

**CLUTHA DEVELOPMENT PTY. LIMITED
AGREEMENT ACT.**

New South Wales



ANNO UNDEVICESIMO

ELIZABETHÆ II REGINÆ

Act No. 79, 1970.

An Act to authorise the making of an agreement between the State of New South Wales and Clutha Development Pty. Limited in relation to the construction and operation of certain works connected with coal mining activities; to amend the Mining Act, 1906, the Local Government Act, 1919, the Stamp Duties Act, 1920, and certain other Acts; and for purposes connected therewith. [Assented to, 9th December, 1970.]

BE

Clutha Development Pty. Limited Agreement.

No. 79, 1970 **B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short
title.

1. This Act may be cited as the "Clutha Development Pty. Limited Agreement Act, 1970".

Inter-
pretation.

2. In this Act, except in so far as the context or subject matter otherwise indicates or requires—

"Agreement" means the Agreement the making of which is authorised by section three of this Act ;

"associated company" has the meaning ascribed thereto in the Agreement ;

"Board" means the Maritime Services Board of New South Wales constituted under the Maritime Services Act, 1935 ;

"Company" means Clutha Development Pty. Limited and its permitted assigns ;

"Crown lands" means Crown lands within the meaning of the Crown Lands Consolidation Act, 1913 ;

"Lease" means Mining Purposes Lease granted pursuant to the Agreement ;

"lessee" means the Company or the associated company to which the Lease is granted ;

"Premier" means the Premier of the State of New South Wales for the time being and includes the person for the time being acting as such ;

"renewal" includes further renewal ;

"resumption" includes the acquisition of land by Gazette notification under the provisions of this Act, and appropriation of Crown lands, and "resume" has a corresponding meaning ;

"Roadstead"

Clutha Development Pty. Limited Agreement.

“Roadstead” means the area set aside as the Coalcliff Roadstead pursuant to subsection one of section eight of this Act; No. 79, 1970

“statutory body representing the Crown” means a statutory body within or under the Local Government Act, 1919;

“Works” has the meaning ascribed thereto in the Agreement.

3. (1) The Premier is hereby authorised to make for and on behalf of the State of New South Wales with the Company an Agreement substantially in accordance with the form contained in the Schedule to this Act. Making of Agreement authorised.

(2) If the Agreement is not executed by both parties within three months after the commencement of this Act the provisions of this Act shall cease to have effect.

(3) Upon the making of the Agreement the provisions thereof may be carried into effect notwithstanding the provisions of any other Act.

Upon any variation or alteration of the Agreement in accordance with section four of this Act, the Agreement as so varied or altered may be carried into effect notwithstanding the provisions of any other Act.

(4) The date of the making of the Agreement and of any such variation or alteration shall be notified by proclamation by the Governor in the Gazette.

4. (1) The Agreement and the Lease may be varied or altered pursuant to agreement between the Minister and the Company and no provision of the Agreement or Lease shall be varied or altered nor the powers and rights of the Company under the Agreement or Lease be derogated from except in such manner. Variation of Agreement and Lease.

Any

Clutha Development Pty. Limited Agreement.

No. 79, 1970 Any such variation or alteration of the Agreement upon approval by the Governor shall be embodied in the proclamation referred to in subsection four of section three of this Act notifying the date of any variation or alteration of the Agreement. Any variation or alteration of the Lease shall upon approval by the Governor be embodied in a proclamation by the Governor published in the Gazette.

Nothing in this subsection shall apply to any variation of the Lease under section 108E of the Mining Act, 1906.

(2) Any proclamation to which subsection one of this section applies shall be laid before each House of Parliament within fourteen sitting days of that House after the date of publication. If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a proclamation referred to in subsection one of this section has been laid before it, disallowing the proclamation or any part thereof, the proclamation or part thereupon ceases to have effect.

(3) Upon the variation or alteration of the Agreement or Lease pursuant to this section a reference in this Act to the Agreement or Lease shall be deemed to be a reference to the Agreement or Lease, as the case may be, as so varied or altered.

Powers and authorities.

5. (1) All acts, matters and things for or with respect to which provision is made in the Agreement, or which by the Agreement are agreed, directed, authorised or permitted to be made, done or executed by or on behalf of the State, the Governor, the Premier, the Minister or the Board are hereby authorised.

(2) Upon the granting of the Lease the lessee shall have power to do and carry out all things required or authorised by it to be done and carried out under the Lease as though authority therefor were enacted in this Act.

(3)

Clutha Development Pty. Limited Agreement.

(3) Neither the Registrar-General nor any other person shall be concerned to enquire whether the provisions of sub-clause one of clause twelve of the Agreement have been complied with. No. 79, 1970

6. The following instruments, that is to say— Exemption from stamp duty.
- (a) the Agreement and any variation or alteration thereof;
 - (b) any assignment, mortgage, charge, sub-lease or disposition of the Agreement or of the Lease which is for bona fide business purposes related to the construction, operation or maintenance of the Works; and
 - (c) any appointment of an associated company in accordance with sub-clause two of clause three of the Agreement,

shall not be liable to duty under the Stamp Duties Act, 1920.

7. (1) Part XIII A of the Local Government Act, 1919, shall not apply to the land the subject of the Agreement. Application of Local Government Act, 1919.

(2) Section three hundred and twenty-seven of the Local Government Act, 1919, shall not apply in respect of any subdivision of land made in connection with the Agreement.

8. (1) The Minister may by notification in the Gazette set aside an area extending seaward from mean low water mark for twice the distance from that mark of the proposed off-shore berth, and extending laterally on a general parallel to the shore-line for a distance in each direction from the line of the off-shore coal loader equal to the distance of the area's seaward Coalcliff Roadstead.

Clutha Development Pty. Limited Agreement.

No. 79, 1970 seaward boundary from the shore, as the Coalcliff Roadstead :
— Provided that the Minister with the consent of the Board may from time to time by notification in the Gazette vary such area.

(2) For the purposes of the Maritime Services Act, 1935, and the Navigation Act, 1901, and any other legislation relating to the control of ports, the pilotage of ports, and the payment of pilotage rates, harbour and light rates, and any other rates relating to vessels occupying or using ports, the Roadstead shall be a port within the jurisdiction of the State : Provided however that the Board and its officers shall not, except for any direction that may be necessary for the safety of persons or vessels, issue regulations with respect to or otherwise regulate or direct the use and operation of the off-shore loading installation, including the determination of the order of vessels using the said installation, which shall be under the sole and exclusive administration of the Company : Provided further that nothing herein shall deprive the Company of the exclusive ownership of the said installation.

(3) For the purposes of the imposition of harbour rates on all goods shipped on any vessel in the Roadstead, or brought by sea to the Roadstead for landing or transshipment, the Roadstead shall be deemed a port to which the Harbour and Tonnage Rates Act, 1920, or any provision of any other Act imposing rates on goods carried to or from a port to which the Harbour and Tonnage Rates Act, 1920, applies, shall apply, and any person who has sold goods for shipment from the said installation shall be deemed the owner of such goods for the purpose of liability for any such rates.

(4) For the purposes of the imposition of tonnage rates or berthing charges on vessels berthed at the said installation it shall be deemed a public wharf in a port to which the Harbour and Tonnage Rates Act, 1920, or any provision of any other Act imposing rates on vessels berthed at public wharves in ports to which the Harbour and Tonnage Rates Act, 1920, applies, shall apply.

(5)

Clutha Development Pty. Limited Agreement.

(5) Notwithstanding the provisions of subsections **No. 79, 1970** three and four of this section no harbour tonnage or berthage rate or charge or any rate or charge of a similar nature which exceeds the lowest rate or charge in each case at the time applicable to the shipment of goods from or the berthing of vessels in any port in the State to which any Act or Acts of the State to which those subsections refer, applies, shall be charged on goods of the like nature shipped or on vessels berthed at the said installation.

(6) Notwithstanding anything in any of the said Acts to the contrary, no loading rate or storage charge shall be charged or made by the Crown or any statutory body representing the Crown or any public or local authority for the use of the said installation.

9. For the purposes of and during periods limited by the **Preliminary powers.** Agreement the Company may—

- (a) enter and re-enter from time to time upon the land of any person (including the Crown) with such surveyors, valuers or other assistants as may be required, and survey and take levels of the same, and ascertain and mark or set out such parts thereof as are proper for the laying out of the railway or other works;
- (b) affix or set up on any land survey stations, pegs, marks, or poles, and from time to time alter, remove, inspect, reinstate, and repair the same;
- (c) dig and bore into any land and set out the lines of any works thereon; and
- (d) do such other acts and things as in the opinion of the Minister are necessary for the purposes of the Agreement.

10. (1) Notwithstanding anything in the Crown Lands **Acquisition of land.** Consolidation Act, 1913, the Mining Act, 1906, or any other Act, all Crown lands appropriated for the purposes of the Agreement

Clutha Development Pty. Limited Agreement.

