

Hon Grant Robertson

MP for Wellington Central
Deputy Prime Minister
Minister of Finance
Minister for Infrastructure
Minister for Sport and Recreation
Minister for Racing



24 November 2021

Gaye Searancke
Chief Executive
Land Information New Zealand
Private Box 5501
WELLINGTON 6145

Dear Ms Searancke,

Ministerial Delegation Letter

Designation and Delegation Letter

1. This designation and delegation letter is made under sections 30 and 32 of the Overseas Investment Act 2005 and Schedule 6 of the Public Service Act 2020.
2. Terms used in this letter have the same meaning as in the Overseas Investment Act 2005 (the Act) and the Overseas Investment Regulations 2005 (the Regulations) unless otherwise stated.

Designation

3. The Minister of Finance designates Toitū Te Whenua Land Information New Zealand (LINZ) as the regulating department and the Chief Executive of LINZ as the Regulator (the Regulator) in accordance with section 30 of the Act.

Delegations

Ministers delegate certain functions and powers to the Regulator

4. The Minister of Finance, the Minister for Oceans and Fisheries, and the Minister for Land Information (together, Ministers or we) delegate our powers and functions under the Act and Regulations as specified in the tables attached to this letter, and the power to delegate those delegated powers and functions.

5. These delegations are intended to balance the need for Ministers to make the most important decisions (for example, decisions involving higher sensitivity assets such as larger areas of farm land) with the need to ensure the efficient operation of the Act.

Ministers may call in decisions

6. The delegations do not prevent us from exercising delegated powers and functions. Ministers may, at our discretion, choose to make a delegated decision (that is, 'call in' a decision).
7. Ministers are most likely to call in a decision when they consider it to be important and the relevant test provides for the exercise of Ministerial judgement. For example, a call in for a land decision could occur when the relevant test is the benefit to New Zealand test and: the relevant land (or the infrastructure on the relevant land) is particularly sensitive, there is or will be a high level of public interest in the application, or there is a high level of risk associated with the investor or investment.
8. We expect the Regulator to regularly report to Ministers on significant applications that may be decided under delegation, and to assist us in identifying important decisions we may wish to call in.

Revocation

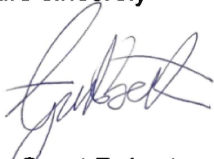
9. Subject to paragraph 10 and 11 below, the Minister of Finance, Minister for Land Information, and the Minister for Oceans and Fisheries revoke all previous delegations under the Act and Regulations (the Revoked Delegations), with effect from 24 November 2021.

Date letter takes effect

10. This letter will take effect on 24 November 2021, and applies in relation to any transaction, application or other matter, where provisions in the Act or the Regulations as they read on or after that date apply.

11. In other cases, where an earlier version of the provisions in the Act or Regulations apply under the transitional arrangements in Schedule 1AA of the Act or Schedule 1AA of the Regulations, then the Revoked Delegations continue to apply to that transaction, application or other matter.

Yours sincerely



Hon Grant Robertson
Minister of Finance



Hon David Parker
Minister for Oceans and Fisheries



Hon Stuart Nash
Acting Minister for Land Information

Table A: Powers and functions to make certain decisions <ul style="list-style-type: none"> The Ministers delegate to the Regulator the powers and functions to make the following decisions, including all ancillary powers and functions necessary for, or incidental to, making those decisions.¹ An application for consent may require a business decision, fishing quota decision, land decision or a combination thereof. If any of those three types of decision on an application for consent must be made by the relevant Minister or Ministers then all consent decisions for that application must be made by the relevant Minister or Ministers.² 			
	Decision type	Relevant Minister(s)	Delegation
A	Business decisions	Minister of Finance	All business decisions delegated to the Regulator.
B	Fishing quota decisions	Minister of Finance and Minister for Oceans and Fisheries	None.
C	Land decisions	Minister of Finance and Minister for Land Information	Land decisions (including on applications for standing consents) delegated to the Regulator when any of the following is true: <ul style="list-style-type: none"> 1. The relevant land is residential (but not otherwise sensitive) land only.³

¹ For example, the ancillary powers: under section 15 of the Act to determine who are relevant overseas persons, and individuals with control, for overseas investments; under section 16A(7) and (8) of the Act to not apply, or to modify, certain requirements; under section 16A(1)(1D) of the Act not to apply the modified benefit test for farm land; or under section 25(1) of the Act including the power to grant consent retrospectively.

