

## Farm Leases

### **A farm lease can provide a mutually beneficial arrangement for landowners and tenants, alike. Having a farm lease in place, reflecting the intentions of the parties, is key.**

Leasing can offer a wide array of benefits to both the landlord and the tenant. For the owner of farmland wanting to retire from their farming career, leasing all or part of a farm can offer an ongoing steady income, while retaining the land. For a tenant, a farm lease can provide the opportunity to build an asset base through the farming enterprise without the initial cost of a land purchase.

Farm leases can also be a key part of succession-planning. Leasing offers inter-generational farming families a way to bring children into the farming business, while they build up their asset base through stock and plant.

No matter the reason for entering into a farm lease, a well-drafted lease agreement is vital. This article covers the key factors that should be considered when negotiating a farm lease, and who should be included in that process.

#### **Key Issues to consider when negotiating a farm lease**

All leases should be recorded in writing and signed by the parties to the lease. To ensure that the lease is robust and fit for purpose, the following matters should be considered during negotiation and included in the lease:

- **Description of the Lease Land** – the description included in the lease should be sufficient to allow a stranger to identify the location of the property leased. Ideally the description will include a map, address, legal description, and specifics as to

which parcel of land is being leased. Excluded areas should also be identified (for example the farm homestead).

- **Guarantee** - it is standard practice to include a personal guarantee from the directors of a company, where it is a company entering into a lease. Alternatively, a bank guarantee may be required (also known as a bank bond), which is a written promise by an institutional bank to pay a specified sum to the landlord if the tenant is in arrears or otherwise in default under the lease. The parties should discuss the requirement for a guarantee upfront.
- **Permitted Use** – the terms of the lease should clearly define the permitted and prohibited uses of the property. For example, will there be a restriction on what sorts of animals may be farmed on the property? Will the tenant be allowed to shoot on the property?

All land is assigned a zone by the relevant local or territorial council which determines the use to which that land can be used. Prior to commencing negotiation of a farm lease the landowner should check that the proposed use of the property is permitted under the relevant local council planning rules. The landowner should also ensure there is nothing recorded on a record of title for the property that affects the ability to use the property in a particular way.

- **Term and Duration of the Lease** – the lease should include clear start and end dates and record any options for the tenant to extend or renew the lease. When negotiating the length of a lease the parties should consider whether lease dates appropriately align with the use of the land. For example, if the lease is for a dairy farm, it may be appropriate to set the start and end dates of a lease around major dates in the farming calendar such as Moving Day. On the other hand, if the lease is for an orchard, such as apples or kiwifruit,

---

**Farm Leases**  
(Continued)

the parties may wish to have a term that fits around the harvesting and processing schedules of the relevant crop.

- **Rent and Outgoings** – a lease should clearly record what rent is payable and when. It should also clearly record who is responsible for outgoings such as rates, insurance, maintenance of the property, and other incidental costs relevant to the area leased.
- **Rent Reviews** – the lease should include a clear mechanism for how rent is to be reviewed, and when. The parties should also consider whether the new rent will be set by undertaking a market review of rent, by a CPI adjusted rate or other mechanism and at what stage of the lease this will occur.
- **Good Husbandry** – farm leases commonly include good husbandry clauses which set out the tenant's obligation to keep the land in good repair, conduct general farm maintenance, stock the pasture on the land, fertilise or top-dress the land, adequately clear weeds, rabbits and vermin from the property, cultivate and manage the land in accordance with accepted farming practices, and comply with all legislation that is relevant to the use of the property.
- **Health and Safety** – the Health and Safety at Work Act 2015 (**HSW Act**) places obligations on the Person Conducting a Business or Undertaking (**PCBU**) to secure the health and safety of workers and minimise risks in the workplace. Both a landlord and a tenant can be considered a PCBU for the purposes of the HSW Act. The lease should, where appropriate, confirm that the tenant is the 'PCBU' on the land for the purposes of the HSW Act, and the lease should include a warranty from the tenant that they have and will maintain a health and safety management system applicable to the type of work to be carried out on the land.
- **Biosecurity and Pests** – lease negotiations should

give specific consideration to the use of the property relative to the specific biosecurity matters that may affect the property during the term of the lease. Many leases will contain a general obligation on the tenant to comply with the relevant biosecurity legislation, however, where the type of farming increases the risk for certain issues, for example, dairy farms and grazing and mycoplasma bovis or kiwifruit orchards and Psa, there should be specific obligations on the tenant to comply with the legislation relevant to those specific matters, in addition to a general obligation.

- **Farm Environmental Management Plan (FEMP)** – all farms are required to have a FEMP by 2025 and it is the obligation of a landowner to ensure that any use of their property for farming has and is compliant with a FEMP. However, where there is a farm lease in place, there should be clear provisions in the lease as to whose responsibility it is to prepare and comply with the FEMP and who bears the costs of compliance. The lease should also contain a warranty from the tenant to the landlord that it will comply with the FEMP including monitoring and reporting obligations, will indemnify the landlord for any cost arising out of non-compliance, and will provide the FEMP to the landlord for its approval, if required.
- **Resource Management** – the parties need to carefully consider and establish their respective responsibilities in respect of any resource management matters affecting the property. For example, if the tenant is to have the benefit and use of the landowner's consent(s) then the responsibility and liability relating to adherence to the terms of the consent(s) needs to be recorded in the lease.

Where additional consents are required to enable the tenant to use the property for the permitted use, for example, if a discharge consent is required to

---

## Farm Leases (Continued)

discharge dairy shed effluent, or a water take consent is needed to take and use water, the lease should record the party responsible for obtaining and complying with the terms of the consent. A landlord should include a provision regarding the assignment of any consents or permits back to them at the end of the lease.

- **Hazardous Substances** – in addition to resource management considerations, if applicable, leases should also set out what responsibility the tenant has in respect of the storage of hazardous substances on the property and clean-up of contamination (if any).
- **Assignment and Subleasing** – the parties should consider whether the tenant may assign the lease (i.e. another party takes over the tenant's obligations under the lease) or sublease the premises (effectively the tenant takes on its own tenant, while retaining its obligations to the landlord). Generally, a lease will contain a provision that the tenant needs to obtain the landlord's consent to any assignment or sublease (not to be unreasonably withheld). However, the inclusion of such provisions should be considered on a case by case basis.
- **Insurance** – the lease should include an obligation on the tenant to hold and maintain public liability insurance, and what level of cover is required.
- **Reinstatement** – the lease should record the obligations of the parties at the end of the lease: will the tenant be required to leave a quantity of residual feed and a specific level of grass cover at the end of the lease? Will the landlord have any obligation to pay the tenant for any capital improvements to the property, or to purchase any farm machinery? These matters should be considered at the outset of the lease so that there can be a smooth transition of the property back to the landlord at the end of the lease.

### Advice in the negotiation of a farm lease

Ultimately a lease is between a landowner and a prospective tenant, and the relationship of those parties is paramount to success. Having a well drafted lease which addresses the parties' intentions prior to the start of the relationship will help to minimise misunderstandings and disputes.

Anderson Lloyd can assist with the negotiation and preparation of a lease agreement. We can also assist with any legal issues that may arise during and at the end of the lease.