

## Transitional Exemption Certificate for Large Apartment Development

This transitional exemption certificate (**Certificate**) is granted under Schedule 1AA, clause 6 of the Overseas Investment Act 2005 (**Act**).

<b>Case number</b>	201900114
<b>Decision date</b>	09 April 2019
<b>Development</b>	64 Great South Road, Epsom, Auckland, as defined in the Appendix.
<b>Expiry Date</b>	22 August 2023.
<b>Developer</b>	Austin Management Limited (company number 1850895) as trustee for the Austin Management Trust.

The following details are not conditions of the Certificate but describe its scope and limits.

<b>Details</b>
<b>Eligible dwellings</b>
<ol style="list-style-type: none"> <li>1. This Certificate applies to 100% of the <b>new</b> dwellings in the Development (being only residential (but not otherwise sensitive) land).</li> <li>2. This Certificate <u>does not</u> apply to any dwelling that was completed prior to 22 August 2018. (A dwelling is <b>new</b> if that dwelling was not completed at 22 August 2018).</li> </ol>
<b>Permitted Vendor(s)</b>
<ol style="list-style-type: none"> <li>3. A person may acquire residential (but not otherwise sensitive) land from the Developer in reliance on this exemption as the first sale of that land.</li> </ol>
<b>Transactions</b>
<ol style="list-style-type: none"> <li>4. A person must acquire any land in reliance on this exemption before the Expiry Date.</li> </ol>

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## Appendix - Development

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1. This transitional exemption certificate applies to the development, being approximately 0.1002 hectares located at 64 Great South Road, Epsom, Auckland.

The land is currently comprised in 4 cross lease records of title; NA75A/175, NA75A/176, NA75A/177 and NA75A/178, each with a  $\frac{1}{4}$  share in Lot 1 DP 128618. These cross lease titles have been included as current descriptors for the land being developed. The cross lease titles will be cancelled as part of the Vanguard development.

2. The following image indicates the boundaries of the development:



3. If there is any inconsistency between the boundary in the image and the land area as defined in record of title, the land area prevails.

## **Appendix 1 - Instructions**

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1. The regulator<sup>1</sup> may grant a transitional exemption certificate to this development if all of the criteria in clause 6(3) of Schedule 1AA of the Overseas Investment Act 2005 ("the Act") are met.
2. The regulator may take into account any of the factors those identified in clause 6(4) of Schedule 1AA of the Act. In the attached Report the Overseas Investment Office identifies each of these factors that the regulator may consider in this case.

### **Applicants – clause 6(2), Schedule 1AA**

3. **A person involved in the development (the developer) may apply for an exemption certificate no later than the expiry of the 6-month period that starts on the date of Royal assent of the Overseas Investment Amendment Act 2018 (the assent date), specifying the land that constitutes the development (in a way that enables its boundaries to be clearly identified).**

### **Land is, or will be, used for a development - clause 6(1), Schedule 1AA**

4. **Land is eligible for a transitional exemption certificate if it is being used, or intended to be used, for 1 (or more) of the following (a development):**
  - (a) **in the construction of 1 or more multi-storey buildings as 1 development, where each building consists, or will consist, of at least 20 residential dwellings; or**
  - (b) **to increase the number of residential dwellings in 1 or more multi-storey buildings, where the number of residential dwellings in each building will be increased by 20 or more.**

### **Criteria - clause 6(3), Schedule 1AA**

5. The regulator may grant an exemption certificate if they are satisfied that:
  - (a) at least 20 new residential dwellings that are not completed at the assent date (the new dwellings) will be, or are likely to be, completed in the development before the expiry of the 5-year period that starts on the assent date (**new dwellings to-be-completed**); and
  - (b) on or before the assent date, a transaction has been entered into by the parties in good faith in the ordinary course of business for the acquisition of 1 or more of the new dwellings to-be-completed).

### **Permissible considerations (non-exhaustive) - clause 6(4), Schedule 1AA**

6. In considering whether the matters in clause 6(3) are met, the regulator may have regard to such factors as:-
  - (a) whether the development has appropriate resource consent, building consent, and any other relevant authorisations; and
  - (b) the developer's financial strength; and
  - (c) the previous activity of the developer (or its associates or individuals with control) regarding use of residential land; and
  - (d) the previous record of the developer (or its associates or individuals with control) in complying with consent conditions or applying for consent conditions to be varied.

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<sup>1</sup> Ministers have delegated to the chief executive of Land Information New Zealand (**regulator**) the power to exercise any of the functions or powers for transitional exemption certificates in accordance with section 32 of the Act.

7. These factors are a non-exhaustive list of permissible, but not mandatory, considerations. The regulator may consider other relevant factors.

**Certificate contents - clause 6(5), Schedule 1AA**

8. In any transitional exemption certificate, the relevant Minister or Ministers—
  - (a) must specify the land that constitutes the development; and
  - (b) may specify persons or classes of persons for the purposes (set out in clause 6(6)(d) having regard to the purpose of this exemption, which is to allow persons involved in the construction of new dwellings to sell those dwellings (but not the development) to an overseas person as the first sale of the dwelling without the overseas person requiring consent.
9. There is no discretion to impose any other conditions for transitional exemption certificates.
10. However, the regulator may, with the agreement of the developer, vary an exemption certificate granted under this clause to the extent that it relates to the following:
  - (a) the developer:
  - (b) the persons specified (per paragraph 8(b) above).

**Decision**

11. The decision that you are required to make should be based on information available to you that you consider is sufficiently reliable for that purpose. The information that the Overseas Investment Office has taken into account in making its recommendation is summarised in the attached Report.