

Crown Pastoral Land Tenure Review

Lease name: HOME HILLS

Lease number: PO 383

Substantive Proposal

- Part 4

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

JUNE

08

- The Grantor shall not do anything on the Easement Land whereby the rights, powers and liberties granted to the Grantee by this Deed may be interfered with and in particular the Grantor shall not without the consent in writing of the Grantee (which will not be unreasonably withheld):
- 6.1.1 erect or permit the erection of any structures on the Easement Land except as allowed in clause 6.1.3;
- 6.1.2 make any alterations or additions to any structure on the Easement Land which affects its overall dimensions;
- 6.1.3 erect any fence of a height of more than three (3) metres on the Easement Land;
- 7.1 The Grantor shall not light or permit to light any fires or burn off vegetation within the Easement Land and or close proximity to the Easement Land without the consent of the Grantee (which will not be unreasonably withheld) such consent to be applied for by telephoning the Grantee's nominated office at least five (5) Working Days prior to the lighting of any such fire.

8. OWNERSHIP OF STRUCTURES

- 8.1 All structures and fixtures 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 will not for any reason become the property of the Grantor.
- 8.2 The Grantee will, on the expiry of the term granted or earlier termination of the rights created by this Deed, remove all structures and fixtures 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.
- 8.3 If the Grantee has not taken the steps set out in clause 8.2 of this Deed within the specified time, the Grantor may remove all structures and fixtures 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.

9, COSTS

- 9.1 The Grantee shall bear all reasonable costs and expenses (including the Grantor's legal costs and expenses) in relation to the preparation and enforcement of any provisions in this Deed.
- 9.2 The Grantee shall be solely responsible for the registration (if any) of this Deed and any associated costs.
- 9.3 All costs of the construction, operation and maintenance of structures and fixtures, and the carrying out of all associated works permitted by this Deed shall be at the Grantee's cost.

10. INDEMNITY

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 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.

11. GRANTOR'S LIABILITY EXCLUDED

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.

12. ASSIGNMENT

12.1 The Grantee may not transfer, lease, assign or licence all or any part of its interest in the Easement Land, and/or the rights in this Deed or any parts of those rights without the prior written consent of the Grantor such consent not to be unreasonably withheld. Any such transfer, lease, assignment or licence shall be subject to the rights and obligations set out in this Deed (and any such other rights and obligations as the Grantor may reasonably require).

13. TERMINATION

- 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 20 Working Days or such other time agreed in writing by the parties.
- 13.2 If the breach remains unrectified (or is unable to be rectified) then termination must be by written notice from the Grantor.
- 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 8.2 of this Deed) but the Grantee shall not be released from any liability to pay consideration or other moneys up to date of termination.
- Upon termination the Grantee shall formerly surrender the rights under this Deed and surrender the grant of easement.

14. RESOLUTION OF DISPUTES

If any dispute arises between the Grantor and the Grantee concerning the 14.1 rights and obligations created by this Deed, the parties will enter into negotiations in good faith to resolve their dispute. If the dispute is not resolved within 20 Working Days of the date on which the dispute was notified, that parties will submit to arbitration of an independent arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator within a further10 Working Days the President or his nominee for the time being of the New Zealand Law Society will appoint an independent arbitrator in the area. In the event that the President of the New Zealand Law Society fails or refuses to appoint an arbitrator, either party may request the High Court to make an appointment. The appointment decision of the High Court may not be appealed. The arbitration proceedings will be conducted in accordance with the Arbitration Act 1996, excluding the Second Schedule thereof, and the parties' execution of this Deed shall be deemed to be a submission to arbitration PROVIDED THAT this clause shall be subject in all respects to the provisions of section 17 of the Land Act 1948.

15 NOTICES

- 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 or facsimile number set out below or to such address or facsimile number notified by the address in writing to the other party.
- 15.1.1 The Grantor's Address as set out in clause 1 of the First Schedule;

- 15.1.2 The Grantee's Address as set out in clause 2 of the First Schedule.
- 15.2 All such notices are deemed to have been delivered:
 - a. if posted, three Working Days following deposit in the mail with postage prepaid; or
 - b. if delivered, when delivered by hand; or
 - if sent by facsimile, when a completed transmission report is received by the sender unless a verifiable query as to material legibility is promptly raised by the recipient,

provided, however, that a notice sent or delivered on a day which is not a Working Day shall be deemed to be received at 9am on the next Working Day.

16 SEVERABILITY

16.1 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 parts of this Deed which shall remain in full force.

