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## Exemption from the farm land offer criterion

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Read this decision carefully - you must comply with all the conditions. If you do not, we may revoke your exemption.

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### Decision

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#### Case:

202300050

#### Decision Date

4 August 2023

#### 1. Duration of the Exemption

This Exemption expires on 31 December 2025.

#### 2. Interpretation

(1) In this notice, unless the context otherwise requires—

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

**Cable GP** means H2 Cable General Partner Pte. Limited

**Exemption** means the exemption in paragraph 3.

**Exemption Holder** means BW Digital Pte. Ltd

**LINZ** means Toitū Te Whenua Land Information New Zealand.

**Land** means approximately 42.8167 hectares of sensitive land at Taylors Road, Makarewa, Southland

**Transaction** means the indirect acquisition of an interest in the Land as a result of the acquisition of shares in Cable GP.

**Regulations** means the Overseas Investment Regulations 2005.

**Project** means the construction of a hyperscale carbon neutral data centre on the Land

(2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this Exemption has the same meaning as in the Act or the Regulations (as the case may be).

#### 3. Exemption from farm land offer criterion

(1) The requirement in section 16(1)(f) of the Act does not apply in respect of an application for consent under the Act for the Transaction decided on or before 31 December 2025.

#### 4. Conditions of the Exemption

(1) If requested in writing by LINZ, the Exemption Holder must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:

- (a) the representations and plans made or submitted in support of the application for the Exemption; or
- (b) the conditions of the Exemption.

## **5. Amendment or revocation of the Exemption**

The Exemption and conditions of the Exemption may at any time be amended or revoked by LINZ.

## **6. Sanctions**

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

## **Reasons for Exemption**

The purpose of the requirement to advertise farm land is to give New Zealanders an opportunity to acquire farm land on the open market.

An exemption from this requirement may be granted if the decision maker considers that the overseas investment need not meet this requirement by reason of the circumstances relating to the particular overseas investment or section 12 interest or the nature of the land to which the section 12 interest relates.

An exemption may only be granted if there are circumstances that mean that it is necessary, appropriate, or desirable to provide an exemption, and the extent of the exemption is not broader than is reasonably necessary to address those circumstances.

Cable GP, via its subsidiary Datagrid New Zealand Limited Partnership, is developing a hyperscale carbon-neutral data centre on the Land. LINZ granted consent for the investment in December 2021, at which time the Land was advertised on the open market in accordance with the Regulations.

The Exemption Holder is one of two shareholders in Cable GP. The Exemption Holder now seeks to acquire the remaining shares in Cable GP which will result in it obtaining an indirect 100% interest in the Land.

In this case, an exemption is appropriate and desirable as:

- The Exemption Holder is conditioned to use the Land for the purpose of developing a hyperscale carbon-neutral data centre which will deliver benefit to New Zealand. The Land therefore cannot be acquired for the purpose of farming activities.
- Due to the other ownership interests in Cable GP, even if a New Zealander acquired the shares and indirect interest in the Land, Cable GP would remain overseas persons and be subject to the 2021 consent and conditions.
- The Transaction involves a change in upstream owner of the Land through a sale of shares. It is not a stand alone acquisition of farm land that an ordinary New Zealander could acquire.

LINZ consider that the extent of the Exemption is not broader than is reasonably necessary as it is limited to the specific transaction; it only applies for a limited period of time; and it is consistent with the objects and purpose of the Act.