

DATED _____ 1989

THE PRESIDENT COUNCILLORS AND
RATEPAYERS OF THE SHIRE OF WOORAYL

and

ANSEVATA NOMINEES PTY. LTD.

AGREEMENT FOR TAKING OF WATER

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TAYLOR SPLATT & PARTNERS
LAWYERS
FRANKSTON

AGREEMENT FOR TAKING OF WATER

THIS AGREEMENT made the 8th day of May 19~~88~~⁹⁰

BETWEEN THE PRESIDENT COUNCILLORS AND RATEPAYERS OF THE SHIRE OF WOORAYL of 9 Smith Street Leongatha in the State of Victoria a municipality incorporated under the Local Government Act (hereinafter called "the Shire" which expression shall include its successors and the successors of the basin land as hereinafter defined and each and every part thereof) of the one part and ANSEVATA NOMINEES PTY. LTD. of 492 St. Kilda Road Melbourne in the State of Victoria (hereinafter called "the Licensee" which expression shall include the said Ansevata Nominees Pty. Ltd. and its receivers liquidators and assigns and the registered proprietor or proprietors for the time being and from time to time of the Licensee's land as hereinafter defined, and each and every part thereof) of the other part WITNESSES THAT
WHEREAS:-

- A. The Shire is empowered pursuant to the Local Government Act to undertake drainage works for the provision, inter alia, of adequate storm water control;
- B. The Shire has approved a scheme pursuant to Section 651 of the Local Government Act for the construction of an underground storm water drainage scheme and retarding basin to receive storm water and treated septic tank effluent from the area known as Promontory Views Estate at Walkerville within the municipal district of the Shire;

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- C. The Licensee is the registered proprietor of all that piece of land comprises Lots 1 and 2 on Plan of Subdivision No. 212161J Parish of Waratah being the land comprised in Certificates of Title Volume 9829 Folios 950 and 951 ("the Licensee's land" which expression shall not include "the basin land" hereinafter described, where the context so requires);
- D. The Shire has agreed with the Licensee to purchase that part of the licensee's land comprising 2.7 hectares of Lot 1 aforesaid delineated and coloured red on the plan in Schedule 1 to this Agreement ("the basin land") for the construction and maintenance of a storm water retarding basin ("the dam"). The precise dimensions of the basin land are being surveyed by or under direction of the Shire;
- E. The sale and transfer by the Licensee to the Shire of the basin land is conditional on the execution and exchange of this Agreement and the Shire making available all water to be stored in the dam free of charge to the Licensee for irrigation and stock watering purposes in accordance with this Agreement,

NOW THEREFORE IT IS EXPRESSLY AGREED by and between the parties hereto as follows:-

1. This Agreement shall bind the Shire and the Licensee and come into full force and effect upon:-
 - 1.1 The approval of the Scheme for the drainage of Promontory Views Estate pursuant to Section 651 or any other appropriate provisions of the Local Government Act 1958, and

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- 1.2 The exchange of a Contract of Sale in the form of Schedule 2 executed by the Licensee as vendor and the Shire as purchaser of the basin land including a condition that it is subject to this Agreement, and the delivery to the Shire of a registrable form of Transfer of the basin land free of encumbrances save for any presently registered easements and the covenant and easement and profit á prendre hereinafter described, and the Licensee doing all acts, matters or things required to enable the Shire to become registered as the proprietor of the basin land, subject as aforesaid.
 - 1.3 The Shire shall prepare a Plan of Survey of the basin land in sufficient form for registration in the Land Titles Office.
2. The Shire shall, within six months from the date of commencement of this Agreement as provided in 1 hereof:-
 - 2.1 Erect a stock proof post and wire fence on the common boundary between the basin land and the Licensee's land and in any event before commencement of any dam construction works referred to in Clause 2.2;
 - 2.2 Not before erection of the fence referred to in 2.1, construct a dam having a capacity of not less than 13.5 megalitres on the basin land in accordance with sound engineering knowledge and practice generally as shown in Schedule 3.
3. The Shire shall, after construction of the dam:

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- 3.1 Properly maintain and repair the said fence and the dam and ensure that the same does not in any way become or cause a nuisance;
- 3.2 Not without the consent of the Licensee use the basin land for any purpose other than for the collection, storage and disposal of water in or from the dam and purposes necessarily incidental thereto, including the purposes authorized by this Agreement. It is expressly agreed that this restriction shall run with the land in favour of the Licensee's land and each and every part thereof (save for the basin land) and shall be registered as a covenant against the title of the basin land to issue to the Shire after registration of the Transfer thereof from the Licensee. Such covenant shall be incorporated in the Transfer of the basin land in registrable form.
4. In part consideration for the transfer of the basin land from the Licensee to the Shire and conditionally upon such transfer, the Shire agrees, and hereby grants to the Licensee, the right hereinafter described in perpetuity or until, with the Licensee's consent as provided in the immediately preceding paragraph, the basin land is no longer used for the purpose therein described PROVIDED THAT should it become necessary, by reason of any declaration or order by any Court of appropriate jurisdiction or for any other legal reason, to read down or reduce the period of this right, it is expressly agreed that this right shall continue

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for a period of 80 years from the date of commencement of this Agreement unless earlier terminated with the consent of the Licensee. The right hereby given is for the Licensee free of any charge by the Shire:-

4.1 To take water from the dam in such quantities and at such times as the Licensee requires for irrigation of and watering of stock on, the Licensee's land without causing nuisance or negligence but the Licensee shall not take more than 50% of the water in the dam at intervals of not less than 30 days;

4.2 To construct or place on or within that part of the basin land and into the water of the dam (as may be required from time to time) such pipes, pumps and equipment and facilities as are reasonably necessary for the purpose described in 4.1 hereof and to maintain, repair, replace and/or remove the same as the Licensee deems fit without causing or creating nuisance or negligence and without damaging the dam structure or any fences constructed on the basin land or its boundaries by the Shire PROVIDED THAT the Licensee may enter the basin land for the aforesaid purposes described in 4.1 and 4.2 hereof through a gate to be constructed and maintained at the Shire's expense on the common boundary between the basin land and the Licensee's land. The Licensee shall be entitled to place such pipe, pumps, etc. at one or more points on the basin land as may be required and the gate shall be constructed in such place as directed by the

Licensee.

5. It is expressly agreed that the right described in paragraph 4 hereof is not only a personal right but the benefit of it shall run with and attach to the Licensee's land and each and every part thereof whether or not the present Licensee, Ansevata Nominees Pty. Ltd., continues to be the registered proprietor thereof.
6. It is expressly agreed that the water from the dam shall not be suitable for human consumption and the Shire gives no warranty or representation that the waters from the dam will be suitable for any purpose other than the irrigation of pasture and crops and watering of stock.
7. Nothing herein contained authorizes or permits the Shire by any act or omission to be negligent or cause any nuisance or breach of statutory duty or any other breach of the law in relation to:
 - 7.1 The construction and/or maintenance of the dam;
 - 7.2 The quality of the water in the dam or to be in the dam;
 - 7.3 The collection or discharge of water to/from the dam;
 - 7.4 The Shire's ownership/occupation of the basin land.
8. The Shire shall, at least six times per year at no less an interval than one calendar month, and at such other times when the Licensee has reasonable grounds to believe that the

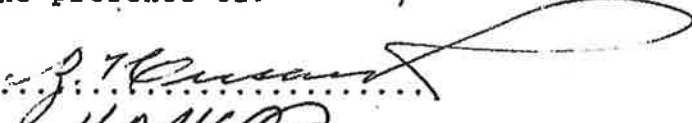


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waters of the dam may be polluted, take samples of such waters and have them tested for biological and chemical pollution in accordance with methods recommended by the Environment Protection Authority and make the results of such tests available to the Licensee. ~~It~~ is expressly agreed that the Shire shall take all necessary action to prevent untreated septic tank effluent being discharged into the dam.

9. It is the intention of the Shire and the Licensee that the right given to the Licensee described in paragraph 4 of this Agreement, is a right in the nature of an easement and/or profit á prendre and the Licensee has the right to register notifications thereof on the title to issue to the basin land by registering an easement or profit á prendre in favour of the Licensee's land over such part of the basin land as is described in paragraph ~~4(b)~~^{4.1} or to register a Caveat against the title to issue in respect of the basin land giving notice of such right.
10. The Shire shall pay all costs and disbursements of the Licensee incurred in the preparation of this Agreement and the registration or notification of any easement and/or profit á prendre or Caveat against the title to issue in respect of the basin land.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first hereinbefore written.

THE COMMON SEAL of THE PRESIDENT)
COUNCILLORS AND RATEPAYERS OF THE)
SHIRE OF WOORAYL was hereunto)
affixed in the presence of:)

President 
Councillor 
Shire Secretary 

THE COMMON SEAL of ANSEVATA)
NOMINEES PTY. LTD. was hereunto)
affixed in accordance with its)
Articles of Association in the)
presence of:)

Director
Secretary

