

Australian Oil Refining Limited Agreement Ratification Act 1954 No 34

[1954-34]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Statute Law \(Miscellaneous Provisions\) Act 2012 No 42](#) (not commenced — to commence on 6.7.2012)

Authorisation

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Australian Oil Refining Limited Agreement Ratification Act 1954 No 34



New South Wales

An Act to ratify a certain Agreement made between Australian Oil Refining Limited of the one part and the Minister for Lands for and on behalf of Her Most Gracious Majesty Queen Elizabeth II of the other part with respect to the sale to such Company of certain lands at Kurnell and the granting to such Company of the right to obtain leases of and licences over certain adjacent lands; to provide for the carrying into effect of the said Agreement; to amend the *Crown Lands Consolidation Act 1913*, the *Public Works Act 1912*, and certain other Acts in certain respects; and for purposes connected therewith.

1 Name of Act

This Act may be cited as the *Australian Oil Refining Limited Agreement Ratification Act 1954*.

2 Definitions

In this Act, unless the context or subject matter otherwise indicates or requires:

Board means the Maritime Services Board of New South Wales.

Company means Australian Oil Refining Limited.

Minister means the Minister for Lands of the State of New South Wales and his successors in office.

The Agreement means the Agreement, a copy of which is set out in the First Schedule to this Act, as amended by the Agreement, a copy of which is set out in the Second Schedule to this Act.

3 Ratification of Agreement

- (1) The Agreement a copy of which is set out in the First Schedule to this Act is hereby approved, ratified and confirmed and may be carried into effect notwithstanding the provisions of any other Act.
- (2) 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 Her Majesty or the Governor or the Minister or the Minister for Public Works or the Board or the Auditor-General or the Registrar-General are hereby sanctioned, authorised and confirmed.

4 Restrictions on sale or lease of land in First Schedule to Agreement

The Company shall not, unless the written consent of the Minister be first obtained, sell or dispose of or lease for a term exceeding three years from the execution of the lease the lands described in the First Schedule to the Agreement or any part thereof: Provided that this section shall cease to operate:

- (a) upon the Minister stating in writing that the Company has performed the provisions of subclause (a) of clause one of the Agreement, or
- (b) upon the Company paying to the Minister the liquidated damages covenanted by it in subclause (b) of clause one of the Agreement to be paid to him, or
- (c) upon the Auditor-General certifying that the total sum arrived at by adding together the cost of the permanent and fixed improvements erected and constructed and caused to be erected and constructed within four years from the first day of January, one thousand nine hundred and fifty-three (or such further time, if any, allowed by the Auditor-General in writing) by the Company upon the said lands and the other lands referred to in subclause (a) of clause one of the Agreement for the purpose of carrying on industrial operations thereon and all other expenditure incurred by the Company in relation to the project generally is the equivalent of at least ten million pounds Australian currency.

In this section the terms ***permanent and fixed improvements*** and ***industrial operations*** and ***all other expenditure incurred by the Company in relation to the project generally*** and ***project*** have the meanings respectively ascribed to them in subclause (h) of clause one of the Agreement.

5 Resumption of land described in Second Part of First Schedule to Agreement

- (1) As soon as practicable after the completion of the sale to the Company of the lands described in the First Schedule to the Agreement, the Governor shall appropriate and resume the land described in the Second Part of such Schedule but to a depth only of five hundred feet below the surface by Gazette notification under Division 1 of Part 5 of the *Public Works Act 1912*, as amended by subsequent Acts.
- (2) For the purposes of the *Public Works Act 1912*, as amended by subsequent Acts, such appropriation and resumption shall be deemed to be for the purpose of carrying out an authorised work within the meaning of that Act, as so amended, and the Minister shall be the Constructing Authority in respect thereof.
- (3) Such appropriation and resumption shall not acquire the mines or deposits of coal, ironstone, kerosene shale, limestone, slate or other minerals under the land so

appropriated and resumed.

