Rural.

Edition 12
November 2025

anderson lloyd.

Inside this issue:

Kia ora, Hello. Welcome to our Spring edition of Rural 2025

It is proving to be a much better year for agriculture with the reduction of emissions targets, reduced interest rates and very strong dairy prices.

As usual, Rural covers a broad range of topical issues impacting our Rural Clients.

Included in this edition is an article on the Government's decision to reduce the 2050 methane target, reducing the target from 24% to 47% to 14% to 24%.

Agriculture may be out of the Emissions Trading Scheme, but must still meet the targets and so a reduction is very helpful. The Government has also announced that it will not tax agricultural emissions but rather seek to achieve the targets by investment in technological solutions. More good news.

Like "Whack-a-mole", just when one problem becomes manageable another challenge rears its head. A recent report by Rabobank highlights that in the next 10 years, half of all New Zealand farm and orchard owners – around 17,320 farmers will hit retirement age. Based on current land values, this will translate into New Zealand's largest ever intergenerational transfer of wealth, involving $150 billion of farming assets. Succession is time-consuming, emotional and complex. The successful transfer of such a large value of farming assets represents a real challenge for the industry. Included is an article summarising the key points of the Rabobank report.

We also cover some interesting new developments in the law, including the *Watters v Mirkin* decision in relation to access to landlocked land, further changes to the Overseas Investments Act and the Supreme Court decision in *Routhan v PGG Wrightsons* on misrepresentation on farm sales.

Lastly, we have some practical advice on environmental compliance and, Residential Care Subsidies and Trusts.

It has also been a good year for Anderson Lloyd with the joining of three new partners - Jo Appleyard, Ingrid Taylor and Ben Williams - from a leading national firm. All three are well recognised in their fields and this represents quite a coup for the firm. In terms of rural Jo, Ingrid, and Ben have impressive track records in the rural space. Ingrid acts for a large number of rural clients in the property space, whereas Jo and Ben are leading RM lawyers acting for a large number of irrigation schemes and rural interests on consenting matters.

All three will greatly strengthen our rural and agribusiness offering to clients.

We hope you find the articles of interest, and please don't hesitate to call us if you have any questions.

David.

David Goodman, Partner
Corporate Commercial

Case Summary: Watters v Mirkin – Easements and Landlocked Rural Properties

A recent High Court decision in *Watters v Mirkin* [2025] NZHC 2475 provides important guidance on the granting of easements under the Property Law Act 2007 (PLA), particularly in the context of landlocked rural properties.

Key Facts

The plaintiffs, Watters and Gibson, own a rural property in Dovedale, Nelson, which contains a converted barn used as their home. While legal access exists via a paper road, it is unformed and prohibitively expensive to develop. The property is therefore considered "landlocked" in practical terms. For decades, the plaintiffs and previous owners accessed the property via a gravel farm track crossing the defendants' land (Mirkin and the Wins).

Tensions escalated in 2024–2025 over gate management, alleged damage, and increased use. Mr Mirkin issued a trespass notice and initiated criminal proceedings. Interim access was granted by the Court in May 2025 under section 328 of the PLA.

The plaintiffs sought an order from the Court under section 327 of the PLA to access the landlocked land by way of a permanent easement over the defendants' land.

Legal Framework

Sections 326 to 331 of the PLA govern applications for access to landlocked land.

Section 327(1) allows an owner or occupier of landlocked land to apply to the Court for an order granting "reasonable access." Section 326 defines "landlocked land" as land to which there is no reasonable access, and "reasonable access" as physical access necessary for use and enjoyment under the Resource Management Act 1991.

Section 328(1) gives the Court discretion to grant access if it considers it just and equitable. In turn, section 329 lists mandatory considerations for the Court, including the nature of access at acquisition, how the land became landlocked, the conduct of the parties and hardship. Section 330 allows the Court to impose conditions, including compensation or land exchange. Finally, section 331 provides that the applicant must meet the reasonable costs of implementing access, though others may contribute if equitable.

These provisions establish a balanced framework that prioritises practical usability and fairness, allowing the Court to intervene where access is unreasonable or impractical.

Court Findings

The Court confirmed the property was "landlocked" under section 326 of the PLA and exercised its discretion under section 328 of the PLA to grant a permanent easement over the farm track. Justice Grice cited the impracticality and cost of forming the paper road, the plaintiffs' need for vehicular access due to farming and family use, and the absence of any other reasonable access in support of the grant.

Although the plaintiffs knew or ought to have known there was no legal access at the time of purchase of the property, this did not disentitle them from relief but influenced the compensation awarded.

Conditions imposed by the Court

The Court imposed detailed conditions on the easement, including:

- **Compensation:** The plaintiffs had to pay $37,500 to Mr. Mirkin and $15,000 to the Wins, based on 35% of the increase in the plaintiffs' property value due to the easement.
- **Capital works:** The plaintiffs had to fund and construct fencing, drainage, and cattle stops.
- **Maintenance:** Ongoing repairs split 90/10 between the plaintiffs and Mr. Mirkin. No contribution was required by the Wins as they use the farm track minimally and neither the plaintiffs nor Mr. Mirkin suggested they should contribute.
- **Gate management:** The plaintiffs had to keep gates closed at all times and are liable for damage caused by themselves or visitors.

The Court also directed the parties to agree on a timetable for works and oversight arrangements, with the option of appointing a third-party contractor if agreement could not be reached.

