

Crown Pastoral Land Tenure Review

Lease name: BERWEN

Lease number: PO 209

Substantive Proposal - Part 2

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

September 06

Appendix 7: Copy of the unregistered easement in gross in favour of The Hawkdun Idaburn
Irrigation Company Limited

M. PEC

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THIS DEED is made this ^{4th} day of ^{MAY} 1994
BETWEEN HAWKDUN IDABURN IRRIGATION COMPANY LIMITED a duly
incorporated company having its registered office at Ranfurly (herein
called "the Grantee") of the one part and HRR MAJESTY THE QUEEN
acting through the Commissioner of Crown Lands (herein called "the
Grantor") of the other part WHEREAS the Grantor is the owner of the
land described in the Schedule hereto AND WHEREAS the Grantor has
agreed to grant in favour of the Grantee an easement in the terms and
conditions hereinafter appearing pursuant to Section 60 of the Land
Act 1948.

AND WHEREAS the Grantee is a company involved in the supply of water
under an irrigation scheme purchased from the Crown by the Grantee to
which Scheme the provisions of the Irrigation Schemes Act 1990
applied AND WHEREAS the Grantee is entitled pursuant to the
provisions of the Irrigation Schemes Act 1990 to obtain a registered
easement over and across the land of all persons or bodies over whose
land the irrigation scheme water races natural gullies syphons
pipelines and other structures existed at the time the irrigation
scheme was purchased by the Grantee from the Crown AND WHEREAS the
land owned by the Grantor as hereinbefore set out is land meeting
that requirement and the Grantor has agreed to Grant to the Grantee
an easement in gross over that land in the terms hereinafter
contained AND WHEREAS there is annexed hereto a diagram or diagrams
of the land owned by the Grantor and referred to herein on which
diagram or diagrams are shown the course of the irrigation races
owned by the Grantee and as purchased from the Crown AND WHEREAS the
term "irrigation races" whenever used herein shall mean and include
all water races natural gullies ditches channels tunnels pipelines
syphons measuring boxes structures and other constructions and
chattels used by the Grantee as part of the Hawkdun Idaburn
Irrigation Scheme NOW THEREFORE IN CONSIDERATION of the premises and
pursuant to the provisions of Section 60 of the Land Act 1948 and of
the Irrigation Schemes Act 1990 the Grantor DOETH HEREBY TRANSFER AND
GRANT unto the Grantee and its successors AS AN EASEMENT IN GROSS
FOREVER upon the terms and conditions as follows:

- A. The full free uninterrupted and unimpeded right to have and maintain irrigation races over the land of the Grantor in positions shown on the diagram or diagrams annexed hereto.
- B. The full free uninterrupted and unimpeded right to convey and transport water over along and through those irrigation races across the land of the Grantor.
- C. The full free uninterrupted and unimpeded right for all or any irrigation races presently existing to remain on the land of the Grantor in such site as it may presently occupy.
- D. The full free uninterrupted and unimpeded right for the Grantee with or without its agents servants workmen engineers and employees and with or without any necessary vehicles implements tools pipes machines and equipment of any nature or kind whatsoever to enter upon the lands of the Grantor at any time and from time to time for the purpose of maintaining repairing renewing or replacing the said irrigation races owned by the Grantee and situated upon the land of the Grantor including the right to open up soil of the land as may be necessary.

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E. The full free uninterrupted and unimpeded right to occupy and use the land forming the course of the irrigation races on each side of each and every irrigation race to a reasonable distance necessary for the proper operation of the irrigation scheme and to enable access along the course of the race by people vehicles and machinery and for benching and construction of new benching as necessary and the deposit of soil and other matter removed therefrom PROVIDED THAT the area of such land shall not exceed a strip ten metres wide along the entire length of the course of the irrigation races and measured either wholly on one side of its course or partly on one side and partly on the other but so nevertheless that at no point of the course shall the total width measured on both sides exceed more than 10 metres.

UPON the terms and conditions as follows:

1. The Grantee shall ensure that in exercising the right hereby conferred there is caused as little damage as possible to the land of the Grantor AND that all necessary works undertaken shall be completed with all reasonable despatch and any damage caused to the land of the Grantor shall be promptly remedied by the Grantee at the cost of the Grantee.
2. The Parties acknowledge that any fences or gateways on or adjacent to the irrigation races on the land of the Grantor are the property of the Grantor who is solely responsible for the repair and maintenance thereof SAVE that in the event of any damage to them done by the Grantee the same shall be remedied by the Grantee at the expense of the Grantee.
3. The Grantee shall be responsible for any damage caused to the land of the Grantor by any escape of water carried in the irrigation races unless the same shall have come about as a result of the action or omission of some other person or body or by Act of God (as for example a cloudburst overflowing the race) AND in the event of any such escape of water the Grantee will immediately and at its own cost repair any damage so caused and re-instate the land the same as nearly as is reasonably possible to the condition it was in prior to such escape AND shall compensate the Grantor for any cost or damage caused to the Grantor as a result of the escape of such water save that the Grantor shall not be entitled to compensation for or in respect of or matters associated to the loss of use of land of the Grantor unless it shall be proved the Grantee has been dilatory in carrying out its obligation under this provision.
4. The Grantee and its servants agents employees contractors and workmen shall have the right at any time and from time to time without being deemed to commit a trespass and without payment of compensation or damages to enter upon the land of the Grantor as hereinbefore set out or upon any other land owned connected or associated to the Grantor and which the Grantee has in the past customarily used for the purpose of access so that the Grantee may fully exercise the rights given to it under this easement and for the operation of the irrigation scheme including (but not exclusively) the maintaining repairing cleaning replacing or reconstructing the irrigation races and all other works owned by the Grantee and the gauging or otherwise determining the quantity of water in or delivered by the irrigation race or races or any pipe and for the viewing of the condition of such irrigation races.

