



PLAIN ENGLISH GUIDE

PURCHASING A RURAL PROPERTY

Prior to exchanging contracts to purchase a rural property, a purchaser should check matters that could affect the value such as:

- native vegetation rights or obligations could affect the value of the property depending on the venture that the purchaser wishes to undertake;
- water rights or entitlements or breaches of requirements concerning dam size;
- notices from the Rural Lands Protection Board (RLPB).

It is advisable to obtain an authority from the vendor before exchange and submit an application to the local RLPB to obtain up-to-date information about whether there is a record of stock diseases or chemical residues on the property. With the exception of an order or other notification which may be a matter of public record, the Department of Agriculture and RLPB will not release information relating to the status of individual parcels of land without the consent of the owner.

An authority signed by the vendor ensures that all information can be disclosed.

Contract

Often vendors' searches and a zoning certificate have not been obtained before giving instructions to prepare a contract. Consider asking the vendor's solicitor to fax the draft special conditions and list of inclusions so that any issues concerning the special conditions can be clarified rather than waiting until the contract has been submitted and exchange delayed by correspondence and negotiations.

Boundary Fences

Bearing in mind the cost of boundary fences, consider asking whether there have been any discussions or notices issued concerning the replacement of a boundary fence or a dispute involving the boundary fence.

We were recently involved in a matter where there had been disagreements between the vendor and the neighbours but there had been no notice issued and no agreement in writing on what was to happen with the fence. Fortunately a nearby neighbour advised our client of the dispute and matter was clarified before exchange.

Water rights

Before exchange, the purchaser should obtain from the vendor, or from the local Department of Land and Water Conservation (DLWC), a copy of any water licence together with its terms and conditions. It has been our experience that the senior officers at the local offices controlling water entitlements are very experienced and practical.

If there is a private water scheme involving the owner, you or your client should obtain a copy of any constitution or agreement and discuss the matter with the secretary of the water users group.

Water scheme

When dealing with water you should check whether it is regulated by the DLWC or controlled, regulated and administered by a private group such as Murrumbidgee Irrigation (Griffith), Murray Irrigation (Deniliquin) or Coleambally Irrigation (Coleambally). Different water bodies have different structures. Some are Companies where shares are issued and others are cooperatives.



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Before finalising any transfer, a purchaser or solicitor should check how the transfer of water entitlements takes place.

There can be a difference between the water licence or water scheme entitlement and actual allocation. Check the current year's water allocation to ensure sufficient water will be available for the client's requirement.

Enclosure permits, Crown licenses/leases or leases from Council

A purchaser should clarify the existence of any enclosure permits, Crown licences or leases with the local DLWC by phone or by attending the office and inspecting the plans.

In particular, the purchaser should check the location, the area and the rental; and whether anyone uses the road permit for access. You need to also check whether there have been breaches of the road permit by putting a fence across the road.

Sometimes there are council controlled roads that are not maintained by the local council but are leased to land holders. The owner should be asked if there are any such roads located within or adjoining the property.

Native vegetation

At the local DLWC offices there is generally a vegetation management officer who can clarify a person's entitlement to clear land. Some basic rules under the Native Vegetation Act 1997 include the following:

- The vegetation management officer can advise the steps involved in obtaining approval for clearing and a prospective purchaser's rights and obligations.
- The local office can advise if a property vegetation plan applies to the land.

Mining

Check if the property has or is affected by any mining exploration agreements or activities. For example, is there rehabilitation work to be carried out, and by whom?

Wik and Aboriginal land rights

Enquiries should be made with the Native Title Tribunal (phone 1800 640 501) and/or the local Aboriginal Land Council. Native Title is relevant to certain Crown licenses, leases and leasehold for grazing purposes in the Western Division.

Access

It is crucial to clarify access to the property. You may need to check with the owner, local council, neighbours and the DLWC whether access is by a public road, road permit or through another property: whether access can be terminated; and whether there should be an easement. Local parish and council maps are also worth checking.

Area

The actual area of the property being purchased should be checked against title deeds, portions and deposited plans that the vendor could send you. Often the old title deeds have a full map of the lands subject for sale but the new identifiers do not include a map and it can be quite confusing. We use colour-coded parish maps setting out the location of the different portions and deposited plans. This way you can clarify the lands that are actually being purchased and also whether there are any parcels of lands between blocks you are acquiring that may be owned by other persons. It is also advisable to clarify particulars of easements, rights of way or any covenants that are attached to the land. Full copies of the documentation can be obtained and the contents of the documentation discussed.