No. 79, 1970 Agreement (the appropriation of which is hereby authorised) may be included in the Lease without charge to the Company other than—

- (a) the rent and other payments to be made by the Company under the Lease; and
- (b) the repayment by the Company to the Minister of all expenditure incurred by the Crown in making surveys of the Crown lands required and plans thereof and in removing or altering any improvements on Crown lands to enable such lands to be occupied for the purposes of the Lease.

(2) Such land as is required for the purpose of or incidental to the Agreement may, subject to subsection one of this section, be resumed by the Governor or purchased by the Minister at the expense of the Company.

(3) The Company shall, subject to subsection one of this section, make provision to the satisfaction of the Governor for the payment of—

- (a) compensation for the land resumed, together with interest;
- (b) the purchase money for the land purchased by the Minister; and
- (c) all necessary charges and expenses incidental to the resumption and purchase of the land.

(4) The Governor may where provision has been made as referred to in subsection three of this section resume the land under Division 1 of Part V of the Public Works Act, 1912.

(5) Any such resumption shall be deemed to be for an authorised work and in respect of such authorised work the Minister shall be deemed to be the Constructing Authority.

Parts III, IV and IX of the Public Works Act, 1912, shall not apply to and in respect of any such resumption.

(6)

Clutha Development Pty. Limited Agreement.

(6) Land when resumed or purchased under this No. 79, 1970 section shall be vested in Her Majesty as Crown lands within the meaning of the Crown Lands Consolidation Act, 1913, and shall be deemed to be reserved from sale or lease generally under that Act.

Subsection one of section ninety-eight of the Public Works Act, 1912, shall apply to such land as if the land when resumed or purchased (but not appropriated) vested in the Constructing Authority and the proceeds of any sale or lease pursuant to that subsection shall be credited to the Company.

(7) From the time any land is acquired for the purposes of the Agreement, the same shall be exempt from occupation for mining or for mining purposes or for residence under any miner's right or for business purposes under any business license under the Mining Act, 1906, and all provisions thereof whereunder a lease or exploration license might be granted with respect to such land save the Lease.

(8) Notwithstanding anything contained in the Public Works Act, 1912, or in any other Act, upon the publication in the Gazette of the notification referred to in section forty-two of the Public Works Act, 1912, the lands described or referred to in such notification shall forthwith be vested in Her Majesty as aforesaid freed and discharged from all trusts, obligations, estates, interests, contracts, charges, rates, rights of way or other easements whatsoever except such as are by the notification expressly excluded from the resumption.

(9) The Company shall have the power and authority to exercise all powers and authorities vested in a constructing authority by Division 6 of Part VI (section eighty-one excepted) of the Public Works Act, 1912, to the extent necessary to construct, carry out and complete the Works.

(10) In this section "land" means land in fee simple whether vacant or built upon, or any easement, right or privilege in, over or affecting land, and includes an interest
in

Clutha Development Pty. Limited Agreement.

No. 79, 1970 in land, and without limiting the generality thereof, includes a stratum, but does not include mines or deposits of minerals other than those that necessarily must be dug or carried away or used in the construction, carrying out or completion of the Works; and "stratum" means a stratum below, on or above the surface of any land, whether the stratum is divided horizontally, vertically or otherwise and whether partly above and partly below the surface.

(11) Neither the Registrar-General nor any other person shall be concerned to enquire whether the provisions of subsections three and four of this section have been complied with.

Power to
rescind
resumption.

11. (1) Subject to subsection seven of this section the Governor may, by notification in the Gazette, rescind in whole or in part a notification of resumption made in pursuance of this Act.

(2) Upon the publication of any notification of rescission the land described in such notification shall revert in the person who was entitled thereto immediately before the resumption for his estate, interest or right immediately before such resumption, but subject to any interest in or equity binding upon such land created by Her Majesty or the Company since such resumption; and the land shall be subject to all trusts, obligations, estates, interests, contracts, charges, rates, rights of way or other easements from which it was freed and discharged by such resumption as if the land had not been resumed and shall also be subject to any interests in or equities binding on the compensation moneys created since the resumption.

(3) No person in whom land has been revested under this section shall be prejudiced in respect of any mortgage, claim, contract, estate or interest in respect of the land by reason of his having, in consequence of the resumption of such land, done or omitted to do any act or thing, or failed to enforce or act upon any right, or to comply with any obligation in respect of such mortgage, claim, estate or interest.

(4)

Clutha Development Pty. Limited Agreement.

(4) (a) On the lodgment with the Registrar-**No. 79, 1970**
General of a copy of the notification in the Gazette rescinding
under this Act a notification of resumption of land under the
provisions of the Real Property Act, 1900, the Registrar-
General shall cancel any recording in the Register made by
him pursuant to section 31A of the Real Property Act, 1900,
in so far as it relates to the land the notification of the resump-
tion of which has been rescinded, and for the purpose of any
dealing with such land the recording made pursuant to section
31A of the Real Property Act, 1900, shall be deemed never to
have been made.

(b) On lodgment with the Registrar-General of
a copy of a notification in the Gazette rescinding under this
Act a notification of resumption of land not under the pro-
visions of the Real Property Act, 1900, the Registrar-General
shall enter in the Register of Resumptions kept under section
196A of the Conveyancing Act, 1919, particulars of the
rescission of such notification of resumption.

(5) The person in whom any land is revested under
this section shall be entitled to be compensated by the State
at the expense of the Company for any loss or damage actually
suffered by him as a direct consequence of the resumption and
its rescission.

(6) Any claim for compensation arising under this
section in which compensation has not been determined by
agreement may be heard and determined in like manner and
subject to the like conditions as a claim for compensation by
reason of the acquisition of land under the Public Works Act,
1912, and the provisions of the Land and Valuation Court
Act, 1921, shall, mutatis mutandis, apply to and in respect
of the hearing and determination of any such claim.

(7) (a) A notification rescinding a notification of
the resumption of any land under this section shall not be
made or published in the Gazette unless the Company and the
person who was entitled to such land immediately before the
resumption have previously agreed in writing to the revesting
as provided by this section of the land or part to which that
notification

Clutha Development Pty. Limited Agreement.

No. 79, 1970 notification relates, nor shall any such notification be made or published after payment of compensation in respect of the resumption has been made.

(b) An advance payment of or on account of compensation shall not constitute a payment of compensation for the purposes of paragraph (a) of this subsection.

(8) Neither the Registrar-General nor any other person shall be concerned to enquire whether the provisions of subsection seven of this section have been complied with.

Grant of
Lease to the
Company.

12. (1) The Mining Act, 1906, shall be deemed to be amended to the extent necessary to authorise the granting of the Lease thereunder in conformity with the Agreement and any renewal thereof in accordance with that Act.

(2) (a) Nothing in section thirty-two of the Mining Act, 1906, shall be construed as authorising an objection to the issue of the Lease or renewal pursuant to the Agreement.

(b) Sections one hundred and twenty-five and one hundred and thirty of the Mining Act, 1906, shall not apply to or in respect of the Lease or any renewal thereof.

Revocation
of certain
proclama-
tions, etc.

13. Any proclamation, notification or order made under or pursuant to any Act before or after the commencement of this Act that, but for this section, would preclude the granting of the Lease or renewal referred to in subsection one of section twelve of this Act or the construction, operation, maintenance and use of the Works or any part of them shall, to the extent necessary to authorise the granting of the Lease or renewal, or to permit such construction, operation, maintenance and use, be deemed to have been revoked, cancelled, varied or amended, as the case may require, immediately before the granting of the Lease or renewal, or the commencement of such construction, operation, maintenance and use.

14.

Clutha Development Pty. Limited Agreement.

14. No discriminatory rates, taxes or charges of any nature whatsoever shall be charged, imposed or assessed by the Crown, any statutory body representing the Crown or any public or local authority on or in respect of the land the subject of the Lease, the Lease or any renewal thereof, or any estate or interest therein, or any of the Works or any products or materials carried or conveyed on the Works or any part thereof, nor shall the Crown, nor any statutory body representing the Crown nor any public or local authority take or permit to be taken any discriminatory action which would deprive the Company of full enjoyment of the rights granted or intended to be granted under this Act, the Agreement or the Lease.

No. 79, 1970
Rates, etc.,
on land not
to be dis-
criminatory.

THE SCHEDULE.

AN AGREEMENT made the _____ day of _____
One thousand nine hundred and _____ BETWEEN THE STATE
OF NEW SOUTH WALES (hereinafter referred to as the State) of
the one part AND CLUTHA DEVELOPMENT PTY. LIMITED
a company duly incorporated in the State of New South Wales (here-
inafter referred to as the Company) of the other part

WHEREAS the Company carries on the mining of deposits of coal in its mines in or near the Burragorang Valley and in the Southern and South Western coalfields of New South Wales and desires to bring the said mines and any future mines opened and owned or operated by it or any associated company in or near the said Valley or near the towns or villages of Picton, Thirlmere, Tahmoor or Bargo or any nearby localities into large-scale production for the sale and shipment of coal, and

WHEREAS for such purpose it is necessary to construct and to maintain and use for a lengthy period the Works as hereinafter defined, and

WHEREAS the Company is prepared to provide or obtain and expend the large capital amount required for these and associated purposes, and

WHEREAS by reason of the benefits which will accrue to the State from the Company's proposed works and from rents to be paid and from tonnage payments to be made by the Company the State is

prepared

Clutha Development Pty. Limited Agreement.

