

# Considerations Before Buying

## Rural Land

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### Introduction

Before buying rural land a buyer should fully assess the suitability of the land for its intended purpose. This includes assessing unseen potential issues such as chemical contamination or disease risks that the vendor is not legally obliged to disclose and which routine conveyance enquiries may not uncover.

Ultimately, it is up to the buyer and their solicitor or conveyancing agent to carefully inspect the property, examine the contract, and ask the right questions about the type of issues that could affect the use of rural land and the legal obligations of the new owner.

The intended use of the land should additionally be set out in the contract to purchase along with provisions to allow the contract to be terminated if enquiries or tests reveal unacceptable problems with the land. **Table 1** at the end of this document sets out a checklist intended to assist prospective purchasers of rural land.

### Information about rural land

Prospective buyers are strongly advised to apply to Local Land Services (LLS<sup>1</sup>) for a certificate under Section 203 of the *Local Land Services Act 2013* for rates, charges and other matters.

Once contracts have been exchanged, the buyer via their solicitor, can additionally write to the relevant LLS to request information about whether there are any 'adverse affectations' on the land, or other official orders or notices affecting the land and the implications of these. Any 'Restrictions on Land' will be recorded and will detail whether or not the property is currently in quarantine for any notifiable diseases, or chemical residues as per the *Biosecurity Act 2015*.

In addition, the buyer can also request extra information about the disease status of the land and with the Owners Authority, can get more of a historical picture of the status of the property in terms of notifiable diseases and chemical residues.

The LLS can also provide general advice about the following topics relevant to the area the land is located in:

- livestock health
- chemical residues
- pest animal populations
- obtaining a PIC
- natural resource management
- emergency (flood and fire) risks
- advice on the fees for any searches and certificates.

Some large properties may have specific production, biosecurity, animal welfare and /or disease control standards. Such programs are not generally binding on a new owner, but can provide additional assurance of on farm disease management practices and standards. Hence it may be worth asking the vendor whether the property's herd, flock or crops are covered by any 'market assurance programs'.

### **Figure 1: Flooding of a rural property**



*Photo: Mellissa Kahler*

Information on land titles and related matters can be obtained from the NSW Land and Property Information website.

It is important to consider the risk of floods, fire and other natural disasters to the proposed land. The NSW Rural Fire Service can provide advice on whether the land is designated as fire prone and Councils can usually provide information regarding the potential for flooding.

Laws governing the use of confidential and personal information, mean that the only information that can be released in response to such enquiries is either on the public record, or specifically authorised. Hence any request for more specific information such as the residue or disease status of the property must be accompanied by the vendor's written authority for the release of that information.

### **Chemical Residues**

The presence of chemical residues in animal and plant products can have a major impact on product marketability, and market access, so property risks should be carefully investigated.

Prospective buyers should ask the vendor if the land is subject to any order, notice, undertaking, restriction, prohibition or other 'adverse affectations' imposed under Schedule 6 of the *Biosecurity Act 2015* and inspect the property for evidence of potentially contaminated sites.

Items to check include:

- pesticide storage sheds
- used chemical drums or disposal sites
- diesel and fuel storage areas, buildings, yards or fences treated for termites

- current or abandoned dip sites and rubbish dumps, and
- abandoned or leaking transformers, capacitors and hydraulic equipment

Some residues can persist in soil for decades, including the following.

**Organochlorines (OCs)** - for a number of years OCs were used around buildings, yards, fence posts and electricity poles for termite control; on fruit, vegetables and crops for pest control; and in dips for controlling parasites on cattle and sheep (e.g. DDT, dieldrin and heptachlor).

**Arsenic** - was used in stock dips and on deciduous fruits. Heavy soil contamination with arsenic can inhibit the establishment and growth of some trees and other crops.

**Polychlorinated biphenyls (PCBs)** - were used in transformer oils, some hydraulic oils and electrical capacitors. Leakage from this equipment can leave contaminated 'hot spots'. The inadequate disposal of waste PCB oils, particularly on former coal mining or transformer service sites has resulted in more extensive contamination of such sites.

