

Buying a farm – due diligence

Buying a farm is a complex matter and it is critical to complete a full investigation of the farm either prior to making an offer to purchase (by contract, tender or auction) or by having a robust conditional agreement in place allowing you to complete a full due diligence by a particular date. Advice that is specific to your circumstances and that of the farm should be sought. The scope of due diligence depends upon the specific property, location and the proposed horticulture/ farming activity. Whether purchasing a run-off block, a new farm or buying the family farm, these are all large investments, which require you to check every aspect of the investment, to ensure that there are no surprises which might have affected either your decision to buy or the price you pay. Some of the issues to consider include:

1. Checking who owns the land and the farming operation:

Basic, but often over looked. Land, stock, equipment, chattels, water rights, resource consents and other

related assets can have different owners. It is crucial the ownership structure is clear and the agreements reflect that structure.

2. Water and environmental due diligence:

Water is critical to the operation of any farm and is a key issue. As purchaser you need to be satisfied on all matters relating to water or irrigation rights affecting the property including, but not limited to, the potential development of the property and the adequacy and utilisation of water and irrigation entitlements. The water permits, units and/or irrigation scheme need to be checked to see if they run with the land, who owns them and how they will be transferred to you as the new owner of the property.

Our Resource Management team discusses environmental due diligence in depth in Edition 3 of our rural update.

See link: [rural edition 3](#)

3. Title review:

Engage your solicitor to review the land titles to the property and to advise on what the various items on the title mean. Issues with the property boundaries and access to the property need to be considered. A review of the land titles provides you with an understanding of the easements and covenants that might provide the property with a benefit over another person's land or whether someone else has a right over the property you are purchasing. Are all areas of the farm being sold included in the Sale and Purchase Agreement? Are all necessary easements registered – for example allowing water to be drawn across a neighbour's property?

4. Land Information Memorandum:

Provides information held by the Regional and District Councils on the farm including rates, consents, permits, code compliance for work done on the property and hazard information.

Buying a farm – due diligence (Continued)

5. What is in the land?

Investigate the condition of the land. Agreements can include warranties from the seller stating that no portion of the property has ever been used as a landfill or dump to receive refuse or waste (except for occasional and immaterial random disposal by individuals) and there is no toxic or hazardous waste stored, installed, generated or disposed of on the property. Testing of the land for contamination can be made a condition of the agreement. For example, you might decide to obtain a DDT test from an approved tester for the property or testing in relation to the soil condition to ensure the land can hold the stock numbers which have been advertised. Consider the potential existence of mycoplasma bovis on the property and include warranties about its status in the agreement. Knowing the soil conditions in advance will let you know the cost of adding fertiliser and/or allow you to negotiate the purchase price with those facts in mind.

6. GST & accounting advice:

Have your accountant involved from the start to consider the financial feasibility of the purchase taking into account your circumstances. Ensure that the numbers are correctly allocated to the land, buildings, equipment and stock or that a valuation mechanism approved by your accountant is included in the agreement. Discussions regarding GST should be resolved prior to signing the agreement. Consider what ownership structure is best suited to your future needs.

7. Stock and equipment:

Ensure that the agreement fully records all stock and equipment being sold. Just because you saw certain items during your inspection of the property with the agent does not mean that they have been included in the agreement. Will you require the vendor to undertake any maintenance of the equipment prior to settlement? What guarantee have you been offered in relation to the condition of the stock and equipment? What are the

mechanisms to confirm and adjust stock numbers on settlement, and to value farm equipment?

8. Resource Consents:

Are all necessary consents in place to undertake the farming operation?

9. Valuation:

Obtaining valuations are often a condition imposed by your bank. The valuations could be required for the land, livestock and/or chattels/equipment that are included in the agreement. You need to ensure that you organise these valuations well in advance to meet the timeframes for completing due diligence.

10. Finance:

Consider and organise your finance approval and provide a copy of your bank's finance approval to your lawyer. Rarely do we see banks providing unconditional finance approval. Normally, bank letters confirming finance have a number of conditions that you need to complete in order for the bank to confirm your finance.

11. Forestry:

Are there trees on the property which are included in the Emissions Trading Scheme and what is the effect of that?

12. Supply contracts and third party leases:

Consider whether there are any supply contracts which need to be assigned on settlement including grazing or dairy supplier contracts. If purchasing a dairy farm is there a share milking contract which runs on after settlement? Is any part of the farm leased to a third party?

13. Staff:

Are there staff to be employed as a condition of sale? What do their employment contracts say? Consider issues such as health and safety and ACC.

Buying a farm – due diligence (Continued)

14. Other considerations:

Depending upon the time between the date of the agreement and settlement, you will need to consider good husbandry, pasture cover requirements on settlement, and if hay or bailage is to be left and in what numbers. You may also need to sell your existing farm in order to purchase the new property.

In summary, comprehensive due diligence on a farm property is crucial to your decision whether or not to purchase. Getting professional advice will help you to accurately assess whether the farm is the right property for you.

Want to know more?

If you have any questions about Buying a farm – due diligence, please contact our specialist [rural and agribusiness team](#).