Key Takeaways for Property Owners

- **Practical access prevails:** Courts will prioritise practical usability over theoretical legal access when assessing landlocked status.
- **Knowledge at purchase:** Awareness of access issues may affect compensation but does not necessarily bar relief.
- **Robust conditions:** Where there is a history of conflict or non-compliance, courts are likely to impose detailed and enforceable conditions.
- **Valuation evidence matters:** Any compensation payments awarded are tied to the increase in property value and detriment to affected landowners. Therefore, valuation evidence is important to establish the market value of the land.
- **Precedent:** The judgment provides a useful precedent for rural access disputes and the balancing of competing landowner interests.

This case highlights the Court's willingness to intervene pragmatically in access disputes, even where legal access exists on paper. It also signals that parties should not rely solely on technicalities. Practical realities and fairness will ultimately guide judicial discretion.

Dan Williams, Partner
Property & Private Client

Danielle Bailey, Associate
Property & Private Client

Government reduces 2050 methane emissions target and commits to a technology-led emissions reduction approach

On 12 October 2025, the Government announced a reduced 2050 methane emission target, in addition to other changes to New Zealand's Climate Change Strategy.

These changes will take effect through an amendment to the Climate Change Response Act 2002 (CCRA), which the Government intends to pass into law, through an amendment Bill, by the end of 2025.

The changes demonstrate that the Government is taking a supportive approach in assisting farmers to reduce agriculture (biogenic methane) emissions through commitments to investments in technology.

Context and History

New Zealand's domestic climate change targets are set out in the CCRA. The following targets were introduced in 2019:

10% a 10% reduction of biogenic methane below 2017 levels by 2030;

24%-47% 24%-47% reduction in biogenic methane below 2017 levels by 2050 (with such reduction being maintained); and

2050 all long-lived greenhouse gas emissions must reach net zero by 2050 (with such reductions being maintained).

Following this, the Government's climate change strategy was released in 2024 and, in conjunction with this, the Climate Change Response (Emissions Trading Scheme Agricultural Obligations) Amendment Act 2024 was introduced, which removed all agricultural activities from the New Zealand Emissions Trading Scheme.

Effect of Announcement

The Government's announcement provides that 2050 biogenic methane target will be reduced from a 24% - 47% reduction in levels (relative to a 2017 base) to a 14% - 24% reduction (also relative to a 2017 base). The 2030 target of a 10% reduction in biogenic methane emission levels (relative to a 2017 base) remains unchanged, as does the 2050 target of net zero greenhouse gas emissions (except biogenic methane).

The Government has indicated that New Zealand remains on-track to meet both of the targets that have been maintained, however it felt that achieving the upper end of the current range of required biogenic methane emissions target (i.e. a 47% reduction) was unrealistic, that it created economic uncertainty, risked exacerbating land use change and could increase food production costs.

In addition to this, the Government notes that targets will be reviewed again in 2040 to ensure that these remain fit for purpose. It is intended that this review will take into consideration New Zealand's progress relative to its trading partners and actions undertaken by the rest of the world.

The announcement also noted that the Government will be investigating aligning its "split gas" target approach with future international climate change targets. This approach separates short lived greenhouse gas emissions (biogenic methane) from more long lived emissions (carbon dioxide) and it will be important for New Zealand's emissions reduction approach and progress to be compared to trading partners and international peers on a "apples for apples" basis.

Investment in Technology

In addition to amending the above target, the Government has confirmed that it will not implement a tax on agricultural methane emissions. Instead, the Government intends that efficiencies and, in turn, reductions, will be achieved through advancements in technology and gradual on-farm improvements.

To further this objective, the Government has pledged $400 million over four years to accelerate the development and adoption of emissions mitigation tools (including through joint ventures, such as AgriZero NZ). The Government estimates that the adoption of technologies by 30% of farmers prior to 2030 could result in a fall in emissions by 7% - 14% over the next decade.

The Government notes that promising and effective technology is becoming available already. This includes "EcoPond", which is a system that reduces methane emissions from dairy effluent ponds by over 90% (which is currently being piloted on 250 farms). In addition to this, there have been efficiencies obtained through the development of low methane sheep genetics and a urease inhibitor coated fertiliser (which helps to maximise nitrogen available for plant uptake that, in turn, means that less nitrogen needs to be used in farming processes).

In addition to investing in technology, the Government is also putting in place systems and tools that farmers can utilise to drive efficiencies, such as an On-Farm Emissions Calculator.

Further Amendments Indicated

As a part of amending the CCRA, the Government also intends to introduce amendments that provide greater recognition of food production and that better align language that is used in this legislation with language that is used in the Paris Agreement. It is not clear at this point in time what form these changes will take, however this could involve a fundamental amendment to the "purpose" of the CCRA that could, for example, require reduction measures to be balanced against food production.

The amendments will also extend the deadline for setting New Zealand's emissions budget for the 2036 to 2040 period by 2 years, to 31 December 2027.

Conclusion

The Government's recent announcement demonstrates that it wishes to support farmers and to invest alongside them in technology that will drive reductions in biogenic methane emissions, rather than utilise taxation to disincentivise emissions. The Government notes that international export markets will also drive targets and motivate industry participants to reduce their emissions.

Formal amendment to the CCRA is expected by the end of 2025 which will bring the changes noted in this article into law. However, exactly how this occurs, and the wording of these changes, remains to be seen.

David Goodman, Partner
Corporate Commercial

Reuben Adams-Cook, Senior Associate
Corporate Commercial

QEII covenants and the Kaimai Properties Limited litigation: What it means for landowners

If you own or plan to buy rural land, a recent Supreme Court ruling makes it clear that QEII covenants are permanent and can restrict development - even if you weren't the original party to the covenant.

What are QEII covenants?

Queen Elizabeth II National Trust (**QEII**) covenants are voluntary agreements entered into by landowners and the QEII National Trust to protect areas of private land with significant native biodiversity values as well as historical sites and areas with high scenic values.

