



To: Michael Appleyard, Manager Applications (Overseas Investment Office)

ASSESSMENT REPORT: Datagrid New Zealand Limited Partnership

Date	22 December 2021	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	202100622	Deadline	24 December 2021

Purpose

We seek your decision on an application for consent to acquire an interest in sensitive land and significant business assets under the Overseas Investment Act 2005 (the Act).

This decision is delegated to you under Table A, Row C3 of the Designation and Delegation Letter dated 17 October 2018, as the value of the consideration to be provided for the overseas investment in sensitive land is less than \$2 million.

Action sought

1. Review this report.
2. Determine whether to grant consent and, if so, on what conditions.
3. Indicate your decision from page 4.

Key information

Applicant	Datagrid New Zealand Limited Partnership (France 62.5%; Austria 37.5%)
Vendor for the Land	Makarios Limited (New Zealand 100%)
Land	Approximately 42.8167 hectares of land located at Taylors Road, Makarewa, Southland
Consideration for the Land	[s 9(2)(b)(ii)]
Asset	The development of a hyperscale data centre, being the Datagrid
Consideration for the Asset	Over \$1,000,000,000
Sensitivity	Is more than 5 hectares of non-urban land
Relevant tests	Investor test: s18A Benefit to NZ test – substantial and identifiable benefit: s16(1)(c) & s16A(1)(b) Farm land offer test: s16(1)(f)

Timing

4. Processing days for the application are set out in the table below. The OIO's processing time is within the standard processing time for an application of this type.

Quality Assurance	OIO Processing	Waiting for Applicant / Vendor	Third party consultation
5	54	14	0

A. Decision

Core tests

5. I determine that:

- 5.1 The 'relevant overseas person' is (collectively):

Relevant overseas person	Role
Rémi Galasso	Trustees and Settlers of the Galasso Family Trust (a discretionary family trust) and the ultimate beneficial owner of 62.5% of the Applicant and Datagrid New Zealand General Partner Limited
[s 9(2)(a)]	
The Galasso Family Trust (a discretionary family trust)	
Andreas Sohmen-Pao	Ultimate beneficial owner of 37.5% of the Applicant and Datagrid New Zealand General Partner Limited
Datagrid New Zealand Limited Partnership	Applicant and acquiring entity
Datagrid New Zealand General Partner Limited	General Partner of the Applicant
H2 Cable General Partner Pte. Limited	100% owner of the Applicant and Datagrid New Zealand General Partner Limited
BW Digital Pte. Ltd.	Intermediate holding companies holding the 37.5% ownership interest in the Applicant
BW Renewables Limited	
BW Group Limited	Entity within the BW Affiliate Group that makes decisions for entities within the wider BW Affiliate Group

- 5.2 The 'individuals with control of the relevant overseas person' are:

Individuals with control	Role
Rémi Galasso	Director of Datagrid New Zealand Limited Partnership and Founder and Executive Chairman of Hawaiki Submarine Cable Network
Andreas Sohmen-Pao	Director of BW Group Limited

Individuals with control	Role
Billy Chiu	Director of BW Digital Pte. Ltd. and Director of BW Renewables Limited
Nicholas John Oxleigh Fell	Director of BW Digital Pte. Ltd.
Erik Strømsø	Managing Director of BW Renewables Limited
Michael Gerard Smyth	Alternate Director to Andreas Sohmen-Pao in BW Group Limited and Director of BW Renewables Limited
Susan Elizabeth Reedy	Alternate Director to Billy Chiu of BW Renewables Limited
Sir John Rose	Director of BW Group Limited
Ouma Sananikone	
Christian Clausen	
Thomas Thune Andersen	
Ludovic Benoit Hutier	Chief Operating Officer of Hawaiki Submarine Cable Network
Florent Blot	Chief Network Officer of Hawaiki Submarine Cable Network and Director of Datagrid New Zealand General Partner Limited
Laurent Jean Pierre Le Breton	Chief Financial Officer of Hawaiki Submarine Cable Network
Peter Frederico Manuel Vidal Missingham	General Counsel of Hawaiki Submarine Cable Network

- 5.3 One of the individuals with control of the relevant overseas person has established a factor contained in section 18A(4) of the Act however we consider that they do not make any of the relevant overseas persons or individuals with control unsuitable to invest in New Zealand.
6. I am satisfied that the investor test in section 18A, as outlined in paragraphs 5.1 to 5.3 above, has been met.
7. I am satisfied, in relation to the benefit to New Zealand test, that:
- 7.1 the criteria for consent in sections 16 and 16A have been met;
 - 7.2 the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders);
 - 7.3 the benefit will be, or is likely to be, substantial and identifiable; and
 - 7.4 the farm land offer test is met.

National interest assessment

8. I note that the overseas investment in sensitive land is not a transaction of national interest under section 20A of the Act and the Minister of Finance has not notified it is a transaction of national interest under section 20B of the Act.
9. My ultimate decision is to grant consent subject to the conditions in the Proposed Decision in **Attachment 1**.



Michael Appleyard

Manager, Applications (Overseas Investment Office)

Date: 23 / 12 / 2021

Released under the Official Information Act 1982

B. Background and proposed transaction

10. The Applicant, Datagrid New Zealand Limited Partnership, is a New Zealand limited partnership, formed on 1 March 2021. The Applicant is applying for consent to acquire approximately 42.8167 hectares of sensitive land at Taylors Road, Makarewa, Southland (the **Land**).¹
11. The Land is currently used to grow silage. The Applicant intends to use the Land to develop a carbon-neutral, hyperscale data centre (the **Datagrid**).²
12. The Applicant is also applying for consent to acquire significant business assets as the total expenditure expected to be incurred, before commencing the Datagrid, exceeds \$100 million. The Datagrid is expected to cost over \$1 billion to develop.

