

These documents from the week beginning 10 December 2017 supplement the release of documents published on 15 December 2017.

	Date	Title	Redactions
1.	12 December 2017	Treasury Report: Overseas Buyers of Existing Homes: Revised Cabinet Paper for Lodgement	s9(2)(k) s9(2)(a) s9(2)(f)(iv) s9(2)(g)(i) s6(a)
2.	12 December 2017	Overseas Investment Amendment Bill: Approval for Introduction	s6(a) s9(2)(j) s9(2)(f)(iv) s9(2)(g)(i) s9(2)(h) s9(2)(j)
3.	12 December 2017	Aide Memoire: Overseas Buyers of Residential Land: Treatment of different types of residential land	s6(a) s9(2)(g)(i) s9(2)(f)(iv) s9(2)(k)
4.	13 December 2017	Cabinet Business Committee Minute of Decision. Overseas Investment Amendment Bill: Approval for Introduction	s6(a) s9(2)(h) s9(2)(f)(iv)

Treasury Report: Overseas Buyers of Existing Homes: Revised Cabinet Paper for Lodgement

Date:	12 December 2017	Report No:	T2017/2882
		File Number:	IM-5-1-1

Action Sought

	Action Sought	Deadline
Minister of Housing and Urban Development (Hon Phil Twyford)	Sign the attached Cabinet Paper and Cabinet Submission Form Lodge this with the Cabinet Office	3:00pm Tuesday 12 December 2017

Contact for Telephone Discussion (if required)

Name	Position	Telephone		1st Contact
Robbie Taylor	Senior Analyst	s9(2)(k)	N/A	✓
Thomas Parry	Team Leader	s9(2)(k)	s9(2)(a)	

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.

Lodge the attached Cabinet Paper with the Cabinet Office by 3:00pm today (Tuesday 12 December 2017).

Refer a copy of the report to the Prime Minister, Deputy Prime Minister, Minister of Finance, Associate Minister of Finance (Hon David Parker), Minister of Immigration and Minister for Land Information.

Note any feedback on the quality of the report

Enclosure: Yes

Treasury Report: Overseas Buyers of Existing Homes: Revised Cabinet Paper for Lodgement

Executive Summary

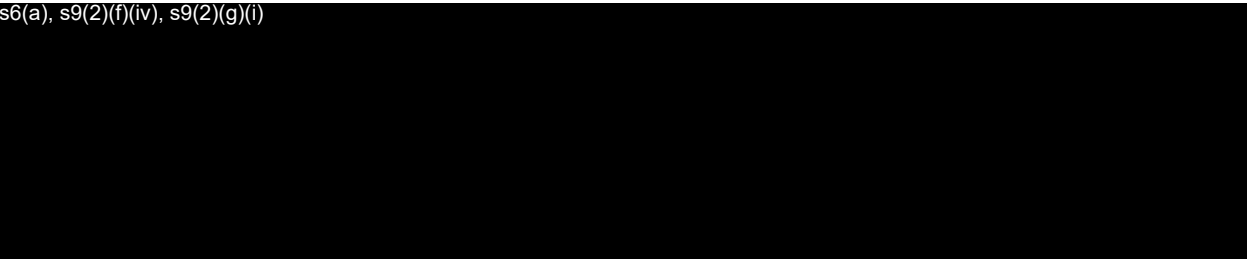
This report seeks your signature on the attached revised Cabinet Legislation Committee paper (revised LEG Paper) and Cabinet Submission Form, and agreement to lodge the revised LEG Paper, accompanying Overseas Investment Amendment Bill (the Bill), Departmental Disclosure Statement and Regulatory Impact Statement (RIS) with the Cabinet Office by 3:00pm on Tuesday 12 December 2017.

On 11 December 2017, Cabinet considered an earlier version of the LEG Paper (CAB-17-SUB-0537) and referred it to the Cabinet Business Committee (CBC) for further consideration at its meeting on 13 December 2017. CBC was authorised to have Power to Act at its meeting on 13 December 2017 to take decisions on the paper.

Ministers instructed officials to make the following changes to the Bill and LEG Paper for CBC's consideration:

- Narrow the categories of people who are exempt from screening of residential land transactions that are not currently screened under the current OIA and would be screened as a result of this Bill to: (i) New Zealand citizens; and (ii) New Zealand permanent residents that meet the 12month/183 day test. The existing rules regarding who can buy sensitive land as currently defined in the Act would be retained for all sensitive land, including residential land that would be screened under the current OIA. Therefore some residence class visa holders will continue to be able to buy residential land that is already sensitive under the Act.
- The ability for other residence class visa holders to come through OIO screening and get consent to buy one house to live in while in New Zealand (and must sell the house when they leave New Zealand) is retained. The boundaries of this pathway would be set by regulations, ^{s6(a)} [REDACTED]
- The ability for developers to retain and commercially lease new properties is removed, except for retirement villages, residential care facilities, student accommodation, and similar facilities, where, as part of operating a long-term accommodation facility, the overseas person owner could operate it directly or could out-source operations to a third party through a commercial lease.¹ In all cases overseas persons cannot live in the new accommodation themselves under the new builds test.

s6(a), s9(2)(f)(iv), s9(2)(g)(i)



¹ Any commercial lease must be for 3 years or more (so that any overseas person lessee would need OIO consent) and a lease cannot be granted to associates.