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5. The Grantor shall ensure that access by the Grantee to any such irrigation race owned by the Grantee and used in the operation of the irrigation scheme is not in any way restricted or imperilled and at all times is kept available to the Grantee and to its servants agents workmen contractors employees and all or any other person or persons acting for or on behalf of the Grantee AND in respect to any future development by the Grantor alongside any such irrigation races the Grantor will ensure that such development does not impede restrict limit or otherwise in any way inhibit or impair that access AND will ensure that no trees are permitted to grow or fences erected adjacent to or in the vicinity of such irrigation races so as to cause any blocking or interference with the same or any damage thereto or impede or prevent access thereto or cleaning thereof AND will at the Grantor's own cost in all things remove any tree or tress fence or fences that may be determined by the Grantee as causing or contributing to any such impedence or prevention of access or cleaning or blockage or interference or damage and will remedy or repair any such immediately and to the Grantee's satisfaction.
6. The Grantor will ensure that in any farming or other operation upon the land of the Grantor no damage is done to the irrigation races of the Grantee and that no interference is caused thereto or blockage impediment or limitation created in respect thereof AND in the event that any such should happen or occur the Grantor will immediately and at the cost of the Grantor in all things repair and remedy such to the satisfaction of the Grantee and in the event that the Grantor should fail or omit to do so then the Grantee shall be entitled to do so and to charge the cost of the same to the Grantor and recover the same from the Grantor as liquidated damages.
7. The Grantor and the Grantee may by mutual agreement vary these terms and conditions as applicable to the easement hereby granted.
8. All costs and expenses of and relating to the creation and registration of this easement shall be paid by the Grantee.
9. In any case where the Grantee shall be involved in maintenance and renewal or replacement of any irrigation races as presently existing and in the course of such activities should wish to increase the size of or alter the nature of (as for example by piping a presently open race) any such irrigation race from that as existing at the time of the grant of this easement then the Grantee shall be entitled to do so PROVIDED ONLY that such actions by the Grantee cause no or minimal loss of use or damage to the land of the Grantor AND in the event that any such proposed actions by the Grantee are considered as likely to cause more than a minimal loss or damage to the land of the Grantor then the same may be done with the consent of the Grantor and thereafter this easement shall be applicable fully to the same and IT IS FURTHER AGREED that in the event of any such activities being carried out by the Grantee and the Grantor failing to lodge a written objection with the Grantee within one year of the completion of such work then the Grantor shall be deemed to have consented to the same and the same shall for all purposes be deemed to be legally and properly done pursuant to this provision and to fall within the terms of the easement hereby granted.
10. The Grantee shall ensure that at all times the operation of the irrigation scheme and the cleaning maintenance repair and replacement thereof shall be done so as to cause as little

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interference as possible to the Grantor in the Grantor's use of the land and the Grantee will make all efforts as might be reasonable or practicable to minimise such interference and to reduce or minimise any nuisance caused by the existence or operation of the irrigation scheme on the land of the Grantor PROVIDED HOWEVER that this provision shall not require the Grantee to reduce or minimise any interference or nuisance below the level existing at the time of acquisition of the irrigation scheme by the Grantee from the Crown.

11. The Grantee shall be entitled following consultation with the Grantor and with the consent of the Grantor to undertake any major repair replacement or reconstruction works on the Scheme and to upgrade or alter the alignment of the Scheme so that following such work they would occupy a position on the land of the Grantor different from that which they occupied at the time of granting of this easement and in such case this easement shall be deemed to apply in all aspects to the irrigation races as they exist following completion of work by the Grantee.

12. In any case where the present area of land occupied by the Grantee forming the course of the irrigation race presently exceeds the total width authorised by this easement then such presently existing use by the Grantee shall be deemed to be within the terms granted by this easement and this easement shall apply in full to such area as if the maximum width authorised had not been exceeded and as if the irrigation races and works were existing within the maximum total width authorised by this easement. In any case of repair reconstruction or re-alignment of any irrigation race where the completed works exceed the total maximum width authorised by this easement then this easement shall apply wholly thereto as if that total width was not exceeded in any case where the consent of the Grantor has been obtained either prior to or subsequent to the carrying out of such works and which Grantors consent shall be deemed to have been given if the Grantor fails to lodge a written objection with the Grantee to such works within twelve months of the completion of same.

13. That so long as the fee simple estate of the Grantor in the land set out in the schedule hereto is subject to a Lease or Licence then:

- (a) Any right of action or remedy which shall at any time hereafter accrue to the Grantee by reason of any breach of non-observance of any of the covenants herein expressed or implied and on the part of the Grantor to be observed or performed shall be enforced only against the registered proprietor for the time being of the Lease/Licence in respect of which such breach or non-observance shall occur or against the registered proprietor thereof at the time of such occurrence aforesaid to the intent that the liability of any registered proprietor for the time being of the Lease/Licence shall cease (except as to the Act and defaults occurring in respect of the land of which he is registered proprietor and while he is so registered) upon his ceasing to be the registered proprietor of the Lease/Licence in respect of which such breach or non-observance shall occur.

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- (b) Any consents or approvals to be given by the Grantor shall not be required PROVIDED that the Lessee/Licencee has given consent or approval pursuant to a like easement granted by the Lessee/Licencee.
- (c) References herein to the Grantor shall where necessary and relevant to the context be deemed to include any such Lessee or Licencee from the Grantor and where necessary or relevant in the context shall be deemed to be a reference to such Lessee or Licencee in lieu of the Grantor.