- (4) Notwithstanding anything contained in the *Public Works Act 1912*, or in any other Act, upon the publication in the Gazette of such notification the lands therein described shall, to the depth to which they are so appropriated and resumed, forthwith be vested in Her Majesty, Her Heirs and Successors freed and discharged from all trusts, obligations, estates, interests, contracts, charges, rates, rights of the public, rights-of-way or other easements whatsoever and shall be deemed to be Crown lands within the meaning of the *Crown Lands Consolidation Act 1913*, as amended.
- (5) The Council of the Shire of Sutherland shall, upon asserting its claim and subject to proof of title, be entitled to compensation on account of any and every appropriation and resumption of lands effected under the foregoing provisions of this section but otherwise subsection five of section two hundred and thirty-three of the *Local Government Act 1919*, as amended by subsequent Acts, shall not apply to any such appropriation and resumption.

6 Certain covenants by Company to bind lands in First Schedule to Agreement

- (1) The provisions to the effect of sub-clause (a) of clause twenty of the Agreement included in the Crown Grants of the lands described in the First and Second Parts of the First Schedule to the Agreement shall without limiting the Agreement be deemed to be covenants by the Company for itself its successors and assigns with the Minister and shall bind the said lands and every part thereof into whosoever hands the same may come and bind all persons interested therein and the Registrar-General shall endorse every Crown Grant or certificate of title comprising such lands or any part thereof accordingly.
- (2) The provisions to the effect of sub-clauses (a), (b) and (c) of clause twenty-six of the Agreement included in the Crown Grants of the lands described in the First Schedule to the Agreement shall without limiting the Agreement be deemed to be covenants by the Company for itself its successors and assigns with the Minister and his successors in office and the other parties with whom the covenants contained in the said sub-clauses are expressed to be made and shall bind the said lands and every part thereof into whosoever hands the same may come and bind the persons interested therein and the Registrar-General shall endorse every Crown Grant or certificate of title comprising such lands or any part thereof accordingly.
- (3) The provisions to the effect of sub-clause (a) of clause twenty-seven of the Agreement included in the Crown Grants of the lands described in the First Schedule to the Agreement shall without limiting the Agreement be deemed to be covenants by the Company for itself its successors and assigns with the Minister and his successors in office and shall bind the said lands and every part thereof into whosoever hands the same may come and bind the persons interested therein and the Registrar-General shall endorse every Crown Grant or certificate of title comprising such lands or any

part thereof accordingly.

7 Determination of rental by local land board

- (1) The local land board constituted under the *Crown Lands Consolidation Act 1913*, as amended by subsequent Acts, shall have jurisdiction to determine the annual rental under subclause (d) of clause twenty-one of the Agreement.
- (2) For the purpose of the said board determining such annual rental, such board and the chairman and members thereof shall respectively have the same powers as when acting under the *Crown Lands Consolidation Act 1913*, as amended by subsequent Acts, for the purpose of the said board determining rentals thereunder.
- (3) An appeal by either party may be made to the Land and Environment Court from the determination by the said board of such annual rental by filing within a period of twenty-eight days from the date of the determination appealed against notice of the appeal in the Court, and by serving within such period notice of the appeal on the other party to the determination. An appeal on behalf of Her Majesty against any such determination may be made by the Minister or by the Under Secretary for Lands on the Minister's behalf.
- (4) For the purpose of dealing with any and every such appeal the Land and Environment Court shall have the same powers as when dealing with appeals from local land boards under the *Crown Lands Consolidation Act 1913*, as amended by subsequent Acts.

8 Provisions of Harbour and Tonnage Rates Act 1920-1953, to apply

The *Harbour and Tonnage Rates Act 1920-1953*, and any Act amending or replacing the same and the regulations from time to time in force thereunder but in so far only as such Acts and regulations relate to the imposition, collection and payment of tonnage rates and berthing charges shall apply to and in respect of every jetty or wharf (which terms for the purposes of this section shall include any structure, landing place or facility where cargo may be loaded or discharged or where vessels may be berthed) now or hereafter erected, constructed or provided upon any and every part of the land described in the Second Schedule to the Agreement as if the same were a public wharf and accordingly tonnage rates and berthing charges in accordance with the said Act and regulations shall be payable in respect of all vessels berthing at any such jetty or wharf subject only to the following exceptions:

- (a) any vessel carrying loading or discharging only cargo and/or goods which are or have been or are about to become the property of the Company and/or of any affiliate of the Company shall be exempt from the payment of such tonnage rates and berthing charges,
- (b) any vessel carrying and/or loading and/or discharging cargo and/or goods part only of which is has been or is about to become the property of the Company and/or of any

affiliate of the Company shall be granted a rebate of such tonnage rates and berthing charges to the extent of the ratio which that part of the cargo and/or goods which is loaded and/or discharged and which is has been or is about to become the property of the Company and/or of any affiliate of the Company bears to the whole of the cargo and/or goods which is loaded and/or discharged,

- (c) any vessel the property of or chartered by the Company or the property of or chartered by any affiliate of the Company berthing for a purpose other than the loading or discharging of cargo shall be exempt from the payment of such tonnage rates and berthing charges.

