

# **Crown Pastoral Land Tenure Review**

**Lease name: KILLERMONT**

**Lease number: PO 207**

## **Substantive Proposal - Part 2**

The report attached is released under the Official Information Act 1982.

**June**

**06**

Appendix 5: Easement in Gross in favour of AgResearch Limited

BETWEEN  
THE COMMISSIONER OF CROWN LANDS  
A N D  
AGRESEARCH LIMITED

GRANT OF EASEMENT

gallaway cook allan  
LAWYERS

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THIS DEED is made the \_\_\_\_\_ day of \_\_\_\_\_ 2006

BETWEEN THE COMMISSIONER OF CROWN LANDS at Wellington ("the Grantor")

AND AGRESEARCH LIMITED at Hamilton (together with its successors and permitted assigns "the Grantee")

### BACKGROUND

- A The Grantor is the owner of the Land described in Clause 1 of the Schedule ("the Grantor's Land").
- B The Grantee is the owner of the Land described in Clause 2 of the Schedule ("the Grantee's Land").
- C The Grantee wishes to use part of the Grantor's Land for the purpose of conveying water across the Grantor's Land.
- D The Grantor has agreed to grant to the Grantee an easement over the Grantor's Land on the conditions set out in this Deed.

### TERMS OF THIS DEED

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1. In this Deed (including the Schedule)

"Deed" means this deed, the background and the Schedule;

"Easement Land" means those parts of the Grantor's Land marked "A" and "B" on Plan SO 359037 within which the Grantee may exercise the rights granted by this Deed;

"Grantee" includes the Grantee's servants, agents, employees, workers, invitees, licensees, lessees or tenants and contractors;

"Lessee" means the lessee in the Pastoral Lease;

"Works" means: conduits, pipes and any ancillary equipment in relation to the water race belonging to the Grantee on the Grantor's Land;

"Pastoral Lease" means pastoral lease No. P207 (as varied) which was granted pursuant to section 83 of the Land Act 1948 and is comprised and described in certificate of title OT386/146 (Otago Land Registration District).

##### 1.2. In the interpretation of this Deed unless the context otherwise requires:

- (a) the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Deed;
- (b) references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw.

bylaw as from time to time amended and includes substitution provisions that substantially correspond to those referred to and;

- (c) the singular includes the plural and vice versa and words incorporating any gender shall include every gender.

## 2. GRANT OF EASEMENT

2.1. Pursuant to section 60 of the Land Act 1948 the Grantor grants to the Grantee, for a term of 25 years commencing from the date of the execution of this Deed the following easement:

- (a) The right to from time to time and at all times to take and convey water by way of a water race through over and under the Easement Land in terms of a right to convey water appurtenant to the Grantees Land as defined by the 4<sup>th</sup> Schedule of the Land Transfer Regulations 2002 ("the 4<sup>th</sup> Schedule") together with all such rights and obligations that attach to such an easement for the right to convey water as contained in the 4<sup>th</sup> schedule except where such rights and obligations conflict with the terms of this Deed then the terms of this Deed shall prevail.

- (b) The provisions of the 4<sup>th</sup> schedule are modified by the addition of the following:

"Any maintenance repair or replacement of the easement facility on the servient or dominant land that is necessary because of any act or omission by the owner of the servient land or the owner of the dominant land (which includes agents, employees, contractors, sub-contractors and invitees of that owner) must be carried out promptly by that owner at fault and at that owner's sole cost.

Where that act or omission is the partial cause of the maintenance, repair or replacement the costs payable by that owner responsible must be in proportion to the amount attributable to that act or omission (with the balance payable in accordance with clause 11 of schedule 4)."

- (c) The right from time to time and at all times to enter, exit, pass and remain on, under or over such part of the Grantor's Land as is reasonable for the exercise of the rights granted under this Deed from time to time and at all times for all purposes reasonably necessary for the exercise of the rights granted under this Deed with or without vehicles or machinery necessary for such purposes but subject to the limitations expressed in this Deed.

- (d) The rights granted under this Deed are non-exclusive and are exercisable in common with the Grantor and any other person having similar rights either now or in the future.

## 3. CONSIDERATION

3.1. In consideration of the grant of easement in this Deed:

- (a) The Grantee shall pay the Grantor the sum of one dollar (\$1.00) for the grant of the water easement.
- (b) The Grantee shall observe the obligations imposed on it under this Deed.

4. **REGISTRATION**

- 4.1. This Deed shall be registered pursuant to section 60 of the Land Act 1948 at the Grantees request and all parties will do all that is necessary for the registration of this Deed at the required time.

5. **WAIVER OF COMPENSATION BY LESSEE**

- 5.1. The Grantee has obtained from the Lessee a waiver of the Lessee's right to payment of compensation from the Grantor pursuant to section 60(1) of the Land Act 1948 in respect of the grant of easements in this Deed.