SCHEDULE OF LAND

<u>Title</u>	<u>Area</u>	<u>Description</u>
386/142	6969.9198 Ha	Part Section 5 Block III Ahuriri Survey District and Run 322B Ahuriri Hawkdun and Gala Survey Districts. <u>Subject to:</u> Pastoral Lease No. P 209
338/148	10298.5675 Ha	Section 94 Block I St Bathans Survey District and Runs 227A and 582 Gala Hawkdun St Bathans and Turnagain Survey Districts <u>Subject to:</u> Pastoral Lease No. P.85
338/139	5719.7687 Ha	Section 19 Block X Section 5 Block XI Blackstone Survey District Part Runs 224A and 227 Blackstone St Bathans and Turnagain Survey Districts <u>Subject to</u> Pastoral Lease No.92
386/75	12355.0527 Ha	Runs 227B and 227C Turnagain, St Bathans, Idaburn and Blackstone Survey Districts <u>Subject to</u> Pastoral Lease No. P181
3B/847	2339.3350 Ha	Part Run 790 in Blocks II, III and IV Idaburn Survey Districts and Blocks IV, V, VIII and IX Naseby Survey District <u>Subject to</u> Pastoral Lease No. 321
B2/1276	1815.8799 Ha	Part Run 306 and part Section 30 and Sections 34,37 and 38 Block VII Naseby Survey District and Sections 1,2 and 3 S.O. Plan 22565 <u>Subject to</u> Pastoral Lease No. P268
386/68	2639.9229 Ha	Sections 27, 28, 29, 34, 35, 36, 37, 38, 39, 43, 50, 51, 107, 143 part 106 Block I Section 17 Block II and Parts Run 219C Naseby Survey District <u>Subject to</u> Pastoral Lease No. P.74

IN WITNESS whereof these presents have been

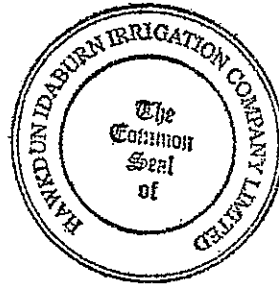
Z *B*

M *PEC*

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executed the day and year first before written.

THE COMMON SEAL of HAWKDUN IDABURN)
COMPANY LIMITED was hereunto affixed)
in the presence of:)



[Handwritten signature]
..... Director

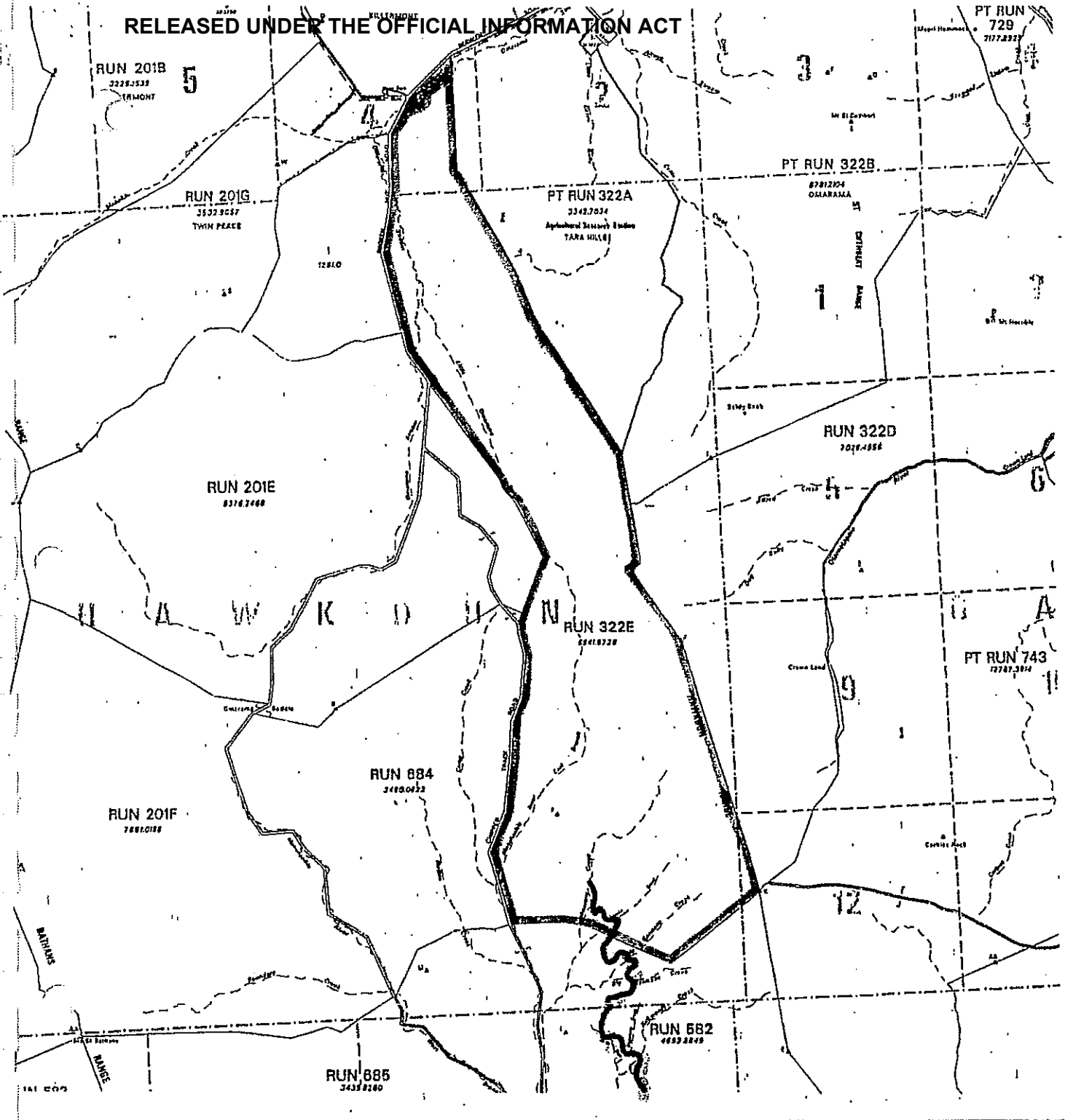
A. J. Dowling
..... Director/Secretary

SIGNED for and on behalf of)
HER MAJESTY THE QUEEN)
by the Commissioner of Crown)
Lands in the presence of:)
in the presence of:)

[Handwritten signature]
.....
Commissioner of Crown Lands

Witness: *Bullen*
Occupation: *Pastoral Administration Officer*
Address: *Department of Survey and Land Information*
Wellington

all. rec.