17 COVENANTS IMPLIED BY LAND TRANSFER ACT 1952

The rights and powers implied the Fourth Schedule to the Land Transfer Regulations 2002 are specifically excluded and replaced with those contained in this Deed.

18 NO WAIVER

- A waiver of any provision of this Deed shall not be effective unless given in writing, and then it shall be effective only to the extent that it is expressly stated to be given.
- A failure, delay or indulgence by one party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

19 CONFLICT OF USE

- 19.1 The Grantor acknowledges that the Grantee has entered into an Easement Concession with the Minister of Conservation under the Crown Pastoral Land Act 1998 dated [date to be inserted]. The purpose of that Easement Concession is specified in Item 4 Schedule 1 of the Easement Concession and is granted over an existing farm management track for that part of the track which crosses land owned by the Minister of Conservation.
- 19.1.1 The Parties agree that the easement herein granted is a grant over the same existing farm management track where it crosses the Grantors land and that no new track construction is authorised.
- 19.1.2 The parties further agree that where any conditions contained in this Deed are in conflict with the conditions contained in the Easement Concession between the Grantee and the Minister of Conservation then the conditions in the aforementioned Easement Concession will prevail.
- 19.2. This Deed is also issued subject to Grant of Easement OT16D/919 [Otago Registry] being a Grant of Easement dated 27 June 1995 between the Omakau Area Irrigation Company Limited and Her Majesty the Queen. The

RELEASED UNDER THE OFFICIAL INFORMATION ACT

easement to the Omakau Area Irrigation Company Limited is a grant in gross in perpetuity for the purposes of irrigation works.

- The parties agree that where any conditions contained in this Deed are in conflict with the conditions contained in the Grant of Easement dated 27 June 1995 between the Omakau Area Irrigation Company Limited and Her Majesty the Queen then the conditions in the Grant of Easement to Omakau Area Irrigation Company Limited will prevail.
- 19.3. This Deed is further subject to a Grant of Easement yet to be documented but authorised by the Grantor in favour of the Falls Dam Company Limited by a decision of the Grantor on 22 September 2002. This approval provides for the granting of an easement in gross in perpetuity to the Falls Dam Company Limited to operate and develop the land for the generation of hydro electricity.

 The final terms and conditions of that easement are yet to be finalised.

The final terms and conditions of that easement are yet to be finalised between the Grantor and the Falls Dam Company Limited.

The parties agree that where any conditions contained in this Deed conflict with the conditions in the Grant of Easement between the Falls Dam Company Limited and Her Majesty the Queen, yet to be finalised, then the conditions in the Grant of Easement to Falls Dam Company Limited will prevail.



IN WITNESS WHEREOF this Deed has been duly executed on the date first written above.

SIGNED by acting for and on behalf of the Commissioner of Crown Lands

pursuant to a delegation under section 41 of the State Sector Act 1988
in the presence of:
Name: Occupation: Address:
SIGNED on behalf of EUAN SCLATER JOHNSTONE By
in the presence of:
Name: Occupation: Address:

FIRST SCHEDULE

1. GRANTOR'S ADDRESS:

Land Information New Zealand Crown Property Management Lambton House 160 Lambton Quay PO Box 5501 WELLINGTON

Fax Number: 04 460 0590

2. GRANTEE'S ADDRESS:

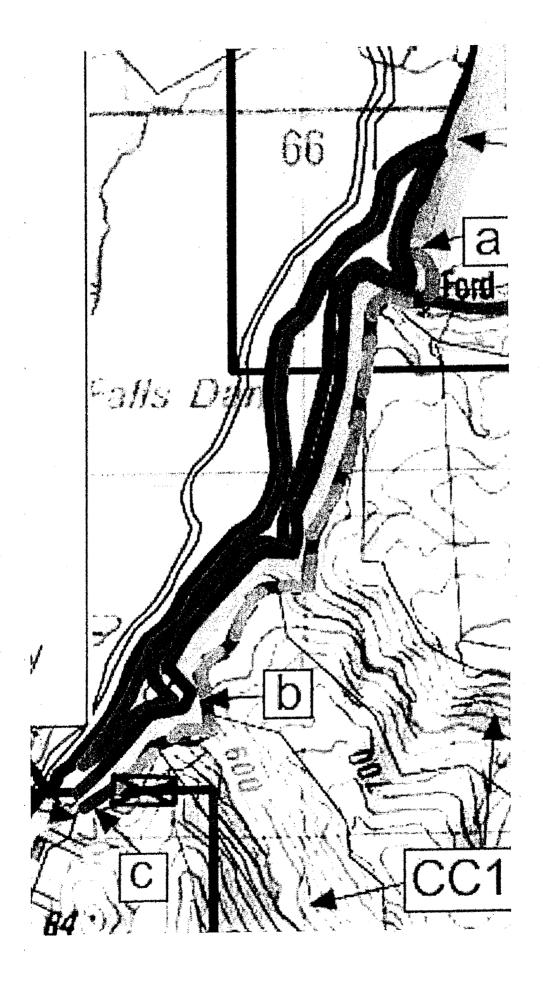
To be inserted Fax Number:

RELEASED UNDER THE OFFICIAL INFORMATION ACT

SECOND SCHEDULE

DESCRIPTION OF LAND AND EASEMENT

PLANS TO BE INSERTED:



RELEASED UNDER THE OFFICIAL INFORMATION ACT

Appendix 9: Copy of Easement in favour of the Omakau Area Irrigation Company Limited and Computer Interest Register



COMPUTER INTEREST REGISTER **UNDER LAND TRANSFER ACT 1952**



Search Copy

Identifier

OT16D/919

Land Registration District Otago

Date Registered

30 June 1995 02:38 pm

Prior References OT15C/21

Type

Deed of easement under s60 Land Act

Instrument

TE 885868

Area

5491.5846 hectares more or less

Legal Description Run 227A and Section 1-3 Survey Office

Plan 24042

Purpose

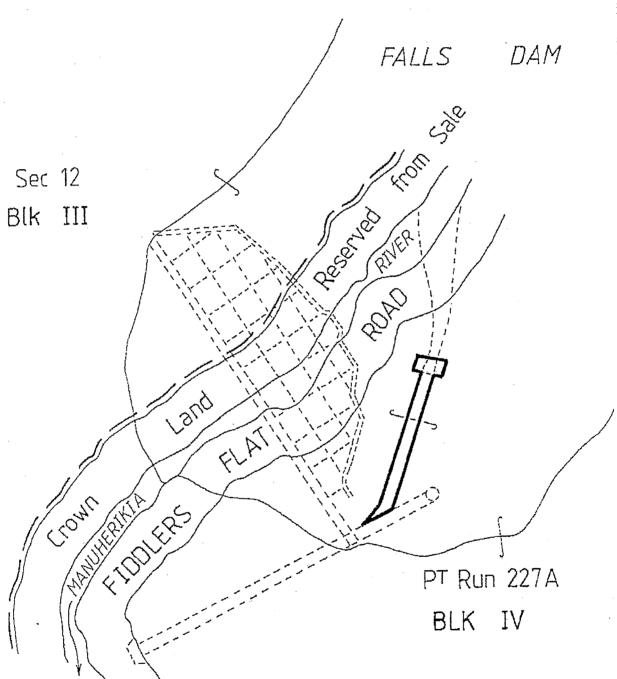
Easement in Gross for Irrigation Works

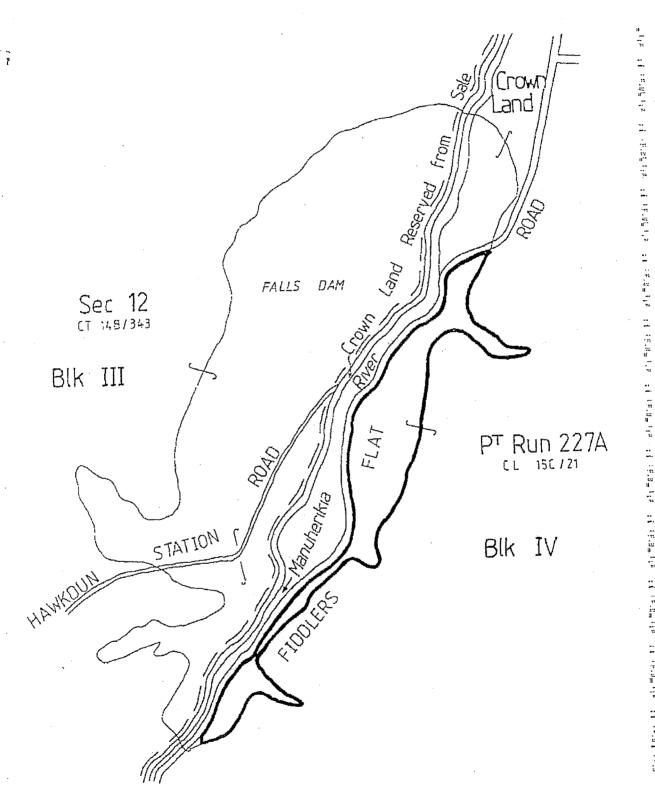
Plan attached to Transfer 885868

Proprietors

Omakau Area Irrigation Company Limited

Interests





THE REPORT OF THE PERSON AND ADDRESS OF THE PERSON ADDRESS OF THE PERSON AND ADDRESS OF THE PERSON AND ADDRESS OF THE PERSON AND ADDRESS OF THE PERSON ADDRESS OF TH : # 1 E . La 1 : #



