



Free information sessions

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WYNN WILLIAMS

RURAL NEWSLETTER

JULY 2012

RURAL LAW: NEWSLETTER

Welcome to the new edition of the Wynn Williams Rural Newsletter. We aim to produce this informative publication on a quarterly basis. We will update you on legal issues we think you should be aware of, changes in law you need to know about, and cases of interest that may affect the way you do things.

THIS EDITION:

Wynn Williams' Partner, Sue Anderson, talks about the factors to consider when purchasing a farm or farm land. Property sales statistics shows that less farms are being bought and sold now than in the period leading up to 2007. If a person is wanting to buy a farm in the current environment they are faced with a smaller number of properties being on the market. There is then the added difficulty of finding a property suiting a purchaser's requirements.

THINKING ABOUT BUYING FARM LAND?

Due to the lack of properties for sale, there can be fierce competition between purchasers. Probably some are taking risks to get to the head of the queue. With farms and land being such a large investment some preparedness reduces that risk. It also means that a person can be more confident about making a purchase decision.

The property itself will dictate some of the due diligence on it.

MATTERS TO CONSIDER INCLUDE:

Title

- Is the title in the same name as the person offering to sell the property?
- Is it a freehold, leasehold, or other type of title?
- Is the area correct?

- What do the encumbrances and easements registered against the title mean?
- Are there any easements missing from the title, for e.g. water pipes, pump, tank might physically be on the property but not protected in terms of drawing water across a neighbour's property by easement?
- Are there rivers, streams, running through or alongside the property?

Land Information Memorandum (LIM) and the Local Authority

The LIM provides information the Council holds on its records about the property. This includes details of rates, resource consents, code compliance certificates and sometimes information about activities on neighbouring properties. Often you are looking to match the information in a LIM to what is on the property and asking if it all correlates.



Regional Authority (Land Information Request)

Many do not realise that a Land Information Request (“LIR”) can and should be obtained from the regional authority. This is particularly necessary in terms of sorting out water consents, discharge and other consents. The LIR also may note potentials for flooding, contaminants, effluent setbacks, and so on.

Copies of resource consents can be obtained. For water consents it is important to check expiry dates, water flows allowed, and irrigation criteria. These things particularly go to value and future farming viability for a property. Are the consents in the name of the people purporting to sell the farm? If not a purchaser may not be contracting to buy those consents. The resource management aspects, in terms of farm purchases, need some careful work in terms of due diligence.

Water

This aspect should be at the top of the list as it is most critical for many farms for their future use.



Finance

If a purchaser requires bank finance to assist with a purchase, it is likely that there will have been discussions with the Bank about eligibility. A formal application will usually be required. Finance needs to be confirmed before committing to purchase. There is a benefit to be gained from a timing point of view if cash flows, and Accounts are available for the Bank. Banks process applications for finance and then issue a letter of offer if they are in a position to make an offer. That offer may have conditions in it which must in themselves be satisfied before it is possible to declare a farm purchase contract unconditional from a finance point of view.

Sale of Existing Property

If a purchaser has a property to sell in order to buy then there will be a condition to that effect in a purchase contract. If selling and buying at the same time confirmation and settlement dates need to match up.

Consultants’ Reports and Soil Tests

These are self-explanatory. They are probably growing in importance. Reference the nitrates issues in Southland and elsewhere.

Dairy Farms and Supply Contracts

If the farm being purchased involves a dairy platform then supply contracts may need to be organised with Fonterra, Synlait, Westland Milk and so on. Each company has a different process.

Due Diligence

There may be aspects to the farm or overall proposition that will crystallise other information a purchaser should take account of and approve. This might include forestry coming under the ETS scheme, but often specific clauses are included in farm offers about this. There could be other matters to be negotiated with third parties or due diligence could look at the feasibility of, for example, a dairy conversion or some other form of development. These are a few examples. Due diligence is the process of obtaining information and the assessment of it, and upon that basing a decision whether to buy or not.

Vendor’s Warranties and Undertaking

There are usually some standard provisions in purchase contracts where the vendor gives some specific warranties. Vendor warranties can be built into a farm sale contract, but by negotiation. Provision of vendor warranties enhances, from the purchaser’s point of view, the state of the asset they are wanting to buy.

Farm Management

As a matter of course, from the date of any confirmation of the purchase through to settlement date, there should be farm management provisions in the contract aimed at keeping the property in good heart.

Some Main Terms

- An offer to purchase a farm will stipulate the purchase price offered, the deposit payable, the GST basis for the purchase, and the settlement and possession dates. If stock and plant are to be sold with the farm, then details of those will be included, together with a mechanism for the valuation of those items.
- It is important to identify specifically stock, plant, and chattels included in the sale. Also this would include pasture cover if required. If hay or balage is to be left, there needs to be criteria around that.
- Depending upon the time a property is put on the market for sale – this may impact on the date for settlement and possession. There are obviously different times of the year when it is practical to take over a new farm. A dairy platform is most usually the end of May or beginning of June. For arable farms a convenient date will often be after harvest, for example. For a sheep and beef, or mixed farm it may revolve around the vendor’s balance date, which is often a convenient year end for that type of farming.

Ownership structuring

At the time of making an offer to purchase, the purchaser needs to be identified. That will mean an assessment of the best ownership structure and also ensuring that the purchaser is registered for GST where appropriate.



IN SHORT: POINTS YOU NEED TO CONSIDER:

- Title
- Land Information Memorandum (LIM)
- Regional Authority Land Information Request
- Water
- Finance
- Sale of Existing Property
- Consultants' Reports and Soil Tests
- Dairy Supply Contracts
- Due Diligence
- Vendor's Warranties and Undertaking
- Farm Management
- Main Terms
- Ownership structuring

Questions?

Contact Sue, David
or any of the Team

P 03 379 7622

RURAL INFORMATION SESSIONS PLANNED FOR 2012

Our next round of information sessions will deal with the issues that surround **farm and land purchases** and the due diligence required when purchasing a farm or additional property. We will cover off the various sales methods vendors can use to sell a property.

In October we would like to talk about **Health & Safety and Employment** issues in the workplace.

Subject	Venue	Date	Time	Cost
Farm and Land purchases	Leeston Show Ground, New Building	Tuesday 7th August	10am - 12noon	Free
Farm and Land purchases	Culverden RFC	Thursday 9th August	10am - 12noon	Free
Farm and Land purchases	Rangiora Bridge Club	Tuesday 14th August	10am - 12noon	Free
Farm and Land purchases	Amberley RFC	Thursday 16th August	10am - 12noon	Free
Health & Safety / Employment	Leeston Show Ground, New Building	Tuesday 2nd October	10am - 12noon	Free
Health & Safety / Employment	Culverden RFC	Thursday 11th October	10am - 12noon	Free
Health & Safety / Employment	Rangiora Bridge Club	Tuesday 16th October	10am - 12noon	Free
Health & Safety / Employment	Amberley RFC	Thursday 18th October	10am - 12noon	Free

To book yourself in to any of these information sessions or join us at the Show please contact our Events department:

E: marketing@wynnwilliams.co.nz P: 03 379 7622 or book online at www.wynnwilliams.co.nz/upcoming-events

More importantly:

*We would really like you to join us at the Amberley A & P Show on Saturday 27 October
for free coffee, cake and chat with Sue, David and their Team*

You'll find us in the Wynn Williams Tent

More details in the next newsletter

OUR DEDICATED TEAM

GUIDING YOU EVERY STEP OF THE WAY

INTRODUCING OUR RURAL LAW TEAM

RURAL LAW

If you need legal advice and expertise in the rural field, please get in touch with any of our team below.



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