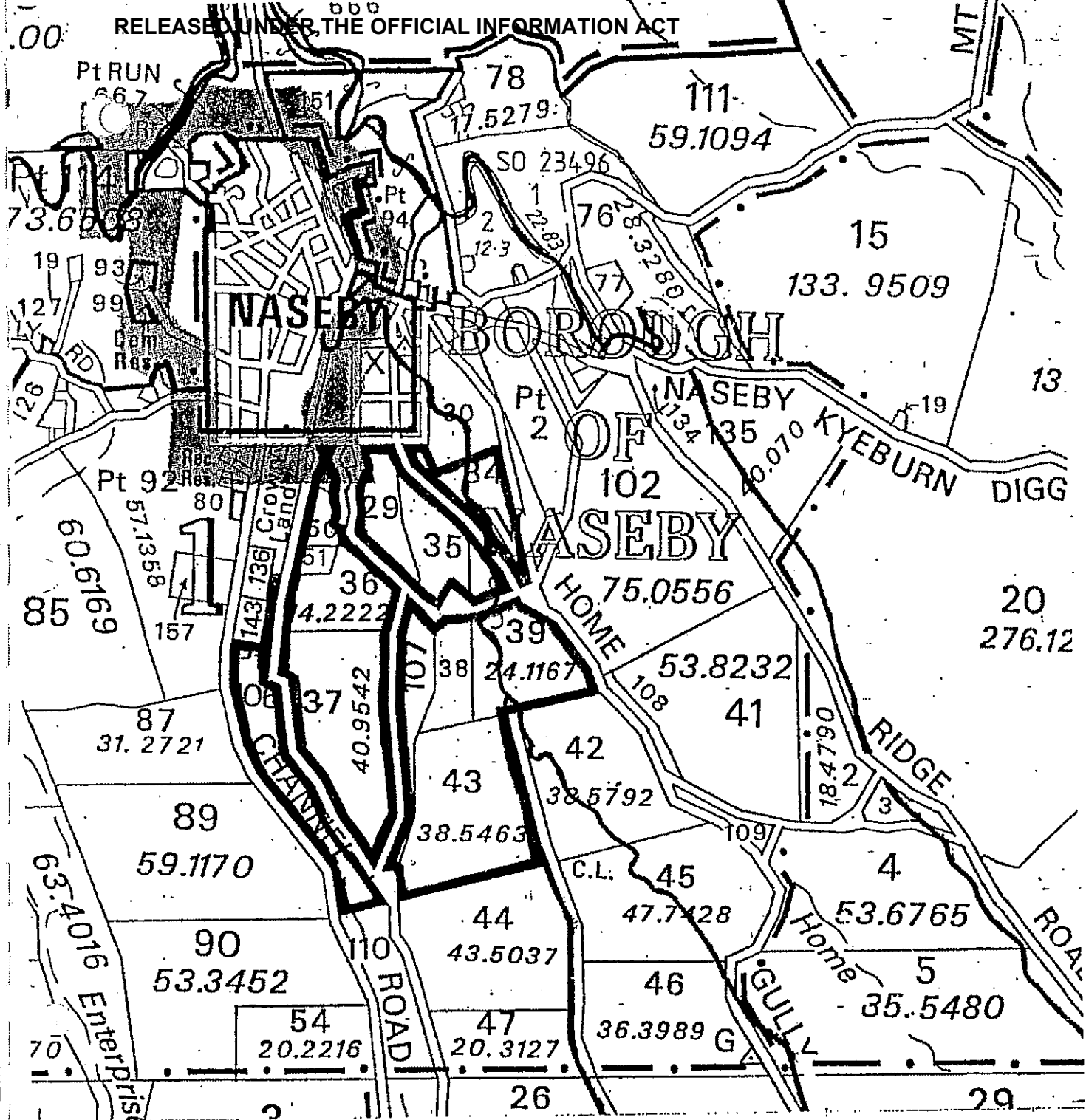
OPTIONAL EASEMENTS IN GROSS

PURPOSE	COMPRISED IN	SHOWN	SERVIENT TENEMENT	GRANTEE
Right to Convey Water	CL 386/142		Run 322E & Sec 5	Hawkdun-Idaburn-Irrigation Company Limited

Plan of Easement Over
 Sec 5 Blk III Ahuriri S.D. and
 Run 322E Ahuriri, Hawkdun and Gala S.D.'s