COMPUTER INTEREST REGISTER **UNDER LAND TRANSFER ACT 1952**

Historical Search Copy



Identifier

OT16D/919

Land Registration District Otago

Date Registered

30 Jun 1995 14:38

Prior References

OT15C/21

Type

As described in the instrument

Area

3199.5846 hectares more or less

Legal Description Section 1-3 Survey Office Plan 24042 and

Part Run 227A

Original Proprietors

Her Majesty the Queen

Interests

Approved by the Registrar-General of Land, Wellington, No. B319989 1:93

Memorandum of Transfer

15 00 Jan

(herem called "the Transferor") being registered as proprietor of an estate

subject however to such encumbrances liens and interests as are notified by memoranda underwritten or endorsed hereon in the piece or pieces of land situated in the Land District of containing more or less being

1.0 BACKGROUND

- 1 1 The Omakau Area Irrigation Company Limited, a duly incorporated company having its registered office at Alexandra (called "the Irrigation Company") has purchased the Omakau Irrigation Scheme pursuant to a Sale and Purchase Agreement between MURRAY JOHN HECKLER. RICHARD JAMES MORGAN and THOMAS MATTHEW MORAN as agents for the Irrigation Company then yet to be incorporated and DAVID FRANCIS CAYGILL. Minister of Finance, and COLIN JAMES MOYLE. Minister of Agriculture, on behalf of the Crown, dated 23rd of August 1989 and subsequently adopted by the Irrigation Company as the Purchaser. The Omakau Irrigation Scheme (called "the Irrigation Scheme") is defined by notices in the New Zealand Gazette Order dated 11th January 1962 Number 1 Pages 4 and described in the said Sale and Purchase Agreement
- 1 2 HER MAJESTY THE QUEEN acting by and through the Commissioner of Crown Lands (called "the Crown") is the proprietor of that land containing 3199 5846 hectares more or less being part Run 227A Hawkdun, Gala, St Bathans and Turnagain Survey Districts and part being more particularly described as Sections 1, 2 and 3. SO Plan 24042 subject to Pastoral Lease Number P383 comprised in Register Book Volume. 15C Folio. 21 (Otago Land Registry)

(called "the Crown's land")

1 3 ANTHONY IAN CLYNE and SONYA CECELIA CLYNE both of St Bathans farmers (called "the Lessee") is registered as the lessee of the said Pastoral Lease

Juli

- The Minister of Agriculture (called "the Minister") had the right immediately before the date of sale of the Irrigation Scheme to the Irrigation Company, pursuant to Section 223 of the Public Works Act 1981 or the corresponding provisions of any former enactment relating to irrigation, to enter, use, occupy, carry out work on, store water on, or convey water over the Crown's land and in the manner, detailed in this Instrument, for the purposes of the Irrigation Scheme
- 1 5 Section 4 of the Irrigation Schemes Act 1990 provides the statutory mechanism to transfer from the Landowners to the Irrigation Company, the same easement rights as the Crown previously had over the Crown's land, and the Crown lessee and the Irrigation Company have agreed to the transfer of these easement rights to the Irrigation Company

2.0 GRANT OF EASEMENT

- 2.1 The Crown pursuant to section 60 of the Land Act 1948 and section 4 of the Irrigation Schemes Act 1990 <u>TRANSFERS AND GRANTS</u> to the Irrigation Company as an easement in gross forever, the following rights to irrigation works (in this instrument referred to as "water works")
 - (a) The right to occupy the said Crown's land as shown "____" on the plan 5 annexed for the purpose of maintenance and support of a dam
 - (b) The right to by-pass water and to convey water over the said Crown's land as shown "___" on the plan 7 annexed
 - (c) The right to collect and control water at the intake and to convey water over the said Crown's land as shown "_____" on the plan 8 annexed.