In this section the term **affiliate** has the meaning ascribed to it in subclause (c) of clause twenty-four of the Agreement.

9 Certain persons may sue and be sued by the Company

It shall not be an objection to the Minister for Public Works, the Board and the Council of the Shire of Sutherland or any of them suing the Company and being sued by the Company under the Agreement that the Minister for Public Works, the Board and the Council of the Shire of Sutherland or any of them are not parties to the Agreement a copy of which is set out in the First Schedule to this Act.

10 (Repealed)

First Schedule The Agreement

THIS AGREEMENT made the sixteenth day of June One thousand nine hundred and fifty-four BETWEEN—AUSTRALIAN OIL REFINING LIMITED a Company duly incorporated under the Companies Acts of the State of New South Wales (hereinafter called “the Company”) of the one part and THE HONOURABLE FRANCIS HAROLD HAWKINS the Minister for Lands of the said State for and on behalf of Her Most Gracious Majesty Queen Elizabeth II (hereinafter called “the Minister” which expression shall where the context admits include his successors in office) of the other part WHEREAS the Company is desirous of establishing and conducting an extensive oil refinery at Kurnell in the said State and to that end has requested the Minister to enter into this Agreement with the Company which the Minister has agreed to do NOW IT IS HEREBY AGREED as follows:—

1.

(a)

The Company hereby covenants with the Minister that the Company without cost to the Minister or Her Majesty Her Heirs or Successors shall upon the date of commencement of this Agreement have commenced or caused to be commenced the erection and construction of permanent and fixed improvements upon the lands described in the First Second Fourth Sixth Seventh and Eighth Schedules hereto and the other lands now owned or hereafter acquired by the Company adjoining or adjacent to the lands described in the First Schedule hereto for the purpose of carrying on industrial operations thereon and shall thereafter proceed with or cause to be proceeded with such erection and construction so that at the expiration of four years from the First day of January 1953 or of such further period if any as may be allowed by the Auditor-

General in writing under the provisions hereinafter contained the Company shall have without cost to the Minister or Her Majesty Her Heirs and Successors erected and constructed or caused to be erected and constructed since the First day of January 1953 upon the said lands and other lands as aforesaid permanent and fixed improvements to a cost which together with all other expenditure incurred by the Company in relation to the project generally amounts to the equivalent of at least Sixteen million pounds (£16,000,000) Australian currency for the purpose of carrying on industrial operations thereon and the Company covenants with the Minister to construct and to have constructed such permanent and fixed improvements to the said cost within the said period of four years from the First day of January 1953 (or further period if any allowed in writing by the Auditor-General as aforesaid) accordingly.

(b)

In the event of the Company failing to erect and construct or cause to be erected and constructed upon the said lands and other lands as aforesaid such permanent and fixed improvements to a cost which together with all other expenditure incurred by the Company in relation to the project generally amounts to the equivalent of at least Sixteen million pounds (£16,000,000) Australian currency as required by the preceding sub-clause within the time as thereby provided the Company hereby covenants to pay to the Minister as liquidated damages and not as penalty a sum calculated at the rate of Ten pounds (£10) per centum of the amount by which the sum of Sixteen million pounds (£16,000,000) in Australian currency exceeds the total sum (in Australian currency) arrived at by adding together the cost of such permanent and fixed improvements erected and constructed and caused to be erected and constructed by the Company upon the said lands and other lands as aforesaid within the time as aforesaid and all other expenditure incurred by the Company in relation to the project generally.