C. Application of the Act

13. The Land is sensitive because it is non-urban land over 5 ha in size,³ so consent is required.⁴ The following criteria for an investment in sensitive land apply to this application:⁵
 - The investor test must be met.⁶
 - The benefit to New Zealand test must be met.⁷
 - The farm land must have been offered for sale on the open market.⁸
 - You must also note whether the investment is a transaction of national interest and, if so, whether the Minister of Finance has decided that the investment is contrary to New Zealand's national interest.⁹
14. In order to satisfy the benefit to New Zealand test, the decision-maker must:
 - determine that the overseas investment will, or is likely to, benefit NZ;¹⁰ and
 - determine that benefit will be, or is likely to be, substantial and identifiable.¹¹
15. We assess the investor test in Part D, the benefit to New Zealand test in Part E, the farm land offer test in Part F, and discuss national interest matters in Part G.

D. Applicant and investor test

15. This section describes the Applicant and assesses whether the investor test is met.

¹ The Land fronts Flora Road East.

² A hyperscale data centre is a large, business-critical facility, designed to efficiently support robust, scalable applications and are often associated with big data-producing companies. Hyperscale is also a term that embodies a computing system's capability to scale, at orders of magnitude, to meet tremendous demand.

³ Table 1, Part 1, Schedule 1 of the Act.

⁴ Under sections 10(1)(a) and 12(1)(a)(i) of the Act.

⁵ Set out in section 16(1) of the Act.

⁶ Section 18A of the Act.

⁷ Section 16(1)(c)(ii).

⁸ Section 16(1)(f).

⁹ Section 16(1)(g) of the Act.

¹⁰ Section 16A(1)(a) of the Act.

¹¹ Section 16A(1)(b) of the Act. This criterion applies because the Land is non-urban land over 5 ha in size.

Business Activities

16. The Applicant does not have any current or past business operations in New Zealand. However, the upstream owners of the Applicant have business operations in New Zealand.
17. BW Digital Pte. Ltd (**BW Digital**), which is an upstream owner of the Applicant, currently has an application before the Overseas Investment Office for consent (OIO case: 202100546) for the acquisition of (collectively the Hawaiki Group):
 - 100% of the partnership interest in the Hawaiki Submarine Cable Limited Partnership;
 - 100% of the shares in Hawaiki Submarine Cable General Partner Limited; and
 - 100% of the shares in International Connectivity Service Limited.
18. The principal IWC is a director of the Applicant and Chairman and Founder of the Hawaiki Submarine Cable Network, which owns and operates a submarine cable network being an integrated system of cables collectively transferring data from one land-based location to another, enabling high speed, large scale, cross border communication. The submarine cable network links Australia, New Zealand, Hawai'i and parts of mainland United States.
19. The Hawaiki Group has ^s9(2) customers, which are varied in profile but include wholesale telecommunications providers, multinational corporations, Government agencies and island nations. The Hawaiki Group's key management personnel are based in Singapore and Auckland. There is a total of ^s9(2)(b)(ii) staff operating across four countries, being New Zealand, Singapore, Australia and the U.S. ^s9(2)(b)(ii) of the ^s9(2)(b)(ii) staff are based in New Zealand.

Ownership

20. The Applicant is ultimately beneficially owned by the Galasso Family Trust as to 72.5% and Mr Andreas Sohmen-Pao as to 37.5%.
21. H2 Cable General Partner Pte. Limited (**H2 Cable GP**) holds 100% of the partnership interests in the Applicant and the shares of Datagrid New Zealand General Partner Limited (**Datagrid NZ GP**).
22. The shares in H2 Cable GP are held by two entities:
 - Subsea Holdings General Partner Pte Limited (**Subsea GP**), a Singaporean incorporated – as to 750 shares (62.5%); and
 - (BW Digital, a Singapore incorporated company– as to 450 shares (37.5%).
23. Garland View Limited, a New Zealand incorporated company, holds 100% of the shares in Subsea GP. Mr Rémi Galasso and ^s9(2)(a) jointly, in their capacity as trustees of the Galasso Family Trust, hold 100% of the shares in Garland View Limited.
24. BW Renewables Limited (**BW Renewables**), incorporated under the laws of Bermuda, holds 100% of the securities of BW Digital. BW Group Limited (**BW Group**), incorporated under the laws of Bermuda, holds 100% of the securities of BW Renewables
25. ^s9(2)(a)
26. ^s9(2)(a)

- [s 9(2)(a)]
27. [s 9(2)(a)]
28. On 8 September 2021 BW Digital completed the purchase of the 37.5% interest in H2 Cable GP, from entities beneficially owned by interests associated with Mr Malcom Dick a New Zealand citizen. Mr Dick was also a director of Datagrid NZ GP and H2 Cable GP and resigned as a director on completion of the sale to BW Digital.
29. A diagram of the intended ownership structure is in **Attachment 2**.

