

Thinking about environmental due diligence

The paper work that you need to have in place to underpin your daily farming or horticultural operations is increasing, particularly for environmental issues. In the light of this it is necessary to give thought to what sort of environmental due diligence you need to do before you buy or sell a farm property, or enter a contract for sharemilking or farm management.

If you are a buyer or incoming contractor, you need to understand and appreciate any risk and costs you may be taking on with the new property. If you are the seller or landowner, having all your paperwork in place will maximise the value of your sale or contract.

Advice that is specific to your circumstances should be sought when entering into any agreement or contract. However the summary below provides some general guidance on issues to be thinking about on the environmental front, including the additional incoming requirements from the recently introduced freshwater standards.

Water permits

Water permits can add huge value to a property, but like all paper work, the devil can be found in the detail. Purchasers should check the conditions on any water permits to ensure that they are appropriate for your intended operation, and to check compliance obligations, including any requirements for new or costly infrastructure.

It is also essential to check when water permits expire. The application process for a new or replacement resource consent can take many months, and in some regions there is a sinking lid on renewing water takes which can make the new permit process particularly complex.

When applying for a replacement water permit, a number of regional councils will require you to demonstrate how much water the property has been using in previous years, and what efficiency gains might have been made. If you don't have any evidence of this, perhaps through electronic or paper copies of water use records, then it could be difficult to meet the council's information requirements – and this may detrimentally affect your application.

Water metering

Regulations issued under the Resource Management Act 1991 require all persons holding a water permit and with a water take of more than 5 litres per second to keep records of water taken and provide these records to the regional council. The handover and maintenance of these records, and control of the metering systems, is essential.

Recent amendments to the regulations have imposed additional requirements on metering and reporting of data, which need to be complied with between 2022 and 2026, depending on the volume of the take. Consideration should also be given to whether the current water metering system complies with these new regulations, or whether upgrades will be required.

Discharges and land use

Discharge permits might be required for certain activities, such as effluent disposal to land, or for ongoing nutrient applications. Again, you should consider how essential these consents are for your potential operations on the property, and check consent conditions and expiry dates.

Thinking about environmental due diligence (Continued)

In some areas, farming activities are controlled based on modelled nitrogen losses over a baseline period of time. Where these rules apply, it will be necessary to provide information about the baseline for the property over previous years. The use of synthetic nitrogen fertiliser is increasingly being monitored and good information on its use is important. Where averaging rules are in place, records over a period of time are essential to show compliance.

Even if such rules are not in place now, there is potential for them to be introduced in the future. For this reason, it is advantageous to obtain information about previous activities on the land, or even on particular soil types within a property.

Consent transfers

Typically, land use consents which are administered by district or city councils stay with the land and therefore don't need to be transferred. However water take or discharge permits granted by regional councils will need to be transferred.

Transfer is essential to give you the benefit of the relevant consent, as well as ensuring that the appropriate entity is responsible for council monitoring charges.

Farm Plans

Many regional councils include rules and requirements for farm environment plans to be created for your property or operation. Each region is different, but the information requirements will be broadly similar. These plans should be being maintained to fulfil their purpose.

The National Environmental Standards for Freshwater (NES) mean Freshwater Farm Plans (FFP) will also need to be in place for regions which the Ministry for the Environment is due to identify in the coming year. Once this requirement is in place, FFPs will need to meet a certain format, have been produced by a certified person and may also need to be audited from time to

time. In time FFPs will need to be checked and handed over on transfer of farm ownership or management.

Fencing of waterways

Stock exclusion regulations have recently been introduced and require fencing of waterways to exclude cattle, pigs and deer. Exemptions apply for some existing fencing. Information should be provided to demonstrate the extent to which existing fencing complies with the regulations.

Winter grazing areas

With the introduction of the recent NES any winter grazing areas need to be recorded until the end of 2024. Consent will be required if the winter grazing is to occur on different land, or will exceed the maximum area under winter grazing, between 1 July 2014 and 30 June 2019.

If you do not have proper records of these key parts of the activity then it will be difficult to demonstrate full compliance with the standards, and may result in additional consent requirements which could have been avoided.

Change or intensification of land use

If you intend to use a farm for a different or larger scale activity than the land is currently being used for, then a full environmental due diligence process should be undertaken to ensure the property is appropriate for your needs.

This will need to include a comprehensive review of the applicable regional and district plan rules, and also of a number of temporary standards that will be in place under the NES. These temporary standards apply until the end of 2024 and relate to converting farm land to dairying, increasing irrigation on a dairy farm, and converting plantation forestry to pastoral land use.

Thinking about environmental due diligence (Continued)

Compliance

Councils hold compliance records, which will address routine monitoring, information provided by consent holders as required by conditions of consent, and any compliance activity undertaken by council officers. Where a council has previously identified issues with compliance, there may be action required by the consent holder as a result. If a new consent holder has just arrived on the property, this does not always mean that there will be much leeway given. Some examples of potential issues we have seen include – infrastructure upgrades to meet with effluent management requirements; remediation of unstable earthworks; or providing for regeneration of an area of indigenous vegetation clearance.

If you are taking over ownership or management of a property you will become responsible for compliance, so should check whether there are any outstanding issues or obligations that you will be taking on.

Forestry

Any blocks of exotic forestry on a property could potentially be subject to the Emissions Trading Scheme, so it is necessary to know whether the block needs to be replanted to avoid any potential liability under that legislation. In some areas exotic forestry is also subject to some national standards, including requirements to manage wilding risk, or resource consents being required for a new rotation in order to manage land instability.

There are also other environmental issues that are unique to particular industries and operations, and each region has its own unique rules and systems. Wherever you are, please take the time to build an environmental due diligence into your next sale, purchase or contracting process.

Want to know more?

If you have any questions about environmental due diligence, please contact our specialist [Rural and Agribusiness](#) Team.