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ISSUE 17 | AUTUMN 2015



# RURAL eSpeaking

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Enjoy reading this Autumn edition of *Rural eSpeaking*. We hope you find the articles both interesting and useful.

To talk further about any of the topics covered, please be in touch – our contact details are above.

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*An easement is defined as 'a right of one person in respect of another person's land.' For rural properties these rights can often be crucial issues for the use of land – in particular, rights to take and convey water from one property to another, rights of drainage and to convey electricity (particularly in respect of pumps) as well as rights-of-way for access ...*

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*The next issue of Rural eSpeaking will be published in late Winter.*

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## Buying Rural Property

### Due diligence is vital

*When buying any business, assets or property it's important to undertake a due diligence investigation into what you are looking to buy. If you're buying rural property, it comes with its own unique set of issues for which you need to take particular care.*

The due diligence process is to inform the purchaser fully about a property to ensure that once purchased, there are no surprises. Due diligence can be carried out before entering into a contract or subsequent to entering into a contract by ensuring there's a due diligence condition in the contract.

Where property is being purchased by auction or tender, there's obviously no option to buy conditionally on a due diligence investigation. As a prospective purchaser, to carry out a due diligence in this scenario means you'll be put to some time and expense, which could prove fruitless if your bid is not successful at the auction or tender.

### Extent of due diligence

The extent of a due diligence investigation will vary depending on what's being purchased. The due diligence requirements for a sheep and beef farm will be different from a kiwifruit orchard or a dairy farm or a vineyard.

You could have been provided with an *Information Memorandum* by the vendor or the vendor's agent. Whilst this is a useful document it usually carries a disclaimer along the following lines:

*"The agent is acting solely as the selling agent for the vendor of the property, and is not responsible for the accuracy and completeness of the information contained in this document. The agent has not verified the information and, accordingly, will not be liable to any party for the accuracy or completeness of such information."*

The standard form of Agreement for Sale and Purchase of Real Estate contains very limited warranties by the vendor. Any valuation or other report provided by the vendor for the purchaser's information will usually have a disclaimer saying that the report is provided to the vendor only, and any liability to a third party is excluded. Therefore it's up to the purchaser to make their own investigations, either pre-contract or post-contract as per a condition in the Agreement, into the matters that are important to them when assessing the value and purchasing the property.

If you're considering buying a rural property, some of the due diligence investigations you should be looking at are:

- » The terms of any easements affecting the property or whether rights of access to water, power, etc are properly secured by permanent registered easements
- » Any necessary resource consents that might be required, the terms of those consents and any history of breaches of those consents
- » Fertiliser application
- » Spray diaries
- » Any requirements that might be necessary for exporting produce from the farm whether it is milk, meat or crops
- » If stock is being purchased, you'll need to see veterinary records, vaccinations, etc
- » If staff are being employed, you'll need to check the employment contracts, health and safety, and the ACC history
- » Any resource consents granted for neighbouring properties that might affect the property
- » Any covenants such as Queen Elizabeth II covenants or land covenants that may restrict the use of the property or parts of it
- » Any development expenditure or other information useful for tax purposes
- » For farms with planted forests, whether or not the vendor is in the Emissions Trading Scheme
- » Any Building Act issues
- » Contamination issues arising from historic uses, and
- » Contractual arrangements such as supply contracts, plant variety right issues, Fonterra or Zespri contracts or requirements.

You will be able to collate and assess some of the due diligence material yourself. Some of this, however, may need professional advice from us, your accountant and so on. Good due diligence is a team job and the benefit is you will be able to accurately assess a prospective property to ensure that as a purchaser you get what you pay for. ■

## Easements on Rural Land

### Care is needed

*An easement is defined as 'a right of one person in respect of another person's land.' For rural properties these rights can often be crucial issues for the use of land – in particular, rights to take and convey water from one property to another, rights of drainage and to convey electricity (particularly in respect of pumps) as well as rights-of-way for access.*

When you're purchasing a property, granting easements to your neighbour, or when taking an easement over your neighbour's property, it's important to be clear about the terms of that easement.

The Land Transfer Regulations 2002 imply certain rights and powers in the following easements – the rights to:

- » Convey water
- » Drain water
- » Drain sewerage
- » Rights-of-way
- » Convey electricity
- » Convey telecommunications and computer media, and to
- » Convey gas.

Also, vehicular rights-of-way have additional terms implied in them by Schedule 5 of the Property Law Act 2007.

The rights and powers implied by both the Land Transfer Regulations and the Property Law Act can be replaced and modified by the easement document itself.

Modern easements tend to rely heavily on the implied terms. For this reason it's important to understand what those implied terms are because not all easements are the same. There are particular issues regarding water and rights-of-way easements that you need to think about.