Control

30. The principal individual with control is Rémi Galasso, as the trustee and Settlor [s 9(2)] of the Galasso Family Trust, the ultimate beneficial owner of 62.5% of the Applicant. He is also a board member of H2 Cable GP and Datagrid NZ GP and is the principal decision maker for all material decisions relating to the Applicant.
31. The approval of any new investments and divestments by, and decision making in general regarding the Applicant, are made by and rest with the board of directors of Datagrid NZ GP as the general partner of the Applicant. The board can also approve significant capital and operating expenditure.
32. Senior management of Hawaiki Submarine Cable Network who are currently involved in the day-to-day management of the Applicant are also individuals with control. These are currently Florent Blot (also a director of Datagrid NZ GP) and Peter Missingham, and likely to be extended to Ludovic Hutier and Laurent Le Breton.
33. Andreas Sohmen-Pao is also an individual with control as the ultimate beneficial owner of 37.5% of the Applicant and a director of BW Group.
34. The other directors of BW Group, BW Renewables and BW Digital, and Erik Strømsø (Managing Director, BW Renewables and part of the executive committee of BW Group), are the decision makers in relation to the BW Digital 's 37.5% investment in the Applicant through its investment in H2 Cable GP and are also individuals with control.
35. BW Digital 's eventual nominated director(s) to the boards of H2 Cable GP and Datagrid NZ GP will be drawn from this group of directors and Erik Strømsø.

Excluded

36. [s 9(2)(a)] is not an individual with control as all decisions in relation to investments by the Galasso Family Trust, including in H2 Cable GP and the Applicant, are made by Mr Rémi Galasso.

37. [s 9(2)(a)]

Relevant overseas person and individuals with control

38. We recommend that the 'relevant overseas person' is (collectively):

Relevant overseas person	Role
Rémi Galasso	Trustees and Settlers of the Galasso

Relevant overseas person	Role
[s 9(2)(a)]	Family Trust (a discretionary family trust) and the ultimate beneficial owner of 62.5% of the Applicant and Datagrid New Zealand General Partner Limited
The Galasso Family Trust (a discretionary family trust)	
Andreas Sohmen-Pao	Ultimate beneficial owner of 37.5% of the Applicant and Datagrid New Zealand General Partner Limited
Datagrid New Zealand Limited Partnership	Applicant and acquiring entity
Datagrid New Zealand General Partner Limited	General Partner of the Applicant
H2 Cable General Partner Pte. Limited	100% owner of the Applicant and Datagrid New Zealand General Partner Limited
BW Digital Pte. Ltd.	Intermediate holding companies holding the 37.5% ownership interest in the Applicant
BW Renewables Limited	
BW Group Limited	Entity within the BW Affiliate Group that makes decisions for entities within the wider BW Affiliate Group

39. We recommend that the 'individuals with control of the relevant overseas person' (IWC)¹² are:

Individuals with control	Role
Rémi Galasso	Director of Datagrid New Zealand Limited Partnership and Founder and Executive Chairman of Hawaiki Submarine Cable Network
Andreas Sohmen-Pao	Director of BW Group Limited
Billy Chiu	Director of BW Digital Pte. Ltd. and Director of BW Renewables Limited
Nicholas John Oxleigh Fell	Director of BW Digital Pte. Ltd.
Erik Strømsø	Managing Director of BW Renewables Limited
Michael Gerard Smyth	Alternate Director to Andreas Sohmen-Pao in BW Group Limited and Director of BW Renewables Limited
Susan Elizabeth Reedy	Alternate Director to Billy Chiu of BW Renewables Limited
Sir John Rose	Director of BW Group Limited
Ouma Sananikone	
Christian Clausen	

¹² Section 15.

Individuals with control	Role
Thomas Thune Andersen	
Ludovic Benoit Hutier	Chief Operating Officer of Hawaiki Submarine Cable Network
Florent Blot	Chief Network Officer of Hawaiki Submarine Cable Network and Director of Datagrid New Zealand General Partner Limited
Laurent Jean Pierre Le Breton	Chief Financial Officer of Hawaiki Submarine Cable Network
Peter Frederico Manuel Vidal Missingham	General Counsel of Hawaiki Submarine Cable Network

Summary of investor test

40. The relevant overseas persons and individuals with control established one of the factors contained in section 18A(4) of the Act however we consider this does not make the Applicant unsuitable to invest in New Zealand because this matter is not likely sufficiently serious enough or connected with the Applicant's investment.
41. Ouma Sananikone is named as a co-defendant in shareholder class action litigation against Macquarie Infrastructure Corporation in the United States of America. Ouma Sananikone is named as a defendant only because she is a director of Macquarie Infrastructure Corporation, a company unrelated to the Applicant. This matter is ongoing; however unconfirmed reports indicate that the litigation may have been recently dismissed.¹³
42. The litigation alleges Macquarie Infrastructure Corporation and the individual defendants (including the IWC) knowingly made material misstatements and omitted material facts in its public disclosures concerning the Macquarie Infrastructure Corporation's and one of Macquarie Infrastructure Corporation's business and the sustainability of the Macquarie Infrastructure Corporation's dividend to stockholders.
43. This matter establishes the factor under section 18A(4)(a)(vi) as the proceedings are ongoing and relate to an alleged breach of the Securities Exchange Act of 1934 which carries a civil pecuniary penalty.¹⁴
44. We consider that Ouma Sananikone as an individual with control of the relevant overseas person (as a director of BW Group) is not unsuitable to invest in New Zealand because:
 - The alleged actions are not considered to be at the serious end of offending as we understand that litigation of this type is not unusual in the United States of America;
 - Macquarie Infrastructure Corporation are actively defending the allegations;
 - The IWC is only named as a defendant because she is a director of Macquarie Infrastructure Corporation;
 - BW Group and the Applicant are unrelated to Macquarie Infrastructure Corporation and not implicated in the litigation;

¹³ <https://www.mondaq.com/unitedstates/securities/1111672/southern-district-of-new-york-dismisses-putative-class-action-against-infrastructure-company-for-failure-to-adequately-allege-misrepresentations-or-scienter>

¹⁴ In particular sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5.