(c)

A certificate by the Auditor-General of the State of New South Wales as to the total sum arrived at by adding together the cost of the permanent and fixed improvements erected and constructed and caused to be erected and constructed within the period of four years from the First day of January 1953 (or such further period if any allowed by the Auditor-General in writing under the provisions hereinafter contained) by the Company upon the said lands and other lands as aforesaid for the purpose of carrying on industrial operations thereon and all other expenditure incurred by the Company in relation to the project generally shall be final and conclusive and binding upon the parties hereto

(d)

The Company shall from time to time produce all relevant books vouchers documents papers and evidence to, and allow the permanent and fixed improvements on the said lands and other lands as aforesaid and all other relevant property assets and things to be inspected by:—

- (i) the Minister and persons authorised by him for the purpose of ascertaining the performance or non-performance by the Company of sub-clause (a) of this Clause; and
- (ii) the Auditor-General (and persons authorised by him) for the purposes of subclauses (a) (c) and (f) of this Clause.

(e)

The Company shall not unless the written consent of the Minister be first obtained, sell or dispose

of or lease for a term exceeding three years from the execution of the lease the lands described in the First Schedule hereto or any part thereof PROVIDED that this subclause shall cease to operate upon the Minister stating in writing that the Company has performed the provisions of sub-clause (a) of this Clause or upon the Company paying to the Minister the liquidated damages covenanted by it in sub-clause (b) of this Clause to be paid to him or upon the Auditor-General certifying that the total sum arrived at by adding together the cost of the permanent and fixed improvements erected and constructed and caused to be erected and constructed within four years from the First day of January 1953 (or such further time if any allowed by the Auditor-general in writing) by the Company upon the said lands and other lands as aforesaid for the purpose of carrying on industrial operations thereon and all other expenditure incurred by the Company in relation to the project generally is the equivalent of at least Ten million pounds (£10,000,000) Australian currency.

(f)

If through any cause beyond the control of the Company and not arising from or due to or contributed to by any neglect default or misconduct of the Company or its agents or servants delay occurs in the erection or construction by the Company of such permanent and fixed improvements as provided by sub-clause (a) of this Clause the Company may from time to time within six months of the happening or occurring of the event or matter causing the delay apply in writing to the Auditor-General for an extension of time on account of such event or matter setting forth the cause of such application and the Auditor-General shall if he thinks the cause sufficient and within the foregoing provisions of this sub-clause (f) but not otherwise allow by writing under his hand such extension of time as he may think adequate.

(g)

Unless the Company shall make such application within the time and in the manner aforesaid and unless and until the Auditor-General shall allow such extension or extensions of time as aforesaid the Company shall not by reason of any delay arising as in the preceding subclause mentioned or for any other reason whatsoever be relieved in any way or to any extent of its liability to erect and construct such permanent and fixed improvements as provided by sub-clause (a) of this Clause within the time as therein provided or of any other liability or obligation of the Company under this Agreement.

(h)

In this Clause the term "permanent and fixed improvements" includes buildings structures fencing storage tanks railways permanent pipe lines levelling of land reclamation of land wharves roads drains and canals and works and erections and other appurtenances to any of the foregoing and also includes fixed plant and machinery of any description and the term "all other expenditure incurred by the Company in relation to the project generally" includes expenditure incurred by the Company prior to the expiration of the said period of four years (or further period, if any, allowed in writing by the Auditor-General as aforesaid) and whether before or after the First day of January, 1953, upon or in relation to:

- (i) the provision of access road from Caringbah to Kurnell and substituted Boat Harbour track;
- (ii) the provision of a water line to Kurnell;
- (iii) the dredging of Botany Bay for the construction of and to secure safe access to wharves and

other works;

- (iv) preliminary operations and training expenses;
- (v) interest on debenture loans raised by the Company for the purpose of the project;
- (vi) royalties paid by the Company for the purposes of or in connection with the project;
- (vii) design and purchasing expenses incurred for the purposes of or in connection with the project;
- (viii) the acquisition of lands or interests in lands already or hereafter acquired by the Company for the purposes of or in connection with the project including agent's charges, conveyancing costs, stamp duty and other expenses properly paid in connection with such acquisition;
- (ix) the construction of the pipe lines referred to in paragraph (i) of Sub-clause (a) of Clause 25 hereof.
- (x) the construction of pipe lines and other works under on or over any public roads on Kurnell peninsula;

and the term "industrial operations" includes such purposes associated therewith or incidental thereto as are conducive to carrying out such industrial operations and the term "project" means the oil refinery and the buildings works and installations appurtenant thereto erected or to be erected on under or over all the lands referred to in paragraph (a) of Clause 1 of this Agreement.

