

**Welcome to the Autumn edition of *Rural eSpeaking*. We hope you find the articles of interest and that they are useful to you.**

**If you would like to talk further about any of the topics covered in this newsletter, please be in touch.**

**Inside:**

## **What's mine is mine, and what's yours is your problem**

**Your things can cause headaches when they head out of bounds**

*You will have all sorts of things on your farm: dogs, stock, water reservoirs, effluent ponds, fires, weeds, emergency petrol supplies, children, compost heaps, bird scarers, etc. Some of those things are valuable and you will want to keep them. Some of those things you would most likely prefer to get rid of. But in all cases, what you don't want to happen is for those things (or the smell, noise, or vibrations they make) to escape your property... CONTINUE READING*

## **Biosecurity Law Reform Bill 2010**

**Bringing New Zealand's biosecurity up to date**

*The Biosecurity Act 1993 is now 17 years old and the legislation has not kept up to date with the evolution of biosecurity challenges in New Zealand. New markets are opening, imports are increasing, there is potential harm from discharge in New Zealand waters of ballast water from vessels travelling the globe as well as the introduction of exotic pests ... CONTINUE READING*

## **Over the Fence**

*Crafar Farms – What is of the most benefit to New Zealand?... CONTINUE READING*

*Fonterra end of season share purchase... CONTINUE READING*

*National Animal Identification and Trading Act 2012... CONTINUE READING*

*Emissions Trading Scheme (ETS): Caveat emptor... CONTINUE READING*

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

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## What's mine is mine, and what's yours is your problem

### Your things can cause headaches when they head out of bounds

*You will have all sorts of things on your farm: dogs, stock, water reservoirs, effluent ponds, fires, weeds, emergency petrol supplies, children, compost heaps, bird scarers, etc. Some of those things are valuable and you will want to keep them. Some of those things you would most likely prefer to get rid of. But in all cases, what you don't want to happen is for those things (or the smell, noise, or vibrations they make) to escape your property. Here are a few reasons why.*

### You have a right to enjoy your land but so does your neighbour

A fundamental principle in land law is a property owner's (or lessee's) right to enjoy their land. You might think that that means that you can enjoy your land as you like. After all, it is yours.

Sometimes, however, the way in which you 'enjoy' your property can lead to your neighbour being less able to enjoy their own property. For example, you will have less enjoyment of your property if it's flooded by water escaping from your neighbour's man-made water reservoir. A free-range farmer will enjoy her property less if a neighbour's dog sneaks through the fence and kills her prized hens. An organic farmer would not take kindly to having crops sprayed with chemical spray drift from the neighbouring property.

### The law balances your rights against your neighbours' rights

There are many relevant laws which relate to things escaping or being somewhere they shouldn't be. Not only can these laws erode or place conditions on a property owner's right to enjoy their land, but also they can also lead to liability. Here are just a few examples:

- » The Health Act 1956 makes it an offence to allow conditions to exist on land or premises where flies and mosquitoes could breed
- » Under the Litter Act 1979, you could be fined a hefty \$20,000 if you've deposited litter on private land without the consent of its occupier
- » The Forest and Rural Fires Act 1977 says you can be liable for costs incurred in fighting a fire caused by you, as well as for damage done to property. Imagine how expensive that may be if you light a small fire to burn off a few weeds and the fire spreads to your neighbour's pine tree plantation, and
- » For situations where there is not a specific statute applying, the law of nuisance developed from case law is likely to fill in the gaps. For example, where a person brings onto or keeps on their land something which is likely to cause mischief if it escapes (such as artificial water reservoirs), that person is liable for damage which is the natural consequence of that escape.

### Reap what you sow

You don't have to lock yourself in the house waiting for an angry knock on the door from your neighbour. Here are a few things you can do:

- » It always pays to know what your obligations and rights are, and comply with them
- » A tidy farm will reap benefits. For example, that sturdy number 8 fencing wire fence, built in accordance with the Fencing Act and kept in good repair, may prove to be a very worthwhile investment in preventing escape, as well as preventing trespass by your neighbour's stock, and
- » Talk to your neighbours (and possibly the council) about what you are doing. Sometimes, your neighbour may be willing to put up with a nuisance for a short period, knowing that you may return the favour at some point in the future. Or alternatively, you may be able to agree on some measures to mitigate the nuisance.

You will acknowledge that you can't always prevent every accident. You should, however, take practicable steps to ensure you're doing your best to prevent an accident. Make sure you have appropriate insurance in place and know what it covers, and what it doesn't (as every insurance policy has exclusions).

## Biosecurity Law Reform Bill 2010

### Bringing New Zealand's biosecurity up to date

*The Biosecurity Act 1993 is now 17 years old and the legislation has not kept up to date with the evolution of biosecurity challenges in New Zealand. New markets are opening, imports are increasing, there is potential harm from discharge in New Zealand waters of ballast water from vessels travelling the globe as well as the introduction of exotic pests.*

In recent years New Zealand has suffered from the incursion of pests and organisms such as the Psa outbreak in kiwifruit, the varroa bee mite, didymo, painted apple moth and the southern saltmarsh mosquito. The responses to these incursions have had a cost to our economy. Those costs, however, would pale into insignificance compared with, for example, the funding required to fight an outbreak of foot and mouth disease or fruit fly.

