

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).
- The Act provides a streamlined consent pathway (the 'large rental development test') for foreign investors looking to invest in established large-scale rental developments.
- New build-to-rent developments of 20 or more dwellings may have access to a streamlined pathway for consent under the Act (the 'increased housing test'). The rules that apply will depend on the type of land being acquired. There is no requirement for investors to have previously completed a built-to-rent development.
- Mixed use developments may be able to rely on different consent pathways for different parts of the 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 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 established developments that involve 20 or more residential dwellings that will be available to be occupied under a residential tenancy (see schedule 2 cl. 11A)

- they are new developments that involve 20 or more new residential dwellings, and are developed on residential land (see schedule 2, cl.1 and 11), and

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

Buying an existing build-to-rent development

Investments in existing build-to-rent developments on residential (but not otherwise sensitive) land will be assessed under the large rental development pathway. This is a streamlined application pathway designed to provide build-to-rent developers confidence in their ability to eventually exit their development. Unlike the 'benefit to New Zealand test' there is no requirement to satisfy the decision-maker that the transaction will benefit New Zealand under the seven benefit factors.

The land must be a single site (or adjacent sites) with one or more buildings that taken together will have at least 20 residential dwellings suitable for use as, or conversion to, residential dwellings that will be available, within a satisfactory timeframe, to be occupied under a residential tenancy.

What will be considered to be a "satisfactory timeframe" may be assessed on a case-by-case basis, and considerations could include the number of dwellings and the degree of any preparatory physical works involved.

Consent conditions for existing developments

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

- At least 20 residential dwellings will be available to be occupied under a residential tenancy.
- Certain individuals connected with the investor must not occupy the land
- The investor and certain individuals connected with the investor must continue to meet the investor test
- The developer disposes of the development if the large rental development test ceases to be met.

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. Similarly, investors into existing mixed use developments on residential (but not otherwise sensitive) land may rely on the 'large rental development' pathway for a build-to-rent component and the 'non-residential use' pathway for a commercial component.

Consent conditions for mixed use developments

If granted, consent for a mixed use development will be subject to similar conditions as for either the increased housing test or the large rental development test (depending on whether the build-to-rent development is new or existing). 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.

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 developer and certain individuals connected with the developer continuing to meet the investor test.

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 – the on-sale of an established 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. B does not intend to add any additional units. The land is residential but not otherwise sensitive under the Act.

What pathway applies?

B's application will be assessed under the 'large rental development' pathway.

How will the test be satisfied?

B must satisfy the decision-maker that:

- the residential land is a single site, or adjacent sites separated by infrastructure (such as roads), with 1 or more buildings that together consist of at least 20 dwellings suitable for use as, or conversion to, residential dwellings; and

- at least 20 of the residential dwellings are likely to be available for use, within a reasonable timeframe, to be occupied under a residential tenancy.

What conditions will apply?

Conditions will require B to make at least 20 residential dwellings available to be occupied under a residential tenancy within a satisfactory timeframe.

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.

Example two – 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.

What pathway applies?

C's application will be considered under the 'increased housing' pathway.

Example three – a 'build-to-rent' development on otherwise sensitive land

B is an 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 (section 17 of the Act refers).

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 four – 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.

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 LINZ's overseas investment regulatory function

LINZ 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.



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