
Exemption

Decision date	27 January 2025
Case	202400853
Exemption	<p>Waitakaruru Arboretum Stewardship Foundation² is exempt from the requirement to obtain consent under section 10(1)(a) of the Act for the acquisition of the Land.</p> <p>This Exemption only applies if Waitakaruru Arboretum Stewardship Foundation is a charitable entity registered under the Charities Act 2005.</p>
Land	A freehold interest in approximately 17.42 hectares of land at 207 Scotsman Valley Road, Tauwhare contained in records of title 504916, SA28A/627 and SA28A/628)
Expiry	This exemption expires on 31 January 2026.

Definitions

Act means the Overseas Investment Act 2005

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Regulations means the Overseas Investment Regulations 2005.

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).

Conditions

Your Exemption is subject to the conditions set out below. You must comply with them. The Overseas Investment Act 2005 (**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.

² Company number 9275789

If requested in writing by LINZ, the Waitakaruru Arboretum Stewardship Foundation 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

Amendment or revocation of exemption

The Exemption and conditions of the Exemption may at any time be amended or revoked by LINZ in the same way as it may be made.

Reasons for exemption

The Applicant, Waitakaruru Arboretum Stewardship Foundation is a New Zealand unlimited liability company ultimately owned by two United States based philanthropists. The Applicant has applied to become a registered charity under the Charities Act 2005.

The Applicant seeks an exemption from the requirement for consent under section 10(1)(a) of the Act (Exemption) in respect of the Land. The Land (which was formerly an abandoned quarry site) is used as an arboretum³ and sculpture park, and is open to the public. The Land is sensitive because it contains both residential land and non-urban land greater than 5 hectares. The rationale behind the transaction is to allow the park to remain operational, and the transaction is non-commercial in nature.

Currently, the Vendors (who developed the park over a 30 year period) live in a house on the Land. The proposed transaction would grant the Vendors an accommodation right to remain living on the Land and be involved in the operation of the park. This outcome is inconsistent with the mandatory conditions attaching to the sensitive residential land imposed by the Act.⁴

Without an exemption, the Vendors would not be able to remain on the Land and be part of the park they spent 30 years curating. Also, the charitable entity would have to spend resources on compliance with the Overseas Investment Act that could otherwise be spent on charitable purposes.

LINZ consider an exemption from the requirement of consent is necessary, appropriate, or desirable in the circumstances because:

- The exemption is in respect of a charitable entity and the acquisition of the Land will support its continued use for charitable purposes;

³ An arboretum is a botanical garden devoted to trees.

⁴ See Schedule 2 clauses 10 to 19 of the Act.

- It would be unduly costly, and unduly burdensome to require the Applicant to spend charitable resources on compliance with the Act, in particular compliance with the residential land outcomes.⁵
- Treasury Report T2018/30 notes that requiring charities whose core purpose is to benefit New Zealand but who are deemed overseas persons under the Act to apply for consent may not be consistent with policy intent of the Act and may have unintended consequences. We consider the present situation to be a good example of unintended consequences arising from the operation of the Act.

LINZ considers that the exemption is not broader than reasonably necessary as it is limited to 12 months and applies only to the acquisition of the Land by a charitable entity.

⁵ Schedule 2 clauses 13 and 14