(i)

The Act ratifying this Agreement shall contain a prohibition to the effect of subclause (e) of this Clause.

2.

(a)

IN CONSIDERATION of the aforesaid covenant by the Company contained in paragraph (a) of Clause 1 of this Agreement and subject to the provisions hereinafter contained the Minister hereby agrees to sell to the Company and the Company agrees to buy the lands described in the First Schedule hereto at and for the price of Sixty one thousand eight hundred and three pounds (£61,803 0 0).

(b)

The Company shall pay the said price in full to the Minister on completion of such sale and purchase of the lands described in the First Schedule hereto.

3.

(a)

The lands described in the First Part of the First Schedule hereto are Crown Lands at present held by the Company under Special Lease 1952/285 Metropolitan granted to the Company under the Crown Lands Consolidation Act, 1913, as amended.

(b)

The land described in the Second Part of the First Schedule hereto is—

- (i) as to part thereof land appropriated for the purpose of a public road and vested in the Council of the Shire of Sutherland by Notification of Resumption under the *Public Works Act, 1912*, and in pursuance of Section 536 of the *Local Government Act, 1919*, published in the Gazette of the 8th January 1937 at page 17 as shown on plan filed in the Department of Lands, Sydney, catalogued Ms. 9271 Sy. Part of this land was prior to appropriation comprised in Special Lease 30/9 Metropolitan and is now a boundary road separating Portion 283 from Portion 570 Parish of Sutherland County of Cumberland and the residue was part of Reserve under General Notice dated 24th December 1861;
- (ii) as to part thereof comprised in Certificate of Title registered Volume 4976 Folio 21. By a Notification published in the Gazette of 21st July 1950 at page 2251 the Council of the Shire of Sutherland notified pursuant to Section 224 of the *Local Government Act, 1919*, that a road in this location and its westerly extension was a public road under the control of and vested in that Council;
- (iii) as to part thereof comprised in Certificate of Title registered Volume 1776 Folio 25. This land is also affected by the said Notification published in the Gazette of 21st July 1950 at page 2251.

4.

(a)

Certain information as to the title to the lands comprised in the First Schedule hereto is referred to in this Agreement and the Company shall not require or be entitled to be furnished with any further particulars as to the title of Her Majesty or the Minister to any of such lands or with any abstract of the title to any of such lands or any evidence whatsoever of the title to any of such lands.

(b)

No objection or requisition whatsoever shall be made by the Company to or in respect of the title to any of the said lands and no objection whatever shall be taken by the Company to the power of Her Majesty and the Minister to sell and assure as provided by this Agreement the said Lands described in the First Schedule hereto.

5.

All the said lands are sold by Her Majesty and/or the Minister to the Company subject to the existing easements and encroachments and all such lands are sold subject to the reservations exceptions and conditions contained in the Crown Grants under which any of the lands were originally or are now held. The Company shall not raise any objection or make any claim in respect of any encroachments by or on any part or parts of the lands described in the First Schedule hereto whether revealed by any present or future survey or otherwise. Subject to the provisions of this Clause vacant possession will be given on completion.

6.

All moneys payable to the Minister or Her Majesty under this Agreement shall be paid to the Minister in cash in Sydney free of exchange.

7.

The Company shall as from the date of this Agreement become liable for the due compliance with all notices which may hereafter be issued by any local Municipal statutory or other competent authority (whether to or against Her Majesty the Minister or any person whomsoever or otherwise) requiring the expenditure of money or the doing of any work upon or in respect of the lands described in the First Schedule hereto or imposing any liability pecuniary or otherwise on the owner or occupier of such lands and the Company shall indemnify and keep indemnified Her Majesty and the Minister against all liability under or in respect of all such notices issued as aforesaid.

8.

On the completion of the sale to the Company of the lands described in the First Schedule hereto Special Lease 52/285 Metropolitan shall cease and determine without prejudice nevertheless to the rights of either party against the other for any antecedent breach of any covenant provision or agreement therein contained or implied. Any necessary apportionment of rental paid or payable by the Company in respect of the Lease shall be made and adjusted on completion.

9.

