

# FACTSHEET: POSSIBLE ADDITIONAL CLAUSES IN CONTRACTS FOR THE SALE OF RURAL LAND

Solicitors acting for parties on the sale of a rural property may wish to consider whether there is a need to include additional clauses in the contract for sale and purchase addressing the following issues.

## Apportionment

- Is it desirable for an additional clause to be included apportioning the purchase price?
- For example, this may be to apportion the purchase price between
  - farming lands and improvements;
  - house and immediate curtilage; and
  - water licence (entitlements).

## Early Access

- Does the purchaser require access to the property for cultivating a part of the property prior to settlement?
- If so, on what terms is the vendor prepared to grant that access? For example, subject to an indemnity and/or appropriate public liability and workers compensation insurance.

## Enclosure permits

- Are there any enclosure permits associated with the land?
- If so, is an additional clause needed to require the vendor to transfer enclosure permits held in connection with the property to the purchaser.
- If included, such a clause should specify who will pay the transfer fees to the appropriate government agency.
- The vendor may also wish to include a provision providing that no objection, requisition or claim will be made by the purchaser if no permits are held by the vendor for any road or water course enclosed with the property.

## Livestock

- Are there currently livestock on the property?
- If so, does the purchaser wish to include a clause preventing the vendor from taking in or feeding upon the property any more stock than are on the property at the time of exchange.

## Onsite Sewerage Management System

- Is the property serviced by an onsite sewerage management system?

- If so, are there any additional clauses required regarding the system?
- For example, the vendor may wish to include a clause providing that the purchaser accepts the system in its present state and no claim for compensation will be made in any way arising from the existence or use of that system.

## Roads and access

- Does the vendor wish to include a clause providing that the purchaser must satisfy themselves as to the existence of rights of access to the property? For example, rights of access to the property over neighbouring property from any public road or over the property by the owners or occupiers of neighbouring property to any public road.
- Does the purchaser wish to ensure that if the vendor is permitted access to the property through adjoining property and such access is provided by means of locks to gates in series, the vendor must give the purchaser copies of any keys to those locks in its possession?

## Water rights

- Are there any water rights attached to the property, whether under the *Water Act 1912* (NSW), *Water Management Act 2000* (NSW), any other legislation or private agreement?
- If so, do the parties wish to establish a process for the transfer of those rights? Any such clause should address which party will be responsible for notifying the government agencies of the change of ownership.
- Is it appropriate for the vendor to warrant that he or she is not aware of any breaches of the *Water Act*, *Water Management Act* or regulations in respect of the property?
- Is it appropriate for the contract to state that the purchaser will not be responsible for the absence of any licence, permit or authority for bores, pumps, dams, levee banks and other works to which the *Water Act*, *Water Management Act* extends?

If these matters are to be addressed by way of additional clauses in the contract for sale, solicitors should draft the particular clauses to reflect the specific circumstances of the sale and the property.

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