These covenants are permanent. Once registered, they "run with the land". This means the covenants remain in place and automatically bind future landowners.

Today, more than 5,000 QEII covenants protect over 180,000 hectares of private land across New Zealand.

The covenants are designed to safeguard biodiversity and heritage. While the landowners retain ownership and management rights (including paying rates on the land) - the covenants will often prevent future development that can undermine the protected values.

Kaimai Properties Limited: a history of litigation

The recent Supreme Court decision in Kaimai Properties Ltd & Anor v QEII National Trust & Anor[1] may be the end of a long-running dispute over a QEII covenant in the Kaimai Ranges.

The covenant, registered in 2007, protects 111 hectares of native bush. The covenant provides, amongst other things, that:

- Nothing can be done on the land that in the opinion of the QEII Board materially alters the appearance or condition of the land or is prejudicial to it being an area of open space.
- The owner of the land cannot carry out quarrying activities on the land without the prior consent of the QEII Board.

In 2009, Kaimai Properties Limited purchased the land. They knew the covenant existed before they purchased the land.

Kaimai Properties later sought to expand its quarry operations into the covenant protected area, arguing the covenant was invalid or should be rectified to allow quarrying.

From 2017 until 2025, Kaimai Properties made multiple legal challenges and arguments against the covenant to try and allow quarrying on the land, including.

- High Court proceedings to re-interpret or rectify the covenant terms.
- Court of Appeal proceedings against the findings of the High Court. The appeals were not granted.

These culminated in the 2025 Supreme Court decision to refuse to grant Kamai Properties' further leave to appeal.

Ultimately, Kaimai Properties' attempts to argue that the covenant should be varied or reinterpreted, or it should have been consulted (as it held a mortgage over the land) before the covenant was registered, or that the covenant process was flawed, were all rejected. The Supreme Court also noted there was no grounds of public importance or miscarriage of justice to justify further appeal.

Why this matters

These Court cases are important for landowners and potential purchasers of land subject to QEII covenants. The Court cases deliver some key messages:

- QEII covenants are permanent (unless the covenant specifically provides otherwise). This means once they are registered, they cannot be removed or overridden by subsequent owners (except with QEII's approval which does not need to be provided).
- QEII covenants are robust when challenged and are legally binding. Courts will uphold them.

This means an owner or a purchaser of land subject to a QEII covenant needs to clearly understand the effect of the covenant on their current and future use of their land (and also any related effect on land values). Because once a QEII covenant is in place it is very hard to remove.

[1] Kaimai Properties Ltd & Anor v QEII National Trust & Anor [2025] NZSC 32 [8 April 2025].

Robert Huse, Partner
Property & Private Client

The Great Wealth Transfer

In May 2025, Rabobank issued a White Paper exploring the challenges and opportunities facing the primary sector regarding succession planning. The key theme - we need to step up the succession conversation.

Over the next 10 years, more than half of all New Zealand farm and orchard owners – around 17,320 farmers – will hit retirement age. Based on current average land values, this is likely to be New Zealand agriculture's largest-ever intergenerational transfer of wealth, involving more than $150 billion of farming assets that will depend on a successful succession process. Yet, the data collected by Rabobank this year shows that only one-third of farmers are prepared with a formal succession plan. The paper identifies that the industry is not transition ready.

As New Zealanders, the emotional tie to our land is strong. However, succession planning in farming is not just about passing on land or assets. It is about ensuring the long-term viability of both the business and the family relationships that underpin it.

The obstacles and financial burdens of continuing the transfer of the family farm inter generationally are under significant pressure.

The reasons for this are varied

- The affordability of increased capital costs to enable children access to ownership whilst ensuring mum and dad have money to enjoy their well earnt retirement.
- Not having children to pass the farm onto,
- having too many children to divide the farm assets equitably,
- children who do not choose farming as their vocation

The discussions surrounding succession are immensely personal. Succession is a process that requires open and collaborative discussion to develop over a period of time rather than in a pressure cooker. Starting succession conversations early creates more opportunities and reduces risks. Early planning allows families to explore new business models, diversify income, and prepare for unexpected events like illness or death.

It has always been the case that there is no off-the-shelf solution for most families. The Rabobank paper highlights that the industry needs to take a more deliberate and entrepreneurial approach to succession. Honest discussions about goals, finances, and fairness are essential, as is recognizing the emotional weight tied to family land and legacy.

The 1990's saw the emergence of new forms of ownership and management structure in the primary sector such as equity partnership, "mega" farms and multi contract sharemilkers. From this point of time, effective business systems are required to compete as a modern farming enterprise. The Rabobank paper identifies the increasing scale and businessification of farm businesses in New Zealand as coinciding with a shifting and broadening of conversations on succession with a number of new and innovative succession models being adopted to help farming families stay connected to their land.

Ultimately, the message is that delaying succession only narrows options and increases stress. Successful transitions require a deliberate plan, honesty about financial capacity and capability, clarity about control, and respect across generations.

Anderson Lloyd has significant experience in the rural sector and is happy to assist in any discussions involving farm succession to help you evaluate existing solutions and contribute to new ones. The key take home – planning early is critical.

Ingrid Taylor, Partner
Property & Private Client

Overseas investment updates – a focus on forestry

The Government has taken a significant step toward reshaping New Zealand's investment landscape with the introduction of the Overseas Investment (National Interest Test and Other Matters) Amendment Bill. The Bill is now at second reading stage and is expected to have significant implications for the forestry sector.

The Bill gives effect to the Government's proposed changes announced earlier this year (refer to our article regarding this [here]) and forms part of the Government's economic strategy, "Going for Growth", to attract and promote overseas investment in New Zealand.

