

## Exemption Certificate for Large Apartment Development

**Read this Exemption Certificate carefully - you must comply with all the Conditions. If you do not, you may be subject to fines or other [penalties](#).**

This Exemption Certificate is granted under Schedule 3, clause 4 of the Overseas Investment Act 2005.

<b>Case number</b>	201810340
<b>Decision Date</b>	9 October 2019
<b>Developer(s)</b>	Mornington Trustee Limited (company number 5764827) as trustee of the Mornington Investment Trust.
<b>Development</b>	The development known as Wolfe Heritage Residences, as defined in the Appendix.
<b>Effect of this Exemption Certificate</b>	<p>This Exemption Certificate is required for the exemption in schedule 3, clause 4(5) of the Act to apply.</p> <p>This Exemption Certificate means that certain transactions are exempt from the requirement to obtain consent under the Act (<b>Exemption</b>).</p> <p>The Exemption for overseas purchasers only applies if <b>all</b> of the following criteria are met:</p> <ul style="list-style-type: none"> <li>• the relevant land is residential (but not otherwise sensitive) land ; and</li> <li>• the overseas purchaser makes the investment before the construction of the apartment is complete; and</li> <li>• 60% or less of the apartments in the Development have been sold to overseas purchasers.</li> </ul> <p>Overseas purchasers should obtain legal advice before relying on the Exemption. More information is available on our website: <a href="http://www.linz.govt.nz/overseas-investment">www.linz.govt.nz/overseas-investment</a></p>
<b>Duration</b>	This Exemption Certificate applies from the Decision Date until the construction of each new apartment in the Development is complete.

## INTERPRETATION

In this Exemption Certificate and conditions, unless the context otherwise requires:

**Act** means the Overseas Investment Act 2005.

**apartment** means any new residential dwelling in the Development.

The **construction of the apartment is complete** on the earlier of:

- the issue of a code compliance certificate for an apartment, or
- the issue of a certificate of practical completion for an apartment.

Other references in the conditions to construction being 'complete' or 'completed' have a corresponding meaning.

**OIO, us or we** means the Overseas Investment Office.

**overseas purchaser** means an overseas person or an associate of an overseas person who is acquiring an apartment.

**overseas person** has the meaning in the Act.

**residential dwelling** has the meaning in the Act.

**transaction** has the meaning in the Act.

**you** means:

- in relation to the Developer conditions; the Developer(s), the holder(s) of the Exemption Certificate;
- in relation to the Purchaser conditions; the overseas purchaser.

## PART A-CONDITIONS FOR THE DEVELOPERS

You must comply with the following conditions.

Details	Required date
<b>Developer condition 1: attach a copy of the Exemption Certificate to the sale and purchase agreement with overseas purchasers</b>	
<p>If an overseas purchaser intends to rely on the Exemption, you must attach a copy of this Exemption Certificate to the sale and purchase agreement (<b>SPA</b>).</p>	<ol style="list-style-type: none"> <li>1. Before the transaction is entered into, if the date of the SPA is after the Decision Date, or</li> <li>2. If the date of the SPA is prior to the Decision Date (and conditional upon the Developer obtaining this Exemption) then you must provide a copy of this decision to the Purchaser (or their</li> </ol>

	<p>solicitor) and obtain written confirmation that its terms apply to the Purchaser's acquisition of the apartment.</p>
<p><b>Developer condition 2: limits on right to dispose of apartments to overseas purchasers</b></p>	
<p>You must not enter into an agreement to sell an apartment to an overseas purchaser for the purpose of this Exemption Certificate if:</p> <ul style="list-style-type: none"> <li>(a) the transaction will result in overseas purchasers acquiring an interest in more than 60% of the apartments in the Development; or</li> <li>(b) the construction of the apartment is complete</li> <li>(c) the apartment is in a building that contains less than 20 apartments.</li> </ul>	<p>At all times.</p>
<p><b>Developer condition 3: keep a record of all transactions</b></p>	
<p>You must keep the following information for each overseas purchaser who has acquired an apartment, <u>whether or not the person is relying on the Exemption</u>:</p> <ul style="list-style-type: none"> <li>(a) full name (If buying as a trust, the name of the settlor, trustee/s and beneficiaries of the trust.)</li> <li>(b) date of birth</li> <li>(c) a copy of their passport<sup>1</sup> or other relevant citizenship documentation</li> <li>(d) postal address</li> <li>(e) telephone number</li> <li>(f) email address</li> <li>(g) number, floor and record of title of the apartment being acquired</li> <li>(h) whether they are an overseas person</li> <li>(i) whether they are relying on the Exemption</li> <li>(j) date the transaction was entered into; and</li> <li>(k) date the transaction was settled.</li> </ul>	<p>At all times from the date of each SPA until the date which the last apartment in the Development acquired relying on this Exemption settles.</p>

<sup>1</sup> Note: the passports or other citizenship documents must be of high quality (at least 300dpi), colour scanned copies of current (in date) primary identity document.

## Developer condition 4: provide information to us

You must provide the information in developer condition 3 to the OIO.