Recommended Action

We recommend that you:

- a **note** that officials have been working on a Bill to implement the Government's 100 day commitment regarding overseas investment in residential land (the Bill), based on detailed design decisions made by delegated Ministers;
- b **note** that on 11 December 2017 Cabinet, on referral from the Cabinet Legislation Committee, considered a Cabinet Legislation Paper (LEG Paper) on the Bill;
- c **note** that Cabinet referred the LEG Paper to the Cabinet Business Committee (CBC) for further consideration at its meeting on 13 December 2017 and authorised CBC to have Power to Act at its meeting on 13 December 2017 to take decisions on the paper.
- d **note** that Ministers have requested changes to the following areas of the Bill:
 - i. The definition of "ordinarily resident in New Zealand": limit the persons that are exempt from residential land screening to New Zealand citizens and to permanent resident visa holders that meet the 12 months/183 days test;
 - ii. The "commitment to reside in New Zealand test": limit the category of persons that can seek consent to purchase one home to reside in to holders of types of residence class visas specified in regulations;
 - iii. The "new builds" test: remove the ability of overseas persons to obtain consent to purchase residential land to develop and let newly built houses/apartments. That is, they must on-sell newly built houses/apartment (but for long-term accommodation facilities, such as rest homes and student hostels, could own, operate or lease them).
- e s6(a), s9(2)(f)(iv), s9(2)(g)(i)
- f s6(a), s9(2)(f)(iv), s9(2)(g)(i)
- g **note** that the Treasury has not had an opportunity to consider the impact on the RIS of the changes made subsequent to Cabinet 11 December 2017;
- h **sign** the attached Cabinet Legislation Committee (LEG Paper), Cabinet Submission Form, and lodge these documents, the Bill and Regulatory Impact Statement (RIS) with Cabinet Office by 3:00pm on 12 December 2017;

Signed/Not signed

- i **refer** this report to the Prime Minister, Deputy Prime Minister, Minister of Finance, Associate Minister of Finance (Hon David Parker), Minister of Immigration and Minister for Land Information.

Referred/Not referred

Thomas Parry
Team Leader

Hon Phil Twyford
Minister of Housing and Urban Development

Chair
Cabinet Business Committee

Overseas Investment Amendment Bill: Approval for Introduction

Proposal

- 1 It is proposed to introduce the attached Bill that amends the Overseas Investment Act (OIA). Overseas persons who do not obtain OIA consent will be prohibited from purchasing residential land (including land with dwellings on it). The amendments focus on legislative changes to the OIA to redefine sensitive land to include residential land, and amend the screening criteria for sensitive land, so that overseas buyers of residential land (including land with dwellings on it) must first obtain consent from the Overseas Investment Office (OIO). The Bill's other key features are measures intended to enable overseas investors to participate in projects that expand housing supply, mechanisms for buyers who are not New Zealand citizens and who hold residence class visas to purchase homes on the basis that they have committed to reside in New Zealand, and an enhanced disclosure, compliance and enforcement regime.

Overview

- 2 The attached Bill amends the OIA to ensure that investments made by overseas persons in New Zealand will have genuine benefits for the country. The Bill has a focus on making residential land sensitive land, but also includes provisions enhancing the enforcement powers of the OIO that would also apply to other transactions and persons regulated by the OIA.
- 3 The Bill will ensure overseas persons who are not resident in New Zealand will generally not be able to own sensitive land that is residential. Residential land is defined with reference to the property classification given to a property by the registered valuer of each council, as is required by the Ratings Valuation Rules issued by the Valuer-General. Residential land will be defined as all properties classified as either "residential" or "lifestyle".
- 4 The OIA operates as a screening regime. An overseas person must apply to the OIO for consent before they can make certain investments. The OIO assesses the investment against screening criteria in the OIA and, if satisfied, will provide a consent that includes conditions. The OIO currently screens "overseas investments in sensitive land" and the Bill would make "residential land" a sub-set of "sensitive land" and subject to that screening process.

5 A natural person is an overseas person and requires consent if they are neither a New Zealand citizen nor “ordinarily resident in New Zealand”. The Bill changes the definition of “ordinarily resident in New Zealand” in respect of the expanded screening regime. Under the new definition, a person will be ordinarily resident here (and not subject to screening) if they hold permanent resident visa and they have been residing in New Zealand for at least 12 months and have not been absent from New Zealand for more than 183 days in that 12 month period.

6 s6(a) [Redacted]


7 The Bill also provides that overseas persons would be able to buy sensitive residential land if they will be developing the land and adding to New Zealand’s housing supply, or if they will convert the land to another, non-residential use and are able to demonstrate this would have wider benefits to New Zealand.

8 The changes in the Bill will apply ten days after it receives Royal assent.

Policy

9 On 31 October 2017 Cabinet (CAB-17-MIN-0489 refers) agreed that:

- s6(a) [Redacted]
- the screening regime changes include provisions enabling overseas investors to invest in the construction of new residential property for on-sale or letting, in some situations;
- s6(a) [Redacted]
- s6(e)(vi), s9(2)(f) [Redacted]
- s6(e)(vi), s9(2)(f) [Redacted]

