Rural eSpeaking

MACTODD LAWYERS

11–17 Church Street, Queenstown 9300, PO Box 653, Queenstown 9348
T 03 441 0125 | queenstown@mactodd.co.nz | www.mactodd.co.nz
Also in Wanaka and Cromwell

ISSUE **45** | Winter **2024**

Welcome to the Winter issue of *Rural eSpeaking*.

We hope you enjoy reading this e-newsletter, and find these articles are both interesting and useful.

If you would like to talk further about any of the topics we have covered in *Rural eSpeaking*, or indeed on any other legal matter, please don't hesitate to contact us. Our details are at the top right.

Budget 2024

What was in it for the rural sector?

On 30 May 2024, the Minister of Finance, Nicola Willis, presented her first Budget.

The Budget was short on detail considering agriculture is the highest contributing sector to New Zealand's economy. The Minister of Agriculture, however, said, "That [the Budget] places our trust back in farmers and growers by cutting public spending and reducing red tape, while also driving the efficiencies required to increase value and place the sector's success at the forefront of New Zealand's economic recovery."

PAGE 2

The future of indoor pig farming

Concerns that policy is threatening indoor pig farming

New Zealand Pork has expressed concern that the National Policy Statement for Highly Productive Land (NPS-HPL) is threatening the future viability of indoor pig farms.

The organisation believes the NPS-HPL is preventing current indoor farms from increasing in size and is blocking new indoor farms from being established on productive land.

PAGE 3

Over the fence

Service tenancies on the farm

Arrangements where an employer provides housing accommodation to their employees, such as where a farm worker who lives on the farm, are known as 'service tenancies.' Notice periods are different from other tenancies.

Checking terms of engagement regarding liability

In farming there are often multiple parties involved in the overall enterprise. It's important to understand your liability where a number of parties are involved.

Farm lease coming to an end – what's required?

Under a farm lease the lessee commonly pays the farm owner (lessor) to run an independent farming operation on the leased land. But it is not a shared responsibility.

PAGE 4

NZ LAW
Stronger Together.

RETURN TO FRONT PAGE

Budget 2024

What was in it for the rural sector?

On 30 May 2024, the Minister of Finance, Nicola Willis, presented her first Budget. The government is focussed on rebuilding the economy, easing the cost of living, delivering better health and education services, and restoring law and order.

Of course, within all those subsections, there is an underlying reliance on agriculture, the highest contributing sector to our economy. So, what did the Budget provide for the rural sector, and is there anything that farmers can look forward to over the next three years?

Drilling down to detail

After the Budget was presented, the Minister of Agriculture, Todd McClay said, "[It] places our trust back in farmers and growers by cutting public spending and reducing red tape, while also driving the efficiencies required to increase value and place the sector's success at the forefront of New Zealand's economic recovery."

Practically speaking, the government intends to do that by:

+ Doubling exports by delivering strong frontline services, cutting red tape and reducing regulatory costs
+ Minimising the administrative burden on farmers caused by duplication, red tape and regulatory blocks on things such as irrigation, water storage, flood protection schemes and stock exclusion rules
+ Replacing the National Policy Statement for Freshwater Management 2020 (Three Waters) and delivering better resource management legislation for the primary sector
+ Taking an independent review of agricultural biogenic methane science by providing clear advice on New Zealand's domestic 2050 methane targets
+ Committing $27 million for the removal of woody debris in Tairawhiti that will restore and help prevent further damage to vital infrastructure in local communities in the region
+ Committing $36 million over four years to catchment groups that back farmers' efforts to improve land management practices, and
+ Driving innovation that will ensure farmers and growers remain global leaders in challenges, including reducing on-farm emissions.

The government considers its Budget will back the sector's continued growth by providing support and professional resources to the frontline, and boosting research and innovation.

Should we be optimistic?

No one would expect the rural community to feel particularly inspired by this Budget and its overuse of words 'innovation' and 'growth' that do not necessarily translate to practical implementation.

The Budget is clearly focusing more on the bigger election promises such as infrastructure, education, and law and order. Although the Budget was more or less neutral on agriculture, the sector will nonetheless be pleased to see a focus on legislative repeal that was going to create a suffocating amount of red tape and make farming financially unviable (for some) in the near future.

It was a tight Budget that intends to put New Zealand's books back into the black. The deficit is forecast to continue through to 2025 with a surplus expected to be reached in 2027–28. The government will continue to rely on revenue from the rural sector, but it seems unlikely that those at the farm gate will notice any positive economic changes for several years. +

RETURN TO FRONT PAGE

The future of indoor pig farming

Concerns that policy is threatening indoor pig farming

Concern has been expressed by industry body, New Zealand Pork (NZP), that the National Policy Statement for Highly Productive Land (NPS-HPL) is threatening the future viability of indoor pig farms. It believes the NPS-HPL is preventing current indoor farms from increasing in size and is blocking new indoor farms from being established on productive land.

So what is the NPS-HPL, how does it affect current and future indoor pig farms, and what (if anything) is projected to change in the future?

The NPS-HPL

The NPS-HPL was introduced on 17 October 2022. It was designed to protect productive land from encroaching urbanisation, such as housing, by restricting infrastructure development.

The NPS-HPL introduced a regime requiring regional councils to identify, map and protect land defined as 'highly productive' for use in 'land-based primary production.' Such identification relies on the Land Use Capability (LUC) system, which categorises land into eight classes of productivity. Land classified as LUC 1 is the most versatile and productive, and has the fewest limitations which makes it best suited for food and fibre production. LUC 8 is the least versatile and productive, and has the greatest number of limitations. LUC classes 1, 2 and 3 are protected by the NPS-HPL as 'highly productive' land.