July

(d) The right to store water over the said Crown's land as shown "____" on the plan 13 annexed

which rights shall have attached to them the rights, powers and obligations detailed in the following clause 3.0

3.0 RIGHTS AND POWERS RELATING TO THE GRANT OF EASEMENT

- 3 1 The Irrigation Company together with any person (as defined in Section 4 of the Acts Interpretation Act 1924) acting with the authority or on the instructions of the Irrigation Company and together with all tools, implements, machinery, vehicles, equipment and materials of whatsoever nature shall have the uninterrupted and unrestricted rights
 - (a) To situate and maintain water works including all earthworks and other construction works for the dam and collect, control, by-pass, convey and store water unimpeded along the stipulated course and at the stipulated position on the Crown's land shown on the plans attached and for this purpose to have the right to use, occupy, excavate, construct, maintain, reconstruct and carry out such works (in this Instrument called "water works") as the Irrigation Company considers necessary or desirable on the Crown's land along the stipulated course and at the stipulated position including, but without limitation, structures and works for, the dam, intakes, conveying water, water flow control and supply, storage, turnouts monitoring and discharges
 - (b) To monitor and control its waterflows and the water source flows and to carry out viewing, surveillance and monitoring of its water works on the Crown's land

THE JR.

- (c) To enter the Crown's land and to have access across the Crown's land by the most practicable route
- (d) To erect and maintain such fixtures or markers as may be necessary to indicate the location of any pipeline and associated works provided that such fixtures or markers do not interfere with the reasonable management of the Crown's land
- (e) To remove from the Landowner's land over which there is a right to store water, sediment or other material the Irrigation Company considers is impeding or likely to impede the efficient operation of the dam and storage
- (f) To install and maintain booms and other floating equipment on the lake on the Landowner's land on which there is a right to store water and to have the right to anchor such equipment on the Landowner's land and to operate on such areas of water any vessel, plant or equipment and in connection with this to establish and maintain jettles, wharfs, landing places and slipways provided they are sited in consultation with the Landowner
- (g) To exclude entry by an person to the water works (excluding the Falls Dam Lake) in such circumstances that this is required to protect public safety or the security of the water works
- (h) To generally do anything necessary or convenient for the full exercise of the rights under this Instrument and to give full effect to the purposes of this Instrument

Jun 1

It being acknowledged that the words "convey water" and "conveying water" include "bye-wash water" and "bye-washing water"

- 3.2 In exercising its rights and powers under this Instrument, the Irrigation Company shall
 - (a) Cause as little disruption and disturbance to the occupation and enjoyment by the Crown and the lessee of the Crown's land, as is reasonably possible
 - (b) Cause as little damage to the Crown's land and the fixtures on it and the surface of it as is reasonably possible
 - (c) After exercising its rights and powers, restore the Crown's land and the improvements on it as nearly as is reasonably possible to its former condition but as shall be reasonable in the circumstances having regard to the economic and amenity values to the Crown and the lessee of the land and the improvements affected
- 3 3 (a) When the Irrigation Company requires entry with machinery on the Crown's land to carry out maintenance or construction works, it shall take reasonable steps to give to the lessee or occupier of the land not less than 24 hours notice by direct personal contact, ordinary letter, facsimile transmission, or telephone prior to such entry and works being undertaken, unless there is an emergency and in which case no notice shall be required.



- (b) If the lessee or occupier has received such notice the lessee or occupier shall notify the Irrigation Company, prior to the entry and work being undertaken, of the presence of pipes or other underground facilities in the Crown's land and if the lessee or occupier fails to notify the Irrigation Company then the Irrigation Company will not be liable for any damage it may cause to such underground pipes or underground facilities
- 3 4 (a) It is acknowledged that the Irrigation Company shall not fence the boundaries of the easements
 - (b) The Crown and lessee shall not do, or permit to be done, anything, including planting trees or constructing works or buildings, which will prevent or interfere with the free passage of water along the stipulated course or prevent or interfere with the Irrigation Company's full rights of access and full use by it of its rights created by this instrument and shall not interfere, or permit any interference, or allow trees, tree roots or other vegetation growing on or from the landowners land or stock pastured on the crown's land to interfere with the support, structure or integrity of the Irrigation Company's water works
 - (c) Without limiting the extent of this clause 3.4, the Crown and lessee shall not, without the prior written consent of the Company, plant or permit to be planted trees or construct or permit to be constructed works or buildings within 4 metres of the centre line of a pipe or within 3 metres from the edge of a water race or other water works
- The rights and powers contained in paragraphs 2 and 5 of the Seventh Schedule to the Land Transfer Act 1952 shall apply except insofar as they are varied by this instrument and with the deletion from both paragraphs 2 and 5.

