

Detailed information for investor visa holders buying a house in New Zealand

Overview

- Investor migrants with an Active Investor Plus (AIP), Investor 1 or Investor 2 visa can buy or build a house in New Zealand for more than NZ\$5 million.
- Consent under the Overseas Investment Act will be required to do this. Consent is inexpensive and generally granted within five working days.
- Broader restrictions on overseas ownership of residential land remain in place.
- For more information, contact oiio@linz.govt.nz

Ability for investors to buy residential land

Investor migrants with an Active Investor Plus (AIP), Investor 1 or Investor 2 visa can buy or build a home in New Zealand for more than NZ\$5 million.

Consent under the Overseas Investment Act **must** be granted before buying residential land. This means:

- getting consent in advance before signing a sale and purchase agreement, submitting a tender or bidding at an auction; or
- make any agreement, tender or bid *conditional* upon consent being granted (LINZ suggests that the condition allow for approximately 20 working days to obtain consent).

AIP, Investor 1 and Investor 2 visa holders should take legal advice before signing an agreement, submitting a tender or bidding at auction.

The \$5m purchase price only includes the land and fixtures

The \$5m purchase price threshold is for "...the agreed purchase price for the relevant land...", and excludes any personal property (or chattels) bought with the property. Chattels include furniture, curtains, freestanding appliances like refrigerators and washing machines, rugs, and garden equipment.

The requirement for the purchase price to be agreed means that the vendor and purchaser need to agree the allocation of the purchase price between the land and improvements (which count towards the \$5m threshold) and chattels (which do not count).

A vendor cannot make other arrangements (like including valuables such as artworks, a vehicle, or a cashback arrangement) to bring the price over the \$5m threshold.

When building a home, the relevant build costs will include everything that will eventually make up the value of the real property only, including all buildings and other fixtures. While professional advice, site works, retaining walls, driveways and landscaping will count, chattels bought as part of the house build do not count towards the \$5m threshold.

The cost of renovating or improving the home on the land does not count towards the \$5m threshold. If the original purchase price does not exceed \$5m, then a new home will need to be built.

Both the agreed purchase price and any build cost include GST (if any).

Requirements for receiving consent

Consent will be granted if:

- the investor holds an AIP, Investor 1 or Investor 2 visa
- the investor does not already own residential land bought under these rules
- the land is residential land, and not sensitive for any other reasons
- the land has a dwelling on it, or we are satisfied that a new dwelling will be built
- we are satisfied that the purchase price, or the purchase price plus the cost of building a home on the land, will exceed NZ\$5m
- the purchase is not contrary to New Zealand's national interest.

The national interest test is a backstop test, expected to be used extremely rarely, and generally focussed on issues of national security or public order. This test applies to all consents under the Act. A decline on these grounds would be extremely uncommon.

We will generally accept an investor's promise to build a new dwelling on the land. Plans, contracts, and cost estimates generally won't be required. Conditions of consent will require the dwelling to be completed and the \$5m threshold to be exceeded – see below.

Consent will be granted subject to conditions

In all cases, conditions will require investors to notify us once a home or land is bought.

If buying land and building a new house, consent will be granted subject to conditions that:

- require a new house to be built (if there is no house, or if the agreed purchase price is \$5m or less)
- require the combined land purchase price and build cost to exceed NZ\$5m
- require reporting to us on the build process and cost
- may require the land to be sold if the build is not completed or if the combined costs fall short of NZ \$5m.

The condition will require a new house to be built within three-years of consent being granted, or such longer time that we agree to. At the end of the initial three-year period, we will agree to a longer time-period provided we are satisfied that the consent holder is making good progress towards completion of the new house.

How to apply

Applications can be made online at www.linz.govt.nz. Consent may be sought for a specific property only – standing consents are not available.

The following documents and information are required:

- a copy of the visa holder's passport and visa
- the purchase price of the land, including:
 - the proportion that applies to the land and fixtures, and
 - the proportion that applies to any chattels,
- whether the land already has a home on it, and whether the investor intends to build a new home on the land
- the address and title of the land, along with answers to some questions about the land
- information about other property the investor owns in New Zealand, and
- a statutory declaration confirming that the information provided is true and correct.

If the investment is being made through a company, information is also required about the shareholders and directors of the company, and we may need copies of the company's incorporation documents.

If the investment is being made through a trust, information is required about the trustees and beneficiaries of the trust, and we may need a copy of the trust deed.

Application cost

The application fee depends on the purchase price and whether a new house will be built on the land.

- If the land includes an existing house, and the purchase price is more than NZ \$5m, the application fee is NZ **\$2,040**.
- In all other cases, the application fee is NZ **\$3,500**.

Timeframes for applications

Applications will generally be decided within five working days.

Entering into an agreement

Investors may enter into an agreement before consent is obtained, if the agreement is conditional upon consent being granted. The standard REINZ/Law Association sale and purchase agreement condition, allowing approximately 20 working days to obtain consent, is likely to be an appropriate condition.

AIP, Investor 1 and Investor 2 visa holders should take legal advice before signing an agreement to buy land.