- Further, Macquarie Infrastructure Corporation is not involved in the Investment.
 - The IWC is one of six directors of BW Group and would therefore not be able to make significant unilateral decisions in relation to the Investment.
45. Standard Condition 3 will be imposed as a condition of consent and requires the IWC and ROP remain not unsuitable to own and/or control assets in New Zealand. Standard Condition 4 also requires the Applicant to report to us if there are any changes to this where a IWC or ROP establish a section 18A factor.
 46. We note that the litigation in relation the Ouma Sananikone is ongoing and if it results in a significantly different or more serious outcome than that assessed by the office, we may reassess the investor's suitability to invest in New Zealand.
 47. For completeness, we note that Rolls Royce was ordered to pay £671m in fines for bribery and corruption between 1996 to 2011, a period during which Sir John Rose was the Chief Executive of the company. Our open-source checks revealed that the Serious Fraud Office in the UK investigated the possibility of prosecuting certain senior executives at Rolls Royce in connection with the corrupt practices, however in February 2019 closed the investigation without charging individuals.
 48. During our assessment of the BW Digital application (OIO case: 202100546) we requested further information from BW Digital regarding the Rolls Royce matter to clarify their basis for asserting that this did not lead to any factors being established. BW Digital provided further information, and we are satisfied that no factors are established for this IWC.
 49. For the reasons set out above our conclusion is that **the investor test has been met.**

E. Investment plan and benefit to NZ test

50. This section describes the proposed investment and our assessment of whether it is likely to meet the benefit criteria in the Act.

Investment plan

51. The Applicant intends to develop the Datagrid on the Land. In conjunction with the Datagrid, a party related to the Applicant, H2 Cable GP intends to develop a trans-Tasman and domestic subsea cable system that will enhance connectivity to the Datagrid (the **Hawaiki Iti Cable**).¹⁵
52. The Datagrid will be a large consumer of electricity, both to power the servers that it houses and to provide cooling. The Applicant submits that New Zealand is an optimal location for the Datagrid as New Zealand can mitigate the consumption of electricity due to its lower temperatures and can provide access to reliable, green electricity.
53. The Datagrid will require resource consents and building consents and has been in discussions with Environment Southland and Southland District Council in relation to these consents.
54. The Applicant intends to initially develop the Datagrid to consume up to 100 Megawatts, which could then be scaled up to 150 Megawatts if there was enough demand to support such an increase. The Applicant and Meridian Energy have entered into an exclusivity agreement relating to the supply of power by Meridian Energy (**Meridian**) to the Datagrid.
55. The Applicant expects to enter into a legally binding agreement with Meridian for the supply of electricity to the Datagrid site by 1 July 2022. By 1 October 2022, the

¹⁵ This cable system does not require any consent under the Act as it does not involve the acquisition of sensitive assets.

Applicants expects to have secured all consents necessary for the construction and operation of the Datagrid. The Applicant expects to complete the construction and commence operation of the Datagrid by 1 April 2024.

What is likely to happen without the investment (Counterfactual)

56. We consider that the most likely counterfactual would be that an adequately funded alternative New Zealand purchaser (**ANZP**) would acquire the Land as the Vendor has submitted that it would continue to advertise the property for sale if this investment does not proceed.
57. We consider that given the size of the Land, the ANZP is unlikely to run a substantial dairy operation on the Land and considering the outcome of the farm land advertising (discussed in Part F), we consider that the ANZP is unlikely to use the Land as a dairy operation in support of a nearby farm.
58. Therefore, we consider that the ANZP would likely use the Land as a grass block or as a dairy support land and that the ANZP is unlikely to commit any significant capital investment into the Land.

Assessment of key benefits

59. The Applicant expects the Datagrid to be the first hyperscale data centre in New Zealand. While there are existing data centres in New Zealand, these data centres would be smaller in comparison to the Datagrid and are scattered across different locations.
60. Based on a design estimate by AECOM¹⁶, the planning and construction of the Datagrid, which is likely to take place over the course of two years, is likely to introduce over \$1 billion of additional investment into New Zealand. The construction stage of the Datagrid would also likely create over 100 full-time equivalent (**FTE**) jobs and approximately 45 FTE positions to operate the Datagrid.
61. However, there would be uncertainty as to the extent of the additional investment and jobs created during the construction phase of the Datagrid as the Applicant will outsource the construction work for the Datagrid on a turn-key basis. The Applicant intends for a yet-to-be appointed contractor to deliver as-built and completed facility, with the Applicant retaining decision-making as to the allocation of resources.
62. The benefits to New Zealand that are likely to result from this investment and our assessment of the relative weight to be given to each are set out in the table below.
63. Factors that we considered were either not relevant to the investment, or the benefit to New Zealand was not sufficient to be relied on, are noted in **Attachment 3**.
64. In applying the benefit to New Zealand criteria, you are required to consider each of the benefit factors and determine which of them are relevant. The weight and relative importance to be given to each factor is a matter to be determined by you as the decision-maker. This report sets out our assessment to guide your consideration, however it is not determinative.
65. Under the terms of the Ministerial directive letter,¹⁷ the 'rural land directive' applies to this investment.¹⁸ The benefit factors Ministers have directed should be given high relative importance are noted in the table below.¹⁹

¹⁶ A global infrastructure firm and specialists in digital infrastructure.

¹⁷ Dated 28 November 2017, paragraphs 13-17.

¹⁸ Because the investment involves the acquisition of non-urban land over 5 hectares in size (excluding any associated land) and excludes 'forest land'.

¹⁹ The factors that we have given high relative importance are: jobs, new technology or business skills, increased export receipts, increased processing of primary products, and oversight and participation by New Zealanders.

