

# House of Representatives

# Supplementary Order Paper

**Tuesday, 14 August 2018**

## **Overseas Investment Amendment Bill**

*Proposed amendments to SOP No 52*

Hon David Parker, in Committee, to move the following amendments:

### *Clause 2*

Before the item relating to *clause 5* (page 1), insert the following items:

#### *Clause 2*

In *clause 2*, before *subclause (1)* (page 5, before line 7), insert:

- (1A) **Section 33B** (which inserts, into the principal Act, **section 80**, which relates to **clause 4A** of **Schedule 1AA** (exemption relating to dwellings in large apartment developments where sales of dwellings have begun before assent date)) comes into force on the expiry of the 2-week period that starts on the date of Royal assent.

In *clause 2(1)*, replace “This Act” (page 5, line 7) with “The rest of this Act”.

### *Clause 33A*

In the first item relating to *clause 33A*, after *new section 61BA(c)(vi)* (page 4), insert:

- (vii) interests in residential (but not otherwise sensitive) land acquired in order to comply with a requirement imposed by or under the Resource Management Act 1991 and to support a business that is not principally in the business of using land for residential purposes.

*New clause 33B*

After the items relating to *clause 33A* (page 5), insert:

*New clause 33B*

After *clause 33A* (page 44, after line 12), insert:

**33B** New section 80 inserted (Transitional provision relating to clause 4A of Schedule 1AA (Exemption relating to dwellings in large apartment developments where sales of dwellings have begun before assent date))

After section 79, insert:

**80** Transitional provision relating to clause 4A of Schedule 1AA (Exemption relating to dwellings in large apartment developments where sales of dwellings have begun before assent date)

A person may apply for an exemption certificate, and the application may be dealt with, before the commencement of **clause 4A** of **Schedule 1AA** as if that clause and the relevant fee prescribed in the regulations were in force.

*Schedule 1*

After the second item relating to *Schedule 1, new Schedule 1AA, clause 4(2)* (page 6), insert the following item:

In *Schedule 1, new Schedule 1AA*, after *clause 4* (page 47, after line 20), insert:

**4A** Exemption relating to dwellings in large apartment developments where sales of dwellings have begun before assent date

- (1) This clause applies in respect of land that 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.

*Exemption certificates*

- (2) 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 **2017** (the **assent date**), specifying the land

that constitutes the development (in a way that enables its boundaries to be clearly identified).

- (3) The relevant Minister or Ministers 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; 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 that the relevant Minister or Ministers are satisfied will be, or are likely to be, completed in the development before the expiry of that 5-year period.
- (4) In considering whether the matters in **subclause (3)** are met, the relevant Minister or Ministers may have regard to factors such 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.
- (5) An exemption certificate must be applied to 100% of the new dwellings in the development.
- Exemptions for dwellings to which exemption certificate applies that are purchased from developer*
- (6) A transaction does not require consent for the purposes of section 10(1)(a) to the extent that it will result in an overseas investment in sensitive land in respect of a residential dwelling in the development if—
- (a) the relevant land is residential (but not otherwise sensitive) land; and
  - (b) an exemption certificate applies to the dwelling under **subclause (5)**; and
  - (c) the person (the **purchaser**) acquires the relevant land before the expiry of the 5-year period that starts on the assent date; and
  - (d) the purchaser acquires the relevant land from—

- (i) the developer; or
- (ii) another person from whom the exemption certificate permits the purchaser to acquire the relevant land in reliance on this exemption.

*Other provisions*

- (7) In any exemption certificate granted under this clause, 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 of **subclause (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.
- (8) The relevant Minister or Ministers 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 under **subclause (7)(b)**.
- (9) For the purposes of Part 2 of the Act, **exemption certificate** includes an exemption certificate granted under this clause.
- (10) **Clause 1(4) and (4A)** applies for the purposes of this clause as if references to commencement were references to assent date.

### **Explanatory note**

This Supplementary Order Paper amends SOP No 52, which amends the Overseas Investment Amendment Bill.

The amendment to *clause 2* and *new clause 33B* provide that the new transitional exemption provision (*see new clause 4A of Schedule 1AA*) applies from 2 weeks after Royal assent, to enable applications for exemptions under that new provision to be made before the rest of the Act comes into force.

SOP No 52 inserts, into *clause 33A*, *new section 61BA* (purpose of exemptions), which clarifies the purpose of the powers to grant exemptions. One of the purposes is to allow exemptions to be made in relation to a list of specific matters. This SOP adds to that list. The effect is to allow exemptions to be made where an interest in residential land must be acquired in order to comply with a requirement imposed by or under the Resource Management Act 1991 (for example, a resource consent). In addition, the acquisition must be to support a non-residential business.

This SOP also inserts, into *new Schedule 1AA in Schedule 1*, a new transitional provision for certain large apartment developments where sales of dwellings have begun

before assent date. The exemption is similar to that in *clause 4 of Schedule 3*, but the main differences are as follows:

- the new exemption is not limited to a maximum percentage of dwellings within the development to be set by regulation;
- the new exemption does not impose any conditions on overseas persons who acquire dwellings in reliance on the exemption.

### **Departmental disclosure statement**

The Treasury considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.