Investors cannot participate in an auction without obtaining an agreement from the vendor to their bid being conditional upon consent being obtained. This will need to be negotiated with the vendor ahead of the auction.

Ways a house can be used

There are no limits under the Overseas Investment Act on what a house can be used for. Specifically, the house can be lived in, used as a holiday home, or used to operate a business.

While consent can be obtained to buy or build a residential property for personal use, this will not be considered an acceptable investment for the purposes of an investor visa application.

Other rules (such as local planning rules) may also limit how the land can be used.

Only one property may be bought

Investors can only own one property bought under these rules. To buy a new property under these rules, any other property bought under these rules must first be sold.

This doesn't apply to property bought under different rules or bought without the need for consent under the Overseas Investment Act.

Use of a company or trust

Under these rules residential land can be bought through a company or a trust. Note that there are limits on who can be involved in the company or trust. We strongly recommend legal advice.

Rules for companies

A company can get consent to buy or build a home if:

- the visa holder or the visa holder and the visa holder's spouse, civil union partner or de facto partner jointly have a more than 25% ownership or control interest in the company, and
- other overseas persons cumulatively do not have a more than 25% ownership or control interest in the company.

Rules for trusts

A trust (other than a unit trust) can get consent to buy or build a home if:

- no overseas person other than the visa holder and their immediate family have a beneficial interest in, or entitlement to, the trust property; and
- no person other than a 'qualifying individual' or an 'exempt individual' has the right to amend, or control the amendment of, the trust deed of the trust; and
- no person other than a 'qualifying individual' or an 'exempt individual' has the right to control the composition of the trustees of the trust.

Who is in an investor's immediate family?

A person's immediate family is:

- their spouse, civil union partner or de facto partner
- their children and any children of their spouse, civil union partner or de facto partner
- any other person treated by them, and acknowledged by them, to be a member of their immediate family.

Who are 'qualifying individuals' and 'exempt individuals'?

Qualifying individuals are:

- the visa holder
- the visa holder's spouse, civil union partner or de facto partner, if the visa holder is buying the land jointly with them, and
- any person who is not an overseas person.

An exempt individual is someone who we determine to be exempt because of the circumstances relating to them and the purpose of the overseas investment. Generally, an exempt individual will be an independent trustee, nominee or custodian.

We must also be satisfied that:

- the exempt individual will not have any beneficial interest in, or beneficial entitlement to, the relevant interest in the residential land; and
- if the investor is a trust, the exempt individual is not a person who may (directly or indirectly) benefit under the trust at the discretion of the trustees and is not likely to become such a person

Not all residential land is eligible

Must have a dwelling or a dwelling must be built

The land must either contain at least one existing dwelling or a new dwelling must be built.

A dwelling¹ is a home for one family or household. It must be reasonably capable of accommodating such a family or household (even if it may not be suitable for the proposed investor's use). A building that is dilapidated or in a state of disrepair such that it could *not* promptly be used as a home for one family or household is not a dwelling.

What land is eligible?

"Residential land" means land that is categorised as 'residential' or 'lifestyle' for the purposes of the district valuation roll. Most homes, apartments, and rural 'lifestyle blocks' are residential land.

There are also other types of sensitive land, including non-urban (rural) land larger than 5 hectares, some land adjoining the seabed or foreshore, and some land on islands. AIP, Investor 1 and Investor 2 visa holders can only buy land if it is residential land and not 'sensitive land' for another reason.

This means that some rural lifestyle blocks, some land adjoining the seabed and foreshore, and some land on islands cannot be bought under these rules. AIP, Investor 1 and Investor 2 visa holders are advised to speak with their lawyer or real estate agent about whether a property is eligible under these rules.

Waterfront land

Consent cannot be granted under these rules for land that

- includes the seabed or foreshore, or
- adjoins the seabed or foreshore and is larger than 0.2 ha.

Rural land

Consent cannot be granted under these rules for land that includes non-urban land (ie: rural land) larger than 5 ha.

Land on islands

There are special rules that apply to land on islands, including Waiheke Island and Great Barrier Island.

- No special rules apply to North Island and South Island.
- For land on Arapawa Island (Arapaoa), Best Island, Great Barrier Island (Aotea Island), Great Mercury Island (Ahuahu), Jackett Island, Kawau Island, Matakana Island, Mayor Island (Tuhua), Motiti Island, Motuhua Island, Rakino Island, Rangiwaea Island, Slipper Island (Whakahau), Stewart Island/Rakiura,

¹ The Act defines a residential dwelling as a building or group of buildings, or part of a building or group of buildings, that is used, or intended to be used, only or mainly for residential purposes, and occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household.

- Waiheke Island, and Whanganui Island, consent may only be granted for land no larger than 0.4 ha.
- On other islands, consent cannot be granted under these rules.

Common property

Care must be taken before buying land that includes 'common property', land whose ownership is shared between several owners. When a tenancy in common occurs, the entire area of the commonly owned land is treated as owned by each of the owners. This makes it more likely that the land will be 'otherwise sensitive land'.

