

# Lifestyle Properties and New Migrants



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Recent updates to this resource:

24 April 2009: New Designation and Delegation Letter

## Introduction

Before buying a lifestyle property or holiday home in New Zealand you may need to apply for consent.

Consent is required if you are an overseas person as defined in New Zealand's legislation and the property is considered "sensitive" land. Find out if consent is required on the OIO website "Do I need consent?" or consult your lawyer and/or a lawyer with significant experience in overseas investments.

If you are planning to migrate to New Zealand indefinitely, you may need to consider short term accommodation in New Zealand before buying a lifestyle property. However, consent may be granted in advance if you can demonstrate your intention to migrate to New Zealand indefinitely.

Lifestyle properties are not defined in New Zealand's Overseas Investment Act 2005, nor is there any concessional treatment for property being acquired for purely personal or lifestyle purposes. However, the OIO's approach is somewhat different than other forms of investment.

Note that overseas persons with a spouse or partner who is a New Zealand citizen or resident are exempt from the consent requirements.

## Legislation

Section 16 of the Overseas Investment Act 2005 sets out the criteria for consent for overseas investments in sensitive land.

## Consent criteria

If you are an overseas person as defined by the Act and intend to acquire land considered sensitive, you will need to satisfy the consent criteria.

### The investor test

Consent can only be granted when the overseas person meets certain investor criteria (also known as the investor test). Only fairly generic business expertise and acumen need to be demonstrated for an investment such as the purchase of a lifestyle property (ie experience in purchasing and owning a residence). See the OIO resource “Investor Test”.

### Farm land advertising

Farm land vendors must advertise farm land on the open market before consent can be granted. However, land that is used purely for lifestyle purposes is probably not considered farm land. See the OIO resource “Standards for Advertising Farm Land”.

### Benefit to New Zealand or intention to reside in New Zealand indefinitely

Consent to acquire sensitive land will only be granted if either:

- the transaction is of benefit to New Zealand (and in some cases, that benefit is substantial and identifiable) (see below), or
- the applicant intends to reside in New Zealand indefinitely (see below).

### Benefit to New Zealand

Benefit to New Zealand is measured against a large number of economic and conservation factors. These factors are such that it is very difficult (though not impossible) to satisfy the "benefit to New Zealand" criterion when the property is being acquired for purely personal or lifestyle purposes. Read more in the OIO resource “Benefit to New Zealand”.

### Intention to reside in New Zealand indefinitely

The alternative criterion allows intending migrants to acquire property in advance of moving to New Zealand. By demonstrating their intention to reside in New Zealand indefinitely, overseas persons are not required to show that their investment is likely to benefit New Zealand. This concessional treatment is offered to potential migrants on the basis that ownership of land will assist new migrants to settle in New Zealand.

Australian citizens and the holders of a current Australian permanent residence visa or current Australian resident return visa will normally be eligible for consent on this concessional basis.

## Demonstrating intention to reside in New Zealand indefinitely

This provision gives concessional treatment to overseas persons that New Zealand wishes to attract as immigrants and who are not yet ordinarily resident in New Zealand.

### Criteria for demonstrating timeframes of intentions

An intention to reside in New Zealand indefinitely requires a definite plan and accompanying action within a reasonable timeframe. In determining whether a person is intending to reside indefinitely, the regulator (the OIO) must give consideration to any

active steps that have been taken by the investor to actually reside in New Zealand. In order for the section 16(1)(e)(i) criterion to apply, the applicant must:

- have applied to Immigration New Zealand for a visa or permit under any of Immigration New Zealand's residence policies, and provide evidence in the form of a confirmation letter from Immigration New Zealand, and
- provide the regulator with evidence that the application for the visa or permit is likely to be successful and provide evidence in the form of a confirmation letter from Immigration New Zealand, and
- show other actions consistent with an intent to reside in New Zealand in the near future.

The regulator may impose a time limit within which the applicant must become permanently resident in New Zealand. As a general rule, the government would expect that this would require that the overseas person must be resident in New Zealand within five years of the date of application.

### **Other supporting evidence of intentions**

A simple assertion by a person that he or she intends to remain indefinitely is unlikely to be sufficient. The surrounding circumstances are important. Expressions of intention will not prevail against a course of conduct leading to an opposite inference.<sup>1</sup>

For example, in *Re Craig; Curtis v Nairn*<sup>2</sup> the court considered factors such as the sale of a house in New Zealand, the cancellation of New Zealand superannuation, a statement that he did not wish to live on the New Zealand pension, and a wish to be cremated in Tasmania as evidence of an intention to live indefinitely in Queensland.

The following matters may demonstrate an intention to live indefinitely in New Zealand:

- acquiring property
- establishing a business and/or making long term investments
- becoming resident for tax purposes
- making long term investments, or
- moving all personal possessions.

In the former country of residence:

- selling property
- closing a business or liquidating long term investments
- ceasing to be tax resident, or
- moving all personal possessions.

## **Delegation and fees**

The Minister of Finance and the Minister for Land Information have delegated to the regulator (the OIO) the power to grant consent under the Act to overseas investments where the relevant overseas persons intend to reside in New Zealand indefinitely.

If the benefit to New Zealand criterion applies (ie the application does not demonstrate intention to reside in New Zealand indefinitely), decisions on consent to acquire lifestyle

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<sup>1</sup> Halsbury's Law of England, Vol 8, LexisNexis Butterworths, United Kingdom at para 429. [1998] BCL 317.

<sup>2</sup> In this case the High Court considered section 9(d) of the Domicile Act 1976.

properties are generally delegated. Exceptions include investments where the land includes special land. See the OIO resource “Offer Back of Special Land”.

See the OIO website for a schedule of current fees and the current Ministerial designation and delegation letter.

## How to Apply for consent

See the OIO resource “How to Apply for Consent”.

## Further information

Visit the OIO website at [www.linz.govt.nz/oio](http://www.linz.govt.nz/oio) to find related links, documents and answers to frequently asked questions. Read the Overseas Investment Act 2005 and the Overseas Investment Regulations on [www.legislation.govt.nz](http://www.legislation.govt.nz).

If you require further information, please contact the OIO.

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