- a group of Ministers consisting of the Deputy Prime Minister, Minister of Finance, Associate Minister of Finance, Minister of Housing and Urban Development, Hon David Parker and the Minister of Land Information be authorised with Power to Act on further detailed policy matters that need to be addressed to enable the legislation to be drafted.
- 10 Legislative change is required in order to achieve this. Ministers with Power to Act were subsequently agreed a raft of design decisions reflected in the Cabinet paper and Bill attached to Cabinet submission CAB-17-SUB-0537.
 - 11 On 11 December 2017, following reference from the Cabinet Legislation Committee, Cabinet referred the paper attached to CAB-17-SUB-0537, *Overseas Investment Amendment Bill: Approval for Introduction*, to the Cabinet Business Committee (CBC) for further consideration at its meeting on 13 December 2017, and authorised CBC to have Power to Act to take decisions on the paper.
 - 12 Key Ministers subsequently agreed to make the changes outlined below and reflected in the attached Bill:
 - 12.1 Narrow the categories of people who are exempt from screening of residential land transactions as a result of this Bill to: (i) NZ citizens; and (ii) NZ permanent residents that meet the 12month/183 day test. The existing rules regarding who can buy sensitive land as currently defined in the Act would be retained for all sensitive land, including residential land that would be screened under the current OIA. Therefore some residence class visa holders will continue to be able to buy residential land that is already sensitive under the Act;
 - 12.2 The ability for other residence class visa holders to come through OIO screening and get consent to buy 1 house to live in while in NZ (and must sell the house when they leave NZ) is retained. The boundaries of this pathway would be set by regulations, but would not be available to holders of temporary visas.
 - 12.3 The ability for developers to retain and commercially lease new properties is removed. The only exception is for retirement villages, residential care facilities, student accommodation, and similar facilities, where, as part of operating a long-term accommodation facility, the overseas person owner could operate it directly or could out-source operations to a third party through a commercial lease. The commercial lease must be for 3 years or more (so that any overseas person lessee would need OIO consent) and a lease cannot be granted to associates.
 - 12.4 Therefore any overseas person (not captured by categories above) building new residential dwellings must on-sell them. In all cases overseas persons cannot live in the new accommodation themselves.
 - 12.5 s6(a), s9(2)(j) 

What land is captured?

- 13 The residential land captured by the expanded OIA definition of “sensitive land” would be land classified as either “residential” or “lifestyle” in information local councils use to support the District Valuation Roll.
- 14 Defining residential property through the District Valuation Roll is likely to capture almost all, but not all, properties that will be used for predominantly residential purpose, and will enable any interested party to access the data held by local councils to confirm the status of the relevant land for these OIA purposes.
- 15 More than just direct purchases of residential land will be captured. Consent is required under the OIA for transactions that result in overseas persons:
 - 15.1 owning sensitive land,
 - 15.2 leasing sensitive land for 3 years or more,
 - 15.3 acquiring 25 percent or more ownership or control of a company (or similar) that owns or leases (for 3 years or more) sensitive land, or
 - 15.4 having already obtained 25 percent or more ownership or control of such a company, increasing the ownership or control interest, or
 - 15.5 investing in such a company that will result in the company being 25 percent or more owned or controlled by overseas persons.
- 16 The OIO screening will also cover flat-owning company arrangements, as well as ownership and leases. This is where a person buys shares in a flat-owning company that owns a building, and also obtains a right to occupy a residence in the building but not a true lease.
- 17 Overseas persons (which includes companies that are 25 percent or more owned or controlled by overseas persons) will be able to obtain consent to buy sensitive residential land, or make the other investments described above, for the following purposes:
 - 17.1 living in a dwelling while they are living in New Zealand (with a requirement to sell the dwelling when they leave) – this will only be available to residence class visa holders who meet a test demonstrating a commitment to reside in New Zealand;
 - 17.2 developing the land to increase the number of dwellings, including purchasing “off the plans” for existing developments, and developing a site to support new residential sections for sale (e.g. earthworks and road-laying, but a mere legal subdivision will not be sufficient);
 - 17.3 building or expanding retirement villages, residential care facilities, student accommodation, and similar facilities – this is a form of housing for many New Zealanders and so is treated as a new build;

- 17.4 converting the residential land to another use (for example to build a motel or retail operation) where the overseas investment benefits New Zealand – it is necessary to provide a pathway to consent in these situations as that the definition of residential land will capture a wide range of land.
- 18 Overseas buyers wanting to use the increasing housing screening criteria to obtain consent (17.2 and 17.3 above) will need to apply to the OIO before purchasing residential land, and meet the existing OIO investor and good character tests. An overseas person will also be able to obtain a ‘standing consent’ to purchase residential land later and notify the OIO when that occurs. That process will enable developers to engage in land purchasing programmes and will enable individuals to make unconditional bids or bid at auction for houses, knowing that they already have the necessary OIO consent (and must then notify the OIO of the purchase).
- 19 Where a developer purchases residential land to build or expand housing they will be required to on-sell the housing, and not allowed to reside in any of the housing. An exception to this requirement to sell is the building or expansion of retirement villages, aged care facilities, student accommodation or similar long-term accommodation, where the developer can retain and operate those facilities (but not reside in them).
- 20 Where an investor wants to develop residential land for another use, the current OIO screening “benefits test” would apply.
- 21 Where residential land is also ‘sensitive land’ for other reasons – i.e. it is already screened under the OIA, such as because it borders a public reserve - the land will be screened as non-residential sensitive land under the existing screening criteria. However, if that land was being used for housing, then the OIO would impose conditions on the residential land. The practical implications of this is that an overseas person would need to meet the existing sensitive land tests, and then either convert the land to a beneficial non-housing use, meet the conditions of increasing housing for on-sale, or sell any surplus land.