6. **OBLIGATIONS OF THE GRANTEE**

- 6.1. The Grantee shall when on the Grantor's Land (subject to Clause 2.1 (b)) of this Deed:
- (a) Wherever possible remain on the formed roads and tracks and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads.
  - (b) Immediately after passing through any gates, close such of them as were closed and lock such of them as were locked immediately before such passing through.
  - (c) Take all reasonable precautions for guarding against any danger (including, but without limitation, fire, physical damage or disease), and in particular shall (but without limiting the general obligation to take full and proper precautions pursuant to this Clause 6.1 (c)) comply with all conditions that may be imposed from time to time by the Grantor or any lawful authority.
  - (d) Ensure that as little damage or disturbance as possible is caused to the surface of the Grantor's Land and that the surface is restored as nearly as possible to its former condition and any other damage done by reason of the activities permitted on the Easement Land by this Deed is similarly restored.
  - (e) The Grantee shall only enter onto the Grantor's Land pursuant to this Deed without notice for routine matters such as water flow monitoring minor and routine matters in relation to complying with the terms of the various Resource Consents for the taking of the water and minor and routine maintenance of the water race. Where the maintenance required is not of a minor nature nor routine, the Grantee shall give reasonable prior written notice **EXCEPT** in an emergency where the Grantee may enter without notice if necessary provided that subsequent notice is given as soon as practicable. In both cases notice shall be given to both the Grantor and the Lessee.
  - (f) The Grantee shall, at its cost, repair to the satisfaction of the Grantor any part of the Grantor's Land, including the tracks, fences, gates, drains, buildings or other structures, which is damaged directly or indirectly by the Grantee.
- 6.2. The Grantee shall compensate the Grantor for any loss suffered by the Grantor resulting directly or indirectly from the actions of the Grantee.
- 6.3. The Grantee shall at all times in the exercise of the rights set out in this Deed not obstruct or hamper the Grantor, or any agents, employees and contractors of the Grantor or the Lessee, in its normal or reasonable use of the Grantor's Land.
- 6.4. The Grantee shall not at any time except with the prior written approval of the Grantor carry out any activity which is not included within Clause 2 of this Deed on

*[Handwritten signature]*

the Grantor's Land, or do any other thing which would affect the ability of the Grantor to use the Grantor's Land.

6.5. The Grantee shall comply at all times with all statutes and regulations and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Deed.

6.6. The Grantee shall be responsible for using its best endeavours, to prevent the Works from becoming a danger or a nuisance.

## 7. OWNERSHIP OF STRUCTURES

7.1. All structures and Works placed by the Grantee on the Easement Land for the purposes of exercising the rights of the Grantee created by this Deed will remain the property of the Grantee and no part of them will become a fixture on the Grantor's Land.

7.2. The Grantee will, on the expiry of the term granted or sooner determination of the rights created by this Deed, remove all structures and Works from the Easement Land within one month and will restore the Grantor's Land as nearly as possible to the condition that it was in at the commencement of this Deed.

7.3. If the Grantee has not taken the steps set out in Clause 7.2 of this Deed within the specified time, the Grantor may remove all structures and Works from the Easement Land and restore the Grantor's Land as nearly as possible to the condition that it was in at the commencement of this Deed and recover all costs incurred from the Grantee.

## 8. COSTS

8.1. The Grantee shall bear all reasonable costs and expenses (including the Grantor's legal costs) in relation to the preparation and enforcement of any provisions in this Deed.

8.2. The Grantee shall be solely responsible for the registration (if any) of this Deed and any associated costs.

8.3. All costs for the installation and maintenance of the structures and Works, and carrying out of associated works, permitted by this Deed shall be at the Grantee's cost.

## 9. INDEMNITY

9.1. The Grantee hereby indemnifies the Grantor against any loss, claim, damage, costs, expense, liability or proceeding suffered or incurred at any time by the Grantor in connection with this Deed or as a direct result of the exercise by the Grantee of its rights under this Deed, or any breach by the Grantee of its obligations, undertakings or warranties contained or implied in this Deed.

## 10. GRANTOR'S LIABILITY EXCLUDED

10.1. Under no circumstances will the Grantor be liable in contract, tort, or otherwise to the Grantee for any expense, costs, loss, injury, or damage whether consequential or otherwise, arising directly or indirectly from this Deed or any activity undertaken by the Grantor on the Grantor's Land, whether the expense, cost, loss, injury or damage is the direct or indirect result of negligence or otherwise.

**11. TERMINATION**

- 11.1. The Grantor may terminate the rights created by this Deed if the Grantee breaches any of the terms of this Deed and the breach remains unrectified following written notice to the Grantee specifying the breach and seeking rectification within 30 days or such other time provided the parties agree.
- 11.2. If the breach remains unrectified (or is unable to be rectified) then termination must be by written notice from the Grantor.
- 11.3. Upon termination (for whatever reason) of the grant of easement evidenced by this Deed all rights of the Grantee shall immediately cease (subject to Clause 7.2 of this Deed) but the Grantee shall not be released from any liability to pay consideration or other moneys up to the date of termination.
- 11.4. Upon termination the Grantee shall formally surrender the rights under this Deed and surrender the grant of easement.

