

From: [Pedro Morgan](#)
To: 9(2)(a)
Cc: 9(2)(a)
Subject: RE: 9(2)(b)(i)
Date: Tuesday, 9 November 2021 9:43:00 a.m.
Attachments: [image001.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image009.png](#)
[image010.png](#)
[image011.png](#)

Hello 9(2)(a),

Thanks for your email.

We've had a close look at the additional information. I'd be happy to talk, but my comments below are a reasonably complete summary of our views.

The starting point remains that an easement is an exempted interest. However, it must be an easement in substance.

I can't say whether that will be the case here. It may well be, but we're concerned that the intensive nature of the land use means that the interest being acquired might in fact be something else. The solar farm would clearly be the dominant use of the land, largely (but not entirely) to the exclusion of the owner's enjoyment of the property. Contrast this with a wind farm, where the owner's use can largely continue unimpeded.

I also wonder whether an easement would genuinely be the investor's preferred form of tenure, or whether the use of an easement is being influenced by the advantages of that interest under the Overseas Investment Act. While that might be a valid reason to explore the use of an easement, the safer course might be to seek consent for a lease or outright ownership.

Pedro Morgan

Lead Advisor

Overseas Investment Office

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Toitū Te Whenua
Land Information
New Zealand

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From: 9(2)(a)
Sent: Monday, 1 November 2021 10:25 a.m.
To: Pedro Morgan <pmorgan@linz.govt.nz>
Cc: Bede Maher 9(2)(a)

Subject: RE: [REDACTED]

Hi Pedro

Further to our discussion on 19 October 2021, we have been in touch with our client and they have prepared the **attached** paper to explain how the solar farm will operate in conjunction with the grazing activities.

Once you have reviewed, could we please set up a time to further discuss?

Thanks

[REDACTED]

[REDACTED]

From: Pedro Morgan <pmorgan@linz.govt.nz>

Sent: Monday, 18 October 2021 9:20 AM

To: [REDACTED]

Subject: RE: [REDACTED]

Hi [REDACTED],

I'm free at 11.45am today or 1.30pm tomorrow.

Pedro Morgan

Lead Advisor

Overseas Investment Office

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From: [REDACTED]

Sent: Friday, 15 October 2021 9:05 a.m.

To: Pedro Morgan <pmorgan@linz.govt.nz>

Cc: Cla [REDACTED]

Subject: FW: [REDACTED]

Kia Ora Pedro

Further to the below, we would be keen to discuss this transaction with you in a bit more detail.

Would you be available for a call early next week? We can do after 11am on Monday or any time on Tuesday.

We look forward to hearing from you.

Ngā mihi

9(2)(a)

From: OIO_Enquiries_Advisors <OIOEnquiriesAdvisors@linz.govt.nz>

Sent: Wednesday, 13 October 2021 2:05 PM

To: 9(2)(a)

Cc: 9(2)(a)

Subject: RE: 9(2)(b)(ii)

Kia ora 9(2)(a)

Please see the following from the Principal advisors:

As you rightly note, easements are an exempted interest and the acquisition of an easement does not require consent (unless the consideration for the easement exceeds \$100m, in which case an SBA consent may be required under s13(1)(c) of the Act). However, care is needed to ensure that the easements are genuinely easements, and not merely a label placed on an arrangement that is, in substance, a lease. In that case, the interest wouldn't be an easement and consent would be required.

We have previously considered the status of wind farms and been satisfied that the easement arrangements entered into in those cases were genuinely easements. In those cases, we identified small areas (like buildings and locked compounds) which we considered the grantee may have exclusive possession of. However, the areas concerned were well below the area thresholds in schedule 1 and so we didn't need to resolve the status of those areas. We were also satisfied that the land owner genuinely retained access to the property. Note that in other cases (for example, involving profits-a-prendre) we've not been satisfied that land owners genuinely retained access, and considered that those transactions required consent.

We're not aware of anything in particular that means that a similar analysis couldn't apply to solar farms. The key is to ensure that the easements are genuinely easements.

Please contact Pedro Morgan if you'd like to discuss this transaction in more detail, but note that we'll be unable to definitively tell you whether or not such a transaction will require consent or not.

Please note that the above should be considered general guidance as the office is not in a position to provide legal advice.

Ngā mihi nui,

Mia Karalus

Operations Advisor

Overseas Investment Office

oioenquiriesadvisors@linz.govt.nz | DDI 04 471 6519



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From: 9(2)(a)
Sent: Tuesday, 5 October 2021 12:40 p.m.
To: OIO_Enquiries_Advisors <OIOEnquiriesAdvisors@linz.govt.nz>
Cc: 9(2)(a) Pedro Morgan
<pmorgan@linz.govt.nz>
Subject: RE: 9(2)(b)(ii)

Thanks Mia.