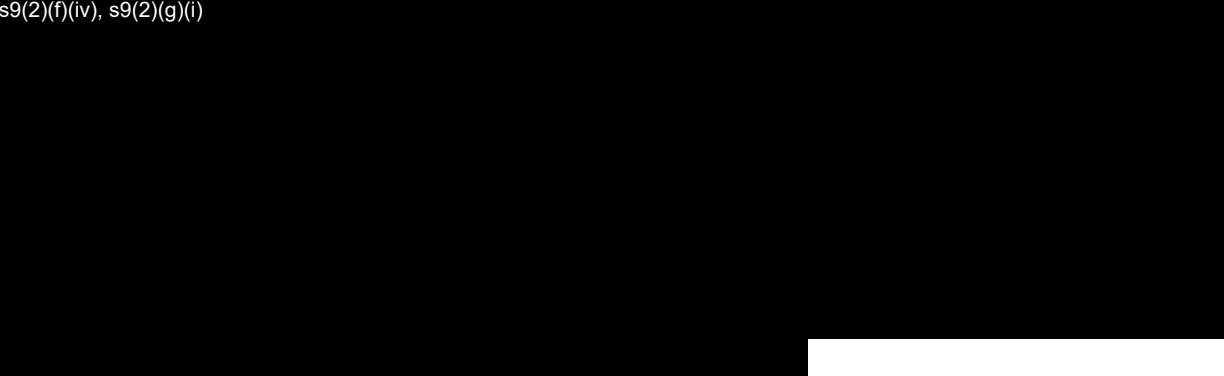
Whose residential property purchases will be subject to screening?

- 22 Any buyer who is not exempt will be subject to OIO screening. Exempt buyers include New Zealand citizens (irrespective of where they live) and anyone of any other nationality who is deemed “ordinarily resident in New Zealand”, as discussed below. Therefore the policy will operate through OIO screening of proposed investments by an “overseas person” in residential land.
- 23 The OIA also classes as “overseas persons” companies (or similar) that are 25 percent or more owned or controlled by overseas persons.
- 24 The Bill introduces a new definition of “ordinarily resident in New Zealand” for application to transactions that are sensitive land only by virtue of being residential land. Under the new definition, a person will be ordinarily resident here (and not subject to screening) if they hold permanent resident visa and they have been residing in New Zealand for at least 12 months and have not been absent from New Zealand for more than 183 days in that 12 month period.

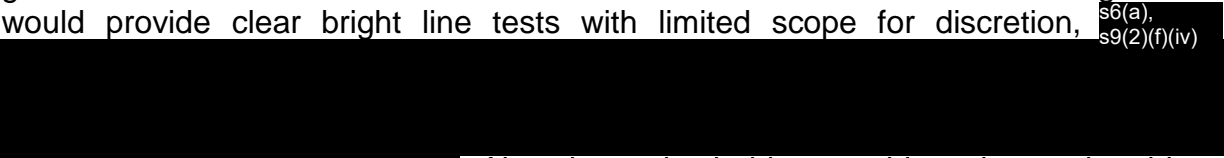
25 Non-citizen New Zealand residents who have a permanent resident visa and meet the 12 month / 183 day tests will be exempt from screening. However, a new set of screening criteria will allow holders of other residence class visas to purchase residential land, so they may live in the home on that land. Regulations will define the “commitment to New Zealand” tests they must meet.

26 It is intended that buyers approved under these provisions would be required to sell the home within 12 months of a “trigger event” (to be defined in regulations) if they are no longer being considered to be living in New Zealand. This disposal requirement would not apply if the screened buyer subsequently became a New Zealand citizen or met the test for being ordinarily resident in New Zealand.

27 s9(2)(f)(iv), s9(2)(g)(i)



28 The approach in the Bill is intended to allow pathways to consent for people with a genuine commitment to reside in New Zealand. It is intended that the regulations would provide clear bright line tests with limited scope for discretion, s6(a), s9(2)(f)(iv)



Also, these visa holders would continue to be able to make commercial investments in New Zealand businesses without screening (unless significant business assets or sensitive land are involved), and would be able to purchase residential land provided they meet the 12 months/183 days bright line test for permanent resident visa holders or the “commitment to reside in New Zealand” test to be defined by Ministers in regulations.

29 The Bill also includes a new regulation-making power for exemptions where required to meet existing FTA commitments. This will be used to implement obligations to ensure that Australian citizens and permanent residents are treated the same as, respectively, New Zealand citizens and permanent residents.

30

s6(a), s9(2)(h), s9(2)(j)



31

s6(a), s9(2)(j)



- 32 It is also proposed that an exemption be added to the existing Overseas Investment Regulations 2005 for overseas persons of Māori descent who would otherwise be subject to the OIO screening regime as an “overseas person” acquiring residential Māori freehold land¹ where the purchaser has an ancestral connection by descent.
- 33 It is likely that other class exemptions will be needed to allow the new law to operate effectively, and I have asked officials to prepare advice on those issues.
- 34 It is important that these new regulations come into effect at the same time as the Bill. For example, if the exemption for non-citizens of Māori descent were not in place in time, potentially such a person could be prevented from having their ancestral connection to Māori freehold land, which would be inconsistent with the principles of the Treaty of Waitangi and the principles underpinning the Te Ture Whenua Māori Act 1993.
- 35 The screening regime would also prevent a business that is an overseas person for the purposes of the OIA from buying residential land to house its New Zealand-based staff. There is an existing exemption power that may be exercised by Ministers if there was a compelling case to permit those purchases.
- 36 Where a residential premises is incidental to a commercial site, e.g. a motel with manager’s unit, and is on sensitive land, then the purchase could obtain consent if it passed the current OIO screening “benefits test” for sensitive land.

