

Property Council New Zealand

Submission to Finance and Expenditure Select Committee on Overseas Investment (Build-to-Rent and Similar Rental Developments) Amendment Bill

23 July 2024

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1. Summary

1.1. Property Council New Zealand (“Property Council”) welcomes the opportunity to provide feedback to the Finance and Expenditure (“FEC”) Select Committee on the Overseas Investment (Build-to-rent and Similar Rental Developments) Amendment Bill (“Bill”). The Bill seeks to amend the Overseas Investment Act (“OIA”) 2005.

2. Recommendations

2.1. At a high level, we make the following recommendation to the FEC:

- Clarify what a satisfactory time frame is in new Clause 11A(1)(b); and
- Consider a long-term alternative solution to relying on Ministerial discretion for the approval of Build to Rent applications to the Overseas Investment Office (“OIO”).

3. Introduction

3.1. Property Council is the leading not-for-profit advocate for New Zealand’s most significant industry, property. Our organisational purpose is, “Together, shaping cities where communities thrive”.

3.2. The property sector shapes New Zealand’s social, economic and environmental fabric. Property Council advocates for the creation and retention of a well-designed, functional and sustainable built environment. We aim to enable opportunities to build sustainable and resilient communities, capable of meeting future needs.

3.3. Property is New Zealand’s largest industry and fastest growing source of employment. There are nearly \$1.6 trillion in property assets nationwide, with property providing a direct contribution to GDP of \$41.2 billion (15 per cent) and employment for around 200,000 New Zealanders every year.

3.4. Property Council is the collective voice of the property industry. We connect over 10,000 property professionals and represent the interests of over 550 members organisations across the private, public and charitable sectors.

3.5. This document provides Property Council’s feedback on the [Overseas Investment \(Build-to-Rent and Similar Rental Developments\) Amendment Bill](#). Comments and recommendations are provided on issues relevant to Property Council’s members.

4. What is Build to Rent?

4.1. Build to Rent (“BTR”) is one of the fastest-growing sources of new housing overseas and has the potential to transform the New Zealand rental market with tens of thousands of quality homes.

4.2. Unlike a standard property development, BTR developments are designed and built (or re-designed) specifically as long-term rental accommodation. BTR properties are owned and maintained by one professional operator, often with on-site management and where tenants

are treated like customers. This is in many ways in contrast to the typical tenant-landlord relationship.

- 4.3. BTR developments tend to be large, multi-unit residential developments, typically located in city centres and key urban nodes, within walking distance of public transport links.

5. Background: Acknowledging BTR Asset Class and Ministerial Directive Letters

- 5.1. There has been increasing support over time by successive governments for BTR in New Zealand for which Property Council and its members thank both decision makers and officials. There has also been increasing acknowledgement of lack of investor applications through the Overseas Investment Office for BTR developments due to uncertainty of outcome.

- 5.2. Property Council, since 2019 has sought to address uncertainty of outcome via multiple engagement opportunities with government and its relevant ministries, resulting in the following outcomes:

- In March 2022, a guidance note was issued from the Overseas Investment Office via Land Information New Zealand. It acknowledged the problem of investor uncertainty with the Overseas Investment Act 2005 for BTR but the note itself was not legally binding and only provided guidance on how the Overseas Investment Office “may” interpret the legislation.
- In March 2023, in order to clarify BTR’s position with respect to the policy of removing interest deductibility at the time, (and address continuing investor uncertainty despite the guidance note), the government instituted an asset class for BTR via the [Taxation \(Annual Rates for 2022-23 Platform Economy and Remedial Matters\) Act 2023](#), which defined BTR land in the Income Tax Act 2007 as:
 - 20 or more dwellings in a single development on a single block or adjacent blocks, held in one or more titles;
 - owned by the same person (a person includes a legal entity like a company);
 - each dwelling is being prepared for use, available, or occupied under a residential tenancy;
 - every residential tenancy has the option of a 10-year term, which will enable tenants to terminate the tenancy with 56 days’ notice under section 58A of the Residential Tenancies Act 1986; and
 - every tenancy agreement includes a personalisation policy, with reference to sections 42, 42A and 42B of the Residential Tenancies Act 1986, and includes examples of possible personalisations and the landlord’s position on the keeping of pets.

(Note: land must continuously meet these requirements to be registered BTR land).

- 5.3. On 7 March 2024, the Coalition Government announced their intention to introduce legislation to amend the Overseas Investment Act 2005, and a Ministerial directive letter was issued on 4 April 2024 to provide interim guidance to the regulator, Land Information New Zealand. This directive made it clearer for investors that investments in BTR developments can meet the Benefit to New Zealand test. It also provided an illustration of how the “reduced risk of illiquid

assets” can be considered under the Benefit to New Zealand test, noting an explicit example of where this might apply where an overseas person is purchasing an existing BTR development, and that purchase would better ensure the asset remains liquid.

- 5.4. On June 16, 2024, the Overseas Investment (Build-to-Rent and Similar Rental Developments) Amendment Bill was introduced to Parliament, to which the remainder of this submission makes commentary on.

6. Key reasons amendments to the Overseas Investment Act are required

Investment is essential

- 6.1. The obstacles to overseas investment deter both overseas and New Zealand operators from proceeding with BTR developments. Only a small number of local market participants are willing and able to fund BTR developments at scale without access to external (most likely overseas) equity. Meanwhile, the few local operators who have the capacity and motivation to forge ahead without an overseas co-investor remain constrained by their own funding limitations.