OTAGO LAND DISTRICT CENTRAL OTAGO DISTRICT COUNCIL	SCALE 1:130 000 DATE 28-11-91	PREPARED BY DEPT. OF SURVEY AND LAND INFORMATION
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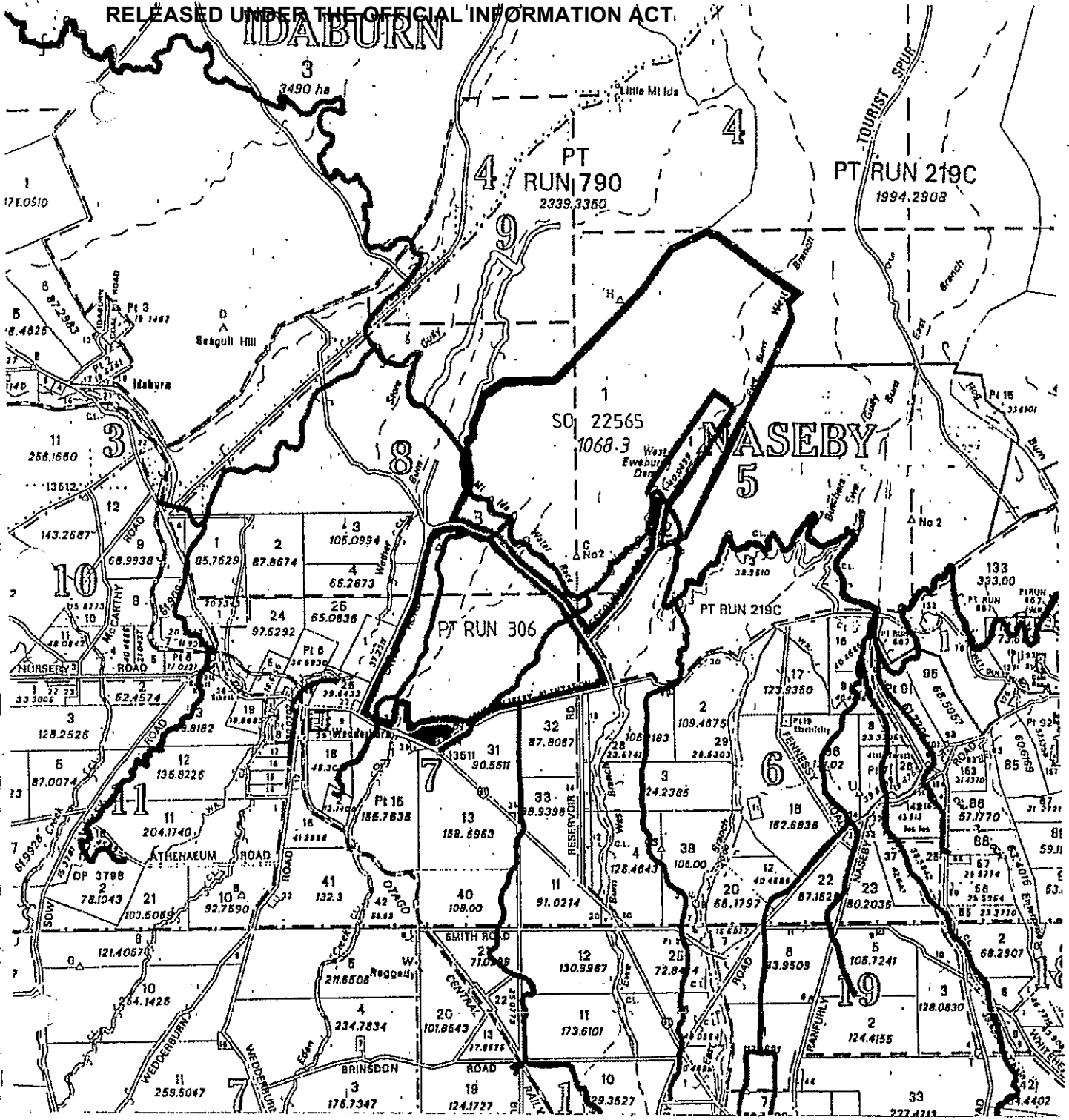


OPTIONAL EASEMENTS IN GROSS

PURPOSE	COMPRISED IN	SHOWN	SERVIENT TENEMENT	GRANTEE
Right to Convey Water	Pt CL 386/68	—	Sec's 27-29, 34-39, 43, 50, 51 & 107 and Pt Sec 106.	Hawkdun-Idaburn Irrigation Company Limited

Plan of Easement Over
 Sec's 27-29, 34-39, 43, 50, 51 & 107 and Pt Sec 106 Blk I Naseby S.D.