No. 79, 1970 prepared to provide (but as regards lands other than Crown lands at the expense of the Company) the land required for the Works and to provide title thereto on the basis of a Mining Purposes Lease of Crown lands, and

WHEREAS it is nevertheless necessary that the State's investment in Government railways and port facilities should be protected, and

WHEREAS it is therefore desirable that in consideration of the Company entering into obligations on its part hereinafter set out the Company should be granted the rights titles and privileges hereinafter mentioned,

NOW THEREFORE IT IS HEREBY AGREED as follows:

1. In this Agreement unless the context otherwise indicates or requires,—

“associated company” means any company wherever incorporated—

- (a) which, in accordance with section 6 of the Companies Act, 1961, is a subsidiary of or is related to the Company;
- (b) which is directly or indirectly controlling, controlled by or under common control with the Company;
- (c) of which the Company or any subsidiary or related company as aforesaid of the Company holds directly or indirectly not less than 20% of the issued ordinary share capital;
- (d) which holds directly or indirectly not less than 20% of the issued ordinary share capital of the Company or any subsidiary or related company as aforesaid of the Company, or
- (e) which is approved in writing by the Minister for the purposes of this Agreement and which is associated directly or indirectly with the Company in its business or operations thereunder

AND for the purpose of paragraphs (b), (c) and (d) of this definition—

- (i) a company shall be said to control another company if it controls the composition of the Board of Directors of that other company or more than half of

the

Clutha Development Pty. Limited Agreement.

the voting power of that other company or holds **No. 79, 1970**
more than half of the issued share capital of that
other company; and

- (ii) the composition of a company's Board of Directors shall be deemed to be controlled by another company in the circumstances mentioned in subsection (2) of section 6 of the Companies Act, 1961;

"the Act" means the Clutha Development Pty. Limited Agreement Act, 1970;

"the Governor" has the meaning attributed to that expression by the Interpretation Act, 1897;

"the Lease" means the Mining Purposes Lease referred to in Clause 13 of this Agreement;

"Mining Act" means the Mining Act, 1906, as amended by any Act and as deemed to be amended by the Act for the purposes of this Agreement;

"Minister" means the Minister for the time being administering the Act;

"resumption" means the acquisition of land pursuant to the Act and "resume" has a corresponding meaning;

"standard gauge" means a gauge of four feet eight and one-half inches;

"Works" means an off-shore coal loader, facilities for the stock-piling of coal, a railway, conveyors, coal handling equipment and ancillary works associated with any of the forementioned works and without prejudice to the generality of the foregoing, includes bridges, tunnels, treatment plant, port, roadstead, jetties, wharves, harbour works, roads, pipelines, drains, dams, diversion weirs, spillways, water facilities, pumping and ancillary works, power lines, haulage-ways, houses, buildings, machinery, engines, vehicles, apparatus, stock, chattels and other matters and things required for the purposes of this Agreement and the business of the Company pursuant to this Agreement.

2. This Agreement shall be read and construed with the Act.

Any reference to an Act shall include that Act and any Act amending or in substitution for the same.

3. (1) The Company shall not at any time without the consent in writing of the Minister first obtained assign transfer or in any manner make over this Agreement or the benefit of this Agreement to any person body or corporation other than as provided in sub-clause (2) of this Clause 3.

(2)

Clutha Development Pty. Limited Agreement.

No. 79, 1970

(2) The Company may at any time—

- (a) assign, mortgage, charge, sublet or dispose of to an associated company as of right the whole or any part of the rights or obligations of the Company hereunder, and
- (b) appoint as of right an associated company or, with the consent in writing of the Minister, any other company or person to exercise all or any of the powers, functions and authorities which are or may be conferred on the Company hereunder,

subject, however, to the assignee or, as the case may be, the mortgagee, chargee, sub-lessee, disponee or appointee executing in favour of the Minister a covenant in a form to be approved by the Minister whereunder it or he engages with the Minister to observe and perform the provisions hereof on the part of the Company to be complied with and observed or performed in regard to the matter or matters so assigned, mortgaged, charged, sublet or disposed of or, as the case may be, the subject of the appointment.

(3) Notwithstanding anything contained in or anything done under or pursuant to sub-clause (2) of this Clause 3 the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained herein:

Provided however that the Minister may agree to release the Company from such liability where having regard to all the circumstances of any such assignment, mortgaging, charging, subletting, disposition or appointment as mentioned in sub-clause (2) of this Clause 3 he considers such release will not be contrary to the interest of the State hereunder.

4. (1) Subject to Clause 8 hereof the Company shall implement its proposals for—

- (a) the construction and operation of a private standard gauge railway from the neighbourhood of the Company's mine at Oakdale or the Company's Brimstone Collieries in the Burragorang Valley to the neighbourhood of Coalcliff on the South Coast of New South Wales, following as far as practicable the route depicted on the plan hereto annexed for the carriage of coal to the Roadstead or to any intermediate point on the line of railway, with the right to construct and operate spurs or additions to the railway to connect with other present or future mines in or near the Burragorang Valley or near the towns or villages of Picton, Thirlmere, Tahmoor or Bargo or in nearby localities, and owned or operated by the Company or any associated company;

(b)

Clutha Development Pty. Limited Agreement.

- (b) the construction and operation of an off-shore loading **No. 79, 1970** installation (including conveyors and coal handling equipment for the transfer of coal and other materials from the railway to the loading installation) on the South Coast of New South Wales in the neighbourhood of Coalcliff in the general position shown on the said plan for the shipment of coal—
- (i) from the South Clifton Colliery Holding including any extensions thereof;
 - (ii) from mines in or near the Burragorang Valley or near the towns or villages of Picton, Thirlmere, Tahmoor or Bargo or any nearby localities—
 - (a) presently owned or operated by the Company or any associated company; or
 - (b) in the future opened by the Company or any associated company and owned or operated by either the Company or an associated company; and
- (c) the creation of facilities for stockpiling coal.

(2) Nothing in sub-clause (1) of this Clause 4 shall operate to prevent the Company using the Works or any part of them for the handling or carriage upon reasonable terms and at reasonable charges (having regard to the cost to the Company of the construction, operation and maintenance of the Works and every part thereof including all costs for which the Company is liable under this Agreement) of any materials other than coal won from any mine referred to in sub-clause (1) of this Clause 4 as the Premier may from time to time at the request of the Company approve.

5. The Company shall provide or obtain the necessary finance for such construction or operation and for the creation of such stockpiling facilities.

6. (1) Title to the area to be occupied by the Works shall be by Mining Purposes Lease under the Mining Act in accordance with Clause 13 hereof.

(2) The Works shall be subject to such special provisions as are herein or in the said Lease provided.

Clutha Development Pty. Limited Agreement.

No. 79, 1970 7. (1) In carrying out its duties and exercising its powers authorities and functions under this Agreement the Company shall observe and comply with all lawful requirements of authorities of the Commonwealth.

(2) In carrying out its powers under section 9 of the Act the Company shall inflict as little damage as may be, and shall with all convenient speed make good any damage or pay compensation to any person interested for any damage sustained by him by reason of the carrying out of such duties or the exercise of such powers authorities and functions by the Company.

(3) In exercising the powers and authorities conferred on the Company by subsection (9) of section 10 of the Act the lessee shall be subject to the duties and to the liabilities (as to damages or otherwise) of a Constructing Authority under Division 6 of Part VI of the Public Works Act, 1912.

8. (1) Within twelve months from the date of this Agreement the Company shall make surveys and other investigations as to the cost and feasibility of its proposals including the extension of existing mines, the opening of new mines, the provision or obtaining of finance necessary for the construction and operation of the Works and the sale of coal on reasonable and proper terms and conditions including price.

(2) Within the same period, the Company shall submit to the Minister, in writing, its proposals for the construction and operation of the Works including—

- (a) preliminary surveys showing the route of the railway and the location of other Works;
- (b) general arrangement drawings;
- (c) outline specifications; and
- (d) operating procedures.

(3) Within three months after the receipt of the said proposals or of proposals limited to any of the matters referred to in paragraphs (a) to (d) of sub-clause (2) of this Clause 8, the Minister shall give to the Company notice either of his approval thereto or of alterations desired thereto. In the latter case, the Minister shall afford to the Company opportunity to consult with and to submit new proposals to him.

(4)

Clutha Development Pty. Limited Agreement.

(4) The Minister may make such reasonable alterations to or impose such reasonable conditions on the Company's proposals or new proposals (as the case may be) as he shall think fit, having regard to all the circumstances relative to the construction and operation of the Works including the cost thereof but the Minister shall, in any notice to the Company, disclose his reasons for any such alterations or conditions. **No. 79, 1970**

(5) Within two months of the receipt of the notice mentioned in sub-clause (3) of this Clause 8, the Company may elect to refer to arbitration any dispute as to the reasonableness of any such alteration or condition. Such election shall be exercised by notice in writing to the Minister and the reference to arbitration shall be made within two months after the giving of such notice.