Jula

of the words "(in common with the grantor, his tenants and any other person lawfully entitled so to do)"

- Any right of action or remedy which shall at any time after the date of this instrument accrue to the irrigation company because of any breach or non-observance by or on behalf of the Lessee of any of the covenants expressed or implied in this instrument and to be observed or performed by the Crown, shall be enforced only against the registered proprietor for the time being of the Pastoral Lease in respect of which such breach or non-observance shall occur or against the lessee of the Pastoral Lease at the time of such occurrence aforesaid but to the intent that any lessee of the Pastoral Lease shall only be liable for acts or defaults occurring while that person is so registered
- 3 7 The lessee agrees to the terms of this instrument and is bound by them to the extent that the terms apply to the lessee and the lessee consents, without payment of compensation, to the terms of this instrument
- 3 8 A reference to any party to this instrument includes that party and that parties transferees and successors



-8-

Dated the	70	C	lay of	June	1995
			, J		
SIGNED by and on I	oehalf)			
of HER MAJESTY T	HE)		/	
QUEEN by the)		(A) _	
Commissioner of Cro	own)			<i>(</i>
Lands as landowner)	/		
in the presence of)	J		
Witness April Willer Occupation Will of. Address Williams	v mini	lcer	Gene u	el Carles Lan	do
Occupation with 4.	Auru	42.	Cand &	uformalital	
Address Willely	10ed	J		,	

SIGNED by the OMAKAU)

IRRIGATION COMPANY)

LIMITED by the affixing of its)

common seal in the presence)

of)

ONANKAU AND ONANKA

Director

Disastas

-8-

SIGNED by ANTHONY IAN)

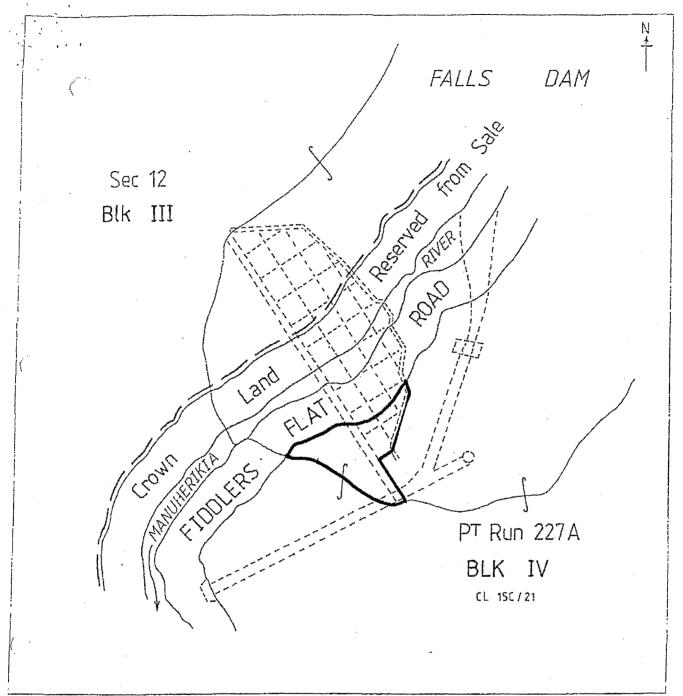
CLYNE and SONYA

CECELIA CLYNE as lessee)

in the presence of

Witness JWO Charactering
Occupation Farmer
Address Becks No.2
AD Omerkan

GJD-573/8



SERIAL NO	OPTI			
TITLE	/ OWNERSHIP	PURPOSE	SERVIENT TENEMENT	GRANTEE
A.I Clyne S.C Clyne CL 15C/21		Right to Maintain and Support Dam Shown	P ^T Run 227A Blk IV St Bathans SD.	Omakau Area Irr/pation Company Limited
		1 77.7		