We look forward to hearing.

Kind regards

9(2)(a)

[REDACTED]

From: OIO_Enquiries_Advisors <OIOEnquiriesAdvisors@linz.govt.nz>
Sent: Tuesday, 5 October 2021 12:04 PM
To: [REDACTED]
Cc: 9(2)(a); Pedro Morgan
<pmorgan@linz.govt.nz>
Subject: RE: 9(2)(a)

Kia ora 9(2)(a)

Thank you for contacting the Overseas Investment Office.

Your query has been escalated to the Principal advisors for comment.

We will be in touch as soon as practicable.

Thank you for your patience.

Ngā mihi nui,

Mia Karalus

Operations Advisor

Overseas Investment Office

oioenquiriesadvisors@linz.govt.nz | DDI 04 471 6519



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From: 9(2)(a)
Sent: Tuesday, 5 October 2021 8:09 a.m.
To: Pedro Morgan <pmorgan@linz.govt.nz>

Cc: OIO_Enquiries_Advisors <OIOEnquiriesAdvisors@linz.govt.nz>; 9(2)(a)

Subject: 9(2)(b)(ii)

Hi Pedro

You may recall that we have corresponded in relation to a number of OIO applications in the past and I thought you might be able to assist us in this case. We have set out below a high level summary of a transaction that our client, 9(2)(b)(ii), is proposing to enter into and we are keen to ensure that our assessment of this is aligned with the OIO's view.

Details of the proposal are as follows:

- 9(2)(b)(ii) develops world-class solar energy projects and provides ready-to-build solar sites in New Zealand. 9(2)(b)(ii) is in negotiations with 9(2)(b)(ii) regarding the development of a solar farm on 9(2)(b)(ii)'s property at 9(2)(b)(ii), 9(2)(b)(ii).
- 9(2)(b)(ii) and 9(2)(b)(ii) have contemplated how to document the proposed arrangement and consider that an option to acquire an easement over part of the property is the most appropriate. An option to acquire a lease or a conditional agreement to lease were also considered but as 9(2)(b)(ii) will not have exclusive possession of the solar farm (as 9(2)(b)(ii)'s farming activities will still continue to be conducted underneath and around the solar panels), an easement arrangement was considered more suitable.
- The parties also regard the solar farm arrangement to be somewhat akin to that of a wind farm. Wind farm arrangements are often documented via easement so 9(2)(b)(ii) and 9(2)(b)(ii) have taken a similar approach.
- Further, given the term of the arrangement is to be 100 years (unless terminated early), a lease would require resource consent to be obtained due to the 'deemed subdivision' rules for leases over 35 years. The parties do not consider the arrangement should constitute a leasehold subdivision given that 9(2)(b)(ii) will not have full control of the area comprising the solar farm.
- **Attached** is the draft option agreement (including the form of easement and fee agreement) and we briefly summarise the terms of such below:
 - For a period of 3 years, 9(2)(b)(ii) will have a licence to access the land to carry out site investigations. During this 3 year period, 9(2)(b)(ii) can elect whether or not to exercise the option to take an easement.
 - If 9(2)(b)(ii) elects to exercise the option then the easement instrument will be registered.
 - The easement instrument grants 9(2)(b)(ii) a right to produce and convey electricity together with a right of way to enable access to the solar farm. The easement also permits 9(2)(b)(ii) to construct the equipment it needs to operate the solar farm.
 - During the term of the easement instrument (being 100 years unless terminated early), 9(2)(b)(ii) will remain entitled to use the land for farming activities with some controls and restrictions placed on these activities to ensure no material interference with the solar farm.
 - In consideration for the easement grant, 9(2)(b)(ii) will make annual payments to 9(2)(a) for the term of the easement.

Noting the explicit wording in section 6(1) of the Overseas Investment Act that easements are "exempted interests", it therefore follows that OIO approval is not required for the above arrangements. However, we are of course keen to ensure that the OIO is of a similar mind. We understand that the OIO has previously considered easements created in the context of wind farms – and has determined that such easements are exempted interests (and do not trigger a requirement for OIO approval).

We would appreciate your thoughts on this matter and would be happy to assist with answering any questions you may have, or to arrange a time to discuss.

Kind regards

9(2)(a)

[Redacted]

9(2)(a)

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