¹ “Māori freehold land” is a category of land defined by section 129 of the Te Ture Whenua Māori Act 1993. Māori Land (including Māori freehold land) tends to have characteristics not associated with other forms of privately owned land, and is subject to a range of unique restrictions and protections. Māori Land generally has multiple owners, and ownership of such land is generally obtained through succession. Māori land is referred to in Te Ture Whenua Māori Act 1993 and by Māori generally as a *taonga tuku iho* which denotes a treasure handed down through the generations.

Enhanced Compliance and Enforcement Mechanisms

- 37 The Bill includes a set of new compliance and enforcement powers:
- a. information gathering powers are strengthened to allow the OIO to require a person to provide information or documents when the OIO considers that it is necessary or desirable for the administration or enforcement of the OIA;
 - b. the OIO will, at its discretion, be able to “notify” an overseas person that if they dispose of property if the OIO has reasonable grounds to believe that the overseas person has purchased in breach of the OIA, that person is protected from further liability or penalty. This is intended to incentivise overseas persons who breach the residential property screening regime to agree to sell, avoiding the need for the OIO to routinely undertake lengthy and expensive court proceedings to force disposal. The OIO would have the discretion to issue a disposal notice for a failure to meet conditions of consent, for instance in relation to conditions for ‘increasing housing’;
 - c. the OIO will be able to serve documents using alternative mechanisms to personal service, such as service at a known electronic address or by leaving documents at the address of the relevant property. This is intended to give the OIO practical means of service where an “overseas person” is overseas or otherwise difficult to personally contact;
 - d. the maximum civil penalty in the OIA is increased to three times the gain that the investor has made (the penalty is currently limited to the gain the investor has made). This means the penalty will act as an incentive to comply with the OIA, rather than allowing someone to break even (or less) through a breach;
 - e. a third-party person who is ‘involved in a contravention’ of the OIA (for example, they aid or abet the contravention) would be liable for a civil penalty as well as the overseas person who contravenes the OIA. There will be protections for innocent third-parties who reasonably relied on apparently sound information. Such a person will have a defence if the person’s involvement in the contravention was due to reasonable reliance on information supplied by another person, or if the person took all reasonable and proper steps to ensure compliance with the OIA; and
 - f. conveyancers will be required to certify that, to the best of their knowledge, the purchase is not inconsistent with the proposed rules. A conveyancer that fails to provide the required certificate or to keep a copy of the certificate on file will be liable for an offence. The requirement to certify is a matter that the Registrar-General of Land might in future specify as a statutory requirement for the transfer instrument, with the effect that the conveyancer would be required to confirm in the course of the e-dealing that the requirement to certify had been met.

Compliance and Enforcement Enhancements to Apply to all OIO Sensitive Assets

38 The Bill proposes that the new compliance and enforcement powers (with the exception of the proposed duty on conveyancers) are not limited to purchases of sensitive residential land, but are applied across the entire OIA regime (i.e. to overseas investments in other sensitive land, in significant business assets, or in fishing quota). Given this coverage is potentially wider than Cabinet envisaged, I seek Cabinet authorisation for those measures.

International Relations and Obligations

39

s6(a)

40

s6(a), s9(2)(h)

41

s6(a)

42

s6(a)

Related Processes

43

s6(a)

- 44 In addition, due to the speed of the policy and drafting process of changes to the Bill following Cabinet on 11 December 2017, officials anticipate some of the current content of the Bill may need to be amended as the Bill progresses through the House.

Regulatory impact analysis

- 45 The Regulatory Quality Team at the Treasury has reviewed the Regulatory Impact Statement “Screening Overseas Investment in Sensitive Residential Land” by the Treasury in accordance with revised expectations for Regulatory Impact Assessments covering 100-day priorities.
- 46 The Regulatory Impact Statement clearly sets out the implementation choices and the reasoning for the selection of preferred options from among those. Within the constraints set out in the section “Key Limitations or Constraints on Analysis”, the analysis of the likely impact of the proposed approach on the New Zealand housing market is more limited, for instance through the impact on investor incentives and the commercial attractiveness and viability of building new houses under the new system.
- 47 It will be important to continue to focus on ways of monitoring the impact of this policy on overall housing market outcomes to help address this, for example to assess whether new housing built with funding from overseas is additional to, or a substitute for, housing that would otherwise have been built using domestically sourced funding, in addition to continued attention on managing implementation risks.
- 48 Note that the Treasury has not had an opportunity to consider the impact of the changes made subsequent to Cabinet 11 December 2017.

Compliance

- 49 The Treasury considers that the Bill is consistent with:
- 49.1 *the principles of the Treaty of Waitangi*. This is provided that the regulations for an exemption for non-citizens of Māori descent in relation to Māori freehold land come into force at the same time as the Bill. The addition of a regulation-making power for this purpose was prompted by consultation with Te Puni Kōkiri. The Treasury also proposes to seek Crown Law’s confirmation, after introduction, that the Bill does not raise any other inconsistencies with the principles of the Treaty. If necessary, the Treasury proposes that any such matters be addressed by amendment to the Bill;
- 49.2 *the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993*. Rights that are potentially engaged include the right to freedom from discrimination (on the grounds of national origin), freedom of expression, and freedom from unreasonable search and seizure (in relation to the amendment to the information gathering power in proposed new section 41(1)). In relation to discrimination, the limitation on the freedom is connected to the Bill’s objective and proportionate. In relation to freedom of expression and freedom from unreasonable search and seizure, the inclusion of a requirement that the regulator have reasonable grounds before exercising the power means that the limitation is not unreasonable and is justified in light of the Bill’s objective;