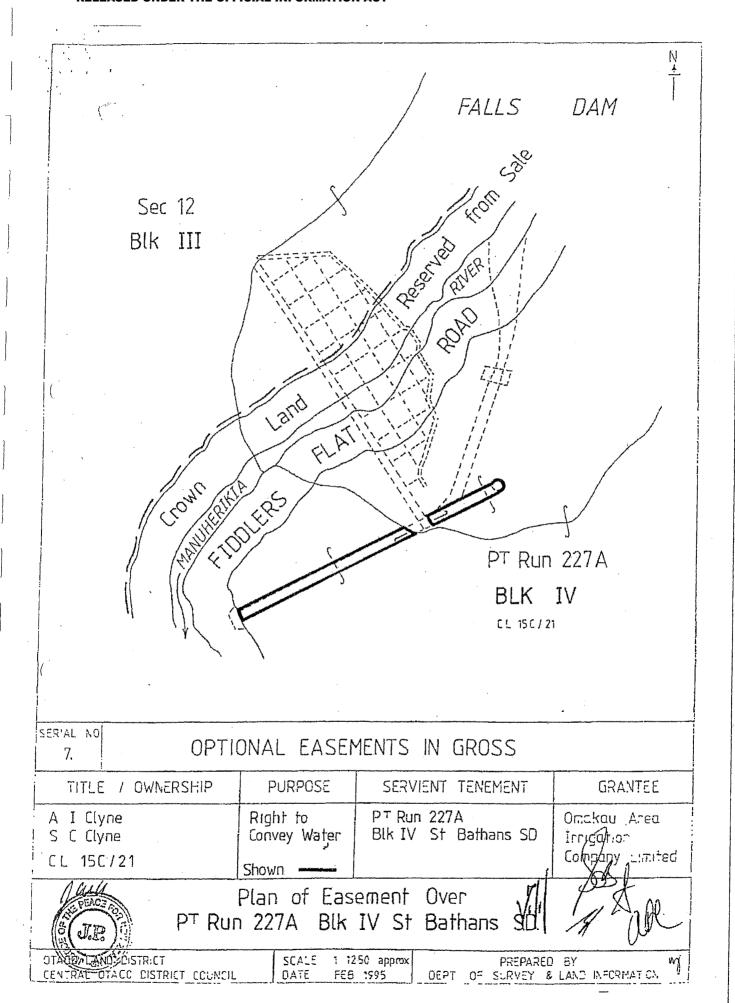
Plan of Easement Over PT Run 227A Blk IV St Bathans S.C