**Cadmium** - high levels of cadmium occur in some soils, particularly those which have been heavily treated with phosphate based fertilisers. Unacceptable cadmium residues can occur in some leafy and root vegetables grown in soils with high cadmium levels and in livestock grazed on such areas.

Soil can be tested for specified residues if the owner consents (see Primefact 316- *Management of organochlorine and related residues* and Primefact 320- *Testing soils for residues of persistent chemicals*.)

Buyers should also enquire about current and past agricultural practices on the property and in the district, such as intensive vegetable, fruit, cotton or tobacco production, all of which could increase the risk of soil residues.

Prospective buyers should also ask the vendor:

- whether their property identification code (PIC) is on a 'targeted testing list'
- if the property has a 'residue management plan', and
- for any other available information about the property's residue history.

### Livestock Diseases

Biosecurity is important because it protects our economy, environment and community from pests, diseases, weeds and contaminants. Everyone has a general biosecurity duty which is a key tool for managing biosecurity in NSW. The law requires that people must do what is reasonable to prevent, eliminate or minimise biosecurity risks.

The *Biosecurity Act 2015* provides obligations to report specific livestock diseases and impose obligations and controls on the sale or movement of livestock to and from affected properties. Disease protection zones may additionally be declared for specific parts of NSW to prevent the introduction or spread of specific diseases. Protection zones are currently in place in certain areas in NSW for footrot in sheep and for cattle tick in grazing livestock. These zones regulate the movement and sale of livestock into or out of the designated area.

Some livestock diseases can persist on contaminated land even if the property is de-stocked when sold (e.g. Johne's disease and anthrax). If the property sale includes stock then a wider range of diseases can carry over. Some of these are subject to regulatory control, such as footrot in sheep and enzootic bovine leucosis (EBL) in dairy cattle.

Prospective buyers should also ask about disease risks or problems in the stock and the control measures being used. Also check whether the land is subject to any order, notice, declaration, undertaking, authorisation or other 'adverse affectation' issued under the *Biosecurity Act 2015*.

## Plant diseases and pests

Vegetables, fruits, cereals and other crops are susceptible to a wide range of diseases and pests, some of which can be of particular concern. The *Biosecurity Act 2015* requires landholders to report specific pests and diseases and authorises their control. If required, inspectors can quarantine land and premises if they suspect a pest or disease of concern to be present.

Inspectors can also require owners or occupiers to comply with specified conditions under the Act; seize product; and order the destruction of infected plants including neglected fruit trees. If crops or fruit producing trees are established on the property, prospective buyers should research the types of pests and diseases that might occur and check the general health status of the plants against the list of likely concerns.

Some parts of NSW are declared as disease / pest management zones. Designated management zones are currently in place for:

- fruit fly in the Riverina and lower Murray - NSW Fruit Fly Exclusion Zone and Greater Sunraysia Pest Free Area
- bunchy top and panama diseases of bananas and banana aphid on the north coast - NSW Banana Protected Area
- phylloxera of grape vines - NSW is a Phylloxera Free Area except for the Sydney basin and a small area around Corowa (southern NSW)
- powdery scab, bacterial wilt and potato cyst nematode in seed potatoes in the northern, central and southern highlands - NSW Seed Potato Protected Areas
- diseases of rice in the Riverina and mid Murray - NSW Rice Pest and Disease Exclusion Zone

These controls may affect the marketing of fruit and vegetable produce and the movement of equipment or plant material. It is therefore worth researching the implications and asking the vendor about the disease and pest history and status of the property before committing to buy.

Some soil-borne pests, such as the Panama disease in Bananas, may persist for many decades, even in the absence of the host plant. Obtaining cropping history may provide useful background information about likely pests and diseases.