(a)

The Company hereby covenants with the Minister that the Company will at its own expense construct in a position approved of by the Council of the Shire of Sutherland and to the satisfaction of the said Council on suitable land to be provided without cost to the Company by the said Council a one cell 4' x 3' culvert fitted with tide flaps and head walls under Di Gama Street near its intersection with Solander Street together with concrete inlet and earth outlet channels the invert inlet level of such concrete inlet channel to be 4.5 feet above low water ordinary spring tides at Fort Denison SO THAT at the expiration of three months from the date of commencement of this Agreement or notification by the said Council that the said land is available whichever date is the later the Company shall have at its own cost completed the full and proper construction as aforesaid of the said culvert and channels and the Company covenants with the Minister to construct the said culvert and channels within the said period of three months in accordance in all respects with the foregoing provisions of this Clause.

(b)

In the event of the Company failing to comply with the foregoing provisions of this Clause the said Council may without prejudice to any other remedy of the Minister by reason of such default of the Company do all such acts and things as the said Council may think necessary to remedy the default of the Company and the Company shall on demand pay to the said Council all costs and expenses incurred by the said Council in so doing and the same shall be recoverable by the said Council from the Company in a court of competent jurisdiction and a certificate of the Shire Clerk of the said Council or the person acting as such for the time being of the amount of such costs and expenses incurred by the said Council shall be prima facie evidence thereof.

(c)

Upon completion of the said culvert and channels in the manner hereinbefore described the said Council shall be responsible for the maintenance repair and cleaning and other work in

connection with the said culvert channels and facilities. The said Council will indemnify and keep indemnified the Company from all actions suits proceedings claims demands costs and expenses whatsoever arising out of the use maintenance repair or cleaning of the said culvert channels and facilities.

(d)

The agreements by the Company contained in this Clause shall be taken by the Council in full satisfaction and discharge of all claims which the Council now has or may hereafter have against the Company in respect of the drainage of the land to be drained by the said culvert and channels PROVIDED HOWEVER that in the event of the Company being at any time after the commencement of this Agreement the owner or occupier of the land to be drained by the said culvert and channels or any part of such land then in such case nothing in this Clause contained shall preclude the Council from exercising in respect of such land or part any right power or function which it would be entitled to exercise in respect of such land or part had this Agreement not been executed.

10.

The completion of the purchase by the Company of the lands described in the First Schedule hereto and payment of the purchase moneys therefor shall take place at the office of the State Crown Solicitor within a period of two months from the date of commencement of this Agreement. If from any cause whatever other than the non-completion caused by the default of the Minister the purchase money shall not be paid within that period the Company agrees with the Minister to pay to the Minister interest thereon at the rate of Five pounds (£5) per centum per annum computed from the date which shall be two months from the date of commencement of this Agreement until the date of actual payment.

11.

The Minister shall be entitled to the rents and profits to the date of completion and shall pay and bear all rates taxes assessments and outgoings to that date in respect of the lands comprised in the First Schedule hereto other than the rates taxes assessments and outgoings payable by the Company under or by reason of its occupancies or interest in any of such lands prior to the date of completion from which date the Company shall be entitled to such rents and profits and shall pay or bear all rates taxes assessments and outgoings in respect of the lands comprised in the First Schedule hereto. Any necessary apportionments shall be made and adjusted on completion. Nothing in this Clause shall relieve the Company of any liability under or by reason of its occupancy or interest in any of the said lands at or prior to the date of completion.

12.

No error or misdescription of the lands sold shall annul the sale of the lands described in the First Schedule hereto but compensation (if demanded in writing before completion but not otherwise and if as regards the Company it is otherwise entitled thereto under this Agreement) shall be made to or given by the Company as the case may be and should the parties be unable to agree between themselves as to the amount thereof such amount shall be settled by two arbitrators one to be appointed by the Minister and the other by the Company in accordance with the provisions of the Arbitration Act, 1902.

13.

All objections and requisitions (if any) which under this Agreement the Company shall be entitled to make shall be made and delivered to the Crown Solicitor of the State of New South Wales within twenty-one days from the date of commencement of this Agreement and all objections and requisitions not so made shall be deemed to be waived.

14.

