
Notice of Decision
Case: 202100806

1 Decision Date

22 July 2022

2 Duration of the Exemption

The exemption in paragraph 4 applies to transactions entered into on or before 30 June 2027.

3 Interpretation

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

Act means the Overseas Investment Act 2005

Aquila means Aquila Capital SG Holdco Pte. Ltd.

Exemption means the exemption in paragraph 4

Exemption Holders means Aquila and FNSF

FNSF means Far North Solar Farm Limited

Land means leasehold interests in the land described in the appendix

Qualifying Leasehold Interest means a leasehold interest in the Land being acquired exclusively or nearly exclusively for operating a solar farm for electricity generation

Regulations means the Overseas Investment Regulations 2005

Qualifying Transaction means the acquisition of a Qualifying Leasehold Interest by an Exemption Holder or a person where one or both of the Exemption Holders are the only overseas person(s) with an ownership or control interest

(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).

4 Exemption from farm land offer criterion under the Act

The requirement in section 16(1)(f) of the Act does not apply in respect of an application for consent under the Act for a Qualifying Transaction.

5 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 when required to do so. Toitū Te Whenua has an obligation to investigate and act upon alleged and suspected breaches of the Act.

6 Reasons for Exemption

The purpose of the requirement to advertise farm land is to give New Zealand investors an opportunity to try to acquire farm land.

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.

Aquila and FNSF intend to develop solar farms on the Land and have sought an exemption from the requirement for farm land to be advertised.

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

- the interests are leasehold interests only (the acquisition of a freehold interest must still be advertised)
- the freehold ownership of the Land will not change as a result of the transaction, and any future sale of the freehold to an overseas person could only occur after being offered for sale on the open market
- solar farming is a temporary use of the Land, and the Land can revert to an exclusively farming use at the conclusion of the lease
- there are commercial considerations that make advertising less practical for solar farm developments than for other developments, and
- the Exemption is consistent with the principle that overseas investment should benefit New Zealand, noting the high importance the Government places on renewable energy.

The relevant Ministers consider that the extent of the Exemption is not broader than is reasonably necessary as it is limited to specific properties, to leasehold interests only, to acquisitions for the purpose of developing solar farms, and only applies for a limited period of time.

Appendix – Land to which the Exemption applies

1. Approximately 15.8555 hectares at 124 Lamb Road, Pukenui
2. Approximately 2.6 hectares at 121 Lamb Road, Pukenui
3. Approximately 16.427 hectares at 64 & 76 Putiki Road, Edgecumbe
4. Approximately 5.47 hectares at 240 Western Drain Road, Edgecumbe
5. Approximately 9.1883 hectares at 246 Western Drain Road, Edgecumbe
6. Approximately 64.2833 hectares at 20 & 41 Gabriels Gully Road, Waiotahe
7. Approximately 37.699 hectares at 41 Waiotahi Valley Road, Waiotahe
8. Approximately 39.8895 hectares at Bergin Road, Foxton

9 – 14 *Withheld under s9(2)(b)(ii) of the Official Information Act 1982*