Purpose

The purpose of the Bill is to reduce compliance costs, make decision-making faster, while ensuring the Government has the tools necessary to safeguard New Zealand's national interest. While the scope of investments that are screened is not proposed to change, the Bill proposes to streamline the assessment process for certain less sensitive assets.

Key changes include:

- **Overarching purpose:** The Bill proposes to update the purpose statement of the Overseas Investment Act 2005 (Act) to explicitly acknowledge the importance of overseas investment in driving economic opportunity, while affirming that the foreign ownership and control of sensitive New Zealand assets remains a privilege.
- **Faster decision-making:** The Overseas Investment Office (OIO) will be required to grant consent to low-risk applications within 15 working days, unless there are reasonable grounds to escalate to a full national interest assessment.
- **Delegation to the OIO:** The majority of decision-making powers will be delegated to the OIO, with only a limited set of powers–such as the ability to decline to grant consent on national interest grounds–reserved for the Minister.
- **Consolidation of tests:** The investor, benefit to New Zealand and national interest tests will be replaced by a consolidated national interest test for all investments other than those involving farm land, fishing quota and residential land (which will continue to be screened under the existing consent pathways).

The 15 working days assessment timeframe and the delegation of most decision making to the OIO largely reflect current practice since the Ministerial directive letter issued in June 2024. The OIO already applies a risk-based approach, targets shorter processing times for low risk applications and makes the majority of decisions in practice.

Impact on the forestry sector

Removal of special forestry pathway

Most significantly for the forestry industry is that the Bill proposes to repeal the 'special forestry test' and the corresponding standing consent pathway. Forestry investments will instead be assessed under the new consolidated national interest test, rather than the streamlined approach that has been relied upon in the last couple of years. This means that the Minister of Finance will have the broad power to decline consent to a forestry transaction if the Minister considers that it is contrary to New Zealand's national interest.

Conversion of farm land to forestry

Conversions of farm land to forestry will remain subject to the more stringent and existing "farm land benefit" test. The Bill also makes no changes to relax the current rules requiring farmland to be advertised on the open market before an overseas purchaser can enter into a contract to buy the land, which was contemplated as a possibility when the changes were first announced in February.

Response to the Bill

Commentary in the forestry sector highlights that key players are concerned that losing the streamlined forestry pathway may dampen investment momentum and that this reversion to a "one-size-fits-all" approach introduces more red tape and uncertainty for a sector already under regulatory pressure.

Regardless of what the flow on effects of the changes will be, it is undeniable that removing the special forestry pathway marks a structural shift in New Zealand's forestry investment environment. While the changes could place additional regulatory requirements on forestry investors, there is also a risk of politicisation where ministerial discretion could lead to inconsistent or ideologically driven outcomes.

Next steps

The Bill is currently at the second reading stage. It is expected to be passed into law by the end of 2025, with the new regime then implemented in early 2026. We will continue to provide updates.

Dan Williams, Partner
Property & Private Client

Brittany Montague, Senior Associate
Property & Private Client

Danielle Bailey, Associate
Property & Private Client

A new era in environmental litigation – with worrying implications for the primary sector

The High Court is increasingly being called upon to revisit first-instance decisions of Regional Councils and government departments on a variety of primary sector related matters. No longer are submissions in a resource consent or planning process the typically sole forum for concerns around the environment to be heard.

The Environmental Law Initiative (***ELI***) is a registered charitable trust that was registered in 2019. Founded by a low-profile Nelson businessman and the former CEO of the Royal Forest & Bird Protection Society Incorporated, the organisation appears to be well resourced and committed to "*using the power of the law to protect the natural taonga of Aotearoa*".

Judicial review

ELI's main approach appears to be to challenge previous first instance decisions by way of High Court judicial review. In some cases, these challenges are occurring years after the original decisions were made and for reasons that were not thought of at the time the original application/decisions were made.

Recent reviews have included, for example, the review of various earlier decisions made by:

- Environment Southland in relation to the obligations the Council has to monitor and take action to protect wetlands, with the High Court finding in favour of ELI (*Environmental Law Initiative v Environment Southland* [2025] NZHC 191);
- Environment Canterbury in relation to the grant of a nutrient discharge consent for the Ashburton Lyndhurst irrigation scheme, with the High Court finding in favour of ELI (*Environmental Law Initiative v Canterbury Regional Council* [2024] NZHC 612);
- Environment Canterbury in relation to the grant of a nutrient discharge consent for the MHV Water irrigation scheme, with the High Court finding some errors but ultimately refusing to grant relief (*Environmental Law Initiative v Canterbury Regional Council* [2025] NZHC 2515). This matter is now under appeal;
- Te Mana Rauhī Taiao / the Environmental Protection Agency (EPA) around the use of Glyphosate ('Round-up'), with the High Court finding in favour of EPA (*Environmental Law Initiative v Environmental Protection Authority* [2025] NZHC 3106); and
- Environment Canterbury in relation to permitted activity rules in the Canterbury Land and Water Regional Plan that relate to discharges (made under section 70 of the Resource Management Act 1991 (RMA), with his matter awaiting judgment).

Other challenges include those in relation to the use of the Wildlife Act in relation to roading projects, the setting of quote limits for crayfish, the need to protect Māui and Hector's dolphins, the impact of bottom trawling in relation to Orange Roughy, MPI levies for fishing observers and other controls in relation to set netting to protect Hoiho/Yellow Eyed Penguins.

In all cases the focus appears to be on obtaining High Court precedent that has wider application. It is likely that no part of primary sector is completely immune from challenge.