Liquidity is key

- 6.2. BTR investors are concerned about their ability to divest BTR assets in the future. Liquidity (or the ability to realise capital through the sale of an asset), is a vital component of any development appraisal or viability assessment. Most international investors capable of meaningful investment in BTR in New Zealand are risk averse and unwilling to invest without certainty over liquidity. For the BTR sector to flourish in New Zealand and provide more homes for Kiwis, given the financial and physical scale of BTR assets, it is essential for both New Zealand and overseas investors to be able to access the global investment market for capital and liquidity.

Uncertainty due to Ministerial Discretion

- 6.3. Currently approval from the Overseas Investment Office or Minister is required for overseas investment in BTR which creates uncertainty for the market. Given the scale of the investment and the cost of the application process, the lack of certainty has proven a major block to applicants.
- 6.4. Overseas investment in BTR is currently dealt with under section 20 of Schedule 2 of the Overseas Investment Act, “Exemption for large developments with shared equity, rent-to-buy and rental arrangements”. While in theory this does provide a path to an exemption for overseas purchasers who satisfy either a) the increased housing test, or b) the benefit to New Zealand test; in reality there are significant barriers to successfully navigating the Overseas Investment Act, the most significant of which is BTR application final decisions are discretionary.

7. The Bill: a new residential consent pathway

- 7.1. Property Council supports the Bill establishing a new residential consent pathway to address our member’s concerns around liquidity of assets.
- 7.2. While the “increased housing” pathway has previously allowed for foreign investment into new housing developments, that test does not assist where existing schemes are being acquired (as the “increased housing” test is not satisfied where an overseas purchaser acquires existing supply to continue to operate it).

- 7.3. There has therefore been a concern that BTR schemes would be difficult to sell, discouraging foreign investment at the outset. The Bill allows for acquisition of currently-operating BTR schemes under the new “large residential development” test.
- 7.4. To illustrate the move to confirm the status of existing BTR schemes, we note the word “new” in relation to residential dwellings has effectively been removed from parts of the original Schedule 2, Clause 20(2)(a) in the Act. This is an outcome Property Council has long advocated for to allow existing or new owners to retrospectively establish BTR in existing assets.

8. Large rental development test

- 8.1. While we support the inclusion of a new investor test that allows overseas investors to purchase existing large BTR schemes, we seek clarification on one part of the test’s wording.
- 8.2. New clause 11A(1)(b) reads: *“at least 20 of the residential dwellings will be, or are likely to be, available for use, within a time frame that is satisfactory to the relevant Ministers, as a residential dwelling occupied under a residential tenancy to which the Residential Tenancies Act 1986 applies or would apply (the large rental development outcome)”*.
- 8.3. The words from new clause 11A(1)(b) *“...within a time frame that is satisfactory to the relevant Ministers...”* leave room for interpretation. Notwithstanding the following section of this submission (section 9) where we address our ongoing concern with the nature of Ministerial discretion, the reference to a “time frame” comes with no further guidance in the Bill.
- 8.4. Questions we have on the Ministerial time frame are as follows:
- What is the satisfactory time frame?
 - Is it the “relevant Ministers” who set the time frame parameters or are they following guidance from Land Information New Zealand?
 - How does this align with the existing increased housing test?
 - Does the “satisfactory” time frame take into account the complexity of the development process and the many factors which could delay completion? Examples of delays are temporary shortage of construction materials, or the well-documented (and persisting) delays in the consenting process. Taking into account the varying nature of delays is especially relevant given dwellings must be available for use (or likely to be) under the Residential Tenancies Act, i.e. the very last occupancy stage.
- 8.5. We note the words *“...or are likely to be...”* in the clause do allow room for movement within a Ministerial decision, but we suggest the Bill still reference supporting origins for time frames.

9. Other comments

- 9.1. While we note Ministerial discretion over applicant success still remains in place through this Bill, we are hopeful that the new residential consent pathway and clear intent derived from the Minister’s April 2024 directive letter will unlock new applications.
- 9.2. It is Property Council’s strong desire that this and any future governments treat appropriate BTR applications through the Overseas Investment Office with consistent support. We are heartened with the multi-party support demonstrated in the Bill’s first reading in Parliament and hope that it endures through to the third reading and well beyond.

9.3. Property Council recommends the Minister of Housing and the Ministry of Housing and Urban Development consider a longer-term review of the use of Ministerial discretion for Build to Rent developments and would lend its support for that process.

10. Conclusion

10.1. Property Council welcomes the proposed changes to the Overseas Investment Act 2005 in support of BTR and is delighted with the multiple party support the bill received in its first reading. The section in the bill outlining its purpose confirms screening requirements for residential land (including those that comprise the “foreign buyers ban”) will not change beyond those for large scale rental housing. In that framework we are comfortable with the proposed amendments but seek further clarity on the reference to satisfactory time frames (see our section 8.4). Property Council has a BTR taskforce with over 45 member companies represented and we are happy to assist Parliamentary officials in any we can, should that be required.

10.2. Property Council members invest, own and develop property across New Zealand. We thank the FEC for the opportunity to submit on this Bill.

10.3. **We wish to appear to speak before the Finance and Expenditure select committee** and would appreciate the option for that to be in an online capacity.

10.4. Should you wish to discuss further, please contact Denise Lee, Advocacy Consultant, via email Denise@propertynz.co.nz

Yours Sincerely,



Leonie Freeman

CEO Property Council New Zealand