- 49.3 *the disclosure statement requirements.* A draft disclosure statement had been prepared and is attached to this paper. At the time of lodgement of this paper, the statement has not been updated to reflect changes to the Bill made since Cabinet on 11 December, 2017. Officials intend to complete an updated statement by introduction of the Bill.
- 49.4 *the principles and guidelines set out in the Privacy Act 1993.* The Treasury has engaged with the Privacy Commissioner on the development of the policy, in particular to ensure that the information gathering power is proportionate to the policy need. Much of the Privacy Commissioner's feedback has been incorporated into the Bill, including a provision to clarify that, in relation to use and disclosure of personal information gathered under the power, the Privacy Act 1993 applies. The Privacy Commissioner has indicated that he is pleased with the level and nature of engagement. He has however expressed the view that the information gathering power could be further limited and has indicated that he intends to submit to the Select Committee. Officials have advised that they intend to continue to work with the Privacy Commissioner to anticipate and respond to this residual concern.
- 49.5 *relevant international standards and obligations.* Refer to the discussion above in the *International Relations and Obligations* section; and
- 49.6 *the LAC Guidelines on the Process and Content of Legislation (2014 edition).* In particular, officials consider that the regulation-making powers proposed in the Bill comply with LAC guidelines.

Certain of the regulation-making powers could be seen as covering matters of significant policy and accordingly better suited for primary legislation

s9(2)(j)

However, officials consider that such matters will be technically complex and, possibly, subject to change; both of which are factors that weigh in favour of locating them in regulations.

For the purposes of the definitions of 'accommodation facility' and 'residential dwelling', the Bill makes provision for regulations to declare a class of premises to be treated as not falling within those definitions. Such regulations-making powers risk comment from the Regulations Review Committee on the grounds that they allow for regulations to determine the circumstances in which the Bill will apply, a matter more appropriate for primary legislation. Officials' view is that the definitions in the Bill are well developed and the regulations would deal with technically complex matters to address potential uncertainty about the precise boundaries of the terms.

However, the new screening tests in the Bill could be criticised for being too prescriptive for primary legislation, and instead matters of detail could be provided for in regulations and be adjusted over time.

Financial Implications

- 50 The proposed change to the definition of ‘ordinarily resident’ and the removal of temporary visa holders from the class of potential buyers will have an impact on the estimated number of applications to be screened by the OIO. However, we are unable to estimate the impact of these changes on volumes (and consequent impact on costs) until additional information is received. We will report back to Ministers on the impacts once analysis has been completed.
- 51 LINZ notes that continued changes to the proposed regime will adversely impact on the OIO’s ability to implement the regime by the proposed commencement date in early March 2018.

Consultation

- 52 Due to time constraints Treasury consultation on this paper was restricted to the Ministry of Business, Innovation and Employment, Land Information New Zealand and Ministry of Foreign Affairs and Trade.
- 52.1 However, Treasury consulted the following departments in the development of the advice supporting the recommendations on the earlier version of this paper, attached to LEG-17-SUB-0157: Land Information New Zealand, Ministry of Business, Innovation and Employment, Ministry of Foreign Affairs and Trade, Ministry of Justice; Inland Revenue, Parliamentary Counsel Office, the Overseas Investment Office, the Ministry for Primary Industries, and Te Puni Kōkiri. The Department of Prime Minister and Cabinet was been informed;
- 52.2 Due to the short timelines there has been no consultation with private sector organisations or public consultation process;
- 52.3 The New Zealand First and Green parties have been consulted in the development of the proposal reflected in the attached draft Bill. The Labour-New Zealand First coalition agreement includes a shared goal to “*Strengthen the Overseas Investment Act and undertake a comprehensive register of foreign-owned land and housing.*” The Deputy Prime Minister and Minister of Land Information were members of the group of Ministers Cabinet delegated Power to Act in developing the details of the proposal.
- 52.4 The Minister of Finance, as portfolio Minister, agrees with the submission of this paper.

Binding on the Crown

- 53 The OIA is currently binding on the Crown. The Bill will be binding on the Crown upon commencement.

Allocation of decision making powers

- 54 No changes to the current allocation of decision-making powers are proposed.

Associated regulations

- 55 Regulations are not necessary to bring the Bill into operation.
- 56 However, various new regulations, using existing and amended regulation-making powers, will be required to give full effect to the policy that the Bill is intended to implement. It is anticipated that many of those regulations will come into force at the same time that the Bill comes into force.
- 57 The Bill amends the existing regulation-making powers to provide for the following matters:
- 57.1 prescribing, for the purposes of the OIA:
- 57.1.1 classes of dwellings not to be treated as residential dwellings;
 - 57.1.2 classes of facilities to be treated as excluded accommodation facilities;
- 57.2 for the purposes of the commitment to New Zealand test (relevant to the acquisition of interests in residential (but not otherwise sensitive) land):
- 57.2.1 prescribing visa types within the residence class of visas and persons with a specified nationality status (“qualifying individuals”), and factors for assessing commitment to reside in New Zealand for each type of qualifying individual;
 - 57.2.2 trigger events (being events that, in relation to a qualifying individual that has acquired an interest in residential (but not otherwise sensitive) land, trigger the requirement to dispose of the interest);
- 57.3 to provide for the acquisition by a Māori person of an interest in residential land that is Māori freehold land for which the person is a member of the preferred classes of alienees (where those terms have the same meaning as in Te Ture Whenua Māori/Māori Land Act 1993). The intent of this provision is to enable regulations to be made that ensure Māori persons are not inadvertently prevented from acquiring that kind of interest as a consequence of the changes made in relation to residential land; and
- 57.4 to provide for the implementation of obligations in existing international agreements and that relate to overseas investments in sensitive land and overseas investments in significant business assets. ^{s9(2)(j)}