Environment Canterbury – sections 70 and 107

Environment Canterbury has borne the brunt of ELI's approach, with three separate proceedings seeking to challenge the Council's approach to how it manages discharges in the region.

This includes challenges based on sections 70 and 107 of the RMA that the High Court found prevented the grant of discharge consents (or by implication the implementation of permitted activity rules) on the basis that discharges may have significant adverse effects on aquatic life.

The High Court decisions all follow earlier Council-level decisions that were not written with potential judicial review in mind. To expect Council-level decision makers to grapple with complex legal issues and address factual matters in a robust, judicial review proof manner is likely to be more idealistic rather than realistic.

Nevertheless, as the Ashburton Lyndhurst and MHV Water matters demonstrate, care needs to be taken when considering and explaining effects. In both matters the first instance decision maker was quick to jump to conclusions around effects on aquatic life being significant, when this was not a fair, or the only, interpretation of the available evidence. In the absence of an easy pathway to matter factual findings in the context of a judicial review both schemes have been left scrambling with nutrient discharge consents that have been quashed, awaiting reconsideration.

The government, worried around the wider application of the High Court's findings on section 107, included some limited amendments to the RMA in the Resource Management (Freshwater and Other Matters) Amendment Act 2024. The amendments do not have retrospective effect and ELI appears to have continued with judicial review of discharge related decisions.

Conclusion

ELI does not appear to be reducing its efforts. A dedicated in-house team with the support of external legal resources appears to be creating disarray for consent holders, the Council and the government alike.

The long-promised RMA reforms are likely to assist 'around the edges', with some proposals to limit notification processes and the extent of wider participation in RMA processes. It is however likely that the right to seek judicial review will remain.

We are in a new era of RMA practice where judicial review is increasingly the new but unwelcome norm.

Ben Williams, Partner
Resource Management

Rachel Robilliard, Senior Associate
Resource Management

Supreme Court decision brings end to long running farm purchase dispute

In 2010, Phillip and Julia Routhan (Routhans) purchased a dairy farm on the West Coast for $2.8 million.

The Routhans purchased the farm based on representations made by PGG Wrightson Real Estate Limited (PGG) that the farm's recent milk production was steady at 103,000 kg of milk solids (kgMS).

The Routhans were unable to achieve the expected production levels and, instead, production fluctuated between 60,597 kgMS and 88,503 kgMS.

The Routhans attempted to increase production levels through investment in capital improvements, however this was unsuccessful and it was later revealed the production levels had been declining for several years before the sale.

Compounded by decreasing milk prices and financial pressure from their bank, the Routhans were ultimately forced to sell the farm at a significant loss.

High Court

The Routhans successfully brought a claim in the High Court against PGG for misleading and deceptive conduct under section 9 of the Fair Trading Act 1986 and in negligence.

The High Court found that PGG had incorrectly represented that there had been no change in the production figures, had neglected to verify key farm information and had failed to inform the Routhans that the vendor had refused to verify the production figures.

Additionally, the High Court found the negligence was a material cause of the Routhan's financial losses that arose from their inability to achieve the represented production levels. PGG claimed that the Routhans' own negligence was responsible for the losses. However, this was rejected by the High Court.

The Routhans were awarded $1,442,000 for the loss of sale of the farm and run-off property and $680,000 for capital investments not reflected in the loss of sale damages.

However, the final award was reduced by 20% to reflect the Routhan's contributory negligence in making certain capital investments that were not directly connected to improving milk production or productivity. The total award made by the High Court was $1,697,000.

A more detailed review of the High Court decision can be found here.

Court of Appeal

The Court of Appeal upheld the High Court's finding that PGG had negligently misrepresented the production levels. However, it differed in its approach to the calculation of damages.

The Court of Appeal considered that PGG's duty was to provide updated production information. The absence of updated production information, or incorrect production information, created a risk that the Routhans would overpay for the farm.

The Court of Appeal did not consider PGG to have assumed responsibility to advise the Routhans on any particular course of action they should take following their purchase of the farm. Accordingly, the Court of Appeal held the post-purchase losses were beyond the scope of PGG's duty/were not caused by PGG's misrepresentation.

Following the principles established in the South Australia Asset Management Corp v York Montague Ltd, the Court of Appeal confined the scope of PGG's duty to the consequences of the incorrect production information.

As such, the appropriate measure of damages was the difference between the price paid for the farm and its true market value at the time, had the production levels been correctly represented. The Court of Appeal awarded damages of $300,000.

A more detailed review of the Court of Appeal decision can be located here.

Supreme Court

The High Court and Court of Appeal decisions established that PGG was liable to the Routhans as a result of PGG's misrepresentation. The remaining issue for the Supreme Court to determined was therefore the quantum of damages and the basis for awarding such damages.

The majority, comprising of Glazebrook, Kos and Miller JJ, held that PGG's duty of care extended to both the risk that:

the Routhans would overpay for the farm; and

the production that the Routhans would achieve would be lower than the levels represented to them.

The majority made it clear PGG was not liable because it passed on incorrect information. Rather, PGG was liable for carelessly leading the Routhans to believe production levels had been verified by the vendor when PGG knew this had not occurred.

Conversely, in dissent, Winkelman CJ and Ellen France J supported the position reached by the Court of Appeal that PGG's duty of care was confined to the risk that the Routhans would overpay for the farm.

Continued >

Supreme Court decision brings end to long running farm purchase dispute (Continued)

It is important to note that the Supreme Court was unanimous in its view that PGG could not be liable for all post-purchase losses.

The majority found PGG was only liable for:

$480,500 (being the amount the Routhans overpaid for the farm);

$150,000 (being the cost of additional money spent on fertiliser to achieve expected production levels); and

$150,000 (being the cost of re-pasturing the farm to improve production).