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Contaminated land

A purchaser is advised to check with the owner, Rural Lands Protection Board and/or the Environment Protection Agency concerning contaminated land.

Zoning

The local Council will be able to advise you about the following:

- building rights (the minimum are for a building permit should be clarified);
- subdivision restrictions and building permit entitlements; sometimes the vendor can be entitled to a concessional building block which lapses once a property has been sold; the contract can be subject to a development application for a certain number of blocks and building permits.

Specific industries

A purchaser who is buying a property for a specific purpose should check issues such as:

- the effects of deregulation on dairy farming;
- water entitlements and allocations for irrigation cropping, for example, Murray Irrigation based in Deniliquin in conjunction with local solicitors have developed special conditions which cover the procedures for the transfer of shares in Murrumbidgee irrigation and the water entitlements;
- accreditation requirements for organic farming.

Taxation issues

It is important that the contract contain some reference to the written down values of improvement for income tax purposes, preferably listing those actual figures. Before exchange of contract, check the vendor's depreciation schedule and have the vendor's and purchaser's accountants discuss the apportionment of purchase price between improvements land, crops, etc. There will be capital gains tax implications in issues such as who should purchase; the value for the principal place of residence; the cost base; minimisation of future CGT liability; and the apportionment of price between improvements, land and water entitlements.

Insurance

The risk of damage to buildings and other fixtures remains with the seller until settlement or the time stipulated by the parties to the contract, that is, a time after the buyer enters into or is entitled to enter into, possession of the land, whichever occurs first. It is advisable for the vendor and purchaser to clarify prior to exchange who is responsible, on exchange, for insuring the house, other improvements, and especially fencing. Often the vendor does not insure fencing, therefore if the fences are destroyed before settlement the vendor could be liable to replace the fences if the contract doesn't specify otherwise.

Does s.66K of the Conveyancing Act 1919 mean that the vendor must insure the principal place of residence until settlement unless the purchaser moves into occupation?

Some time ago our firm was involved in a rural conveyance where there was a house on the property occupied by the vendor's tenant. Just prior to settlement the vendor's tenant was moving out and the purchaser was moving in and had some boxes stored on the veranda and inside the house. The house burned down and the issue was who was responsible for insuring the property. However, the vendor had insured the property for \$70,000 and the purchaser had insured the property for \$50,000. The matter was referred to the General Insurance Claims Review Panel and the matter was determined by the Commission as there were two insurance companies involved. If one of the parties had not been insured the matter



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could not have been referred to the independent panel and the uninsured faced the prospect of a long drawn-out court case.

Other issues to clarify are whether the improvements are actually insured for the replacement value; whether both parties are covered by insurance until settlement; and public liability.

Finance

Check whether the sale is subject to finance. Contact your Financier to find out their requirements. These will probably include;

- searches; check whether the financier would accept a statutory declaration concerning certain issues to save the cost of searches;
- insurance;
- security; check whether security is to be provided over other land;
- timing; check how long the financier requires for settlement.

Clarify all costs and fees of the financier including:

- application fee;
- brokers' fees
- additional yearly fees such as account keeping fees;
- whether the loan is fixed or variable or a combination of both;
- margin and how the margin will be reviewed.

You should obtain at least two or three quotes for finance. You need to consider who will be responsible for the loan account, how accessible the account manager will be, and how much authority he or she has. The cheapest interest rate is not always the cheapest loan. Access to a representative of the lender who has a practical down to earth approach combined with decision making powers is preferable to having to refer to head office. It can be an advantage to deal with lenders whose representatives can visit the farm or are available locally.

Who should be the purchaser?

You should be aware of the advantages and disadvantages of purchasing, either as an individual or jointly as tenants in common or joint tenants. From an estate planning perspective, purchasing as tenants in common is advisable as often the automatic right of survivorship is not in the parties' best interest. Other options are to purchase as a company or a trust. Capital gains tax, the GST and other tax issues will need to be considered. So will the complexity of the structure.

Special conditions

Consideration should be given to including special conditions covering the following matters;

- the vendor's stock numbers before settlement; check whether an actual number or a dry sheep equivalent should be specified;
- preparation rights and cropping rights prior to settlement;
- access to property prior to settlement;
- clearing sale items - if a clearing sale is to be conducted after settlement then the vendor should be responsible for public liability and insurance. Should the contract specify where the items can be stored and when they will be removed? Should a clause be included setting out what is to happen if items aren't removed within a specific number of days of settlement or the clearing sale?
- occupation of the household premises after settlement;
- settlement date and in particular, what is to happen if settlement does not take place on the due date.