The Biosecurity Law Reform Bill will extensively amend the 1993 Act, *to allow the biosecurity system to respond to an increasingly challenging environment*<sup>1</sup>. The Bill had its second reading in Parliament in August last year.

The Bill seeks to extend New Zealand's biosecurity regime to its full Exclusive Economic Zone and enables New Zealand to assess the biosecurity risk of vessels and economic activity, for example. oil rigs operating in that zone.

The proposed legislation addresses the potential biosecurity harm to our aquaculture industry caused by the discharge of ballast water from vessels. The craft risk management standard espoused in the Bill will set out the requirements for craft coming into New Zealand waters.

There is provision for the making of national and regional pest management plans and pathway management plans ('pathway' meaning the movement of goods or craft in and out of and through New Zealand which has the potential to spread harmful organisms).

In the area of pest management, the Bill introduces the concept of a government-industry agreement between stakeholders and the government to boost New Zealand's biosecurity response to unwanted pests and diseases. The government and primary industries will make joint decisions about the preparation for, and response to, the arrival of a harmful pest/organism/disease. With joint decision-making comes the obligation of cost-sharing for this biosecurity readiness.

A further innovation in this Bill is the concept of 'good neighbour' rules in relation to pest management. The rules are intended to manage the spread of a pest that would cause damage or cost to occupiers of adjacent or nearby land. This is significant because for the first time the State is bound by the good neighbour rules as well as the private landowner. Currently the Crown is not required to comply with regional pest management strategies in relation to pests or weeds escaping from Crown land, for example: DOC land or railway reserves, on to neighbouring land. The private landowner has therefore traditionally had to meet a higher standard of pest management and weed control than the Crown.

A biosecurity database containing information about land for the purposes of the Act will be established.

Further changes may well be made before the Bill is finally passed and becomes law. We will keep you up to date with developments.

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<sup>1</sup> Noted in the Purpose of the Act

## Over the Fence

### Crafar Farms – What is of the most benefit to New Zealand?

The High Court<sup>2</sup> has told the Minister of Finance and the Minister of Land Information that their decision to grant consent to the purchase of the Crafar farms by an overseas person was 'misdirected in law'. So what happens now?

The future ownership of the Crafar farms is now up in the air pending the Ministers reconsidering the application as directed by the High Court, and any potential appeals. The High Court's decision, however, is more far reaching than the Crafar farms. Unless there is a successful appeal or legislative change, applications by overseas persons to buy farm land in New Zealand will have to be approached in a different way in the future.

The legislation has always prescribed the criteria that must be met before an overseas person can receive consent to buy farm land in New Zealand<sup>3</sup>. One of the relevant criterium is that the acquisition must be of substantial and identifiable benefit to New Zealand.

In the past, a 'before and after' (status quo) approach was applied to the assessment of whether the acquisition would be of substantial and identifiable benefit to New Zealand. The Crafar farms were in poor condition. In applying the 'before and after' approach in that case, the Ministers as decision-makers considered that the foreign buyer would deliver substantial and identifiable economic benefits by investing capital in the farms and improving production.

The High Court said that to best serve the legislation a 'with and without' approach should be applied rather than 'before and after'. The 'with and without' approach takes into account what may happen if the transaction does not proceed, in particular that a notional domestic buyer may buy the land if the foreign buyer cannot. The reasoning was that the Crafar farms would be sold, whether to an overseas buyer or a New Zealand buyer, and "any solvent purchaser can be expected to bring their production up to its potential."

In future applications where an overseas buyer seeks consent to buy New Zealand farm land, the following question will need to be considered. Can the foreign buyer establish that it can bring substantial and identifiable benefits to New Zealand, which are greater than the benefits that a notional domestic buyer may bring?

This is an interesting question to think about – what is of the most benefit to New Zealand?

### Fonterra end of season share purchases

Applications for 2011-2012 Growth Contracts (enabling share purchases to be spread over three years with one-third of the contracted quantity to be purchased as part of June 2012 end of season transactions) may be made until 30 April 2012.

The delayed share purchase scheme for the 2011-12 year may be chosen as part of the end of season elections.

For more information, go to <http://tiny.cc/q4ljbw>

### National Animal Identification and Tracing Act 2012

All persons in charge (PICA) of NAIT animals need to be aware that this Act received the Royal Assent on 20 February 2012. The Act requires the fitting of NAIT animals (cattle from 1 July 2012 and deer from 1 March 2013) with a NAIT device and registration with the NAIT organisation.

Recording of deaths, losses or exports of live cattle or deer with NAIT will be mandatory. There's more information at [www.nait.co.nz](http://www.nait.co.nz)

### Emissions Trading Scheme (ETS) – Caveat emptor

When buying rural land with trees, remember to ask the seller when the forest was planted and what the land use status was when it was planted. You should also remember to ask if a pre-2008 forest has been harvested from the land.

There's more information about forests and the ETS on <http://www.climatechange.govt.nz/emissions-trading-scheme/participating/forestry/>

<sup>2</sup> *Tiroa E and Te Hape B Trusts & Ors v Chief Executive of Land Information & Ors* (HC, 15/2/2012; Miller J, Wellington, CIV-2012-485-101) [2012] NZHC 147

<sup>3</sup> Overseas Investment Act 2005, referring to sections 3,14,16 and 17