Summary assessment: benefit to NZ test

66. This table assesses the benefits to NZ likely to result from the investment and the relative weight to be given to each.

Relevant benefit factors	Applicant’s claims: what they intend to do	Without the investment (Counterfactual)	OIO analysis: strength/weakness		Proposed special conditions
			Indicative strength	Summary	
Additional investment for development purposes	Based on the Datagrid’s design estimate prepared by AECOM, the planning and construction of the Datagrid is likely to cost over \$1.1 billion. The funding for this is likely to be made up of a combination of equity/shareholder loans and equity in the Applicant from New Zealand institutional investors and offshore debt funders.	The ANZP is unlikely to unlikely to commit any significant capital investment into the Land and would likely use the Land as a grass block or dairy support land.	Strong	Taking into account the size of the Land, we consider that this investment is likely to introduce significant investment for development purposes into New Zealand. While there is uncertainty as to how much of the additional investment will come from overseas, we consider that sum is likely to be significant and have, therefore, rated this benefit factor strong.	Condition that the Applicant build the Datagrid.
Job opportunities (high relative importance factor)	Construction phase The two-year construction phase of the Datagrid is likely to create at a minimum 150 FTE construction-related position. This estimate is based on the Applicant’s experience with their other projects. However, the Applicant is unable to provide a precise breakdown as the construction work for the Datagrid will be outsourced on a turn-key basis. The selected	The ANZP is likely to require hours of work on the Land that are similar to that of the Vendor’s, which is approximately five hours of work per week on average. This is approximately 0.15 FTE.	Moderate	While the Applicant is unable to provide certainty as to the FTE roles that will be created during the construction phase, we consider that the investment will, regardless of the work being outsourced create job opportunities that will be beneficial for New Zealand. We consider that the 45 FTE roles created during the operational phase of the	Reporting on the tender process to procure a contractor to construct the Datagrid. Reporting on jobs created, including the roles and their

	<p>contractor will undertake to deliver an as-built and completed facility.</p> <p>Operational phase Once the Datagrid is operational, the Applicant expects to create approximately 45 FTE roles to operate the Datagrid. These are broken down as follows: 25 data centre operators and managers, 10 IT support staff, and 10 network and transmission engineering staff.</p>			<p>Datagrid will also be beneficial to New Zealand, especially for the local economy in Southland and taking into consideration the size of the Land. However, we rate this benefit factor moderate as the FTE roles created during the construction phase are uncertain and will only last for the two-year construction phase of the Datagrid.</p>	salaries.
Added market competition	<p>The Applicant does not currently operate in New Zealand's data centre market. The current entities operating in that market includes Spark New Zealand Limited, Datacom Group Limited, Plan B Limited, DataCentre 220, Vocus Group, Vodafone New Zealand Limited, and Chorus New Zealand Limited. The Applicant will, therefore, be a new entrant into this market, adding to market competition.</p>	<p>No changes to market competition as the ANZP will not be operating in the data centre market.</p>	Moderate	<p>The data centre market is a relatively difficult market to enter as it requires a large amount of capital for establishing the business. As the Datagrid will be the first hyperscale data centre in New Zealand, the Applicant will be a substantive competitor in the data centre market, and will add to market competition in that industry. However, we have rated this benefit factor moderate as there are already a number of entities operating in the data centre market.</p>	Condition that the Applicant build the Datagrid.
Greater efficiency	<p>The Datagrid, enhanced by the Hawaiki Iti Cable will provide New Zealand-based users of data</p>	<p>The ANZP is likely to operate the Land as a grass block or dairy</p>	Low	<p>Taking into consideration the size of the Land, we consider that the Datagrid</p>	Condition that the Applicant build the

	<p>access to a much larger, scalable facility. This will enable these providers to service their clients faster, more efficiently, and in a more cost-effective way.</p>	<p>support land, unlikely to increase efficiency.</p>		<p>will lead to some efficiency given it will be the first hyperscale data centre in New Zealand. However, we have rated this benefit factor low as there is no certainty as to the scale of this efficiency. The Datagrid would also be dependent on the Hawaiki Iiti Cable.</p>	<p>Datagrid.</p>
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Released under the Official Information Act 1987

Consultation and submissions about the investment

67. No consultation was undertaken in relation to this application.

Submissions

68. We received a third-party submission from a member of the public (the **Submitter**) who raised concerns regarding the location of the Datagrid. The Submitter was concerned about the possible noise pollution from the Datagrid and the possible drop in property values for properties within the Datagrid's vicinity.
69. We consider that any noise coming from the construction or operation of the Datagrid will be sufficiently dealt with under the robust resource consenting processes. The local community will have the opportunity to make their submissions during the resource consenting processes as well. With the noise being managed, the Datagrid is, therefore, unlikely to impact the property values for the properties within the Datagrid's vicinity.

Conclusion – benefit to NZ test

70. We have undertaken our assessment having regard to the characteristics and size of the Land and the nature of the interest being acquired, reflecting the proportional nature of the benefit to NZ test. The Land is a moderate piece of farm land, for which the freehold interest is being acquired. The investment is likely to create job opportunities for New Zealanders and result in an additional investment of over \$1 billion for development purposes. The investment will also add to market competition in the data centre market and result in greater efficiency from the scale of the Datagrid.
71. After considering the application, we are satisfied that the investment is likely to result in the benefits considered above. Taking into account the size of the Land, we consider the overseas investment is likely to benefit New Zealand and that the benefits are substantial and identifiable.