² For example, if an application for consent required a business decision (which are all delegated) and a land decision that was not delegated then both consent decisions would be made by the relevant Ministers. For the avoidance of doubt, the Regulator may still make a delegated consent decision where the transaction is a transaction of national interest, and the Minister has considered the exercise of the power under section 20C.

³ One effect of this delegation is that all applications (including standing consents) under the increased housing test, non-residential use test, and incidental residential use test are delegated to the Regulator.

			<ol style="list-style-type: none"> 2. The application for consent is under the commitment to reside in New Zealand test only, or the 'intention to reside in New Zealand test' only.⁴ 3. The value of the consideration to be provided for the overseas investment in sensitive land is less than \$2 million. 4. The acquisition is an overseas investment in sensitive land under section 12(1)(b)(ii) of the Act and the overseas person, together with any associates, is increasing their existing more than 25% ownership or control interest by less than 25%.⁵ 5. The interest in the relevant land is not and does not include: <ol style="list-style-type: none"> a. a freehold estate; or b. a leasehold interest for a term of 35 years or more (including rights of renewal, whether of the grantor or grantee); or c. a reviewable lease under the Crown Pastoral Land Act 1998. 6. The application for consent is under the benefit to New Zealand test, section 16A(4) of the Act does not apply, and the relevant land is not, and does not include, non-urban land exceeding 5 hectares.
--	--	--	---

⁴ A reference to the 'intention to reside in New Zealand test' in this letter is a reference to the criterion in section 16(1)(c)(i) of the Act.

⁵ For example, increasing from a 60% ownership or control interest to a 80% ownership or control interest.

			<p>7. The application for consent is under the benefit to New Zealand test and the relevant land is or includes non-urban land exceeding 5 hectares and:</p> <ul style="list-style-type: none"> a. the value of the consideration to be provided for the overseas investment in sensitive land is less than \$20 million; and b. the relevant land is less than 30 hectares; and c. the relevant land is not, and does not include, any marine and coastal area; and d. the relevant land is not, and does not include, any bed of a lake that exceeds the relevant area threshold in Table 1 of Schedule 1 of the Act. <p>8. The application for consent is under the benefit to New Zealand test and:</p> <ul style="list-style-type: none"> a. the application is being considered in accordance with section 16A(4) of the Act (the special test relating to forestry activities); and b. the application is not for a standing consent.
D	A decision on whether or not to grant an individual exemption under section 61D of the Act ('individual exemption').	Minister of Finance	All 'individual exemption' decisions delegated to the Regulator.
E	A decision on whether or not to grant an 'exemption certificate'. ⁶	Minister of Finance and Minister for Land Information	All 'exemption certificate' decisions delegated to the Regulator.

⁶ A reference to an 'exemption certificate' in this letter is a reference to an exemption certificate under clause 4 of Schedule 3 of the Act (dwellings in large apartment developments that are purchased off plans).

F	A decision on whether or not to grant a waiver relating to a trigger event under clause 8 of Schedule 2 of the Act (a 'waiver')	Minister of Finance and Minister for Land Information	All 'waiver' decisions delegated to the Regulator.
G	<p>A decision to:⁷</p> <ol style="list-style-type: none"> 1. vary a consent or conditions of consent under section 27 of the Act; or 2. revoke a condition of consent that the Act required to be imposed, under clause 39(2) of Schedule 1AA of the Act; or 3. vary a 'transitional exemption certificate' under clause 6(8) of Schedule 1AA of the Act⁸; or 4. vary or revoke a standing consent or the conditions of a standing consent under clauses 3 or 4 of Schedule 4 of the Act; or 5. revoke a consent under section 26 of the Act; or 6. amend or revoke an 'individual exemption'; or 	Minister of Finance, Minister for Land Information and Minister for Oceans and Fisheries ⁹	All Variation and Revocation Decisions delegated to the Regulator.

⁷ For the avoidance of doubt, a decision to vary conditions of consent includes a decision to vary by way of adding to or revoking conditions.

⁸ A reference to a 'transitional exemption certificate' in this letter is a reference to an exemption certificate under clause 6 of Schedule 1AA of the Act (exemption relating to dwellings in large apartment developments where sales of dwellings have begun before assent date).

⁹ The relevant Minister(s) being: the relevant Minister(s) responsible for the relevant category of overseas investment for items 1 and 2; the Minister of Finance and Minister for Land Information for items 3, 4 and 7; the Minister of Finance for items 5 and 6.

