherwise increase the housing supply to qualify for the streamlined increased housing test.

Land which is otherwise sensitive, will still need to proceed under the benefit to New Zealand test. The existing streamlined pathway under the increased housing test will continue to apply for new or expanding BTR developments which are increasing the housing supply.

The new test is also intended to enable other types of large rental developments that are functionally the same as BTR but may not be the same housing type, such as worker accommodation.

The large rental development test streamlines the consent process where:

- an overseas investor acquires an interest in residential land (a single site, or adjacent sites separated by infrastructure such as a road);
- there are 1 or more buildings with 20 or more dwellings across them, suitable for, or for conversion for, residential dwellings;
- at least 20 of the dwellings will be made available for a residential tenancy to occupiers within a satisfactory time frame; and
- the non-occupation outcome will be met.

Consent will be conditional on investors continuing to make at least 20 of the dwellings available for residential tenancy, otherwise the owner must divest their interest in the asset. Owners no longer need to be “in the business of providing residential dwellings” in the rent-to-buy or shared equity space, as they did previously.

There will be an opportunity to provide feedback on the Bill at the Select Committee stage.

Associate Minister of Finance Hon David Seymour’s Ministerial Directive Letter to the OIO on 6 June 2024 (*Directive Letter*) which was a prelude to the Bill, together with the explanatory note in the Bill, emphatically encourages BTR housing developments as a means of addressing the housing crisis and attracting overseas investment. In anticipation of the Bill being passed later in the year, the Minister has directed the OIO to consider investment in housing supply and the operation of existing large scale housing developments as a benefit under the benefit to New Zealand test. The Minister considers that 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.

The Directive Letter and the introduction of the Bill are a clear pronouncement to overseas investors of the Government’s support of BTR developments, indicating the doors are opening for increased investment in this space.

If you have any questions on the Bill, or are an overseas investor considering investing in BTR developments or land to develop in New Zealand, please contact Brigid McArthur, Ranui Calman, Annabel Crawford or Anna Hickmott from our Overseas Investment team.