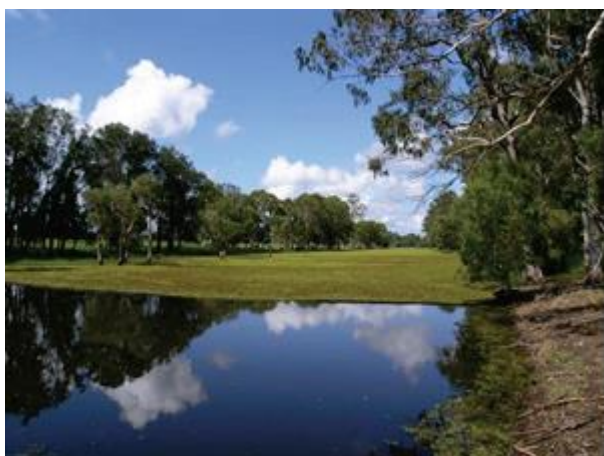
## Noxious weeds

When an occupier fails to comply with the obligations of the *Biosecurity Act 2015* to control declared noxious weeds, the local weed authority, usually the local council, may issue a weed control notice. This requires the occupier, at their expense, to carry out specified weed control work.

If this work is not done, the authority may initiate legal proceedings or carry out the work and recover costs from the occupier. These orders and associated weed control costs can transfer to a new owner, hence it is worth:

- checking any weed problems with the vendor
- applying to the relevant weed authority for a certificate stating whether any weed control notices are in force or any expenses are payable for the land.

**Figure 2: The aquatic weed *Salvinia molesta* in a river system near Grafton**



*Photo: NSW DPI*

The weed species declared noxious varies between Local Council areas and may change over time as new weed risks are identified. A complete list can be viewed on the DPI Weeds website.

Many common weeds that are not declared noxious can also affect productivity, quality, saleability of produce, or amenity of the property. Prospective buyers should therefore inspect the land for weeds or hire a consultant to do this. Unfortunately some weeds may not be evident at certain times of the year.

## Noxious animals and insects

The *Local Land Services Act 2013* requires landholders to actively control declared pest animals including rabbits, wild dogs, foxes and feral pigs and declared pest insects including plague locusts. The Act also authorises LLS to order rural landholders to control declared pest animals. An existing order extends to the new owner or occupier and places the same obligations on them.

Prospective purchasers can request LLS to provide a search certificate that:

- identifies any current (or past) pest control orders, and
- provides information on the status of the land regarding rates payable to LLS, and whether any orders have been issued in relation to the property under the *Biosecurity Act 2015*.

A fee is payable for such search certificates.

Prospective buyers (or their agricultural consultant) should additionally inspect the property for signs of pest animals and insect activity, and ask the current owner about any pest problems they experience.



## Mining and mineral exploration

Rural land may be subject to mining and exploration titles or applications under the *Mining Act 1992* or *Petroleum (Onshore) Act 1991*. Before buying rural land the prospective buyer or their solicitor should submit an 'application for search' and check the current cost of this with the NSW Department of Industry, Division of Resources and Energy.

An exploration title (exploration licence, petroleum exploration licence) is the most widespread form of mining authorisation affecting rural lands. An exploration licence gives the licence holder rights to explore for specific resources within a designated area, but it does not permit mining or production, nor does it guarantee a mining lease will be granted.

Exploration activities can only be carried out subject to a specific 'access arrangement' with the landowner\*. A mining/petroleum lease or pending application can have significant implications for the use of rural lands and should be carefully investigated before buying the affected property.

Mining leases are relatively uncommon except in well-known mining regions and cannot be granted without prior development approval under the *Environmental Planning & Assessment Act 1979*. This should be investigated with the relevant planning authority as part of routine pre purchase checks.

A further matter to be investigated when considering buying rural land within a current or former underground coal mining area in the Hunter Valley, Newcastle, Wollongong, Campbelltown, Central Coast, and Lithgow areas, is whether a property lies within a proclaimed Mine Subsidence District. Within Mine Subsidence Districts, the Mine Subsidence Board has the power to regulate surface land use by controlling land subdivision and establishing guidelines for the design and construction of building and utility services.