F. Farm land offer test

72. Because the Land is farm land, we note that it was advertised on the open market with the required information for a period exceeding 20 working days on the Land itself, the Southland Times, TradeMe, Country&Co's website, and RealEstate.co.nz.
73. There were four phone call enquiries and two internet enquiries over the duration of the advertisement. However, no formal offers were submitted.
74. We are, therefore, satisfied that the regulations requiring the farm land to be offered for acquisition on the open market have been complied with.

G. Not a transaction of national interest

75. The investment does not involve a transaction of national interest under the mandatory criteria of the Act.²⁰ This is because the investment does not involve a non-NZ government investor, or an investment in a strategically important business (as defined in the Act).
76. We have not referred this transaction to the Minister of Finance for him to call it in for a national interest assessment on a discretionary basis.²¹ He has therefore not declined consent to the transaction.

²⁰ Under s 20A of the Act.

²¹ Section 20B of the Act

77. We are directed²² that the starting point is the assumption that overseas investment is in New Zealand's national interest and that we should only seek the Minister of Finance to exercise his discretion for a national interest assessment if the proposed investment:
- could pose risks to New Zealand's national security or public order
 - would grant an investor significant market power within an industry or result in vertical integration of a supply chain
 - has foreign government or associated involvement that was below the 10 per cent threshold for automatic application of the national interest test, but granted that government (and/or its associates) disproportionate levels of access to or control of sensitive New Zealand assets or
 - would have outcomes that were significantly inconsistent with or would hinder the delivery of other Government objectives.
78. We do not consider that this investment engages any of these risk factors.

H. Conclusion

79. After considering the application, our view is that:
- the investor test has been met; and
 - the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
 - the benefit is proportionate to the sensitivity of the land and the nature of the transaction; and
 - the benefit will be, or is likely to be, substantial and identifiable;
 - the farm land was offered for sale on the open market; and
 - the transaction is considered not to be a transaction of national interest.
80. Therefore, we consider that the criteria for consent in section 16 have been met and our recommendation is to **grant consent**.
81. If you agree, we refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and from page 3 of this Assessment Report to record your decision.



Sherlene Ho

Senior Solicitor
Overseas Investment Office

Date: 22/12/2021



Luke Hilton
Solicitor
Overseas Investment Office

Date: 22/12/2021

²² Supplementary Ministerial Directive Letter (8 June 2020).

I. List of Attachments

1. Proposed Decision
2. Intended ownership structure
3. Other benefit factors

Released under the Official Information Act 1982

ATTACHMENT 1 PROPOSED DECISION

Consent for Overseas Person to Acquire Sensitive New Zealand Land and Sensitive New Zealand Assets

Read this consent carefully - you must comply with all the conditions. If you do not, you may be required to dispose of the land and/or be subject to fines or other penalties.

Consent

Decision date: [date]

The following people have been given the following consent:

Case	202100622
Consent	The Consent Holder may acquire the Land and may invest in the Datagrid subject to the Conditions set out below.
Consent Holder	Datagrid New Zealand Limited Partnership (registration number 50058829) We will also refer to each Consent Holder as you .
Land	A freehold interest in approximately 42.8167 hectares of land located at 370 Flora Road East/Taylor's Road, Makarewa, with legal description Lot 2 DP 526953 contained in Record of Title 847503 (Southland).
Datagrid	A hyperscale data centre.
Timeframe	You have until 31 December 2022 to acquire the Land.

Conditions

Your Consent is subject to the Special conditions, Standard conditions and Reporting conditions (Conditions) set out below. You must comply with them all. Be aware that if you do not comply with the Conditions you may be subject to fines or other penalties, and you may also be required to dispose of the Land.

In the Consent and the Conditions, we refer to the Overseas Investment Office as **OIO, us or we**.

Act means the Overseas Investment Act 2005.

Special conditions

You must comply with the following **special conditions**. These apply specifically to this Consent and were considerations that particularly influenced us to give consent:

Details	Required date
Special condition 1: Apply for relevant consents	
You must lodge all applications for consent under the Resource Management Act 1991 (or any replacement legislation) and all applications for consent under the Building Act 2004. If you do not, standard condition 6 will apply and we may require you to dispose of the Land.	30 June 2023
Special condition 2: Obtain all relevant consents	
You must obtain all applications for consent under the Resource Management Act 1991 (or any replacement legislation) and all applications for consent under the Building Act 2004. If you do not, standard condition 6 will apply and we may require you to dispose of the Land.	31 January 2024
Special condition 3: Construct and operate the Datagrid	
You must commence the construction of the Datagrid.	30 June 2024
You must complete the construction of the Datagrid and begin operation of the Datagrid.	1 January 2027
If you do not, standard condition 6 will apply and we may require you to dispose of the Land.	

Standard conditions

You must also comply with the **standard conditions** set out below. These apply to all overseas people who are given consent to acquire sensitive New Zealand land, including you:

Details	Required date
Standard condition 1: acquire the Land	
<p>You must acquire the Land:</p> <ol style="list-style-type: none"> 1. by the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Land, and 2. using the acquisition, ownership and control structure you described in your application. <p>Note, only you – the named Consent holder – may acquire the Land, not your subsidiary, trust or other entity.</p>	As stated in the Consent
Standard condition 2: tell us when you acquire the Land	
<p>You must tell us in writing when you have acquired the Land. Include details of:</p> <ol style="list-style-type: none"> 1. the date you acquired the Land (Settlement), 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the Land, and 4. copies of any transfer documents and Settlement statements. 	As soon as you can, and no later than two months after Settlement
Standard condition 3: allow us to inspect the Land	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions.</p> <p>We will give you at least two weeks' written notice if we want to do this.</p> <p>You must then:</p> <ol style="list-style-type: none"> 1. Allow a person we appoint (Inspector) to: <ol style="list-style-type: none"> (a) enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (Inspection), (b) remain there as long as is reasonably required to conduct the inspection, 	At all times