Arguments that the Routhans were partly to blame for their losses were rejected because they invested based on PGG's information.

However, the majority found that other losses, such as revenue shortfalls, increased debt servicing costs, supplementary feed and long-term capital investments were either not caused by, or clearly attributable to, PGG's breach, were not reasonably foreseeable, or were already accounted for in the awarded damages.

The Supreme Court ordered PGG to pay the Routhans $780,500 in damages, along with interest and $50,000 in costs.

Key Takeaways

From a purchaser's perspective, the case highlights the importance of conducting robust due diligence. Farm transactions are inherently complex and a thorough due diligence process needs to be undertaken to allow a purchaser to identify, verify, understand and assess key information and risks.

We always recommend that purchasers seek the advice of their lawyer before entering into an agreement to purchase a farm. While farm transactions utilise the Law Association's standard Agreement for Sale and Purchase of Real Estate as a base, the reality is that farm transactions involve multiple asset classes (land, machinery, buildings and often stock, employees and dairy company shares). This means that appropriate further terms are required to address such assets, with a robust due diligence clause being included in order to allow the farm, and the assets that it comprises, to be inspected and understood.

While due diligence is crucial, this case also highlights its limits. In some situations, there may be information that only the vendor can verify. Where this occurs, it is often appropriate for a purchaser to require a vendor to stand behind such information (often in the form of warranties that the vendor would provide). If a particular risk is not already priced in and cannot be mitigated to a level that a purchaser considers to be satisfactory, a purchaser may request that the vendor indemnifies it against all loss that arises from that risk. These mechanics are often the subject of negotiation but, if agreed, allow a purchaser to pursue recovery against a vendor for a breach of contract (rather than an alternative claim).

There is inherent uncertainty in asking a Court to determine a claim that relates to loss arising from a farm purchase and it is advisable that purchasers seek to mitigate this risk through robust due diligence and appropriate contractual mechanics. The Supreme Court's decision clearly highlights that not all forms of loss are recoverable under a claim of this nature and the loss that was deemed to be recoverable in this situation was only decided to be recoverable by a narrow 3-2 margin (after earlier litigation which no doubt would have brought with it considerable expense for both sides).

We are also noticing a growing trend of "own judgment" clauses being included in agreements for sale and purchase of farms. These clauses effectively provide that the purchaser has entered into the agreement in reliance of its own judgment and not in reliance of any statement or representation made by the vendor or its agent. Purchasers should ensure that they understand the effect of clauses of this nature and should carefully consider whether this is something that they are prepared to accept.

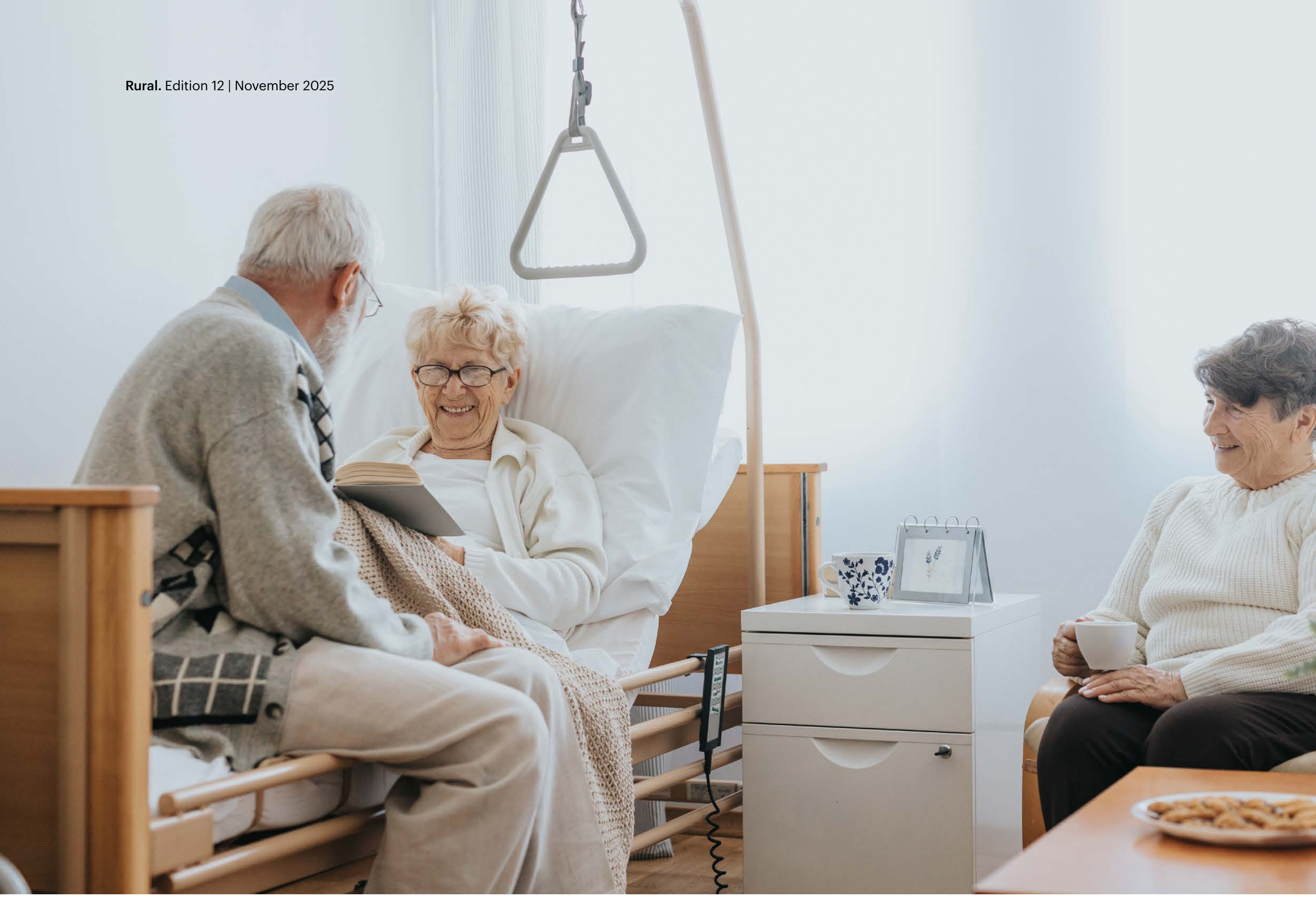
From a vendor's perspective, the case emphasises the importance of verifying all statements or representations that are being made. The marketing material for farms (particularly large farms) is often extensive and a vendor (or an agent) may wish to maintain a "verification register" that records the underlying information/basis for a particular representation or statement. We also suggest that vendors engage their lawyer at an early stage to review/stress test marketing material and to review/prepare the agreement for sale and purchase. Some vendors may also wish to instruct their lawyer to complete vendor due diligence on the farm in order to ascertain whether there are any risks that a purchaser may identify.

