

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

Government Bill

As reported from the Finance and Expenditure Committee

## **Commentary**

### **Recommendation**

The Finance and Expenditure Committee has examined the Overseas Investment (Build-to-rent and Similar Rental Developments) Amendment Bill and recommends by majority that it be passed. We recommend one amendment, which we recommend unanimously.

### **Introduction**

The bill would amend the Overseas Investment Act 2005 to remove barriers to overseas investment in build-to-rent housing. The bill would create a new streamlined test: the “large rental development test.” It would allow overseas investors to buy existing large rental developments, provided that:

- they acquire 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.

### **Legislative scrutiny**

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation’s design to bring to the attention of the House.

### **Proposed amendment regarding intermediary lease arrangements**

We recommend just one change to the bill: inserting clause 6(8A).

The Overseas Investment Act already enables overseas investors to apply for consent to develop new housing under the “increased housing test.” Investors who develop properties under the test are typically required to on-sell them. This requirement prevents investors from holding empty units for speculative purposes and helps to ensure that new housing is quickly made available for people to occupy.

Schedule 2, clause 20 of the Act enables the Ministers responsible for the Act to exempt investors from the requirement to on-sell the properties they develop if they build 20 or more new dwellings and lease them to an occupier. However, in some cases an overseas investor may use an intermediary (or “sublandlord”) to operate build-to-rent housing. In these cases, the investor would be leasing to the intermediary, rather than to an occupier, so would not be eligible for the on-sell exemption.

We do not think using an intermediary to operate build-to-rent housing should make an investor ineligible to retain the assets they develop. These investors should be treated the same as those who lease directly to occupiers (provided they meet the other relevant criteria in the Act). Accordingly, we recommend inserting clause 6(8A), which would amend Schedule 2, clause 20(2)(a)(iii) of the Act to replace “OP will lease” with “lease of”. This change to the existing “increased housing test” would align with the bill’s proposed “large rental development test”, which would also provide for the operation of build-to-rent housing by intermediaries.

### **New Zealand Labour Party differing view**

We agree that changes to overseas investment rules would likely lead to more developments being built. We remain disappointed there was an unwillingness to explore alternative options around the minimum unit settings. 20 units may be the correct setting for cities, however if build-to-rent is to assist in addressing the housing shortage in New Zealand the provincial centres should not be overlooked. 20 units may prove too high a barrier for smaller centres, and we would have liked more work to be done exploring whether a proportion of a development would work as a minimum unit setting outside the major cities. We agree that the minimum number of units required should not be set below 20 in the cities, but if a smaller development that was intended to be all build-to-rents was proposed in a smaller centre it would not be permitted under this bill. We think this is a missed opportunity for rural and regional New Zealand.

### **Green Party of Aotearoa New Zealand differing view**

The Green Party of Aotearoa New Zealand opposes this bill because it is not clear that restrictions on selling large rental developments to overseas investors are a substantial barrier to investment in new rental housing development. We are also concerned that this bill would lead to existing large rental developments being sold off to overseas investors while failing to increase the supply of residential housing.

We support strengthening controls on foreign investment to minimise the negative effects of speculative and other non-productive foreign investment, such as property investment, and reserving land ownership in Aotearoa for residents.

Iwi and hapu have deep interests in land in Aotearoa, and selling more land off to overseas interests would serve as a further act of dispossession and disconnection.

We believe the existing “benefit to New Zealand test” pathway appropriately balances protections on foreign investment with reducing the risk of illiquid assets.

## Appendix

### Committee process

The Overseas Investment (Build-to-rent and Similar Rental Developments) Amendment Bill was referred to our committee during a sitting of the House that began on 25 June 2024. The calendar day the bill was referred to us was 26 June. The House instructed us to report the bill back no later than 1 November 2024.

On 27 June 2024, we called for submissions on the bill with a closing date of 28 July. We also invited submissions from stakeholders who had engaged with the Treasury and the Ministry of Housing and Urban Development during the bill's development. We received and considered written submissions from 27 interested groups and individuals. We heard oral evidence from 6 submitters at hearings held in Wellington and by videoconference.

The Treasury and Land Information New Zealand provided advice on the bill. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

### Committee membership

Stuart Smith (Chairperson)

Jamie Arbuckle

Hon Barbara Edmonds

Ryan Hamilton

Nancy Lu

Hon Dr Deborah Russell

Todd Stephenson

Chlöe Swarbrick

Rawiri Waititi

Catherine Wedd

Hon Dr Megan Woods

Hon Kieran McAnulty and Tamatha Paul participated in our consideration of this bill.

### Related resources

The documents we received as advice and evidence are available on the Parliament website.

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Developments) Amendment Bill**

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously



*Hon Chris Bishop*

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Government Bill

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**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—

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- (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 <b>clause 11A(1)(b)</b>)</p> <p>The on-sale outcome (as defined in clause 17), if <b>clause 11A(1)(b)</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).

(8A) In Schedule 2, clause 20(2)(a)(iii), replace “OP will lease” with “lease of”.

(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**

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**Amendments to regulations**

**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

**Legislative history**

11 June 2024  
25 June 2024

Introduction (Bill 61–1)  
First reading and referral to Finance and Expenditure Committee