<ul style="list-style-type: none"> (c) gather information, (d) conduct surveys, inquiries, tests and measurements, (e) take photographs and video records, and (f) do all other things reasonably necessary to carry out the Inspection. <p>2. Take all reasonable steps to facilitate an Inspection including:</p> <ul style="list-style-type: none"> (a) directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection, (b) being available, or requiring your employees, agents, tenants or other occupiers to be available, at all reasonable times during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required. <p>3. During an Inspection:</p> <ul style="list-style-type: none"> (a) we will not compel you and your employees, agents, tenants or other occupiers to answer our questions or to let us look at, copy or take away documents, (b) our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection. 	
Standard condition 4: remain not unsuitable to invest in New Zealand	
<p>You, and to the extent that you are not an individual, the Individuals Who Control You must remain not unsuitable to own or control the Land in accordance with section 18A(1) of the Act.</p> <p>The Individuals Who Control You are individuals who:</p> <ul style="list-style-type: none"> (a) are members of your governing body, (b) directly or indirectly, own or control more than 25% of you or of a person who itself owns or controls more than 25% of you, and (c) are members of the governing body of the people referred to in paragraph (b) above. 	<p>At all times</p>

Standard condition 5: tell us about changes that affect you, the people who control you, or people you control

You must tell us in writing if any of the following events happens to any of the Consent holders:

1. You become aware that you and/or any Individual Who Controls you establishes any of the investor test factors listed in section 18A(4) of the Act.
2. You cease to be an overseas person or dispose of all or any part of the Land.
3. Your New Zealand Service Address changes. This is the address you provided us in your application as the address which we will send any legal document we need to serve on you.

Within 20 working days after the change

Standard condition 6: dispose of the Land if you do not comply with key special conditions

Some of the special conditions were key to the decision to give consent. If we consider you have failed to comply with one of those Special conditions in a material way we may require you to dispose of the Land.

If all or part of this standard condition 6 applies to a special condition, we have said so in that condition.

We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:

Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.

Within six weeks of the date of our notice.

Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.

Within six weeks of the date of our notice.

Dispose of the Land: dispose of the Land to a third party who is not your associate.

Within six months of our notice.

Offer without reserve: if you have not disposed of the Land within six months of our notice, offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.

Within nine months of our notice.

<p>Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.</p>	<p>By the last day of every March, June, September and December after our notice or at any other time we require.</p>
<p>Report disposal to us: send us, in writing, evidence:</p> <ul style="list-style-type: none"> (a) that you have disposed of the Land, (b) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor), (c) the purchaser is not your associate. 	<p>Within one month after the Land has been disposed of.</p>

Reporting conditions

We need information from you about how your Investment Plan is tracking so we can monitor your progress against the Conditions and so we can measure the benefits you have brought to New Zealand through your investment.

You must lodge **reports**. They must:

1. be sent to **oiomonitoring@linz.govt.nz** by these dates:
 - (a) Year one: 30 July 2023
 - (b) Year two: 30 July 2024
 - (c) Year three: 30 July 2025
 - (d) Year four: 30 July 2026
 - (e) Year five: 30 July 2027
2. contain information about:
 - (a) your progress in implementing the special conditions;
 - (b) your progress in procuring a contractor to build the Datagrid;
 - (c) the amount, broken down, invested for development purposes; and
 - (d) the number of FTE employees and contractors, including their salaries.
3. follow the format of the template report published on our website at <https://oio.linz.govt.nz/oio-consent-monitoring>.

