
Exemption

Decision date	2 October 2024
Case	202400588
Exemption	Every person is exempt from the requirement for consent for the acquisition of an estate or interest in land arising from the issue of new titles following the deposit of unit plan LT191652 under section 71 of the Unit Titles Act 2010.
Timeframe	This exemption expires on 15 February 2026.

Conditions

This exemption has been granted unconditionally.

Reasons for exemption

Victoria Park Terraces development, between Halsey Street and Dock Street, Central Auckland, has had weathertightness issues remedied.

The repairs required an application to the High Court at Auckland to settle a scheme under section 74 of the Unit Titles Act 2010.

The repairs triggered a need for the development to be resurveyed resulting in minor changes to the boundaries of the principal and accessory units, and consequential changes to the common property. For example, small amounts of land (primarily building elements such as cladding and framing) once contained within principal and accessory units became part of the common property.

Under s 54 of the Unit Titles Act, the owners of a unit are beneficially entitled to the common property as tenants in common in shares proportional to the ownership interest in respect of their units. This means the owner of a unit acquires a beneficial interest as tenant in common in any new common property. Strictly, this triggers a requirement for consent under the Overseas Investment Act.

The exemption is minor or technical because:

- The interest in this case is merely an undivided equitable interest as tenants in common, with control of the common land being vested in a body corporate. This grants the individual owners a relatively insignificant interest in the newly acquired land, while vesting control in a third party of which each owner is just one member.
- The acquisition results from a resurvey following extensive weathertightness repairs. But for repairs, no resurvey and no acquisition would be occurring.

The extent of the exemption granted is not broader than reasonably necessary. The exemption only applies only to acquisitions of land arising from the issue of new titles following the deposit of unit plan LT191652 under section 71 of the Unit Titles Act 2010. This is a narrow set of circumstance, applying to a small number of identified properties, and will only occur once.

We consider that there are circumstances that mean it is necessary, appropriate, or desirable to provide an exemption, and that the extent of the exemption is not broader than reasonably necessary to address these circumstances. Specifically:

- the assets are already owned by and controlled by an overseas person and would continue to be so; and
- there is no material change in the ultimate ownership and control of the New Zealand assets.

Acquisitions of any other sensitive New Zealand assets by the Exemption holder will remain subject to any applicable requirement for consent under the Act.