For the avoidance of doubt, you are required to provide the information in developer condition 3 to the OIO until all transactions for apartments in the Development are completed.

Within 20 working days of all of the following occasions:

1. any written request from us,
2. every anniversary of the Decision Date until such date that construction of all the apartments in the Development is complete,
3. the date (if any) on which 60% of the apartments in the Development have been acquired by overseas purchasers relying on the Exemption, and
4. the date on which the last apartment in the Development acquired relying on this Exemption is settled.

You must also provide all of the following information to the OIO:

- (a) a land transfer plan showing the layout of the apartments in the Development and the total number of apartments in the Development.

Within 20 working days of all of the following occasions:

1. any written request from us (if available, in draft as the case may be), and
2. the date on which LINZ advise the e-dealing depositing the land transfer plan has registered.

## PART B - CONDITIONS FOR THE OVERSEAS PURCHASERS

**Overseas purchasers** must comply with the following conditions.

Details	Required date
<b>Purchaser condition 1: do not occupy the apartment(s)</b>	
<p><b>None</b> of the following people may occupy the apartment:</p> <ul style="list-style-type: none"> <li>(a) overseas purchaser</li> <li>(b) any overseas person with a 25% or more ownership or control interest in the overseas purchaser</li> <li>(c) any overseas person who occupies the apartment other than on arm's length terms<sup>2</sup></li> <li>(d) any overseas person beneficially interested in or entitled to the relevant interest in the apartment</li> <li>(e) if (a) is a trust, any beneficiary (direct or indirect) who may benefit under the trust at the trustees' discretion.</li> </ul> <p>This means that overseas purchasers and the people outlined in paragraphs (b) to (e) cannot live in the apartment unless they have a 'One Home to Live In'<sup>3</sup> consent allowing them to do so.</p>	<p>This condition applies at any time when you, or any of the people outlined in paragraphs (b) to (e), has any relevant interest<sup>4</sup> in the land.</p>
<b>Purchaser condition 2: dispose of the apartment if you do not comply with Purchaser condition 1</b>	
<p>If we consider you have failed to comply with Purchaser condition 1 in a material way we may require you to dispose of all relevant interests in the apartment.</p> <p><b>We will give you written notice if we require you to dispose of the apartment. After we have given you notice, you must:</b></p>	
<p>1. <b>Value the apartment:</b> obtain and send us a copy of a market valuation of the apartment from a New Zealand registered valuer, unless we agree to waive this requirement.</p>	<p>Within six weeks of the date of our notice.</p>

<sup>2</sup> 'At arms length terms' has the meaning in clause 17, Part 5, Schedule 2 of the Act. In summary it means terms, for example under a lease (or other contract), that are on a reasonable commercial basis.

<sup>3</sup> A 'One Home to Live In' consent, allows you and your family to live in the property as your main home. You can find out more about how to apply for consent under the 'One Home to Live In' consent on our website at <https://www.lin.govt.nz/overseas-investment/information-for-buying-or-building-one-home-live>.

<sup>4</sup> 'Relevant Interest' has the meaning in clause 2 of Schedule 2 of the Act. In summary it means any interest of any kind (legal or equitable) in the residential land, or any right or interest in securities of a person who owns or controls (directly or indirectly) any interest in the residential land.

<p>2. <b>Market the apartment:</b> instruct a licensed real estate agent to actively market the apartment for sale on the open market.</p>	<p>Within six weeks of the date of our notice.</p>
<p>3. <b>Dispose of the apartment:</b> dispose of the apartment to a third party who is not your associate.</p>	<p>Within six months of our notice.</p>
<p>4. <b>Offer without reserve:</b> if you have not disposed of the apartment by the date required in paragraph 3 of this purchaser condition 2, offer the apartment for sale by auction or tender without a reserve price or minimum bid and dispose of the apartment.</p>	<p>Within nine months of our notice.</p>
<p>5. <b>Report to us about marketing:</b> tell us in writing about marketing activities undertaken and offers received for the apartment.</p>	<p>By the last day of every March, June, September and December after our notice or at any other time we require.</p>
<p>6. <b>Report disposal to us:</b> send us, in writing, evidence:</p> <ul style="list-style-type: none"> <li>(a) that you have disposed of the apartment,</li> <li>(b) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered owner),</li> <li>(c) the purchaser is not your associate.</li> </ul>	<p>Within one month after the apartment has been disposed of.</p>

## SANCTIONS

The Act provides for civil and criminal sanctions for breaching the Act, failing to comply with conditions of the Exemption Certificate or the Exemption and failing to provide information required by the OIO. The OIO has an obligation to investigate and act upon alleged and suspected breaches of the Act.

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**APPENDIX - DEVELOPMENT**

1. This exemption certificate applies to the development, at street address 30-36 Fanshawe Street, Auckland CBD, currently comprised in records of title:
  - NA121C/408, legally described as Lot 1 DP 193477;
  - NA7A/671, legally described as Part DP 3765; and
  - NA121C/409, legally described as Lot 1 DP 193476.  
(approximately 0.056 hectares)
2. The following image indicates the boundaries of the development, outlined in purple:



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