If the Minister shall be unable or unwilling to comply with or remove any objection or requisition which the Company shall be entitled to make under this Agreement the Minister shall whether he or Her Majesty Her Heirs or Successors shall or shall not have attempted to remove or comply with such objection or requisition and notwithstanding any negotiations or litigation whatsoever in respect thereof be at liberty to rescind this Agreement and in no case shall Her Majesty or Her Heirs or Successors or the Minister be liable for any damages costs charges expenses and losses whatsoever incurred by the Company in and about this Agreement AND IT IS HEREBY DECLARED that seven days' notice of the intention of the Minister to rescind this Agreement shall be deemed reasonable notice of such intention under Section 56 of the *Conveyancing Act, 1919-1953*.

15.

All notices and documents hereunder may be served as mentioned in Section 170 of the *Conveyancing Act, 1919-1953*.

16.

Clauses 2 to 6 inclusive of the conditions of sale contained in Schedule III of the *Conveyancing Act, 1919-1953* shall not apply to this Agreement except insofar as the same or any part thereof are incorporated herein.

17.

If the Company shall omit to fulfil observe or perform the provisions of this Agreement on the part of the Company to be fulfilled observed or performed the Minister may by notice in writing served on the Company call upon the Company to rectify the default complained of within a reasonable time (to be stated in the notice) after the service of such notice and if the Company shall fail after service of the said notice upon it to rectify the said default within such reasonable time the Minister may by notice in writing served on the Company determine this Agreement but without prejudice to any claim which Her Majesty Her Heirs and Successors and/or the Minister may have against the Company in respect of any breach of the provisions of this Agreement on the part of the Company to be fulfilled observed and performed PROVIDED ALWAYS that a determination of this Agreement under this Clause after completion of the sale to the Company of the lands described in the First Schedule hereto shall not operate to defeat the Company's title to such lands.

18.

(a)

As soon as practicable after the completion of the sale to the Company of the lands described in the First Schedule hereto a Crown Grant or Crown Grants shall be issued to the Company for the assurance to it of the lands described in the First Part of the First Schedule hereto.

(b)

As soon as practicable after completion of the sale to the Company of the lands described in

the First Schedule hereto the Governor shall appropriate and resume the land described in the Second Part of the First Schedule hereto but to a depth only of 500 feet below the surface by Gazette Notification under Division I of Part V of the *Public Works Act, 1912*, as amended, and for the purposes of such Act such appropriation and resumption shall be deemed to be for the purpose of carrying out an authorised work within the meaning of that Act and the Minister shall be the Constructing Authority in respect thereof and the Act ratifying this Agreement may provide accordingly. The said appropriation and resumption shall not acquire the mines or deposits of coal, ironstone, kerosene shale, limestone, slate or other minerals under the land. The Act ratifying this Agreement is to provide that 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 this sub-clause the lands described in such Notification shall to the depth to which they are so appropriated and resumed forthwith be vested in Her Majesty Her Heirs and Successors freed and discharged from all trusts, obligations, estates, interests, contracts, charges, rates, rights of the public, rights-of-way or other easements whatsoever and shall be deemed to be Crown Lands within the meaning of the *Crown Lands Consolidation Act, 1913*, as amended.

(c)

As soon as practicable after the publication in the Gazette of the Notification referred to in sub-clause (b) of this Clause, a Crown Grant or Crown Grants shall be issued to the Company for the assurance to it of the land described in the Second Part of the First Schedule hereto.

(d)

The Crown Grant or Crown Grants so to be issued to the Company for the assurance to it of the lands described in the First Part of the First Schedule hereto shall contain a reservation of all minerals in such lands.

(e)

There shall be excluded from the Crown Grant or Crown Grants so to be issued to the Company for the assurance to it of the lands described in the Second Part of the First Schedule hereto all mines or deposits of coal, ironstone, kerosene shale, limestone, slate or other minerals under such lands which will not be acquired by the Notification of Resumption referred to in sub-clause (b) of this Clause and in addition such Crown Grant or Crown Grants shall contain a reservation of all other minerals which such lands contain

(f)

Every Crown Grant to be issued to the Company in accordance with this Clause shall contain such other reservations and exceptions as are usually inserted by the Crown in Crown Grants of Town lands and for the purposes of this Clause "minerals" shall have the same meaning as it has in the *Crown Lands Consolidation Act, 1913*, as amended.

