



Build-to-rent developments under the Overseas Investment Act 2005

Overview



- Build-to-rent developments of 20 or more dwellings are specifically provided for in the Overseas Investment Act 2005 (the Act).
- New build-to-rent developments of 20 or more dwellings may have access to a streamlined pathway for consent under the the Act. The rules that apply will depend on the type of land being acquired. Investors must be in the business of providing residential dwellings, but there is no requirement for them to have previously completed a built-to-rent development.
- New build-to-rent developments of fewer than 20 dwellings will be eligible for consent only if they are not built on residential land.
- Mixed use developments may be able to rely on different consent pathways for different parts of the development.
- Different rules will apply to the on-sale of an existing built-to-rent development.

Build-to-rent developments and the Overseas Investment Act 2005

Build-to-rent is a term for medium to large-scale residential housing developments that are built to provide long-term rental accommodation to tenants. It generally encompasses both the development and professional management of a property by institutional investors and developers. It differs from the more traditional renting model consisting of individual or a small number of dwellings provided by small investors.

Build-to-rent developments may need consent under the Act.

- Consent may be needed to acquire the land on which the development will occur
- Consent may also be needed if the development cost will exceed \$100m (or a higher threshold for developers from certain countries)
- Consent may be needed to purchase an existing build-to-rent development

The rules that apply will depend on the type of land that the development is built on, whether consent is sought for a new development, an expansion of an existing development, or the on-sale of an existing development, and whether the development is exclusively residential or mixed-use.

Scope of this guidance

This guidance applies to developments typically described as build-to-rent developments, and mixed-use developments that have a build-to-rent component.

Schedule 2 of the Act makes special provision for build-to-rent developments when:

- they are new developments that involve 20 or more new residential dwellings, and are developed on residential land (see schedule 2, cl1 11 and cl 19(2)(c)(7)), and
- the developer is 'in the business' of providing new residential dwellings through shared equity arrangements, rent-to-buy arrangements, rental arrangements, or through sale.

To establish whether someone is 'in the business of', the OIO considers the nature of any existing business (including related entities) and what overt steps have been taken to commence providing residential dwellings by one or more of the required arrangements (and especially overt steps taken to enter the built-to-rent market).

This does not require investors to already have an established build-to-rent business or to have completed a build-to-rent development.

Establishment of a new build-to-rent development

Different rules apply depending on the type of land.

Land type	Pathways	Criteria
Residential land that isn't sensitive for any other reason	Increased housing pathway Significant business assets pathway (if >\$100m)	Increase dwellings by at least one, for a total of at least twenty Investor test
Land that is sensitive for another reason (whether it includes residential land or not)	Benefit to New Zealand pathway Significant business assets pathway (if >\$100m)	Benefit to New Zealand test Investor test National interest test if applicable (refer to s 20A and 20B)
Non-sensitive land	Significant business assets pathway (if >\$100m)	Investor test

Consent conditions for new developments

If granted, consent for **new** developments on sensitive land will generally be subject to the following conditions.

- The developer must complete the development within a specified timeframe
- Each dwelling must be either rented to an occupier or sold
- Certain individuals connected with the developer must not occupy the land
- The developer and certain individuals connected with the developer must continue to meet the investor test

Developments on *non-sensitive land* (ie: developments that require only consent under the significant business assets pathway) are likely to be conditional only upon the the developer and certain individuals connected with the developer continuing to meet the investor test.

Buying an existing build-to-rent development

Investments in **existing** build-to-rent developments on sensitive land will generally be assessed under the 'benefit to New Zealand' pathway. Under the 'benefit to New Zealand' pathway, the investor must demonstrate that their investment will deliver benefits against seven broad 'benefit factors'.

The 'increased housing' pathway may also be available if the investor intends to expand an existing development by at least 20 dwellings.

One benefit that can be considered under the benefit to New Zealand test is the "reduced risk of illiquid assets". This means that an overseas person acquiring an asset would benefit New Zealand by ensuring there is a purchaser for assets that might otherwise be stranded. For example, it may apply where an overseas person is purchasing an existing build-to-rent development (or acquiring the owner of such a development), and that purchase would better ensure the asset remains liquid.

This consideration is more likely to be relevant to large assets that cannot easily be sold in parts (or where breaking the asset up would result in a loss of value), or assets that require specialisation to own, control or

operate. These assets are less likely to have prospective New Zealand purchasers so risks of illiquidity will be heightened.

Consent conditions for existing developments

If granted, consent for existing developments on sensitive land will generally be subject to the following conditions.

- Each dwelling must be either rented to an occupier or sold
- Certain individuals connected with the investor must not occupy the land
- The developer and certain individuals connected with the developer must continue to meet the investor test

Mixed-use developments

Developers of 'mixed use developments' on residential (but not otherwise sensitive) land may rely on different pathways for different areas of land. For example: a developer may rely on the increased housing pathway for a build-to-rent component and the 'non-residential use' pathway for a commercial component. Different conditions may apply to different parts of the development.