Allen PEC

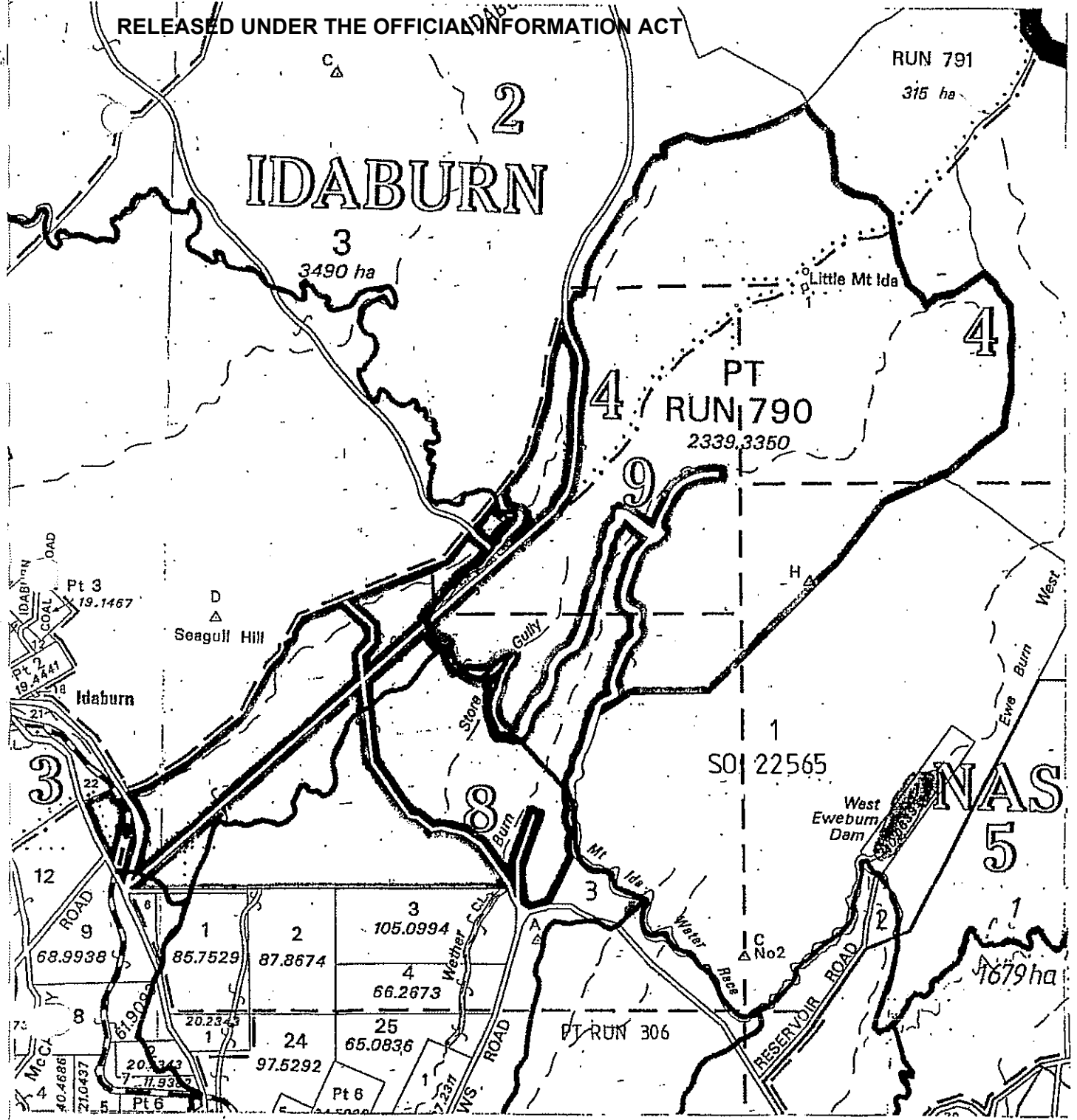


OPTIONAL EASEMENTS. IN GROSS

PURPOSE	COMPRISED IN	SHOWN	SERVIENT TENEMENT	GRANTEE
Right to Convey Water	CL B2/1276		Sec's 1,2,3, Pt Sec 30 and Pt Run 306	Hawkdun-Idaburn Irrigation Company Limited

EB Plan of Easement Over
 Sec's 1, 2 & 3 SO 22565, Pt Sec 30 and Pt Run 306 Naseby S.D.

ML. P.C.



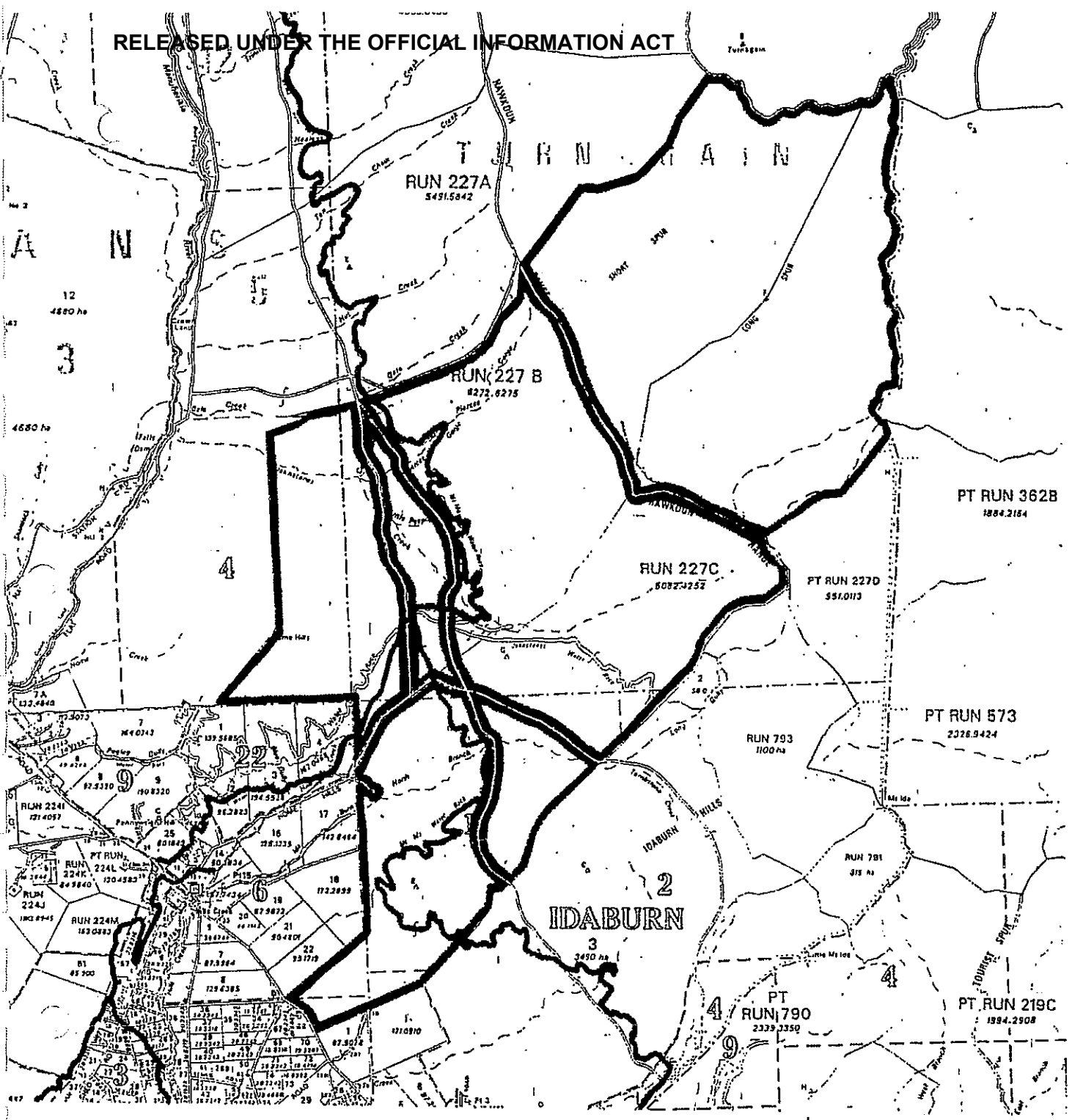
OPTIONAL EASEMENTS IN GROSS

PURPOSE	COMPRISED IN	SHOWN	SERVIENT TENEMENT	GRANTEE
Right to Convey Water	CL 3B/847		Pt Run 790	Hawkdun-Idaburn Irrigation Company Limited

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Plan of Easement Over
Pt Run 790 Idaburn and Naseby S.D's.