	7. amend or revoke a 'waiver' under clause 8(4) of Schedule 2 of the Act Together Variation and Revocation Decisions.		
H	A decision under section 29A(1) of the Act as to whether or not a person meets the investor test ('standalone investor test')	Minister of Finance	All 'standalone investor test' decisions delegated to the Regulator.
I	A decision on whether or not to grant an exemption under section 20 of the Act ('farm land offer exemption').	Minister of Finance and Minister for Land Information	All 'farm land offer exemption' decisions delegated to the Regulator, except for decisions under section 20(1)(b) of the Act (class exemptions).
J	Decisions in relation to the acquisition of a fresh or seawater interest under Schedule 5 of the Act or regulations 12-25 ('fresh or seawater interest decisions').	Minister for Land Information and Minister of Finance	All 'fresh or seawater interest decisions' delegated to the Regulator, except for the following decisions: <ol style="list-style-type: none"> 1. a decision not to acquire a fresh or seawater interest under clauses 4(1) or 5(1) of Schedule 5 of the Act; 2. a decision to agree a different amount of compensation under clause 9(3) or 10(3) including at mediation under clause 25 of Schedule 5 of the Act; 3. a decision to agree a different procedure for determining an amount of compensation under clause 9(3) of the Schedule 5 of the Act, where the amount is likely to significantly exceed the average rateable value per hectare of the land under regulation 23(5)(b).

Table B: Further powers and functions <ul style="list-style-type: none"> Ministers delegate the following powers and functions to the Regulator to the extent that they are not already delegated in Table A above.¹⁰ For the avoidance of doubt, the Regulator may exercise the delegations in this table in connection with a decision made by Ministers. The delegation of a power or function includes any ancillary powers and functions necessary for, or incidental to, the exercise of that power or function. 			
	Provision	Description of power or function¹¹	Relevant Minister(s)
A	Section 14(1)(b) of the Act and section 57E(1)(b) of the Fisheries Act 1996.	To consult with any other person(s).	Minister of Finance, Minister for Land Information and Minister for Oceans and Fisheries ¹²
B	Section 20A	To determine whether an application for consent involves a transaction of national interest and to notify the applicant.	Minister of Finance
C	Section 20B(1)	To notify the applicant that a transaction is a transaction of national interest only, following a decision made by the Minister (part delegation).	Minister of Finance
D	Section 20D	To identify and notify persons who are critical direct suppliers and to publish list.	Minister of Finance
E	Sections 20E(3)(b) and 20E(5)(b)	To specify the information that must be contained in notices given by unpublished critical direct suppliers.	Minister of Finance
F	Section 25A(3)	To enter into a contract or deed with an applicant for the purpose of enforcing a condition.	Minister of Finance, Minister for Land Information and Minister for Oceans and Fisheries ¹³

G	Section 84(3)	To review any other call-in transaction (in addition to transactions which have been notified).	Minister of Finance
H	Section 87(1)	To authorise changes to the manner in which the notification under sections 85 and 86 must be given, in the case of minor and technical changes only (part delegation).	Minister of Finance
I	Section 88(1)	To give a direction order to a relevant acquirer, following a review of a call-in transaction, where the direction order is not subject to other conditions under section 88(3) only (part delegation).	Minister of Finance
J	Section 129	To publish notice of a decision, or defer or dispense with publication.	Minister of Finance
K	Regulation 64(1)(c)	To specify, by notice in the Gazette, the information that must be contained in an exemption application.	Minister of Finance
L	Regulation 64C(4) and (5)	To extend the period that an interim direction order is in force and to give notice of the extension to a relevant acquirer.	Minister of Finance
M	Regulation 68	To give notice of the exercise of powers.	Minister of Finance, Minister for Land Information and Minister for Oceans and Fisheries ¹⁴
N	Regulation 69A(3) and (5)	To extend the timeframe for taking a risk management action and to give notice of the extension is delegated to the Regulator.	Minister of Finance

¹⁰ For example, the power to consult under section 14(1)(b) of the Act is delegated as an ancillary power in Table A to the extent that it is exercised in connection with a delegated decision.

The delegation of the same power in Table B ensures (for the avoidance of doubt) that the Regulator can exercise it in connection with decisions that are not delegated.

¹¹ The primary purpose of the 'description of power or function' column in this table is to assist the reader, unless stated otherwise it does not limit the scope of the delegation.

¹² The relevant Minister(s) are the Minister(s) responsible for the relevant category of overseas investment.

¹³ Ibid.

¹⁴ Ibid.