Initial consultation on the proposed NPS-HPL suggested that the intention was to protect highly productive land for 'primary production' purposes. This was supported by NZP, but the published version of the NPS-HPL changed the wording from 'primary production' to '*land-based* [our emphasis] primary production'.

'Land-based primary production' is defined under section 1.3(1) of the NPS-HPL as, "production, from agricultural, pastoral, horticultural, or forestry activities, that is *reliant on the soil resource of the land* [our emphasis]."

Implications for indoor pig farming

NZP is concerned that while indoor pig farming is an intensive primary production activity that requires access to arable land, indoor pig farming is being interpreted by the Ministry for the Environment (MoE) and regional councils as being an 'inappropriate land use' under the NPS-HPL due to it not directly relying on the soil resource of the land. NZP states, "This interpretation of the policy will make it hard for new pig farms to be established and for existing farms to grow or change the way they do things."

Farmers have expressed concern that there are no clear consenting pathways for building new, sector-specific infrastructure on highly productive land, nor are there pathways for the development of structures used for intensive indoor primary production and greenhouses.

Adding to that concern is that current indoor pig farmers may have to double their building footprints to comply with code of welfare changes. One pork farmer stated that two-thirds of commercial pig farms in New Zealand are situated on land classified as 'highly productive' under the NPS-HPL. The National Animal Welfare Advisory Committee has proposed changes to the code for pigs, including increasing the amount of space where young pigs live. As such, NZP has identified that it could be difficult for pig farmers to construct new buildings on productive land to meet any new welfare rules. The pork farmer indicated that his business would need to build another five new indoor sheds to meet the welfare code changes.

The future

NZP has asked the government to change the NPS-HPL to make sure it protects good farming while still allowing for indoor pig farming.

The MoE and the Ministry for Primary Industries have consulted stakeholders about amendments to the NPS-HPL that would provide more clarity around what can be built on highly productive land. Consultation closed in October 2023, and ministers are due to seek Cabinet approvals to changes later this year. It is unclear exactly what changes are being proposed.

On 4 July 2024, however, Minister of Housing Chris Bishop unveiled six changes the government plans to boost housing growth. The minister said the changes would free up land for development, remove unnecessary planning barriers and "ensure abundant development opportunities in our key urban areas" by making it easier to build new houses. These proposed changes seem to contradict the NPS-HPL, but may well resolve the issues that indoor pig farmers face under it.

We will keep you informed of how the proposed changes progress. +

RETURN TO FRONT PAGE

Over the fence

Service tenancies on the farm

Arrangements where an employer provides housing accommodation to their employees, such as where a farm worker who lives on the farm, are known as 'service tenancies.'

A service tenancy is governed by the Residential Tenancies Act 1986; it must be recorded with a written agreement. Regardless of whether your tenant pays rent for the property, it is still considered a service tenancy. A tenancy agreement may be incorporated into an employment agreement, however it is beneficial if they are two separate documents.

The Act sets out the rights and responsibilities for service tenancies – for both landlords and tenants. As a landlord you must provide the property in a reasonable state of cleanliness, comply with healthy homes standards, smoke alarm requirements, and any health and safety obligations. Your tenants must pay the rent when due, keep the property reasonably clean and have the right of quiet enjoyment.

A notable difference between service tenancy agreements and other tenancy arrangements is the notice period required to end the service tenancy. If you are terminating a worker's employment, or your employee has decided to leave, both parties must give each other at least 14 days' notice of the intention to end the tenancy.

In situations where the employment has ended you may give your tenant less than 14 days' notice if you believe substantial damage will be done to the property if they continue living in the property, or you need the accommodation for a new employee starting in less than 14 days and no other accommodation is available.

Checking terms of engagement regarding liability

In farming there are often multiple parties involved in the overall enterprise. In the seed industry, for example, there is often the supplier, grower and cleaner.

The terms of engagement is a legally binding agreement that sets out the rights and obligations of each party in the overall structure. It is important to understand the terms you have agreed to particularly regarding liability so that you know if/when you could be liable for the seed and any damage caused to it.

The terms of engagement can differ depending on the structure of the arrangement. Whether your land is leased by a business to grow seed or whether you buy and grow the seed yourself can alter the rights and obligations. Different parties are liable for the seed from the time it is planted, through to harvesting and cleaning. For example, if the seed is damaged during the cleaning process it is important to know whether you are still liable or whether the seed cleaning company, if outsourced, has assumed liability for the damage.

Understanding your liability under the terms of engagement and ensuring that you have the appropriate cover in place is important. Who is liable, and what rights and obligations are owed differ depending on what process is followed.

Farm lease coming to an end – what's required?

Under a farm lease the lessee commonly pays the farm owner (lessor) to run an independent farming operation on the leased land. Such a lease often gives the lessee access to the land, building and other infrastructure on the property or portion of the property.

Although this arrangement is mutually beneficial to both parties, it is not a shared responsibility. Your lessee is responsible for maintaining the land in accordance with the terms and conditions of the lease.

The duration of the farm lease should be included in the lease document. There are also prescribed obligations to comply with when the lease expires. Your lessee often has to ensure that, at the end of the lease, the land is returned in an acceptable state as agreed to in the lease terms, and is also required to remove alterations or additional fixtures they may have installed, and to destock the land.

If your lessee does not comply with these lease terms, they may have to pay the costs and expenses associated with removing fixtures.

If you would like some guidance on any of these topics in *Over the fence*, please contact us. We are here to help. +

NZ LAW Stronger Together.

The next edition of *Rural eSpeaking* will be published in **Decemeber**.