Particular care needs to be taken with critical information that goes to value, such as milk production volumes for a dairy farm.

David Goodman, Partner
Corporate Commercial

Reuben Adams-Cook, Senior Associate
Corporate Commercial

Emma Humphries, Solicitor
Corporate Commercial



Residential Care Subsidies and Trusts

Ministry of Social Development's requirements for eligibility to a residential care subsidy are becoming more complex over time – and it is important to know how this may affect you, especially if you have a trust.

Since many trusts were established, the requirements for eligibility for a Residential Care Subsidy (Subsidy) to contribute to the costs of rest home care have changed. The eligibility criteria continues to shift with the Ministry for Social Development (MSD) focusing increasingly on trusts and any gifts made to trusts by those applying. This can affect a range of clients but when farm life evolves into needing long-term residential care, understanding government subsidies – and how trusts and gifts may affect eligibility – is essential.

What is a subsidy?

A Residential Care Subsidy is a form of benefit provided by the government to cover part of the cost of rest home care or hospital level care for those who need it long term and cannot afford it.

This scheme is administered by the MSD, and the subsidy is paid directly to the care provider.

Who can receive the subsidy?

An applicant could qualify for a Residential Care Subsidy if they are:

(a) are aged either:
   (i) 65 or older;
   (ii) 50-64 and single with no dependent children.

(b) are medically assessed as needing long-term residential care in a hospital or a rest home;

(c) need this care for an indefinite length of time;

(d) are receiving contracted care services.

How does MSD determine if you can afford care?

Whether an applicant can afford to pay for their care is determined by a financial means assessment by MSD, this is a two-stage test. MSD will consider your assets (stage one) and your income (stage two).

MSD will adjust the asset and income limits yearly based on inflation. The thresholds below are current from 1 July 2025.

Stage One – Asset Test

To satisfy this test, you must fall under either of the following asset limit thresholds:

(a) **Threshold A:** for single people or couples where both partners are in care, the higher limit of $291,825 will apply;

(b) For couples where one partner is in care, while the other remains in the family home:

  (i) **Asset Threshold A:** the higher threshold of $291,825 which would include all their assets (including the family home); or

  (ii) **Asset Threshold B:** a lower threshold of $159,810 which excludes the value of the family home and any vehicle.

Examples of assets that are included in the assessment are cash, investments, loans made to other people (including to family trusts), and properties.

Stage Two – Income Test

If you pass the asset test, MSD will then check your income (such as NZ super, interest, payments to you from a Trust) to calculate how much you must pay towards your care.

What about Trusts, Gifting and Deprivation?

Gifting

MSD will allow limited gifting to family members or Trusts without it affecting your subsidy application:

(a) Within 5 years of the application: you can gift up to $8,000 per person per year.

(b) More than 5 years before the application: you can gift up to $27,000 per couple per year.

If you gift more than these limits (or have in the past), MSD may treat the extra amount as if you still own it. This is called deprivation, and it can affect whether you qualify for the subsidy.

Examples of deprivation can include:

(a) Giving away property or selling it for less than its worth.

(b) Loaning money without charging interest.

(c) Changing ownership of a property without a valid reason.

If MSD finds that deprivation has occurred, they can include this in your financial means assessment.

If you have gifted assets to a trust and deprivation has occurred, there is an expectation that the trust will contribute to your care. MSD can request that you ask the trustees for financial support. It is important to be aware that if the trustees refuse to pay for care, then MSD may decline granting the subsidy.

Recommendations

If you or a family member is planning to move into rest home care and there is a family trust involved, we recommend that you contact us to assist with the preparation of an application for the residential care subsidy, or a residential care loan and provide advice on your gifting and family trust moving forward.

A full review of the trust and your personal structure is important to understand how and when assets were transferred and whether any deprivation has occurred.

Sharon Knowles, Partner
Property & Private Client

Ffion Muhl, Senior Solicitor
Property & Private Client

Reviewing the Rules: Keeping ahead of the game in respect of environmental compliance

Your accountant runs a ruler over your finances at the end of each financial year, but when was the last time you checked in on how your business operates in relation to changing environmental rules and responsibilities?

It has been signalled that alongside resource management reforms there will be increased monitoring and enforcement activities by councils to ensure the rules that are set by the new legislation will have higher levels of compliance. Recent RMA amendments that are already in force have created a stronger framework to support this also. With this in mind, we think it is a good time now to consider a review of your business's environmental compliance to avoid future issues.

