



**FUTUREFARM™**  
BEEF + LAMB NEW ZEALAND

# NEGOTIATING THE FUTURE FARM LEASE

## *Key Learnings - 01*

The B+LNZ Future Farm (Lanercost) is a leased farm. Its leased by a partnership comprising B+LNZ and two North Canterbury farmers.

Negotiating a Lease agreement was new for many involved and an opportunity has been identified to share some learnings from the experience.

### **Key Messages**

- Communication, communication, communication
- Assembling the right team of trusted advisors to guide and support you through the process is important. For example; Farm consultant, Accountant, Legal
- Due diligence should include making sure the right farm is matched to the right lessee
- Have a robust operational plan for the intended farming system on the property you intend to lease
- Clarity is critical when defining the intent and expectations of both parties when negotiating a lease
- Requiring expert advice will incur cost but you can help to keep these down by doing as much pre-work yourself
- Document the condition of the property and assets at the start of the lease including timestamped photographs
- Identify the key points where things could go wrong in the lease/relationship and ensure these are well articulated in the lease agreement.

### **Trusted advisors and assembling the right team**

A legal and accounting team can help identify the optimal legal structure to protect your business and if relevant optimise tax obligations and manage risk.

The **legal team** will provide clarity of obligations of you during and at the end of the lease period. The legal team can advise appropriate lease structure to protect your assets and investments.

The **accounting/financial team** provide structure and clarity of revenue and expenditure elements, financial modelling and tax obligations. Evaluate a range of scenarios for changes to income and expenditure.

The **farm advisor/consultant** can develop an enterprise model and its evolution for the duration of the proposed lease term. A farm advisor can help identify opportunities, risks and threats in the proposed farm system model. It is strongly recommended that the farm consultant you have on your team is experienced in environmental sustainability elements relevant to your proposed enterprise model and the location of the property. You need to consider any potential environmental and sustainability factors on your proposed system model, prior to completing the lease process.

*A great lease requires good planning to ensure the expectations of both parties are clear, achievable and meet their needs.*





## Choosing the right farm and lessee

Patience and being prepared to wait for the right property will impact positively on your leasing experience.

Talk to people in the district and those outside of the district who have experience of farming in the region or similar systems. Familiarise yourself with the environmental regulations and regional plan to understand any long-term implications. Council websites or freephone will provide appropriate contacts for the region. Remember, there is no such thing as a silly question.

Meet and spend time with the lessor, they are an important part of the future success of your business. Do they understand what you want to do with the farm, and do you understand why they are leasing the property?

Sitting down with the other parties in a lease right at the beginning of the process is a good idea. Both partners can then talk through what is important to them and come to a tentative agreement on many things like:

- The physical features of the farm and any constraints (for example, some land owners will specify that the farm cannot run bulls)
- Who will cover the rates and insurances
- The approach that the parties will take to fertiliser, repairs and capital improvements
- Identifying which buildings and chattels are included or excluded.

This process is sometimes known as a “Heads of Agreement” and is not legally binding but always check with your lawyer before you agree to anything. Having a good open conversation at this early stage can save lots of time, money and confusion throughout the process. It is useful to have someone experienced in farm leases (like a farm consultant) facilitate the conversation.

As a lessee you are paying rent to occupy the land from the lessor (normally the owner) to operate your business. The lessor could have a strong and deep connection to the property, and it is their asset they are interested in maintaining and protecting.

## An Operational plan

Lease tenure will have an impact on the enterprise model (farming system) you may choose. In the example of the B+LNZ Future Farm, there is a strong commitment to farming sheep and beef sustainably in hill country conditions. The business plan is for a sheep and beef breeding/finishing farm, operating in the high-performance range for environmental sustainability, economic, people, animals and forages.

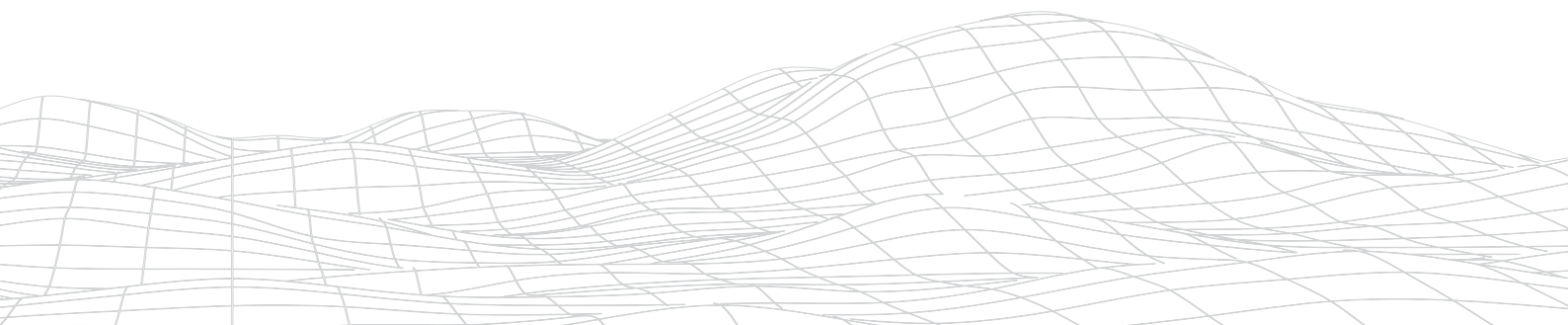
A detailed operational plan was developed with projected numbers, forecast feed requirements and projected performance. This plan was important when reviewing the lease to ensure the proposed farming system could be sustained not only within the productive capacity of the farm, but also within the confines of the lease