For example: A 10ha lot has been subdivided into ten 0.5ha lots (totalling five hectares), with each owner holding a 1/10th undivided interest as tenants in common over the remaining five hectares. In this case, the Overseas Investment Act will treat each of the ten lots as being 5.5 ha (the 0.5ha of the exclusively owned lot, plus the five hectares of the commonly owned lot). In this case, if the land was in a non-urban area, it would be 'otherwise sensitive land' as it would be 'non-urban land larger than 5ha'.

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.



Case studies

Example one – Buy an existing home > \$5m

Facts

A holds an AIP visa and wishes to buy an existing home for \$7m.

Discussion

A can apply to LINZ for consent under the Overseas Investment Act to buy the home. A will pay an application fee of \$2,040 and expect a decision to be made within five working days. There will be no limits imposed under the Overseas Investment Act on A's use of the land, although A will still be subject to the same local planning rules and other rules all other land owners.

Example two – Buy an existing home < \$5m

Facts

A holds an AIP visa and wishes to buy an existing home for \$4m.

Discussion

Consent can only be granted if LINZ is satisfied that A plans to build a new home on the land. A's consent will be subject to conditions that will require a new home to be built, require the total of the purchase price and build cost to exceed \$5m, and require A to report to us on the build process. The costs of renovating the existing home will not count towards the \$5m threshold.

Alternatively:

- If A intends to move to New Zealand and live in the home then A can apply for consent under the "one home to live in" consent pathway.
- If A intends to build one or more new homes on the land, or use the land as part of a business, A may be able to apply for consent under a residential development pathway. However, in this case, A will not be able to use the land for their own residential purposes (to live there or use the land as a holiday home).

Example three – Building a new home >\$5m

Facts

A holds an AIP visa and wishes to buy bare land for \$2m and spend a further \$5m building a home on the land.

Discussion

A can apply to LINZ for consent under the Overseas Investment Act to buy the home. A will pay an application fee of \$3,500 and expect a decision to be made within five working days.

A's consent will be subject to conditions that will require a new home to be built, require the total of the purchase price and build cost to exceed \$5m, and require A to report to us on the build process.

There will be no limits imposed under the Overseas Investment Act on A's use of the land, although A will still be subject to the same local planning rules and other rules all other land owners.

Example four –Company buying land

Facts

A holds an AIP visa and wishes to buy a holiday home for \$7m through a company.

Discussion

A can apply to LINZ for consent under the Overseas Investment Act to buy the through a company, however no more than 25% of the company may be owned by people who:

- do not hold an AIP, investor 1 or investor 2 visa, or
- are not the spouse, civil union partner or de factor part of someone who holds such a visa, and hold their interest jointly with that person.

A will pay an application fee of \$2,040 and expect a decision to be made within five working days.

Example five – Trust buying land

Facts

A holds an AIP visa and wishes to buy a holiday home for \$7m through a family trust.

Discussion

The rules allow A to buy the land through a trust, however there are limits on who can benefit from the trust or exercise control over the trust.

- No overseas person other than A or an immediate family member of A may have a beneficial interest in, or entitlement to, the trust's property
- No person other than a qualifying individual or an exempt individual may have the right to amend, or control the amendment of, the trust deed of the trust.
- No person other than a qualifying individual or an exempt individual may have the right to control the composition of the trustees of the trust.

In practice, a trust will be allowed to buy if only A and A's immediate family can benefit from the trust, and if the trust is controlled by A, one or more independent trustees or one or more people who aren't overseas persons.

Example six – Buying with a friend

Facts

A holds an AIP visa and, together with friends, wishes to buy a holiday home for \$7m.

Discussion

Whether A can buy the land together with friends will depend on whether A's friends have an AIP, investor 1 or investor 2 visa, and whether the land will be bought directly or through a company or trust.

In practice, buying with one or more friends is only possible if the land is bought directly or through a company.

If buying the land directly, then every person who acquires an interest in the land must either:

- hold an AIP, investor 1 or investor 2 visa, or
- be the spouse, civil union partner or de factor part of someone who holds such a visa, and hold their interest jointly with that person, or
- not be an overseas person.

See example four if buying the land through a company.

Example seven– Buying a larger property (sensitive for another reason)

Facts

A holds an AIP visa and wishes to buy a 20 hectare lifestyle property for \$17m.

Discussion

A cannot buy the land under these rules, as the land is non-urban land larger than 5 hectares meaning the land is sensitive for another reason, or 'otherwise sensitive'. However, if A intended to move to New Zealand and live in a home on the land, then A may be able to apply for consent under the "one home to live in" consent pathway.

Example eight– Buying a property on Waiheke Island

Facts

A holds an AIP visa and wishes to buy a 1 hectare lifestyle property on Waiheke Island for \$10m.

Discussion

A cannot buy the land under these rules, as the land is larger than 0.4 hectares on an island listed in schedule 1 of the Act meaning the land is sensitive for another reason, or 'otherwise sensitive'. However, if A intended to move to New Zealand and live in a home on the land, then A may be able to apply for consent under the "one home to live in" consent pathway.