RM Reforms

Legislation to put into place a 'new RMA' (a proposed Planning Act and a Natural Environment Act) is being developed, with the government indicating that it will be enacted before the end of 2026. This new legislation is likely to reduce consenting requirements and reduce rules about amenity issues, with the rules that will persist almost certainly including rules relating to management of the natural environment such as rules on water take limits and conditions on discharges to land and water. These types of rules and the associated resource consents are very important for a range of agricultural and industrial activities.

If your business relies on a resource consent or performance standards in a local authority plan to operate, then now is a good time to look at how you are tracking in relation to performance standards and consent conditions (particularly relating to water).

The realities of increased monitoring and compliance

Increased funding and requirements for environmental monitoring and compliance will likely include more testing and data gathering by council compliance teams, which in turn will guide focused investigations. Council officers are able to enter private landholdings without landowner consent if their purpose being there is to undertake testing and monitoring for compliance purposes.

Where site visits are undertaken to determine whether an operation is complying with its resource consent conditions or rules in a plan, councils have the ability to recover costs from the landowner in relation to that compliance monitoring work. Recent legislative amendments provide further support for fees and charges for council officer time investigating any breaches to be invoiced to landowners – regardless of whether further enforcement action is taken.

What 'enforcement action' can a Council take?

If a breach of a rule or consent is found, then the council officer may first seek to have a conversation with you to see if you understand all of the requirements that apply to your business, and to co-operate with you to get things on track.

If a council officer considers an activity is a serious breach of a rule or consent condition then their other options (beyond an initial conversation) include:

- issuing infringement notices with minor fines;
- issuing abatement notices which will direct action to be taken, or something to be stopped, to remove the non-compliance they have identified.

In relation to the first infringement notice option, the fines that can be imposed through these notices are being raised from 4 September 2025 to be between $600-$2,000 for an individual, and between $1,200-$4,000 for a company.

More serious steps that can be taken by councils can include seeking enforcement orders from the Environment Court, or for extremely serious incidents or repeated breaches – commencing a prosecution. Maximum penalties for offending against the RMA are now very significant sums, with $1 million for an individual and $10 million for a corporate entity setting the ceiling for any fines that might be imposed. There are very few actual instances where these upper fines might be imposed. At the moment average fines for moderate environmental offending sit around the $20,000-$40,000 mark for 1-2 breaches, however this average will rise in the next few years, roughly in proportion to the uplift in maximum fines set out in the act.

We discussed the recent critical change to the RMA which removes the ability for businesses to insure against liability for environmental offending in our previous article here. This limitation on insurance will take effect on 20 August 2027.

How we can help

It is sensible to regularly review your operations against environmental rules and regulations, as well as check in on the core parts of your business that rely on resource consents. Regular review of environmental compliance can avoid issues later.

Anderson Lloyd's Resource Management team can help ensure your business is complying and will continue to comply with environmental laws and regulations as they are introduced. We assist our clients with:

- simplifying complex environmental laws and regulations for you to apply to your business;
- setting up internal compliance systems with regular checks and balances;
- ensuring activities comply with district and regional plans, including checking all necessary resource consents are in place;
- reviewing consent conditions/management plans/other supporting documents and talking to you to ensure they actually fit with your work practices;
- assisting with environmental due diligence on small to large-scale transactions;
- reviewing compliance reports received from technical experts and/or councils to identify and promptly address potential issues of concern before they escalate.

We also assist those facing enforcement action, providing specialist advice and representation. Should any issues arise, we encourage you to reach out at an early stage.

Shelley Chadwick, Senior Associate
Resource Management

Our Rural and Agribusiness Team

If you have any questions about the topics raised in this newsletter please contact one of our rural and agribusiness specialists:

Jo Appleyard
Partner
Resource Management

03 335 1252
jo.appleyard@al.nz

Maree Baker-Galloway
Partner
Resource Management

03 450 0736
maree.baker-galloway@al.nz

Sarah Eveleigh
Partner
Resource Management

03 335 1217
sarah.eveleigh@al.nz

David Goodman
Partner
Corporate Commercial

03 335 1235
david.goodman@al.nz

Robert Huse
Partner
Property and Private Client

03 450 0746
robert.huse@al.nz

Sharon Knowles
Partner
Property and Private Client

03 467 7178
sharon.knowles@al.nz

Vanessa Robb
Partner
Property and Private Client

03 471 5430
vanessa.robb@al.nz

Ingrid Taylor
Partner
Property & Private Client

03 335 1251
ingrid.taylor@al.nz

Ben Williams
Partner
Resource Management

03 335 1250
ben.williams@al.nz

Dan Williams
Partner
Property and Private Client

09 338 8320
dan.williams@al.nz

Anderson Lloyd is a trusted legal advisor to the businesses that support New Zealand's primary sector – from the family farm, through to co-operatives, large corporate farms, and rural service providers.

Our nationally recognised team of rural and agribusiness experts are able to advise you on a variety of legal matters. We form solid partnerships with our clients and are focused on achieving the best possible outcomes. Across our full service firm we also bring together the right people when it comes to banking, construction, litigation, employment, overseas investment and resource management legal advice.

Our lawyers advise on:

- due diligence for acquisition and disposal of farming properties and rural businesses
- finance and ownership structures of farming businesses
- succession and inheritance issues
- agreements for joint venture farming entities
- co-operative company shareholdings
- overseas investment requirements
- industry specific advice for example, dairy, sheep and beef, orchardists, winemakers and grape growers
- resource management including consents for irrigation and effluent discharge
- water rights and irrigation schemes
- submissions on plans and policy reform
- environmental compliance and prosecutions