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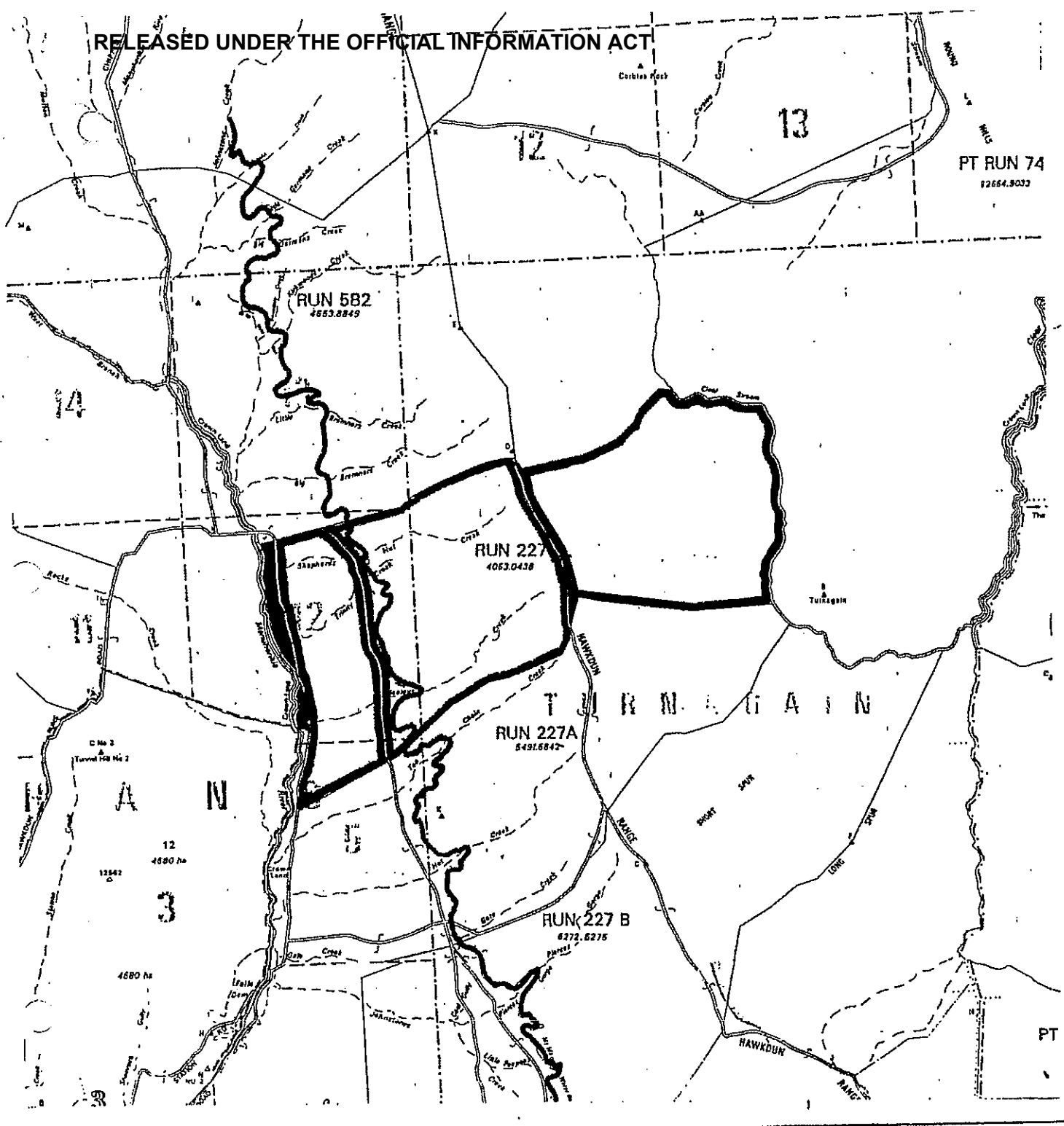
OPTIONAL EASEMENTS IN GROSS

PURPOSE	COMPRISED IN	SHOWN	SERVIENT TENEMENT	GRANTEE
Right to Convey Water	CL 386/75		Runs 227B & 227C	Hawkdun-Idaburn Irrigation Company Limited

R B Plan of Easement Over
 Runs 227B & 227C Turnagain, St Bathans, Idaburn & Blackstone SD.

OTAGO LAND DISTRICT CENTRAL OTAGO DISTRICT COUNCIL	SCALE 1:110 000 DATE 5-12-91	PREPARED BY DEPT. OF SURVEY AND LAND INFORMATION
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OPTIONAL EASEMENTS IN GROSS

PURPOSE	COMPRISED IN	SHOWN	SERVIENT TENEMENT	GRANTEE
Right to Convey Water	Pt Cl 338/139	————	Run 227	Hawkdun-Idaburn Irrigation Company Limited