Other instruments

- 58 The Bill does not introduce any provision empowering other legislative instruments.
- 59 However, a clause of the Bill amends section 34 of the OIA. Section 34 provides the Minister with the ability to direct the OIO in relation to certain matters by a Ministerial directive letter. The OIO must comply with the directive letter. The directive letter is a type of delegated legislation.

60 The Bill will add, to the matters that are already set out in section 34, the following matters in relation to which the Minister can direct the OIO:

60.1 conditions of consent; and

60.2 whether, and in what circumstances, the proposed new section 16A(3)(b) (which relates to the “commitment to New Zealand” test for certain overseas investments in sensitive land) may be applied.

Definition of Minister/ department

61 No changes to the current definition of Minister are proposed. The OIA does not contain a definition of department.

Commencement of legislation

62 It is proposed that the Bill come into force 10 days after its assent. The new measures would apply to transactions entered into after that date. The current OIA rules will continue to apply to all transactions entered into before the commencement date, including ‘conditional agreements’ for sale and purchase where conditions precedent are not yet met and the contract is not yet enforceable at the commencement date.

63 If necessary the commencement method or date may need to be amended during the Bill’s passage through the House, for instance if the proposed commencement turns out to be incompatible with Land Information New Zealand’s implementation programme, ^{s9(2)(j)} [REDACTED].

Parliamentary stages

64 The Bill should be introduced and referred to the Finance and Expenditure committee (FEC) prior to Christmas 2017, and ^{s9(2)(f)(iv)} [REDACTED] ^{s9(2)(j)} [REDACTED]. This will require FEC to be instructed by the House, upon introduction, that the Bill is to be reported back to the House for its second reading by ^{s9(2)(f)(iv)} [REDACTED].

Recommendations

The Associate Minister of Finance (Hon David Parker) recommends that the Committee:

1 note that the Overseas Investment Amendment Bill amends the Overseas Investment Act (OIA) in order to deliver the Government’s policy goals regarding overseas investment in residential land (including built-on land).

2 note that significant policy details included in the Bill were agreed by a group of Ministers delegated Power to Act by Cabinet, therefore have not been approved by a Cabinet policy committee;

3 ^{s6(a), s9(2)(h)} [REDACTED]

4 endorse the decisions made by Ministers with Power to Act;

5

s6(a)

6

agree to amend that decision by removing the words “or letting”;

7

s6(a)

8

s6(a)

9

note that the Treasury has not had an opportunity to consider the impact on the RIS of the changes made subsequent to Cabinet 11 December 2017;

10

approve the Overseas Investment Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;

11

agree that the Bill be introduced by 1.00 p.m. on 14 December 2017;

12

agree that the Government propose that the Bill be:

12.1 referred to the Finance and Expenditure committee for consideration; and

12.2 s9(2)(f)(iv)

13

note that if necessary the commencement method or date may be amended during the Bill’s passage through the House; and

14

note it is anticipated that significant new or amending material will be introduced into the Bill by way of SOP during its passage in the House.

Authorised for lodgement

Hon David Parker

Associate Minister of Finance



Reference: T2017/2900 IM-5-1-1

Date: 12 December 2017

To: Minister of Housing and Urban Development (Hon Phil Twyford)

Deadline: None
(if any)

Aide Memoire: Overseas Buyers of Residential Land: Treatment of different types of residential land

This note provides you with a further potential update for the Cabinet Business Committee's consideration of the Overseas Investment Amendment Bill.

We have provided you with an updated Cabinet submission, following feedback from key ministers after Cabinet considered this Bill on Monday 11 December.

As amended through the changes since Monday, a person will be exempt from the Overseas Investment Act:

- For residential land, if they are a New Zealand citizen, or a New Zealand permanent resident who has been residing in New Zealand for 12 months and been in the country for at least 183 days (new ordinarily resident test).
- For other sensitive land, if they are "ordinarily resident in New Zealand" under the Act as it currently stands. This is a less restrictive test than the above test for residential land. It includes all residence class visa who have an intention to reside in NZ indefinitely (broadly similar to the 12 month / 183 day test).

The question arises how to treat land that is both residential and sensitive for other reasons. At present, the Bill provides in this situation that a person be exempt from the Act if they meet the "other sensitive land" test. This was because the test for "other sensitive land" was originally more restrictive than the test for residential land, but this situation has now reversed.

The effect of the recent proposed changes is that a broader class of people will be able to buy (without screening) land that is residential and sensitive, compared to land that is just residential. For example:

- A person on a residence class visa (not permanent resident) may be able to buy (without screening) a large residential property that is on the foreshore (sensitive land), but not if it is in the suburbs (normal residential), unless consent is obtained through screening.

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- A person on a residence class visa (not permanent resident) may be able to buy (without screening) a 10 hectare lifestyle block (sensitive land), but not a 4 hectare lifestyle block (normal lifestyle), unless consent is obtained through screening.