As part of the State's land conveyancing system, the Board issues certificates on request to prospective land purchasers. These certificates inform the purchaser:

- if the land is within a Mine Subsidence District
- if the Board's approval has been obtained for any improvements or alterations to improvements on the land, and
- if the improvements have been the subject of any claims for subsidence damage

\* Prescribed by Section 140 of the *Mining Act 1992* or Section 69C of the *Petroleum (Onshore) Act 1991*.

## Other conditions of land use

There are a number of other factors which could affect the cost of owning rural land and its future use. For example, the Carbon Farming Initiative and Emissions Reduction Fund can provide landholders with an opportunity to participate in various forms of carbon emission reduction and or sequestration projects.

In some instances, these can apply for periods of up to 100 years, so it is important that anyone intending to buy rural land determines whether or not any of these projects affect what can and can't be done on the land. The underpinning legislation is the Commonwealth *Carbon Credits (Carbon Farming Initiative) Act 2011* and the *Carbon Credits (Carbon Farming Initiative) Rule 2015*.

The best place to find out more information is the Clean Energy Regulator (CER). The CER maintains an **Emissions Reduction Fund Project Register** and any prospective buyer of rural land should check this Register to determine whether there is a legally binding carbon project that concerns the land.

There are also various forms of environmental agreements that can affect rural land in NSW. In some cases these agreements have existed for many years and which legally bind existing and new owners under various legislative instruments, including through a conservation agreement that is registered on the title for the land affected by the agreement. This can be checked through a title search.

In addition the land may be subject to the following agreements:

- A Natural Resource Management Agreement with the LLS
- Australian Government On farm Irrigation Efficiency Program
- Box Gum Grassy Woodland Stewardship Program agreements

More recent environmental agreements, such as the **NSW Biodiversity Banking and Offsets Scheme**, may also concern the land. This scheme was established to help address the loss of biodiversity values, including threatened species. While any agreements within this scheme that bind future owners of the land will be registered on the title for the land affected, there is also a **Bio Banking Public Register** maintained by the Office of Environment & Heritage that should be searched before a contract to buy land is entered into.

Some additional considerations that should be made prior to purchasing rural land include:

- Most rural land is subject to annual LLS rates, as well as local council rates. Additional rates and fees apply in the western division.
- Buyers of crown leases should be aware of the special conditions and obligations which apply.
- Many farming industries are subject to licensing and other legal requirements designed, for example, to assist disease control, allow trace-back of produce, provide for orderly marketing arrangements or protect the environment.
- High levels of certain chemical residues in soils can impose constraints on where a house can be built.
- Some agricultural developments may additionally require council consent such as subdividing rural lands, constructing a dwelling, or developing an intensive farming operation.

Prospective rural landowners should familiarise themselves with these requirements before committing significant financial resources with the expectation of undertaking an agricultural enterprise.

Further information may be sought from; the local council, Office of Environment and Heritage, Local Land Services and other Government agencies as outlined in the attached **Table 1**.

## Enterprise planning

There are many features of agricultural land that can significantly affect the land's suitability, productivity, amenity and value as well as the costs and likely financial returns from agriculture. These include:

- natural features such as climate, topography, soils, water availability, and natural vegetation
- flood, bushfire and climate change risks
- infrastructure and other improvements such as road access, sheds, yards, fences, water and power supply
- established crops, plantations, aquaculture or horticulture
- the overall farm layout and farm planning required / undertaken
- options for selling farm produce, transport options, marketing costs, and
- enterprise requirements, farming techniques, business management requirements and local support services.

The suitability of the property resources, the sustainability and marketing prospects and the profitability of any proposed agricultural enterprise should be closely examined before buying rural land to farm or graze.

Information on the productivity and potential use of a property can be obtained by engaging an agricultural consultant with relevant experience or by completing various rural / farm training courses.