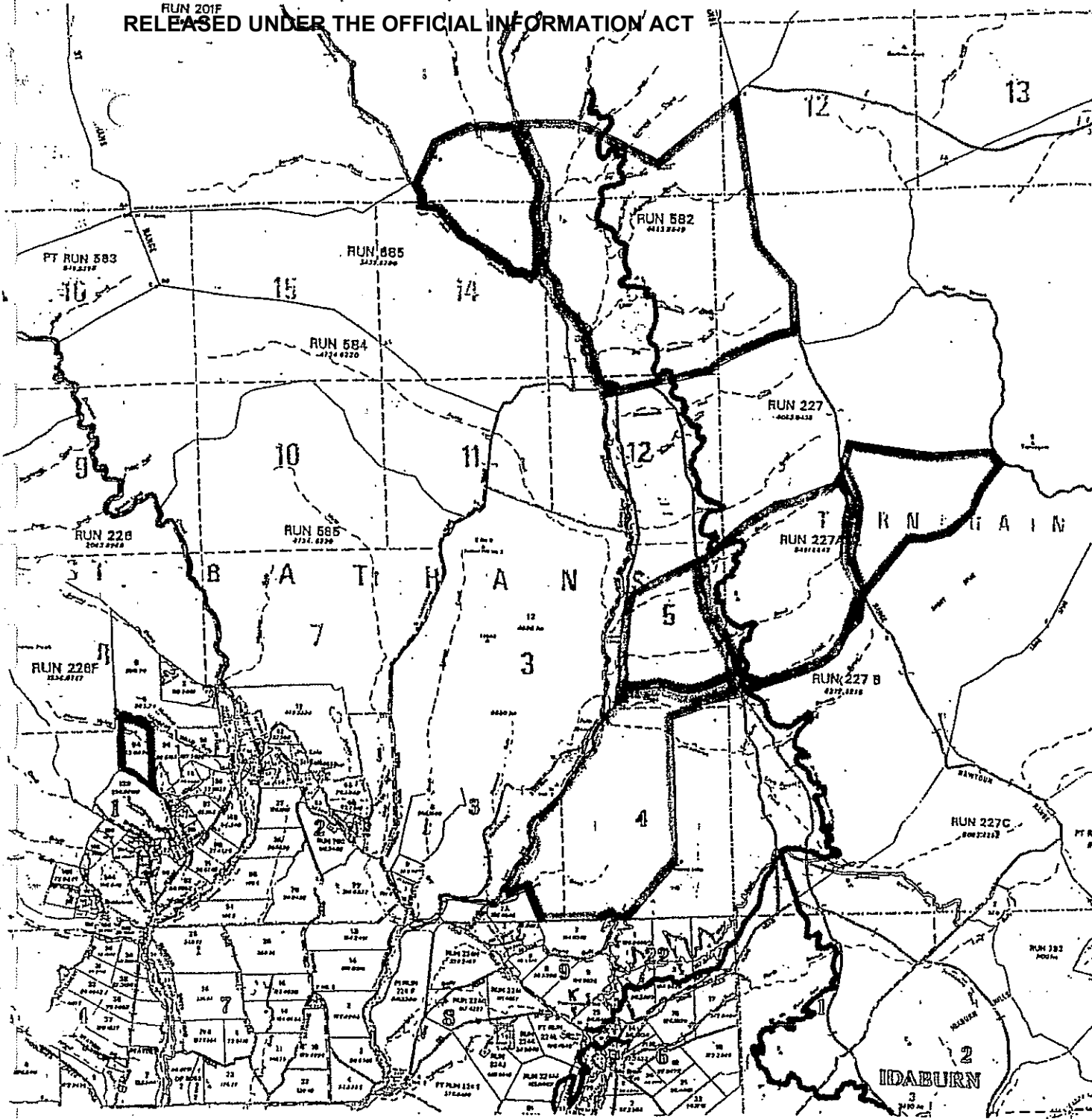
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Plan of Easement Over
Run 227 St. Bathans and Turnagain S.D.

OTAGO LAND DISTRICT CENTRAL OTAGO DISTRICT COUNCIL	SCALE 1:110 000 DATE 4-12-91	PREPARED BY DEPT. OF SURVEY AND LAND INFORMATION
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OPTIONAL EASEMENTS IN GROSS

PURPOSE	COMPRISED IN	SHOWN	SERVIENT TENEMENT	GRANTEE
Right to convey Water	CL 338/148		Sec 94 and Runs 227A. & 582.	Hawkdun-Idaburn Irrigation Company Limited

E B Plan of Easement Over
 Sec 94 Blk I St Bathans S.D.
 and Runs 227A & 582 Gala, St Bathans, Hawkdun & Turnagain SD's

OTAGO LAND DISTRICT
 CENTRAL OTAGO DISTRICT COUNCIL

SCALE 1:50 000
 DATE 5-12-91

PREPARED BY
 DEPT. OF SURVEY AND LAND INFORMATION

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DATED _____ 19__

HAWKDUK IDABURN IRRIGATION CO. LTD
Grantee

HER MAJESTY THE QUEEN
Grantor

DEED OF GRANT OF BASEMENT

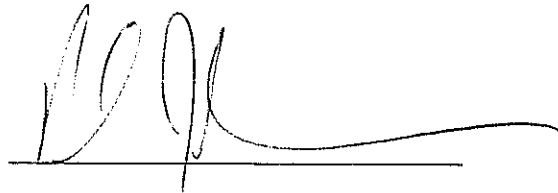
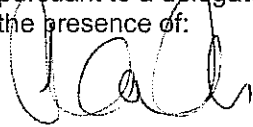
FRASER MACDONALD MARTIN & CO
SOLICITORS
RANFURLY

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Execution Section

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:



SHANNON LEIGH AUSTIN

Witness

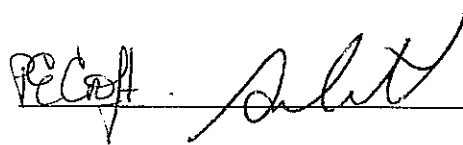
SOLICITOR

Occupation

WELLINGTON

Address

SIGNED by **Simon Richard Croft**
and **Patricia Elaine Croft** in the
presence of:



Ms Ingram

Witness

NOELINE HAZEL INGRAM

Occupation

Oamaru
Legal Executive

Address