We propose this is altered so that if land is both residential and sensitive for other reasons, the residential categorisation would apply instead. This would mean that for land that is residential and sensitive:

- A person will be exempt if they are a New Zealand citizen or a New Zealand permanent resident who has been residing in New Zealand for 12 months and been in the country for at least 183 days; and
- The new commitment to reside in New Zealand test for residential land would apply (the new residual, screening pathway). That is, only overseas persons that hold residence class visas would be able to come through OIO screening and get consent to buy one house on residential and sensitive land to live in while in New Zealand (and must sell the house when they leave New Zealand) is retained. The boundaries of this pathway would be set by regulations.

The trade-off here is that this would limit the access to some existing sensitive land (that happens to be residential). s6(a), s9(2)(g)(i)

We note the new builds exemption would only be available for residential land that isn't sensitive for other reasons.

s9(2)(f)(iv)

Robbie Taylor, Senior Analyst, International, s9(2)(k)
Thomas Parry, Team Leader, International, s9(2)(k)

New recommendation to table at Cabinet Business Committee

Agree to amend the Bill before introduction so that:

- (i) the new definition of “ordinarily resident in New Zealand” applies to all transactions that include residential land (including land already subject to screening as sensitive for other reasons); and
- (ii) the new commitment to reside in New Zealand test (which requires those who obtain consent to sell the house on a trigger event, e.g. leaving New Zealand) applies to all transactions that include residential land (including land already subject to screening as sensitive for other reasons).

Agree / disagree



Cabinet Business Committee

Minute of Decision

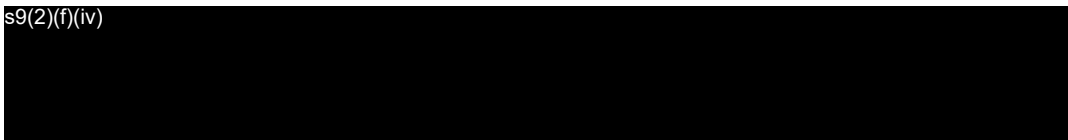
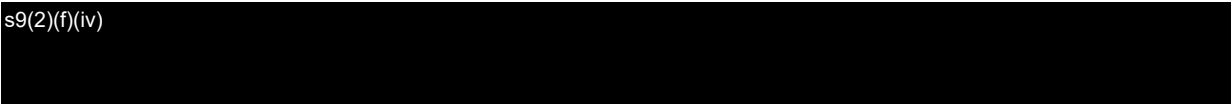
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Overseas Investment Amendment Bill: Approval for Introduction

Portfolio Associate Finance (Hon David Parker)

On 13 December 2017, the Cabinet Business Committee, having been authorised by Cabinet to have Power to Act [CAB-17-MIN-0537]:

- 1 **noted** that the Overseas Investment Amendment Bill amends the Overseas Investment Act 2005 (OIA) in order to deliver the government's policy goals regarding overseas investment in residential land (including built-on land);
- 2 **noted** that significant policy details included in the Bill were agreed by a group of Ministers delegated Power to Act by Cabinet [CAB-17-MIN-0489], and therefore have not been approved by a Cabinet policy committee;
- 3 s6(a), s9(2)(h) [REDACTED]
- 4 **endorsed** the decisions made by Ministers with Power to Act, as reflected in the Bill;
- 5 s6(a) [REDACTED]
- 6 **agreed** to amend the decision referred to in paragraph 5 above removing the words "or letting";
- 7 s6(a) [REDACTED]
- 8 s6(a) [REDACTED]
- 9 **noted** that the Treasury has not had an opportunity to consider the impact on the Regulatory Impact Statement of the changes made subsequent to Cabinet's consideration on 11 December 2017;

- 10 **approved** the Overseas Investment Amendment Bill for introduction [PCO 20769/7.0],
subject to:
 - 10.1 the final approval of the government caucuses and sufficient support in the House of Representatives;
 - 10.2 the amendments referred to in paragraph 11 below;
- 11 **agreed** to amend the Bill before its introduction so that:
 - 11.1 the new definition of “ordinarily resident in New Zealand” applies to all transactions that include residential land (including land already subject to screening as sensitive for other reasons); and
 - 11.2 the new commitment to reside in New Zealand test (which requires those who obtain consent to sell the house on a trigger event, eg leaving New Zealand) applies to all transactions that include residential land (including land already subject to screening as sensitive for other reasons);
- 12 **agreed** that the Bill be introduced by 1.00 p.m. on 14 December 2017;
- 13 **agreed** that the government propose that the Bill be:
 - 13.1 referred to the Finance and Expenditure Committee for consideration; and
 - 13.2 s9(2)(f)(iv) 
- 14 **noted** that, if necessary, the commencement method or date may be amended during the Bill’s passage through the House;
- 15 s9(2)(f)(iv) 

Janine Harvey
Committee Secretary

Hard-copy distribution: (see over)

Present:

Rt Hon Jacinda Ardern (Chair)
Rt Hon Winston Peters
Hon Kelvin Davis
Hon Grant Robertson
Hon Phil Twyford
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Andrew Little
Hon Carmel Sepuloni
Hon Dr David Clark
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Iain Lees-Galloway (part of item)
Hon Tracey Martin
Hon Shane Jones
Hon James Shaw
Hon Eugenic Sage

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet

Hard-copy distribution:

Associate Minister of Finance (Hon David Parker)
Minister of Housing and Urban Development
Minister of Immigration