(6) If, by the award on arbitration, any matter or matters the subject of the dispute is or are not decided in favour of the Company, then, unless the Company within three months after delivery of the award, satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration, this Agreement shall, on the expiration of that period, cease and determine but without prejudice to the liability of any party hereto in respect of any antecedent breach or default under this Agreement.

(7) If, by the award on arbitration, any matter or matters the subject of the dispute is or are decided in favour of the Company, the decision will take effect as a notice by the Minister that he is satisfied with and approves the matter or matters the subject of the arbitration.

(8) The arbitrator on any submission to arbitration under this Clause 8, may, upon application by either party hereto, grant an extension of the period referred to in sub-clause (6) of this Clause 8 as in the circumstances he considers reasonably necessary in the interests of either or both the parties hereto.

(9) Without limiting the generality of anything hereinbefore contained, the Company's proposals shall indicate which roads, railways or tramways the Company proposes to cross by the Works on the level, by bridge and by subway and, so far as is reasonable, the proposal shall provide that all bridges included in the Works will be constructed in one span, other than the bridges over the Nepean and Georges Rivers.

(10) Unless the Minister otherwise in writing consents the eastern terminal point of the railway shall be located east of State Highway No. 1 (Princes Highway) and shall not be located on any catchment area under the control of The Metropolitan Water Sewerage and Drainage Board.

Clutha Development Pty. Limited Agreement.

No. 79, 1970 (11) The railway and any works appurtenant to such railway shall not at any point be located on the Metropolitan Catchment Area.

(12) Any reference to arbitration pursuant to this Clause 8 shall be deemed a reference under the Arbitration Act, 1902.

(13) The Minister shall support any application by the Company or any associated company to the Joint Coal Board for its consent to the development of any coal mine, seam or field or the opening of any coal mine referred to in any of the Company's proposals which the Minister approves.

(14) If within the period of twelve months referred to in sub-clause (1) of this Clause 8, or before the Minister gives to the Company notice of his approval to the said proposals, or before the making of an award on arbitration the effect whereof is, pursuant to sub-clause (7) of this Clause 8, notice by the Minister that he is satisfied with and approves the matter or matters the subject of the arbitration therein referred to, whichever is the latest, the Company notifies the Minister in writing that it does not intend to proceed with its proposals and does not require the granting of the Lease, this Agreement shall absolutely cease and determine but without prejudice to any claim by the State or the Company against the other of them in respect of any antecedent breach or non-observance of any provision of this Agreement.

(15) If before the expiration of the period of twelve months mentioned in sub-clause (1) of this Clause 8, or before the Minister gives to the Company notice of his approval to the said proposals, or before the making of an award on arbitration the effect whereof is, pursuant to sub-clause (7) of this Clause 8, notice by the Minister that he is satisfied with and approves the matter or matters the subject of the arbitration therein referred to, whichever is the latest, the Company does not notify the Minister in writing that it does not intend to proceed with its proposals and does not require the granting of the Lease, or if at any time prior to the latest of such events the Company notifies the Minister in writing that it does so intend to proceed with its proposals and requires the granting of the Lease, then, as from such latest time, or the date of receipt by the Minister of the notification referred to in this sub-clause (whichever is the earlier) the Minister shall forthwith proceed to acquire such land as may be required for the purposes of the Lease and the Company shall forthwith proceed with its proposals pursuant to Clause 4 hereof.

(16) The date last referred to in the preceding sub-clause (15) is hereinafter referred to as the date of commencement of the Works.

Clutha Development Pty. Limited Agreement.

9. Notwithstanding any provision hereof, the Minister may at the request of the Company at any time or from time to time extend any period or date referred to in this Agreement for such period or to such later date as the Minister thinks fit. The extended period or later date when advised to the Company by notice from the Minister shall be deemed for all purposes hereof, substituted for the period or date so extended. **No. 79, 1970**

10. Neither party hereto shall be responsible for any omission, failure or delay in the performance of any of its obligations hereunder if such omission, failure or delay is occasioned by or arises from circumstances beyond the power and control of the party responsible therefor including, but without limiting the generality thereof, omissions, failures or delays caused by or arising from Act of God, force majeure, floods, lightning, storms, tempests, wash-aways, fires, explosions, act of war, riots, civil commotions, strikes, lock-outs, stoppages, disputes with workmen, restrictions of labour, bans, embargoes or other similar acts (whether partial or general), and shortages of labour or essential materials, or factors which the party whose performance of obligations is affected could not reasonably have foreseen and in any such event howsoever or wheresoever arising or occurring and in any way related to the construction or operation of the Works or any part of them or to the winning, working, raising, processing, transporting or selling of coal PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall seek to overcome that cause as soon as reasonably possible after the same first arises.

11. (1) Such land as at the date of commencement of the Works is Crown lands and is required for the purpose of or incidental to the Works shall be included in the Lease without charge to the Company other than the charges and expenses referred to in subsection (1) of section 10 of the Act.

(2) Such land other than Crown lands as is required for the purpose of or incidental to the Works shall be resumed by the State or purchased by the Minister.

(3) All compensation and interest and all purchase moneys payable in respect of lands so acquired together with all necessary charges and expenses incurred by the State or the Minister in effecting every such acquisition shall forthwith on demand and being duly vouched for be paid by the Company to the Minister.

(4)

Clutha Development Pty. Limited Agreement.

No. 79, 1970

(4) A certificate under the hand of the Under Secretary, Department of Mines, or the person for the time being acting as such, shall be prima facie evidence of amounts payable by the Company pursuant to any preceding provisions of this Clause.

(5) In this Clause "land" has the meaning ascribed thereto in subsection (10) of section 10 of the Act.

12. (1) Before settling the amount of compensation by agreement or fixing the amount of purchase price of land purchased, the Minister shall consult with the Company as to such amount.

(2) Nothing in this Clause shall limit the power of the State or the Minister to agree upon or determine the amount of any compensation or purchase money.

13. As soon as practicable after the whole of the lands required for the purposes of this Agreement are or have become Crown lands the Governor shall grant to the Company a Mining Purposes Lease of such lands for a term of fifty (50) years in or to the effect of the form set out in the Appendix hereto, and subject to the special conditions therein contained or such special conditions as varied or such other special conditions as may be necessary having regard to the survey made of the area:

Provided that in lieu of the grant of a Mining Purposes Lease to the Company the Governor may at his discretion grant such Mining Purposes Lease to an associated company named by the Company.

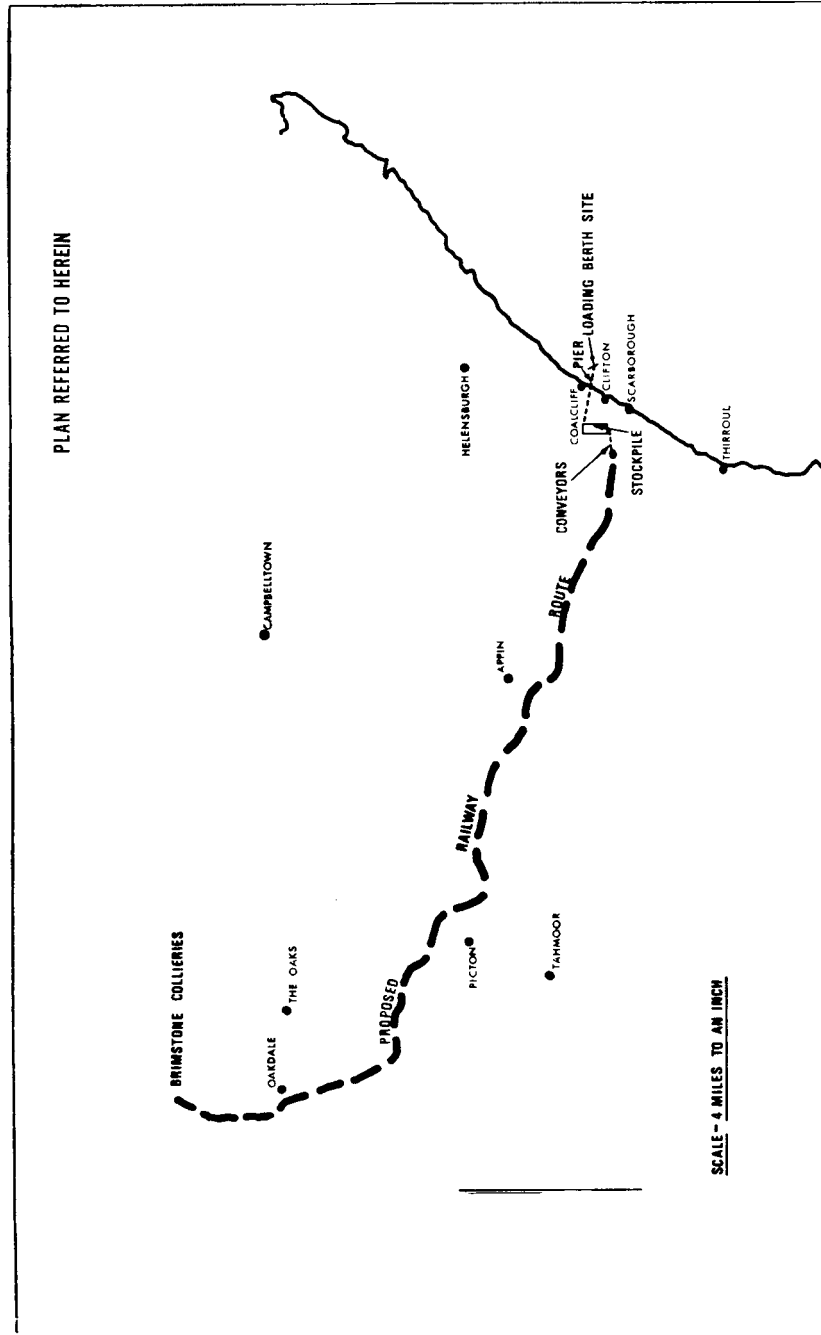
14. Any notice, consent, requirement or writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State, the Governor, the Premier or the Minister (as the case may be) if signed by the Under Secretary, Department of Mines, or the person for the time being acting as such and forwarded by prepaid post or delivered to the Company at its registered office in the State and by the Company if signed on behalf of the Company by the managing director, a director, general manager or secretary of the Company and forwarded by prepaid post or delivered to the Minister at his office in Sydney in the said State and any such notice, consent, requirement or writing forwarded by post shall be deemed to have been duly given or sent on the day on which it would in the ordinary course of post have been delivered.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

