

# Offer Back of Special Land

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## Introduction

In some situations qualifying special land must be offered back to the Crown before consent can be granted to an overseas investment in sensitive land. Special land consists of qualifying foreshore, seabed, riverbed or lakebed, as defined in the legislation.

This requirement only applies to land investments where the applicant must demonstrate how the transaction will, or is likely to, benefit New Zealand. The procedure for the offer back of special land is detailed below.

## Legislation

Section 16 sets out certain criteria for consent for overseas investments in sensitive land. Under section 16(1)(e)(ii), it must be shown in certain circumstances that the overseas investment “will or is likely to benefit New Zealand”.

The factors used to assess whether there is such a benefit are then set out in section 17. The special land factor is set out in section 17(2)(f).

It is important to note that there is **no requirement** to offer back special land where section 16(1)(e)(i) applies, namely where the relevant “overseas person” is:

- an individual intending to reside in New Zealand indefinitely, or
- where all the individuals with control of a “non-individual” overseas person are New Zealand citizens, ordinary New Zealand residents or are intending to reside in New Zealand indefinitely

See the OIO publications “Lifestyle Properties and New Migrants”, “Determine If a Person is Ordinarily Resident in New Zealand” and/or “Benefit to New Zealand”.

Regulations 13 to 27 establish the offer back procedure.

## Consent criteria

The OIO requires that either:

- any special land is offered back to the Crown in accordance with the procedure set out in regulations 13-27 (see below), or
- the applicant provides a statement that the relevant land does not include any special land.

## Determining special land

Qualifying foreshore, seabed, riverbed or lakebed, as defined in section 6, is described as “special land” in regulation 12 of the Overseas Investment Regulations 2005.

The two most common special land scenarios are where either:

- there is a qualifying riverbed fully enclosed within a Land Transfer Act title, or
- a Land Transfer Act title has an external river boundary to which the *ad medium filum aquae* centreline presumption applies.

In practice determining the cadastral boundaries defined by mean high water springs will usually require professional surveying expertise.

In cases of doubt, the OIO recommends that you engage a lawyer with significant experience in overseas investment applications, a licensed cadastral surveyor and/or a LINZ-accredited Crown property service provider.

## Offer back procedure

Please forward all special land documentation to the OIO in the first instance. The OIO will forward this documentation to the relevant Ministers where required.

Special land generally increases the timeframe for application assessment. It may be possible for consent to be granted for an application to acquire sensitive land before the offer back process is completed. In such cases, the consent will be conditional upon the

new owner agreeing to be bound by any subsequent special land agreement. Contact the OIO for more information.

### **1. Written notice to the Crown**

The owner must give written notice under regulation 13 that a proposed overseas investment includes special land. Regulation 14 sets out the “content of notice” which includes a statement that the owner intends to offer the special land to the Crown.

If the land is to be offered to the Crown for nil consideration, please amend the regulation 14 notice to state that the special land does not need to be surveyed before its market value can be determined and before it can be acquired by the Crown - see regulation 14(g)(i).

A set of templates to facilitate an offer of special land to the Crown for no consideration will be published shortly.

### **2. Crown right of waiver**

The Crown may waive its right to acquire the special land under regulation 15 at any time after a notice has been given and before a final agreement is reached.

### **3. Valuation procedure if Crown requires**

If the Crown chooses not to waive its right to acquire the special land, a valuation procedure is set out in regulations 16 to 21. Valuation will not be required if the special land is to be offered for nil consideration.

### **4. Negotiation in good faith**

Under regulation 22, the owner and Crown must negotiate in good faith in order to conclude an agreement in principle as to the terms and conditions of the acquisition. If this is successful, the owner must then offer the special land on the terms and conditions stated in that agreement.

### **5. The Crown decides**

The Crown must decide whether to accept the offer under regulation 24. If the offer is accepted, the special land will be formally conveyed to the Crown. The method of conveyance will be determined by the type of special land involved.

## **Delegation and fees**

The Minister of Finance and the Minister for Land Information decide whether to accept special land offered back to the Crown. Please note that all documentation should be forwarded to the OIO in the first instance.

For applications involving special land, the relevant Minister fees apply. See the OIO website for the current schedule of fees.

The current Ministerial directive letter provides additional commentary on special land.

## 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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