

Update

Cristina Canal - a senior associate in the Commercial Property team provides an overview of recent property related matters



1. OIC update – Farmland

Earlier this year, the Overseas Investment Amendment Act 1998 and its associated regulations came into force. A brief explanation of the main features of the new provisions can be found on the OIC's website at www.oic.govt.nz/newrules.htm.

One of the major changes is the way the OIC now deals with farmland. Farmland generally covers land used for traditional farming, horticulture and agriculture. It is interesting to

note that farmland does not include forestry blocks or hobby farms.

The new rule means that no approval to overseas investments in farmland will be granted unless the farmland has been offered for sale on the open market to New Zealanders.

The procedure for offering farmland on the open market includes advertising the property for sale. There is a minimum period of 20 working days that the property must be advertised.

2. New ADLS lease is released

The ADLS (4th Edition) lease has been released. We are currently involved in leasing transactions using the new lease. We will report on initial reactions of our landlord and tenant clients to the new lease in the next leasing newsletter.

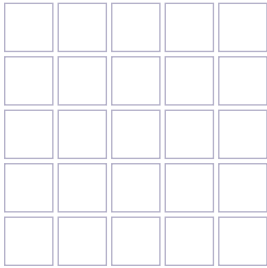
In the meantime, we summarise the main changes to look out for:

- either party can initiate a rent review;
- rent cannot fall below the rent payable at the commencement of the current lease term;
- outgoings have been broadened to include, for example, management fees and security costs;
- indemnity and insurance provisions have been extended;
- improvements rent will only be payable by the tenant until the next rent review date;
- no directors' guarantees are required on assignment; and
- carparks are now leased to the tenant (as opposed to being licensed) to assist in compliance with FBT rules.

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Commercial Property

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3. eDealings to revolutionise property law

Electronic registration is on its way. All land title districts in New Zealand now offer electronic title searching at www.landonline.govt.nz.

Soon it will be possible to lodge routine dealings such as discharges of mortgages, transfers and mortgages electronically. eDealings will allow real time updating of the register and registrations will be able to be completed immediately following settlement.

As part of the project to have titles and eDealings on line, there will be a phasing out of duplicate certificates of title. This is expected to take effect on 14 October 2002.

We will keep you updated on progress of the start-up of eDealings.

4. The PPSA and its application to land

The Personal Property Securities Act 1999 is now in force. The PPSA applies to security interests in personal property and this does not include land. This means that the PPSA has little impact on real property.

If you are dealing with property that might be personal property for the purposes of the PPSA, for example, a serviced office lease which includes chattels, we are happy to discuss with you how to best protect your interests. For further information on the PPSA generally, visit our website at www.bellgully.com.

5. New legislation alert – Local Government (Rating) Act 2002

The Local Government (Rating) Act 2002 replaces the Rating Powers Act 1998 and is just about to come into force. The Act is intended to update and simplify existing rating powers to coincide with the modernisation of local authorities.

The main changes to be aware of are:

- owners of land rather than occupiers will be liable for payment of rates. This will impact on landlords who will need to ensure that their leases adequately cover reimbursements of rates from tenants;
- there will be clarification that land comprised in each individual certificate of title will be separately rated;
- the local authorities will have the power to exempt payment of rates or to postpone payment of rates under publicly stated policies; and
- local authorities will be granted the power to raise funds from the community generally and also have the ability to target specified groups of rate payers.

6. What's happening to the proposed new legislation to protect subcontractors?

Currently, the answer is not much.

The Construction Contracts Bill emerged following the collapse of a number of construction companies such as Goodall ABL Construction in Auckland and Voss Construction in Wellington. The expectation was that it would come into force at the beginning of 2001. The Bill is largely directed at facilitating the movement of cashflow through the construction industry by ensuring timely payments of progress claims for construction contractors. The Bill gained further momentum following the collapse of Hartner Construction later in 2001.

However, the Bill, which was initiated by Laila Harre, seems to have stalled in its progress through the House following the break up of the Alliance at the end of the last Parliamentary term. The Bill remains "alive" but it is not clear who will champion it in the new Government or indeed what priority it will have.

The Bill, when (and if) enacted, will apply to all construction contracts entered into or renewed for a further term after the Bill comes into force. We will keep you updated with progress.

**"Standards
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Conditions of
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7. New NZS form construction contracts

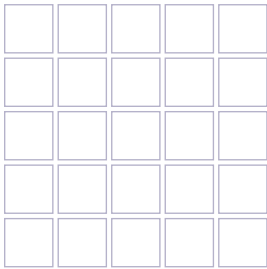
Standards New Zealand is updating its Conditions of Contract for Building and Civil Engineering Construction known as NZS 3910.1998.

Proposed changes include:

- revised insurance provisions;
- new provision for contractor design elements (including options for contractor Professional Indemnity Insurance);
- additional provisions to cover the situation where the contractor is obtaining building consents; and
- code compliance certificates and requirements for quality management systems.

An adaptation of this new contract has also been developed – to be called NZS3916 - to include design/build terms and includes the concepts of 'Principal's requirements' and (as an option) provisions for consultants.

The new documents are currently in draft and are expected to be released in final form at the beginning of next year.



“A number of properties and buildings are proposed to be subject to a plan change by the Auckland City Council...”

8. Auckland City Council Plan Change – Historic Places Register

A number of properties and buildings are proposed to be subject to a plan change by the Auckland City Council that will classify them as places of special value or places that are subject to Heritage Orders. These properties include:

- 9 Acton Place, Avondale (Charles Grey’s home);
- 1 – 3 Exler Place, Avondale (Exler’s House);
- 74 Gillies Avenue, Epsom (Alfred Kidd House);
- 249 – 259 Gillies Avenue, Epsom (Melville Park- Stone Walls / Posts/ Steps);
- 136 Grafton Road, Grafton (Trinity College, Whitecliffe Art School);
- 260 Great South Road, Greenlane (Simpson House);
- 197 – 211 Greenlane West, Cornwall Park (Huia Lodge);
- 539 Mt Albert Road, Three Kings (Ranfurlly Veterans’ Home);
- 2 Mt Eden Road, Mt Eden (Grafton Library);
- 20 Park Road, Grafton (Towers & Gates to Auckland Domain);
- 30A – E St Benedict Street, Newton (The Stables);
- 18 St Georges Road, Avondale (Whau Hall);
- 20 St Georges Road, Avondale (Hollywood Theatre);
- 9 Wharua Road, Remuera (Shera House);
- 40 Wood Street, Ponsonby (Private Residence).

If you are interested in finding out more information about any of these properties, please contact us.

For further information, please contact:

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