Develop an annual operational plan for your business, including repairs and maintenance, and capital expenditure. Separate out the areas which reference expenditure or activity relating to lease obligations and ensure these are clearly identified and shared with the lessor. Include in this plan what is going to be undertaken, when it will happen, who is going to do and importantly pay for this.

## Clarity of intent and expectations - The Lease

Communication, communication, communication....

The lease document itself is usually prepared by the legal teams acting on behalf of the lessee and lessor. There are parts of the lease which specify obligations and commitments which may constrain operations. Subsequent clauses of the lease which deal with how obligations and commitments of the agreement are interpreted and enforced. It is recommended you use your legal team to guide you through this process to clearly identify what this means for your business.







**Common clauses found in a lease include:**

**Permitted Use** - it is very important to have clarity and scope of the intended activity you wish to undertake on the property. This may also need to be checked against consent requirements or environmental regulation. The Lessor wishes to retain access to the property, for example for hunting, it should be clearly indicated and include conditions by which they agree to abide by. This may include timing, notice period to the team, adhering to farm policies.

**Maintenance and husbandry of premises** - It is important both parties are clear on the distinction between what is maintenance versus capital improvement. You should then aim to agree on who will pay for what upfront. A common issue can be where a lessee makes capital improvements then aims to recoup these from the lessor. A photo log of condition at the outset may be useful.

**Fertiliser** - This requirement should be set relative to the land use. It is normal for a land owner to expect evidence that these requirements are being met at agreed intervals. Current fertility should be considered along with lease obligations when assessing the farm suitability.

**Rent review periods** - dates for rent review need to be agreed by both parties. Consider seasonal cashflow as part of this process. A clear mechanism of how the rental will be assessment is required. How will the value be assessed as high, low or just right?

**Outgoings** - be very clear as to who is responsible for outgoing and how these are handled e.g. rates, licenses and agreements relating to the land. The registered owner of the land will have obligations and any apportionment of obligations by the lessee needs to be clearly stated in the lease.

**Insurances** - Get specialist advice. Ensure clear understanding of lessee and lessor obligations for insurance relating to property, infrastructure, public liability etc. Significant events (earthquakes, floods etc) can have immediate impact on the productive capacity of a farm. Your trusted team (legal, financials, farm advisor) will help you identify how these risks are managed in a policy sense.

**Resource consents** - Who is responsible if a resource consent is required? Who's responsibility to ensure it remains current? How will compliance be monitored? If the terms of the consent/s are breached, who is responsible for the resulting claims or losses incurred? This area needs to be carefully considered and responsibilities clearly established.

**Reinstatement** - Starting with the end in mind. As lessee there will be obligations throughout the lease for

maintaining the productive capacity and health of the land, or protection of special features of the land. There will also be obligations for the end of the lease, such as quantity of residual feed, forage crops and pasture condition available at termination date. Lock these obligations into a cycle of annual planning to align with crop rotations. Include triggers in your annual planning to consider livestock numbers at critical dates and contingency planning for extreme weather events (drought, flood etc.). Plan towards critical phases within your lease duration to avoid unplanned interruptions to workflow.

It is recommended you carefully review the **Definitions** clause in the proposed lease agreement, as this records the agreed definition of technical and operational elements of the proposed activity (e.g. Dry Matter, Outgoings, Improvements etc).

**Summary**

The lease is a binding document - once it is signed there is no going back so it is very important to get it right the first time.

All issues and concerns need to have been acknowledged, discussed and resolution reached prior to signing the lease.

Have an open mind and consider what future implications could emerge over the life of the lease. Have a good understanding of clauses like; rent review, outgoing, insurances, maintenance and husbandry of premises, reinstatement, regional or geographical restrictions.

**Key Words**

**Lessee** - A person who holds the lease to a property; the tenant.

**Lessor** - A person who leases or lets a property to another; a landlord.

**Enterprise model** - A farming system model; the combination of sheep and/or beef, and their status within the farming business as either breeding, finishing, grazing or trading stock. How livestock are structured and organised to generate revenue (output), and the resources (inputs) required to sustain production creating costs and the sum of the two is profit.

**Business plan** - A document setting out a business's future objectives and strategies for achieving them.

**Operating plan** - A detailed plan, often broken down into components, defining actions required to support the strategic objectives.



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