THE

THE PLAN.

No. 79, 1970



1736

Clutha Development Pty. Limited Agreement.

No. 79, 1970 SIGNED by the Premier of the }
State for and on behalf of the }
State in the presence of: }

THE COMMON SEAL of }
CLUTHA DEVELOPMENT }
PTY. LIMITED was here- } Director.
unto affixed by authority of }
the Directors and in the }
presence of: }

Secretary.

APPENDIX

Clutha Development Pty. Limited Agreement.

APPENDIX

No. 79, 1970

Mining Act, 1906

Clutha Development Pty. Limited Agreement Act, 1970

LEASE OF CROWN LANDS FOR MINING PURPOSES

Elizabeth the Second, by the Grace
of God of the United Kingdom,
Australia and Her other Realms
and Territories, Queen, Head of
the Commonwealth, Defender of
the Faith.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:—

WHEREAS in conformity with the Mining Act, 1906, and the Clutha Development Pty. Limited Agreement Act, 1970, and the Agreement dated entered into in pursuance thereof between the State of New South Wales and Clutha Development Pty. Limited, a lease of the lands hereinafter described for the purposes of constructing, maintaining and using the Works was authorised to be granted.

NOW KNOW YE that in pursuance of the provisions of the said Acts and in conformity with the same and in consideration of the rent hereinafter reserved and of the covenants and provisos hereinafter contained We do hereby grant and demise unto Clutha Development Pty. Limited (which with its successors transferees and assignees is hereinafter referred to as the lessee) ALL that the surface and the land to a depth of three hundred feet below the surface of that piece or parcel of land containing by admeasurement and more particularly described and delineated in the plan drawn hereon or annexed hereto and numbered together with all liberties easements advantages and appurtenances which are now or at any time during the term hereby granted may be held occupied or enjoyed therewith for the purposes of constructing, maintaining and using the Works but not so as to enable the lessee to mine in on or under the said land for gold or any other mineral or metal TO HOLD the said land and premises with the appurtenances unto the lessee from the date hereof for the term of fifty years next ensuing for the purposes aforesaid and for no other purpose

YIELDING AND PAYING therefor unto Us Our Heirs and Successors yearly and every year during the said term a yearly rent of fifty cents per acre in advance the first year's rent having been paid as aforesaid

Clutha Development Pty. Limited Agreement.

No. 79, 1970 aforesaid the next payment to be made to the Minister for Mines in Sydney on or before the _____ day of _____ next and thereafter on or before the _____ day of _____ in each and every year the yearly rent aforesaid shall be paid to the Minister for Mines aforesaid clear of all rates taxes and assessments to which the said land is now or at any time during the said term may be subject or liable. And the lessee doth covenant with Us Our Heirs and Successors in manner following that is to say:—

1. THAT the lessee shall during the term hereby granted pay unto Us Our Heirs and Successors the rent hereby reserved at the times and places hereinbefore appointed for payment thereof clear of all deductions.

2. AND shall during the said term keep the Works in repair and continuously use the same bona fide for the purposes aforesaid and take all reasonable and proper precautions to prevent the waste of water therefrom.

3. AND shall make such provision for the disposal of the detritus dirt waste or refuse of the Works that the same shall not be an inconvenience nuisance or obstruction to any roadway river creek or private or Crown lands or in any manner occasion any public nuisance or private damage or inconvenience.

4. AND shall maintain boundary marks at each angle of the said land and at such points along the boundary lines as shall be necessary so as plainly and accurately to define the boundary lines and angles of the said land.

5. AND shall keep such books accounts documents and any other records as may be necessary for the purpose of establishing the quantities of coal specified in clause 7 and shall permit any officer of the Department of Mines at all times to inspect the same and as often as required so to do make and deliver to the Minister for Mines or any officer appointed or instructed to collect obtain or receive the same all such true and proper returns statements and statistics of the operation of the Works as may be required by the Minister for Mines to verify the records so kept.

6. AND if so required by the Minister for Mines shall keep such other books accounts documents or other records as the Minister for Mines may reasonably consider necessary for the purpose of establishing the quantities of coal specified in the next following clause.

7.

Clutha Development Pty. Limited Agreement.

7. (a) AND shall within each calendar month furnish to the Minister for Mines a full and proper return showing the quantity of coal shipped by way of the off-shore coal loader during the preceding calendar month and the quantity of coal transported over all or any part of the railway and sold and delivered by means other than the off-shore coal loader in that preceding calendar month and shall forward with such return payment in respect of each ton of coal so shipped or so transported, sold and delivered on the following basis:—

- (i) sixty-five cents (65c) per ton on each ton of coal up to four (4) million tons so shipped or so transported, sold and delivered in a calendar year; plus
- (ii) seventy cents (70c) per ton on each ton of coal in excess of four (4) million tons and up to five (5) million tons so shipped or so transported, sold and delivered in a calendar year; plus
- (iii) seventy-five cents (75c) per ton on each ton of coal in excess of five (5) million tons and up to six (6) million tons so shipped or so transported, sold and delivered in a calendar year; plus
- (iv) eighty cents (80c) per ton on each ton of coal in excess of six (6) million tons and up to seven (7) million tons so shipped or so transported, sold and delivered in a calendar year; plus
- (v) eighty-five cents (85c) per ton on each ton of coal in excess of seven (7) million tons and up to eight (8) million tons so shipped or so transported, sold and delivered in a calendar year; plus
- (vi) ninety cents (90c) per ton on each ton of coal in excess of eight (8) million tons and up to nine (9) million tons so shipped or so transported, sold and delivered in a calendar year; plus
- (vii) ninety-five cents (95c) per ton on each ton of coal in excess of nine (9) million tons and up to ten (10) million tons so shipped or so transported, sold and delivered in a calendar year; plus
- (viii) one dollar (\$1.00) per ton on each ton of coal in excess of ten (10) million tons so shipped or so transported, sold and delivered in a calendar year.

(b) For the purposes of assessing any payment to be made pursuant to subclause (a) of this clause, the quantities of coal therein specified shall be determined in accordance with such normal commercial practices as may from time to time be approved by the Minister for Mines.

(c) Allowance for water in coal specified in subclause (a) of this clause shall be as determined in accordance with the practices and procedures of the Minister for Mines for purposes of payment of royalty pursuant to the provisions of the Mining Act.

(d)

Clutha Development Pty. Limited Agreement.

No. 79, 1970 (d) Where any payment referred to in subclause (a) of this clause is not paid within the time stipulated interest at such rate per annum not exceeding two per centum above the maximum rate for the time being payable on overdrawn accounts held with any trading bank for any purpose as the Minister for Mines may determine may be added to the amount due until it is paid.

(e) Any payment or interest payable pursuant to this clause shall constitute a debt due and payable to the Crown and shall be recoverable in any court of competent jurisdiction.

8. AND shall during the said term make proper and reasonable compensation to the occupier or occupiers or lessee or lessees from the Crown of any adjoining land in respect of any damage which may be sustained by him or them by reason of the carrying on of the Works such compensation to be determined by the Minister for Mines or by some person authorised by him so to do.