### Water rights

The main issue regarding the right to convey water is that the implied rights simply give the right to convey water from a source of supply over one person's land to another person's land. It's not a guarantee that there's water there and there's no limit on the quantity of water that can be taken or the use to which the water can be put. So you need to think hard as to whether or not specific terms to regulate the water supply should be included in the easement document. This is usually done by either:

1. Putting a limit on the amount of water that can be taken, or
2. By limiting the use to which the water can be put.

### Access rights-of-way

A major issue for vehicular rights-of-way is the standard to which the right-of-way needs to be constructed and maintained. Schedule 5 of the Property Law Act implies the right to 'establish a right of way on the land over which the right of way is granted ...' and also gives 'the right to reasonable contribution towards the costs of establishment, maintenance, upkeep and repair of driveway to an **appropriate standard** ...' [our emphasis].

In a mixed rural/lifestyle situation there's often debate as to the 'appropriate standard' for a right-of-way. For the lifestyle living in the country the 'standard' could be poles apart from what the local farmer needs. Therefore, it's important when granting these rights-of-way and there is going to be a mix of users, to fix the standard in the easement documentation so that arguments don't arise later. The costs of establishing long sealed driveways in rural areas can be substantial!

### And more ...

You also need to be wary of the general rights implied in all the easements listed above to 'use any easement facility already situated on the stipulated (easement) area or cause for the purpose of the easement granted.' What this means, for example, is that if you grant a right to a neighbour to take water from a well on your land, they are entitled to use any 'pipes, pumps, pump sheds, storage tanks, water purifying equipment, other equipment suitable ...' that are already situated on your land. So once again, without modifying the implied terms you're also granting the right to use any easement infrastructure that already exists on the easement area.

Our advice is to look carefully at the terms of easements when granting or taking an easement, or when looking at a property that's subject to existing easements. Easement terms are not all the same and you need to consider carefully what terms might be appropriate in each instance. ■

## Over the Fence

### 'Mondayising' public holidays

The Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 came into force on 1 January 2014. Its first impact will be this ANZAC Day which falls on Saturday, 25 April, but the public holiday for many will be on Monday, 27 April. This means that this year:

- » For employees who would not otherwise work on that Saturday the public holiday must be treated as falling on the following Monday, and
- » For employees who would otherwise work on that Saturday the public holiday must be treated as falling on that day.

Sorting this out isn't straightforward for farming and other rural businesses that operate seven days a week. You will need to carefully review your work rosters to ensure you comply with this new law. If you have any queries, please get in touch.

### Minimum wage review 2015

The government reviews the minimum wage each year. On 1 April 2015 the adult minimum wage is to rise from \$14.25/hour to \$14.75/hour. The starting out and training minimum wages will increase from \$11.40 to \$11.80/hour.

We recommend you review all wage and salary structures to ensure your employees are paid at least the minimum wage at all times for hours worked. Please also remember that an employer's KiwiSaver obligations are in addition to minimum wage entitlements.

### Sharemilking arrangements

With about three months remaining of the dairy farming season for 2014–2015 we recommend you review your sharemilking agreements, if you haven't already done so. This will ensure things are on track for a smooth ending to any sharemilking arrangements and/or transition. You will need to be mindful of such things as:

- » Pasture cover obligations
- » Supplements to be left on the farm
- » Cow conditions
- » Herd records
- » Resource consent requirements are up-to-date
- » Any rubber ware to be replaced, and
- » Accommodation and farm maintenance provisions.

Similarly, if you are entering into new sharemilking agreements for next season, ensure contractual arrangements are correctly completed to reflect the agreements reached and that you are on track to start next season in accordance with your contractual obligations.

### New employment law provisions in force

The Employment Relations Amendment Act 2014 came into effect on 6 March 2015 and makes some important changes to New Zealand's employment law. Key changes include:

#### Flexible working arrangements

- » Extending the statutory right to request flexible working arrangements to all employees (previously confined to caregivers)
- » Removing the requirement of six months' prior employment with the employer, meaning employees can ask for flexibility from their first day on the job
- » Removing the limit on the number of requests an employee can make in a year, and
- » Reducing the timeframe within which an employer must respond to a request, from three months to one.

**Rest and meal breaks** Changes are made to the rest and meal provisions, encouraging employers and employees to negotiate, in good faith, rest and meal breaks that meet the legislative requirements, without compromising business continuity and flexibility.

**Continuity of employment** There are changes to the provisions covering transfer of employee entitlements and information to a new employer.

**Good faith** Changes are made to the provisions requiring an employer to give an employee relevant information where they are proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of that employee's employment.

- » An employer must give the affected employee relevant confidential information about themselves. An employer doesn't have to give the affected employee confidential information about another employee if doing so would involve an unwarranted disclosure of the affairs of that person, and
- » An employer does not have to give confidential information that legally must stay confidential, or where there is a good reason to keep the information confidential. ■