**Table 1: Sources of property information**

(This checklist is a guide only. It is not exhaustive or applicable to every rural property)

<b>Things to consider when buying rural land</b>	<b>Sources of Information</b>
<b>Chemical residues</b>	
<b>History and current status of property</b>	Vendor
<b>Official orders and notices<sup>2</sup></b>	Local Land Services <sup>1</sup>
<b>Presence of contaminated sites</b>	Vendor, property inspection, Office of Environment and Heritage, Local Land Services, Local Council
<b>Constraints on development and land use</b>	Office of Environment and Heritage, Local Land Services, Local Council – planning framework
<b>Advice on programs and problems<sup>3</sup></b>	Local Land Services (animals)
<b>Soil Testing</b>	Agricultural consultants, NSW DPI, Analysts
<b>Livestock diseases</b>	
<b>History and current status of property</b>	Vendor
<b>Livestock disease zones</b>	Local Land Services
<b>Official orders and notices<sup>2</sup></b>	Local Land Services
<b>Advice on programs and problems<sup>3</sup></b>	Veterinary surgeons, publications
<b>Plant diseases and pests</b>	
<b>History and current status of property</b>	Vendor
<b>Quarantine pest control zones</b>	NSW Department of Primary Industries <sup>3</sup>
<b>Advice on programs and problems<sup>3</sup></b>	Agricultural consultants, publications, DPI web for legislation, biosecurity, production systems, pests and diseases
<b>Noxious weeds</b>	
<b>Presence of noxious weeds</b>	Property inspection, vendor
<b>Weed control notices<sup>2</sup></b>	Local Council or weed authority
<b>Advice on programs and problems<sup>3</sup></b>	Local Council, agricultural consultants, publications, Regional Weed Advisory Committees (RWAC)

<b>Noxious animals and insects</b>	
<b>Presence of noxious animals or insects</b>	Property inspection, vendor
<b>Outstanding control orders<sup>2</sup></b>	Local Land Services
<b>Advice on programs and problems<sup>3</sup></b>	Local Land Services publications
<b>Mining and mineral exploration</b>	
<b>Current mining / exploration authorities</b>	Vendor, NSW Department of Industry – Mineral Resources and Energy
<b>Subsidence issues</b>	Mine Subsidence Board
<b>Things to consider when buying rural land</b>	<b>Sources of Information</b>
<b>Other conditions of land use</b>	
<b>Zoning, building approvals, easements, covenants, resumptions, development consent</b>	Local Council in the first instance, NSW Land and Property Information, The Clean Energy Regulator
<b>Controls on clearing native vegetation</b>	Local Land Services
<b>Legal access to water</b>	Office of Water
<b>Rates, crown leases</b>	Local Council, Local Land Services Western Lands Commission (if in western lands zone)
<b>Enterprise planning</b>	
<b>Natural features</b>	Property inspection Local knowledge and records Agricultural / environmental consultants, analysts Local Land Services
<b>Infrastructure availability</b>	Vendor
<b>Reliability of electricity and phone services</b>	Boring contractors, irrigation suppliers, Soil Services Electricity suppliers, communication suppliers
<b>School bus &amp; medical services</b>	Neighbours, local council.
<b>Enterprise Options and requirements</b>	Property Inspection Vendor / Neighbours / Landcare groups

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Agricultural consultants, Rural suppliers  
Advisory publications, books, magazines, newspapers  
NSW Department of Primary Industries short courses,  
seminars and field days TAFE colleges, adult education  
centres,  
Industry associations.  
Business enterprise centres

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<sup>1</sup> For Local Land Services visit [www.lls.nsw.gov.au](http://www.lls.nsw.gov.au) .

<sup>2</sup> Official orders and notices may only be disclosed on written request and after exchange of contracts.

<sup>3</sup> Government agencies and local authorities can only provide general advice relating to the district unless the current owner gives written permission for the release of specific information about their land.

## More Information

The NSW DPI website contains information on the broad range of issues highlighted in this factsheet. Visit [www.dpi.nsw.gov.au](http://www.dpi.nsw.gov.au) to search the site for your specific information.

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