9. AND further shall at all times during the said term keep and preserve the land and premises hereby demised from all avoidable injury or damage and also the watercourses roads ways works erections and fixtures therein and thereon in good repair and condition, fair wear and tear and damage or destruction caused by fire, flood, lightning, storm, tempest or act of the Queen's enemies excepted, and in such state and condition shall at the end or sooner determination of the said term but without prejudice to such rights as the lessee may have to remove any or all the Works upon the determination of the said term, deliver peaceable possession thereof and of all and singular the premises hereby demised to Us Our Heirs and Successors or to the Warden or other officer authorised to receive possession thereof.

10. AND shall not use or occupy or permit to be used or occupied the said land or any part thereof for other than the purposes hereinbefore specified.

11. AND shall not mine in or upon the said land for any mineral metal or ore.

12. AND shall not assign or sublet this Lease or any interest therein without the previous sanction in writing of the Minister for Mines.

Clutha Development Pty. Limited Agreement.

13. AND shall not plead acceptance of rent by Us Our Heirs and Successors or on Our or Their behalf as a waiver of the right of Us Our Heirs and Successors or of the Minister for Mines or other officer on Our or Their behalf to enforce observance of the covenants herein contained or the covenants and conditions to be observed under the Mining Laws or of the right of the Governor with the advice of the Executive Council to cancel this Lease for breach of any such covenant. No. 79, 1970

14. PROVIDED always and it is hereby agreed and declared in manner following:—That it shall be lawful for Us Our Heirs and Successors without compensation to the lessee to make and use in on or under the land hereby demised any levels drifts leads shafts water-courses adits roads ways and passages for freeing and keeping free any other lands or any mines from water or for conveying water to any other lands or any mines for mining purposes or for supplying any mines with fresh air or for effectually working any mines or for any public purpose whatsoever causing as little damage obstruction or interference as possible to the Works.

15. IF the lessee at any time during the term of this demise—

- (a) fails to fulfil or contravenes the conditions and covenants contained or referred to herein;
- (b) fails to use the said land bona fide for the purpose for which it has been demised; or
- (c) uses it for a purpose other than that for which it has been demised,

and such failure, contravention or use continues after the expiration of reasonable notice given by the Minister for Mines requiring that the failure be remedied or that the contravention or use cease this Lease may be cancelled by the Governor and the cancellation shall take effect on the date notified in the Government Gazette and the production of a copy of the Government Gazette containing a notice purporting to be signed by the Minister for Mines declaring the Lease cancelled shall be conclusive evidence of the facts stated therein and upon the date notified as aforesaid it shall be lawful for Us Our Heirs and Successors or Our or Their agents or officers or for any bailiff or other person duly authorised thereto or for any holder of a miner's right who has the permission of the Minister for Mines without any previous demand whatsoever to enter forthwith into and upon the land hereby demised and the same to repossess and enjoy as fully and effectually to all intents and purposes as if these presents had not been made and the lessee to expel and remove without any legal process and as effectually as the Sheriff might do in case judgment in
ejection

Clutha Development Pty. Limited Agreement.

No. 79, 1970 ejection had been obtained and a writ of habere facias possessionem had been issued on such judgment and in case of such entry and any legal proceedings taken in respect thereof the defendant or defendants in any such proceeding may plead leave and license in bar thereof and these presents shall be conclusive evidence of such leave and license by the lessee or other person or persons plaintiff or plaintiffs in such proceedings for such entry or other matters complained of in such proceedings.

16. AND it is hereby declared that all conditions and provisions contained in the Mining Act or any other legislation now or hereafter to be passed or prescribed so far as the same may be applicable are embodied and incorporated with these presents as conditions and provisions of the Lease hereby granted and the lessee hereby covenants to observe fulfil and perform the same.

17. This Lease is issued subject to—

- (a) variation or alteration as provided in section 4 of the Act, and
- (b) variation as provided under section 108E of the Mining Act with respect to any one or more of the following that is to say:—
 - (i) the lands demised by the Lease;
 - (ii) the rent; and
 - (iii) any conditions described in the Lease as special conditions.

In this Clause special conditions means the conditions set forth in Clauses 18 to 37 inclusive hereof.

18. The lessee shall survey the boundaries of the area required for the construction of the Works and shall lodge a plan of such survey with the Minister for Mines and obtain his approval to such plan before construction of the Works or any part thereof is commenced, unless otherwise approved by the Minister for Mines.

19. (a) The lessee shall, unless the Minister for Mines otherwise agrees in writing, construct and operate the Works generally in accordance with the proposals approved pursuant to Clause 8 of the Agreement and in accordance with the complete plans and specifications submitted to and approved by the Minister for Mines hereinafter referred to.

- (b) The lessee shall submit complete plans and specifications—
 - (i) for the construction of the railway and any installations associated with the operation thereof;

(ii)

Clutha Development Pty. Limited Agreement.

- (ii) of all bridges, subways or other structures; No. 79, 1970
 (iii) for all structures to be erected below mean high water mark
 and within two chains shoreward of mean high water mark;
 and
 (iv) for the construction of any conveyors,

to obtain the approval of the Minister for Mines before the construction of the work referred to in the plans and specifications, respectively, is commenced.

(c) Notwithstanding anything contained in this clause, the Minister for Mines shall not refuse his approval to any plans and specifications or impose any conditions on such approval if such refusal or conditions would be contrary to the proposals previously approved by him or deemed to have been approved by him in accordance with Clause 8 of the Agreement.

20. (a) The gauge of the railway to be constructed as part of the Works shall be four feet eight and one-half inches.

(b) All rolling stock to be used in connection with the Works shall be constructed and maintained so that the escape of coal therefrom is as far as possible prevented but the lessee shall not be responsible for the escape of any coal through accidental causes.

21. (a) The Works other than spur or branch railway lines shall be completed and in operation by a date not later than three years from the date hereof or within such additional time as the Minister for Mines may allow. Provided that in the event of any spur or branch railway line not being completed and in operation within such additional time as in the opinion of the Minister is reasonable (having regard to the proposals approved or deemed to have been approved in accordance with Clause 8 of the Agreement) and the land being required for another purpose the Governor may on notice in writing being given to the lessee by the Minister cancel the Lease so far as it relates to any right to the area granted for such spur or branch line for so much of such area as is necessary for the purpose for which it is required.

(b) Neither party hereto shall be responsible for any omission, failure or delay in the performance of any of its obligations hereunder if such omission, failure or delay is occasioned by or arises from circumstances beyond the power and control of the party responsible therefor including, but without limiting the generality thereof, omissions, failures or delays caused by or arising from Act of God, force majeure, floods, lightning, storms, tempests, wash-aways, fires,

explosions,

Clutha Development Pty. Limited Agreement.

No. 79, 1970 explosions, act of war, riots, civil commotions, strikes, lock-outs, stoppages, disputes with workmen, restrictions of labour, bans, embargoes or other similar acts (whether partial or general), and shortages of labour or essential materials, or factors which the party whose performance of obligations is affected could not reasonably have foreseen and in any such event howsoever or wheresoever arising or occurring and in any way related to the construction or operation of the Works or any part of them or to the winning, working, raising, processing, transporting or selling of coal PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall seek to overcome that cause as soon as reasonably possible after the same first arises.

(c) If at any time after completion of the Works the lessee abandons them, the Minister for Mines or any person authorised by him may take possession of the Works on such terms as the Minister for Mines may determine.

22. (a) Upon the expiry or sooner determination of this Lease or the last renewal thereof the Minister for Mines shall have the right to acquire by purchase the whole or any part or parts of the Works with or without the whole or any part of the railway equipment (whether it forms part of the Works or not) at the date of the Minister's exercising such right, the said right to be exercised upon notice to the lessee given within three months of such expiry or determination.

(b) The purchase price to be paid to the lessee for the Works or such part or parts thereof as are being purchased (other than railway equipment) shall be the value thereof as determined by the Valuer-General for the State or the person for the time being carrying out the duties of that office.

(c) The purchase price to be paid to the lessee for the railway equipment or the part or parts thereof being purchased shall be as agreed between the Minister for Mines and the lessee or, if agreement cannot be reached, then at the value thereof as determined by a valuer agreed upon between the Minister for Mines and the lessee or if no agreement can be reached as to such valuer then by a valuer nominated by the Commonwealth Railways Commissioner for the time being or the person for the time being carrying out the duties of that office.

(d) For the purposes of this clause the expression "railway equipment" means railway rolling-stock (including locomotives), railway lines, sleepers and ballast, signalling and switching equipment, railway communication equipment, control equipment, and other equipment used directly in the operation, control and maintenance of the railway (and whether fixtures or not).

(e)

Clutha Development Pty. Limited Agreement.

(e) In so far as the Minister for Mines does not exercise the right to acquire the whole or any part of the Works in accordance with subclause (a) of this clause then within 12 months after the expiry of the period of three months mentioned in subclause (a) the lessee shall at its own expense remove all buildings, structures, erections, plant, machinery, equipment, railway equipment, and other things placed on the area demised pursuant to or for the purposes of this Lease not acquired by the Minister for Mines and shall leave the area in a clean and tidy condition to the satisfaction of the Minister for Mines. No. 79, 1970

23. (a) The schedule of payments set out in clause 7 may, at any time after the expiration of a period of 20 years from the date hereof and at intervals of 10 years thereafter, be reviewed and varied by the Minister for Mines.