**12. DELEGATION**

- 12.1. All rights, benefits and obligations of the Grantor arising under this Deed may be exercised by any person duly appointed by the Grantor **PROVIDED THAT** the exercise of any such rights, benefits or obligations by that person shall not limit the liability of the Grantor in the performance or observance of the provisions of this Deed.

**13. DISPUTES**

- 13.1. If any dispute arises between the Grantor and the Grantee concerning the rights created by this Deed the parties shall enter into negotiations in good faith to resolve their dispute. If the dispute is not resolved within one month of the date on which the parties begin their negotiations the parties shall submit to the arbitration of an independent arbitrator appointed jointly by the parties, and if one cannot be agreed upon within 14 days, to an independent arbitrator appointed by the President for the time being of the District Law Society in which the Grantor's Land is situated. Such arbitration shall be referred to the arbitration in New Zealand of a single arbitrator if the parties can agree upon one or otherwise to two arbitrators (one to be appointed by each party) and an umpire (to be appointed by the arbitrators before entering upon their reference) in accordance with the Arbitration Act 1996 **PROVIDED THAT** this clause shall be subject in all respects to the provisions of section 17 of the Land Act 1948.

**14. NOTICES**

- 14.1. Any notice to be given by one party under this Deed to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the address in writing to the other party.
  - (a) The Grantor's Address as set out in Clause 2 of the Schedule.
  - (b) The Grantee's Address as set out in Clause 3 of the Schedule.
  - (c) Any notice posted shall be deemed to be served three (3) working days after the date of posting.

**15. SEVERABILITY**



15.1. If any part of this Deed is held by any court or administration body of competent jurisdiction to be illegal, void, or unenforceable, such determination shall not impair the enforceability of the remaining part of this Deed which shall remain in full force.

16. GRANTOR NOT TO INTERFERE WITH GRANTEE'S RIGHTS

16.1. The Grantor shall not at any time do, permit or suffer to be done any act whereby the rights, powers, licences and liberties granted to the Grantee maybe interfered with or affected in any way.

IN WITNESS WHEREOF these presents have been executed the day and year hereinbefore written.

SIGNED by THE COMMISSIONER OF CROWN LANDS - by MURRAY ROBERT MACKENZIE in the presence of:

*[Handwritten signature of Murray Robert Mackenzie]*

Witness Signature:  
Witness Full Name:  
Witness Occupation:  
Witness Address:

*[Handwritten signature of Owen John Frost]*  
OWEN JOHN FROST  
PORTFOLIO MANAGER  
CROWN PROPERTY MANAGEMENT  
C/- LINZ, CHRISTCHURCH

EXECUTED for and on behalf of AGRESEARCH LIMITED in the presence of:


*[Handwritten signature of Scott Alexander Mataga]*  
Authorized Person  
(Scott Alexander Mataga,  
Company Secretary)

Witness Signature:  
Witness Full Name:  
Witness Occupation:  
Witness Address:

*[Handwritten signature of Donna Jane Cross]*  
Donna Jane Cross  
Solicitor  
Hamilton

SCHEDULE

1. **GRANTOR'S LAND**  
4825.0669 hectares more or less  
being Section 3 Block V Ahuriri  
Survey District, Run 201B and  
Run 674  
**SUBJECT TO:** Renewal of  
Lease 910685, Statutory Land  
Charge 429781 and Certificate of  
Alteration 265173
  
2. **GRANTEE'S LAND**  
3341.6589 hectares more or less  
being Section 1 Survey Office  
Plan 23872 as comprised in Title  
reference OT14D/1011
  
3. **GRANTOR'S ADDRESS**  
C/- Land Information New  
Zealand  
Private Bag 4721  
Christchurch  
**Attention: Crown Property  
Management**
  
4. **GRANTEE'S ADDRESS**  
AgResearch Limited  
Ruakura Research Centre  
Private Bag 3115  
Hamilton  
  
**Attention: Chief Financial Officer**

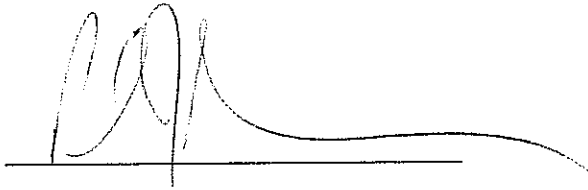


**Execution Section**

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This Proposal (including the schedules and appendices) is signed by the Commissioner and the Holder as a binding agreement.

**SIGNED** for and on behalf of the  
**Commissioner of Crown Lands**  
by Paul Alexander Jackson acting  
pursuant to a delegated authority in  
the presence of:



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Paul Alexander Jackson  
Witness  
Solicitor  
Occupation  
123456789  
Address

**SIGNED** by Killermont Run Limited  
in the presence of:

M. B. Thomas Director  
D. J. Thomas Director

\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Occupation  
\_\_\_\_\_  
Address