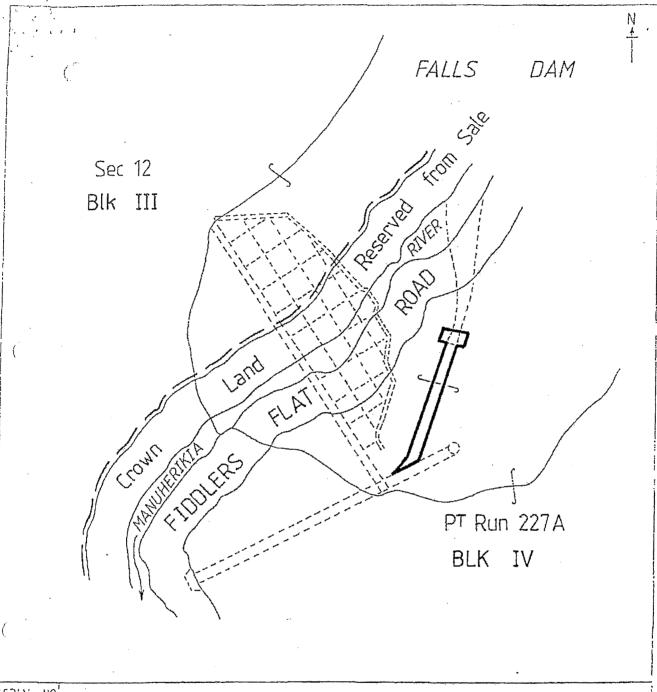
O.STRICT ÍTACO DISTRICT COUNCIL

SCALE 1 1250 approx SATE FEB 1995

PREPARED BY

DEPT OF SURVEY & LAND INFORMATION

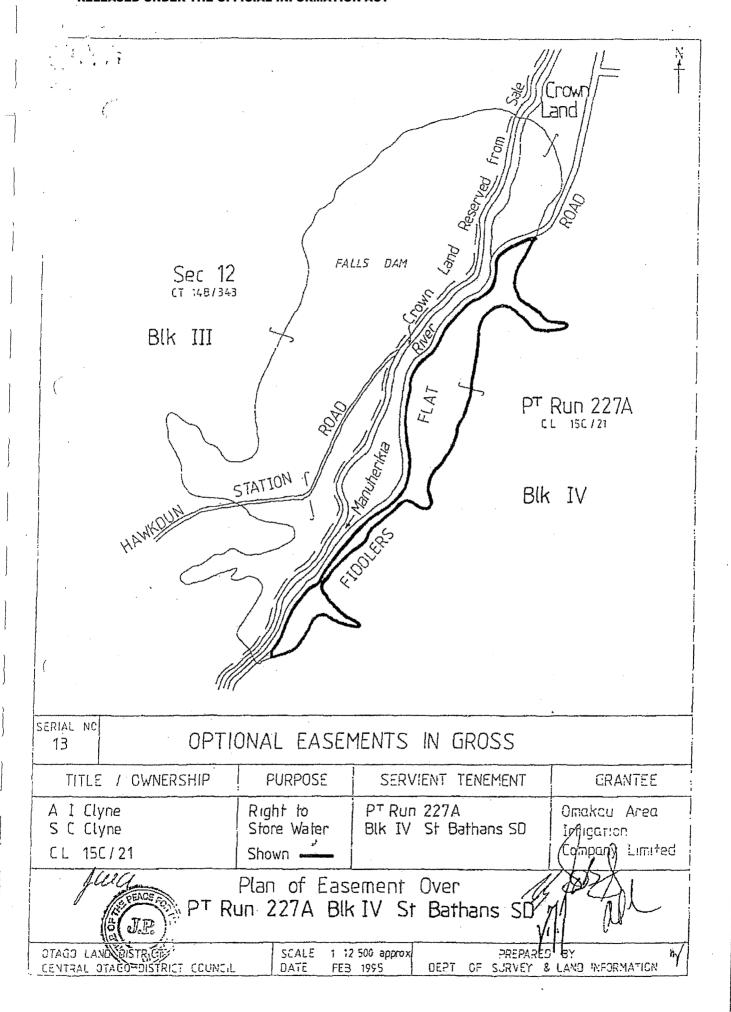




SERIAL NO OPTI	OPTIONAL EASEMENTS IN GROSS					
TITLE / OWNERSHIP	PURPOSE	SERVIENT TENSMENT	GRANTEE			
A I Clyne S C Clyne C.L 15C/21	Right to Control Water	PT Run 227A Blk IV St Bathans SD	Omakau Area Izrjaat:on Company Limited			
Plan of Easement Over						

Plan of Easement Over
PT Run 227A Blk IV St Bathans SD.

CENTRAL CTAGO DISTRICT SCALE 1 1250 approx PREPARED BY CENTRAL CTAGO DISTRICT COUNCIL GATE FEB 1595 GEPT OF SURVEY & LAND INFORMATION



In Consideration of the sum of		
en j		
•		
paid to the Transferor by		
	•	
(herein called "the Transferee") the receipt of which sum is		Hereby Transfers to the
Transferee all the Transferor's estate and interest in the said piece of	or pieces of land	
		•
	,	
·		
	•	
In witness whereof these presents have been executed this	day of	19
IN WITHESS WHELEOF MESS PRESENTS BAVE OCCUR CHARACTER MAN		
<i></i>		
Signed by the Transferor		•
(by the affixing of its common seal)		
vi the presence of		

MEMORANDUM OF TRANSFER

Particulars entered in the Register as shown herein on the

EASEMENTS IN GROSS FOR IRRIGATION WORKS

OMAKAU AREA IRRIGATION COMPANY LIMITED (FALLS DAM)

-Transferor

CLYNE AI & SC

-Transferee

Correct for the purposes of the Land Transfer Act 1952

SOLICITOR FOR THE TRANSFEREE

I hereby certify that this transaction does not contravene the provisions of Part IIA of the Land Settlement Promotion and Land Acquisition Act 1952

SOLICITOR FOR THE TRANSFEREE

Thereby certify for the purposes of the Stamp and Cheque Duties Act 1971 that no conveyance duty is payable on this instrument by reason of the application of Section 24(1) of the Act and that the provisions of subsection (2) of that section do not apply

SOLICITOR FOR THE TRANSFEREE

Assistant / District Land Registrar of the

date and at the time endorsed below

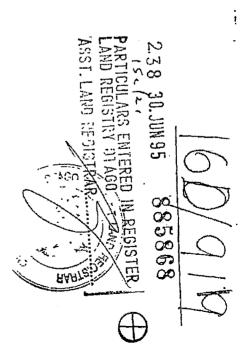
District of

OTAGO

b1b/09

CHECKETTS MCKAY LAWYERS CENTRAL OTAGO

AUCKLAND DISTRICT LAW SOCIETY 1993 (2) REF 2082



Appendix 10: Form of Covenant to be Created CC1