(b) No variation of any rate specified in the said schedule shall be made which represents a greater percentage variation of the rate so specified than the variation (expressed as a percentage) in the average price (f.o.b.) of coal obtained by the Company including any associated company for coal exported through the off-shore loader during the financial year immediately preceding the date at which the review was made and the average price (f.o.b.) of coal obtained by the Company including any associated company for coal exported from the Burragorang Valley for the financial year immediately preceding the year in which the off-shore coal loader came into commercial operation: Provided that such variation shall not exceed the arithmetic average of—

- (i) the percentage variation in the State male basic wage (or the equivalent thereof) payable at the 1st April immediately preceding the date at which the review was made and the State male basic wage (or the equivalent thereof) payable as at 1st April immediately preceding the date on which the said loader came into commercial operation; and
- (ii) one and one-half times the variation (expressed as a percentage) in—

the arithmetic average total cost per ton gross mile of the New South Wales Department of Railways for the last three complete financial years of the Department before the date as at which the review was made,

over—

the arithmetic average total cost per ton gross mile of the New South Wales Department of Railways, in the case of the first review, for the three financial years ending on 30th June immediately preceding the year in which the said loader came into commercial operation and

in

Clutha Development Pty. Limited Agreement.

No. 79, 1970

in the case of any subsequent review, for the three financial years ending immediately preceding the then previous review.

(c) The total cost per ton gross mile for each financial year shall be ascertained by dividing the total expenditure of the New South Wales Department of Railways, that is, working expenses, including depreciation, and debt charges for that year by the gross ton mileage (goods and passengers) for the same year, all as published in the Department's Annual Report for that year.

(d) Any variation made by the Minister for Mines in accordance with this clause shall take effect upon notice of the variation signed by the Under Secretary, Department of Mines, or an officer of that Department acting on his behalf, being sent by certified mail or delivered to the lessee at its registered office.

(e) On any renewal of this Lease the schedule of payments set out in clause 7 applicable at the time of expiry of the Lease shall apply but shall be reviewed as soon as practicable after the renewal and then at intervals of 10 years from the date of renewal. Any variation upon the first review after any such renewal shall be applicable as from the date of renewal.

(f) In this clause the expression "financial year" shall mean any period from 1st July to the following 30th June; a reference in this clause to the State male basic wage shall be a reference to the basic wage for adult males by reference or in relation to which rates of wages are by Part V of the Industrial Arbitration Act, 1940, fixed by an award or agreement that fixes rates of wages by reference or in relation to a basic wage.

24. Unless the Premier otherwise consents in writing the lessee shall not use the Works for the handling or carriage of—

(a) coal other than coal won from mines referred to in paragraph (b) of sub-clause (1) of Clause 4 of the Agreement; or

(b) any materials other than coal.

The lessee shall comply with any terms and conditions the Premier may impose.

25. (a) In constructing, operating and maintaining the Works the lessee shall not interfere in any way with any transmission lines nor with the rights conferred by any easement for the construction of

such

Clutha Development Pty. Limited Agreement.

such lines traversing the area demised, save to the extent which is inherent in the proposals approved by the Minister for Mines in accordance with Clause 8 of the Agreement. **No. 79, 1970**

(b) The lessee shall allow free and uninterrupted access to authorised employees of the authority or authorities responsible for the maintenance of any transmission lines traversing the area demised to those parts of such area as is necessary for the purpose of maintaining such lines.

(c) The lessee shall submit to the authority or authorities controlling any transmission lines traversing the area demised, details and plans including the location and levels of the part or parts of the Works in the vicinity of such lines, before any construction work is commenced.

(d) In the event of any alteration being required as a result of the construction, erection or operation of the Works to any transmission lines, the cost of such alterations shall be paid by the lessee to the authority incurring such cost.

26. (a) The lessee shall maintain all structures to be erected below mean high water mark and within two chains shoreward of mean high water mark and associated works to the satisfaction of the Minister for Public Works and any requirement of the Minister for Public Works in respect of maintenance shall be implemented without delay.

(b) Any officer of the Department of Public Works or the Board authorised in that behalf shall be given free and uninterrupted access to such structures for the purpose of examining such structures and any such person shall have the right to moor vessels within the area demised.

27. The lessee shall itself, and shall ensure that all other persons employed by the lessee and the masters of all vessels owned or chartered by the lessee making use of the off-shore coal loader shall, accept as applicable, and comply with, all requirements of the Maritime Services Act, 1935, the Navigation Act, 1901, and any other legislation relating to the control of ports, the pilotage of ports, and the payment of pilotage rates, harbour and light rates and any other rates relating to vessels occupying or using ports or wharves or to goods carried or to be carried by such vessels, which are based upon the classing of the Roadstead as a port within the jurisdiction of the State.

Clutha Development Pty. Limited Agreement.

No. 79, 1970 28. (a) The lessee shall effectively drain and keep drained at all times that part of the area demised above high water mark and shall comply with any directions given from time to time by the Minister for Mines or an officer authorised on his behalf in regard thereto.

(b) The lessee shall take all steps necessary to ensure the growth of approved grasses and plants on the surface of those parts of the area demised which may be disturbed by the construction of the Works and which can be applied to the growth of such grasses and plants, and shall comply with any reasonable and lawful directions given by the Minister for Mines or an officer authorised on his behalf in regard thereto.

29. The lessee may, and shall if so directed by the Minister for Mines, fence and keep fenced the boundaries, or such part or parts of the boundaries, of the area demised as may be considered reasonably necessary. Any fence erected in consequence of a direction given by the Minister for Mines shall be to a standard satisfactory to the Minister for Mines.

30. The lessee shall permit the passage of stock across the area demised at such places as may be directed by the Minister for Mines and subject to such conditions as he may impose.

31. (a) The lessee shall to the satisfaction of the Minister for Mines enclose by either natural or artificial means the boundaries of all areas used for the stockpiling of coal.

(b) The lessee shall ensure that the drainage from all areas used for the stockpiling of coal shall be directed into silt traps or ponds and such traps or ponds will be so designed as to permit of their being cleaned out as required and the material removed therefrom being returned to the stockpile area.

(c) The lessee shall, if required so to do by the Minister for Mines or an officer authorised on his behalf, provide a suitable water spray system to suppress airborne dust from coal deposited within stockpile areas.

32. (a) The lessee shall enclose all conveyors installed in the area demised and all conveyor discharge points (other than on to any stockpile) shall be so designed as to reduce as far as is practicable freefall of any material and shall be enclosed unless otherwise approved by the Minister for Mines.

(b)

Clutha Development Pty. Limited Agreement.

(b) The lessee shall cause all spillage from conveyors to be No. 79, 1970 trapped below the conveyor and thereafter collected and returned to the conveyor or stockpile area.

33. The lessee shall at all times comply with any directions given by an inspector appointed under the provisions of the Coal Mines Regulation Act, 1912, in regard to the safety of the operation of the Works.

34. The lessee shall take all reasonable action to prevent any pollution as a result of the construction, maintenance and operation of the Works and shall comply with any reasonable direction given by the Minister for Mines or any officer acting on his behalf in regard thereto.

35. The lessee shall observe and comply with the following conditions in respect of any part or parts of the area demised that lie within any catchment or other areas under the control of The Metropolitan Water Sewerage and Drainage Board and in this clause the word "Board" wherever appearing shall mean The Metropolitan Water Sewerage and Drainage Board:—

- (a) The lessee shall carry out the Works in such a way as to conform strictly to all provisions of the Metropolitan Water, Sewerage, and Drainage Act, 1924, applying to the prevention of pollution of any catchment area or the preservation of the purity of the water supply provided thereby or derived therefrom, or for the protection of the property of the Board on any catchment area and also to all the requirements of the Minister for Mines acting at the request or on the advice of the Board from time to time under the said Act or any of the by-laws thereunder for the time being in force.
- (b) If the lessee shall at any time be using or about to use any process in the construction, operation, maintenance or use of the Works or any part of them which in the opinion of the Minister for Mines acting as aforesaid is likely to pollute any catchment area or the water supply or to endanger any property of the Board on any catchment area the lessee upon service of a notice under the hand of the Minister for Mines so to do shall—
 - (i) discontinue the use of such process within twenty-four hours, or
 - (ii) thereafter refrain from adopting such process at any time,as the case may require.

(c)

Clutha Development Pty. Limited Agreement.