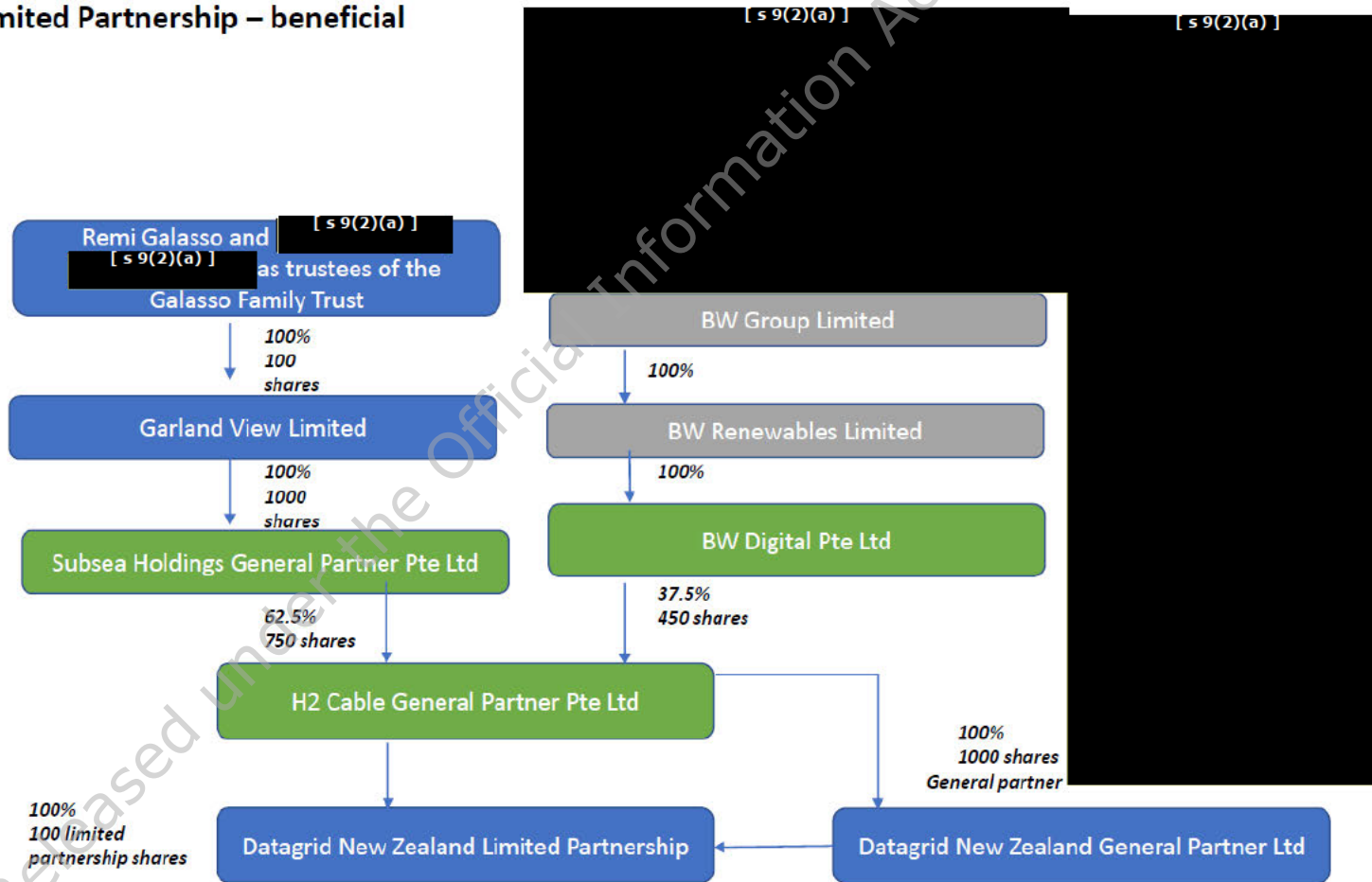
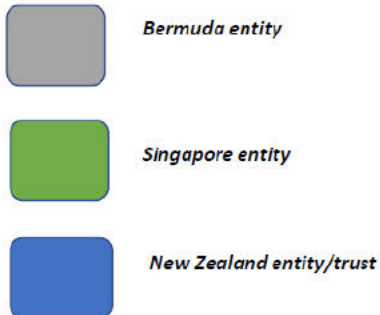
If requested in writing by the OIO, the Consent Holder(s) must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:

- (a) the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the content was granted or
- (b) the conditions of this consent.

ATTACHMENT 2 – INTENDED OWNERSHIP STRUCTURE

Datagrid New Zealand Limited Partnership – beneficial ownership diagram

- The Galasso Family Trust is a discretionary family trust, the settlors and trustees of which are Mr and [s 9(2)(a)]
- The discretionary beneficiaries of this trust are Mr and [s 9(2)(a)] and their children.



ATTACHMENT 3 – OTHER BENEFIT FACTORS

The table below lists other factors in the Act and regulations for assessing the benefit of overseas investments.

We considered that the factors below were either not relevant to the investment, or the benefit to New Zealand was not likely or sufficient to be relied on for the purposes of our assessment.

Factor	Reason not relevant or insufficient
New technology or business skills – s17(2)(a)(ii) (high relative importance factor)	The Applicant has not shown that the technology or business skills from the Datagrid are new to New Zealand.
Increased export receipts – s17(2)(a)(iii) (high relative importance factor)	This investment will not affect export receipts.
Increased processing of primary products – s17(2)(a)(vi) (high relative importance factor)	The Applicant is not involved in the processing of primary products.
Indigenous vegetation/fauna – s17(2)(b)	There is no indigenous vegetation/fauna is found on the Land.
Trout, salmon, wildlife and game – s17(2)(c)	There are no trout, salmon, wildlife, and game found on the Land.
Historic heritage – 17(2)(d)	The Land does not have any historic heritage.
Walking access – s17(2)(e)	This investment will not create walking access on the Land.
Offer to sell seabed/foreshore/riverbed to the Crown – s17(2)(f)	Neither of these features are found on the Land.
Consequential benefits – reg 28(a)	The consequential benefits claimed for this investment are highly uncertain and still in discussion stages with various parties.
Key person in a key industry – reg 28(b)	There is no key person involved in this investment.
Affect image, trade or international relations – reg 28(c)	A well-reasoned decline will not affect New Zealand's image, trade, or international relations.
Owner to undertake other significant investment – reg 28(d)	The Vendors have no immediate plans to undertake other significant investment in New Zealand.
Previous investments – reg 28(e)	The ROPs have not undertaken previous investments in New Zealand.
Advance significant government policy or strategy – reg 28(f)	While the Applicant has been working closely with other government entities regarding opportunities that this investment may yield, this investment is unlikely advance any significant government policy or strategy.
Enhance the viability of other investments – r28(g)	This investment will not enhance the viability of other overseas investments undertaken by the Applicant.

Factor	Reason not relevant or insufficient
Strategically important infrastructure – reg 28(h)	There is no strategically important infrastructure involved in this investment.
Economic interests – reg 28(i)	This investment will not impact New Zealand’s economic interests.
Oversight and participation by New Zealanders – reg 28(j) (high relative importance factor)	There are no current requirements for New Zealanders to be part of a ROP’s governing body. While it is the Applicant’s intent for future oversight and participation by New Zealanders, this remains too uncertain to be relied on.

Released under the Official Information Act 1987