Consent conditions for mixed use developments

If granted, consent for a mixed use development will be subject to similar conditions as for a new development on residential land. However, different conditions will apply to the non-residential parts of the development. These conditions will require the non-residential parts of the land to be used for non-residential purposes.

Examples

The following examples are intended to illustrate potential scenarios related to build-to-rent investments. However, each application will be decided on its merits and the decision and any resulting conditions will be influenced by the circumstances of the developments and the capability of the developer.

Example one – a new developer undertaking a 'build-to-rent' development on residential land

C is a newly incorporated New Zealand company owned by a United States investment fund. C wishes to undertake a residential development on residential but not otherwise sensitive land. The development will comprise 100 new dwellings.

Neither C nor the investment fund have undertaken a 'build-to-rent' development before. However, the investment fund has started another residential development (developing dwellings for sale), and C has been planning this development for some time. C's senior executive team has made clear decisions to undertake an investment of this nature, and has stated publicly that it will be operating in the build-to-rent market.

What pathway applies?

C's application will be considered under the 'increased housing' pathway. In order to be allowed to retain dwellings for rental, C must demonstrate that it is 'in the business of' providing new residential dwellings through shared equity arrangements, rent-to-buy arrangements, rental arrangements, or through sale.

Is C 'in the business of'?

Yes. C's shareholder's other development and the preparatory work undertaken by C means that C is probably 'in the business of'.

Example two – a ‘build-to-rent’ development on otherwise sensitive land

B is an established, overseas-owned, build-to-rent developer wishing to undertake a new development on ‘otherwise sensitive’ land.

What pathway applies?

B’s application will be assessed under the ‘benefit to New Zealand’ pathway, as the land is otherwise sensitive land. The benefits of B’s development will be assessed against seven broadly framed benefit factors (see s 17 of the Act).

These factors are: economic benefits, benefits to the natural environment, public access, protection of historic heritage, advancing a government policy, oversight or participation of New Zealanders, and other consequential benefits.

Example three – a mixed-use development

A is an established, overseas owned, build-to-rent developer wishing to undertake a new development on residential land that not otherwise sensitive. The development will be a mixed-use development, including at least 20 residential dwellings and a number of commercial units.

What pathways apply?

Each part of the transaction will need to meet the requirements of one of two pathways under a single application for consent:

- The residential elements of A’s application will be assessed under the ‘increased housing’ pathway,
- The non-residential elements will be considered under the ‘non-residential use’ pathway.

What conditions will apply?

Conditions will require A to:

- complete the development, and
- either *rent* or *sell* each residential dwelling, and
- use the non-residential areas for non-residential uses.

A’s directors and possibly some other individuals must continue to meet the investor test.

Conditions will prohibit certain individuals occupying a dwelling (but *could* occupy a non-residential space for non-residential purposes).

Conditions will require A to dispose of the development if these conditions are not met.

Example four – the on-sale of a development

A is the owner of an established 150 dwelling build-to-rent development. A wishes to dispose of the investment, and has agreed to sell it to B, an overseas investor. B intends to operate the development in the same manner as A.

What pathways apply?

As B does not intend to add additional units, the transaction will need consent under the ‘benefit to New Zealand test’.

How will the test be satisfied?

B must satisfy the decision maker that the transaction will benefit New Zealand, having regard for the seven benefit factors in s 17 of the Act.

The most likely benefit will be an economic benefit, a reduced risk of illiquid assets. The Government has directed the OIO that it is important to minimise the number of stranded assets. This benefit will do that as well as increasing market liquidity and, among other things, support greater appetite for international capital investment in New Zealand.

What conditions will apply?

Conditions will require B to either *rent* or *sell* each residential dwelling.

B’s directors and possibly some other individuals must continue to meet the investor test.

Conditions will prohibit certain individuals occupying a dwelling (but *could* occupy a non-residential space for non-residential purposes).

Conditions will require B to dispose of the development if these conditions are not met.

More information

The information contained in this document is intended for general guidance only, and the examples provided are for illustrative purposes only.

For more information, we recommend that you seek legal advice from a lawyer who has experience in dealing with the Overseas Investment Act.

We also encourage investors to consider meeting with us before submitting an application for consent. A 'pre-application meeting' will help you prepare a clearly reasoned application that contains all the information we will need to assess your application.

You will be able to:

- Explain (at a high level) your overall application for consent and your investment proposal
- Ask any questions you have about presenting specific aspects of your application
- Get our feedback on how you may be able to improve the quality of your application
- Ask any questions you have about the application process.

For more information: Phone: 0800 665 463 (New Zealand only),
Phone: +64 7 974 5595 (international callers), Email: oio@linz.govt.nz

About the Overseas Investment Office

The Overseas Investment Office regulates access to New Zealand's land, residential properties and significant business assets by overseas investors, and makes decisions on overseas investment applications. It administers and applies the Overseas Investment Act. Its work contributes to more homes and jobs for New Zealanders, thriving companies and industries, protection of the places Kiwis treasure, and greater access to them.