No. 79, 1970

- (c) The lessee shall make such provision for sanitation as may be directed by the Minister for Mines and shall at all times observe and perform any requirements of the Minister for Mines respecting sanitation.
- (d) The lessee shall provide and maintain to the satisfaction of the Minister for Mines efficient means to prevent the contamination, pollution or siltation of any stream or watercourse or catchment area by the lessee or any contractor, agent, servant or employee of the lessee and shall observe any instruction given by the Minister for Mines with a view to preventing or minimising the contamination, pollution or siltation of any stream, watercourse or catchment area.
- (e) The lessee shall not establish any camps or habitations within any catchment or other areas under the control of the Board except as hereinafter provided.
- (f) The lessee hereby covenants with the Minister for Mines and as a separate covenant the lessee hereby covenants with the Board that the lessee shall at all times hereafter save harmless and keep the Minister for Mines and the Board indemnified from payment of compensation and from and against all actions proceedings claims and demands in respect of any injury loss or damage arising out of or in any way connected with any interference with or deprivation or loss of access to the land and premises hereby demised which may occur by reason of any works or operations undertaken or carried out by the Board or arising out of or in any way connected with any discontinuance or alteration of any process consequent upon the service of a notice in pursuance of the provisions of subclause (b) of this clause or arising out of or in any way connected with the operation of any by-laws relating to a catchment area in force at the date hereof or made by the Board at any time hereafter and the lessee hereby agrees that for the purpose of this subclause the Board shall be deemed to be a party to this Lease.
- (g) The lessee shall not erect install or use within any catchment area or other area under the control of the Board any plant or process for the purpose of washing coal or extracting or refining or otherwise treating any oil or other derivative from coal or shale, except with the consent in writing of the Minister for Mines and subject to such conditions as he may stipulate.
- (h) The lessee shall at all times properly operate, maintain and drain at its own expense to the satisfaction of the Minister for Mines acting as aforesaid the railway and appurtenant works authorised by this demise within any catchment area.

(i)

Clutha Development Pty. Limited Agreement.

- (i) The lessee shall observe any requirements of the Minister for Mines acting as aforesaid as to the order and method of constructing the Works so as to prevent erosion or siltation of any catchment areas, or pollution of any watercourse, creek or the stored water of any dam. **No. 79, 1970**
- (j) The lessee shall carry out to the satisfaction of the Minister for Mines acting as aforesaid any structural works considered necessary by the Minister for Mines acting as aforesaid for the protection of the purity of the water supply.
- (k) The lessee shall ensure that the following requirements are complied with in regard to the method of construction and location of the railway within any catchment or other area under the control of the Board:—
- (i) cutting and filling of the formation shall be kept to a minimum;
 - (ii) all material cut and not required for fill purposes shall be removed from any catchment area if so directed by the Minister for Mines acting as aforesaid;
 - (iii) all embankments shall be stabilised by such processes as may be approved by the Minister for Mines acting as aforesaid; and
 - (iv) the railway formation shall be provided with suitable concrete-lined drains, silt traps, culverts, dwarf walls or other facility to prevent erosion which shall be of sufficient capacity to permit of cleaning without putting them simultaneously out of commission.
- (l) The lessee shall keep all parts of the land hereby demised within any catchment or other area under the control of the Board in a clean condition and maintain ground cover vegetation and establish it artificially where directed to the satisfaction of the Minister for Mines acting as aforesaid.
- (m) The lessee shall strictly limit its operations within any catchment or other area under the control of the Board to the width approved by the Minister for Mines acting as aforesaid to be cleared for the route of the railway and its appurtenant works. The parking of plant, or stockpiling of materials, beyond this width, shall be prohibited except in areas specifically approved, in advance, by the Minister for Mines acting as aforesaid. Proposals for the provision of access tracks within any catchment or other area under the control of the Board to the route of the railway must also be approved in advance by the Minister for Mines acting

Clutha Development Pty. Limited Agreement.

No. 79, 1970

as aforesaid before construction of any such track is commenced. Use of such tracks shall cease on completion of construction of the railway unless otherwise approved by the Minister for Mines acting as aforesaid.

- (n) The lessee shall limit the use and storage of petrol, diesel fuel, grease, oil and similar materials to the minimum essential for the carrying out of the Works, and shall arrange for the use and storage of these materials only in such parts of any catchment or other area under the control of the Board as are approved by the Minister for Mines acting as aforesaid.
- (o) The lessee shall not establish any camps or habitations on any catchment area except with the special permission of the Minister for Mines acting as aforesaid. The Minister's approval, in writing, must first be obtained as to location, size and method of operation before any such camp is established.
- (p) The use of any camp or other sites on any catchment or other area under the control of the Board by personnel shall be subject to satisfactory hygiene arrangements including the provision of treatment works designed and constructed to the requirements of the Minister for Mines acting on the advice of the Department of Public Health. The effluent and any other sullage, including bathroom wastes, shall be disposed of in a manner satisfactory to the Minister for Mines acting at the request or on the advice of the Board and, if required, shall be pumped to a disposal area clear of the catchment lands through mild steel cement-lined pipes. Pumping arrangements shall be to the Board's approval and shall include 100% stand-by arrangements with a holding tank (for emergency use) capable of holding at least three days' discharge. The effluent shall be chlorinated by the lessee at or near the pumping point to the satisfaction of the Minister for Mines acting as lastmentioned.
- (q) (i) The lessee shall not permit any fire place to be constructed within any catchment or other area under the control of the Board unless protected by stone wallings and fires lit therein shall not be left unattended.
(ii) The lessee shall take adequate precautions for the prevention of fire to the satisfaction of the Minister for Mines acting as aforesaid, and in the event of any fire caused by the operation of the lessee within any catchment area the lessee shall be held responsible for the cost of fire suppression activities incurred by the Board.

(iii)

Clutha Development Pty. Limited Agreement.

- (iii) No fires shall be lit within any catchment or other area **No. 79, 1970** under the control of the Board for the purposes of clearing vegetation or other materials without the prior approval of and subject to such conditions as may be stipulated by the Board's Forestry Officer.
- (r) The lessee shall accept responsibility for the control and conduct of its employees or other persons engaged in business with the lessee, at all times while they are on any catchment area which lies within the area demised, whether actually working or not. If any person in the employ of the lessee is guilty of an offence under any of the Board's by-laws governing the control or use of any catchment area, the lessee shall agree upon the request of the Board to transfer that employee to work outside any catchment area.
- (s) The lessee shall erect and maintain fences and locked gates where determined by the Board, to prevent the entry from the area demised of unauthorised persons on to any immediately adjacent part of any catchment area.
- (t) The lessee shall permit free and uninterrupted access to officers or employees of the Board at any time for the purposes of their official duties and the production of an "Authority to Enter" card issued by the Board or other official badge shall be accepted by the lessee as sufficient proof of identity.
- (u) The lessee shall provide and maintain suitable signs at the proposed sites of and at the junction of any access road with any main road, warning all persons that trespassing on the catchment area, the lighting of fires or throwing of cigarette butts or matches on to any part of the catchment area is strictly prohibited.
- (v) The lessee shall reimburse the Board for any costs of investigation, design, construction, supervision and maintenance as may be applicable incurred by the Board in connection with the various installations authorised by this Lease, provided that the cost to be paid by the lessee shall not exceed two thousand dollars (\$2,000) in any one calendar year.
- (w) The lessee shall not be concerned in any case to see that the Minister for Mines is acting at the request or on the advice of the Board.

36. The lessee shall lodge with the Minister for Mines a deposit of two hundred and fifty thousand dollars (\$250,000) or enter into a bond in the sum of two hundred and fifty thousand dollars (\$250,000) as a guarantee that the foregoing conditions shall be fulfilled and in

the

Clutha Development Pty. Limited Agreement.

No. 79, 1970 the event of such conditions not being fulfilled in their entirety, the deposit shall be forfeited and may be applied towards the cost of carrying out the work which the lessee failed to do and/or restoring the area demised.

37. The lessee shall indemnify and keep indemnified the Crown from and against all actions suits claims and demands of whatsoever nature and all costs charges and expenses which may be brought against the lessee or which the lessee may incur in respect of any accident or injury to any person or property which may arise out of the construction maintenance or operation of the Works by the lessee within the boundaries of the area demised notwithstanding that the conditions contained in this Lease shall in all respects have been observed by the lessee or that any such accident or injury shall arise from any act or thing which the lessee may be licensed or compelled to do hereunder.

38. AND it is hereby further agreed and declared that—

- (a) the expression "ton" means a long ton of two thousand two hundred and forty (2,240) pounds avoirdupois;
- (b) expressions used in this Lease shall unless the context otherwise indicates or requires have the meanings ascribed to them in the Clutha Development Pty. Limited Agreement Act, 1970, or in the Agreement; and
- (c) any reference to an Act shall include that Act and any Act amending or in substitution for the same.

IN TESTIMONY WHEREOF We have caused this Our Lease to be sealed with the Seal of Our said State.

WITNESS Our Trusty and Well-beloved Sir Arthur Roden Cutler, upon whom has been conferred the decoration of the Victoria Cross, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George, Knight Commander of Our Royal Victorian Order, Commander of Our Most Excellent Order of the British Empire, Knight of Our Most Venerable Order of Saint John of Jerusalem, Governor of Our State of New South Wales and its Dependencies in the Commonwealth of Australia at Sydney in Our said State this day of in the year of Our Reign and in the year of Our Lord one thousand nine hundred

COMMONWEALTH