(g)

Every Crown Grant to be issued to the Company in accordance with this Clause shall be limited to the surface of the land comprised in such Crown Grant and to a depth of 500 feet below such surface and shall contain a proviso to the effect that mining operations may have been and may be carried on upon and in the land below the land thereby granted and the lands adjoining the land thereby granted and the land below the same and metals and minerals may

have been and may be removed therefrom and that the Crown Grant is made upon and subject to the condition that the Company and its assigns shall not be entitled to make or prosecute any claim for damages or take any proceedings either by way of injunction or otherwise against Her Majesty Her Heirs or Successors or the Government of the State of New South Wales or any lessee or lessees under any Mining Act or Acts of the said State of New South Wales or his or their executors administrators or assigns for or in respect of any damage or loss occasioned by the letting down subsidence or lateral movement of the land thereby granted or otherwise howsoever by reason of the following acts and matters that is to say by reason of Her Majesty Her Heirs or Successors or the Government of the said State of New South Wales or any persons on Her Their or Its behalf or any lessee or lessees as aforesaid or his or their executors administrators or assigns having worked or then or thereafter working any mines or having carried on or then or thereafter carrying on mining operations or having searched for work won or removed or then or thereafter searching for working winning or removing any metals or minerals under in or from the land below the land thereby granted or on in under or from any other land situated laterally to the land thereby granted and the land below the same and whether on or below the surface of such other lands AND THAT Her Majesty doth thereby expressly reserve unto Her Majesty Her Heirs and Successors the liberty and authority by reason of the acts and matters aforesaid or in the course thereof for Her Majesty Her Heirs and Successors and the Government of the said State of New South Wales and any person on Her Their or Its behalf and any lessee or lessees as aforesaid and his or their executors administrators and assigns from time to time to let down without payment of any compensation whatsoever any part of the land thereby granted and/or of the surface thereof.

(h)

The Company shall not be entitled to any assurance from the Minister or the Crown with respect to any part of the lands comprised in the First Schedule hereto except as is provided by this Clause.

(i)

The Company shall pay to the Crown in respect of every Crown Grant to be issued to it under this Clause (and prior to the issue of such Grant) all stamp duty and fees on such Crown Grant.

(j)

The Company hereby covenants with the Minister that in the event of the total of all and every sums and sum of money that may become due and payable by Her Majesty or the Minister in connection with or in respect of or incidental to any and every appropriation and resumption effected under subclause (b) of this Clause whether as compensation money interest damages costs charges expenses or otherwise howsoever exceeding the sum of One thousand five hundred and three pounds (£1503) the Company will pay to the Minister on demand the amount of the excess. The payments to be made by the Company to the Minister under this subclause (j) shall be in addition to and not in reduction of the purchase price of Sixty-one thousand eight hundred and three pounds (£61,803) to be paid by the Company to the Minister under subclause (a) of Clause 2 hereof.

(k)

The Council of the Shire of Sutherland shall upon asserting its claim and subject to proof of

title be entitled to compensation on account of any and every appropriation and resumption effected under subclause (b) of this Clause but otherwise subsection (5) of Section 233 of the *Local Government Act, 1919*, as amended, shall not apply with respect to any such appropriation and resumption and the Act ratifying this Agreement shall contain provisions to the effect of this subclause.

19.

(a)

The arrangements with respect to the supply of water to the Company's oil refinery shall be such as have been or may hereafter be agreed upon between the Company and the Metropolitan Water Sewerage and Drainage Board.

(b)

The arrangements with respect to road connection between the Company's oil refinery and Caringbah shall be such as have been or may hereafter be agreed upon between the Company and the Council of the Shire of Sutherland.

20.

(a)

The Company for itself and its successors and assigns hereby covenants with the Minister that the lands described in the First Schedule hereto shall not nor shall any part thereof be at any time without the written consent of the Minister used or permitted or suffered to be used otherwise than for the purposes of an oil refinery and such purposes as are associated therewith or incidental thereto.

(b)

Provisions to the effect of sub-clause (a) of this Clause shall be included in the Crown Grants of the lands described in the First and Second Parts of the First Schedule hereto and (without limiting the foregoing) the Act ratifying this Agreement may provide that such provisions of the said Crown Grants shall be deemed to be covenants by the Company for itself its successors and assigns with the Minister and that such provisions shall bind the said lands and every part thereof into whosoever hands the same may come and bind all persons interested therein and that the Registrar-General shall endorse every Crown Grant or Certificate of Title comprising such lands or any part thereof accordingly.

21.

(a)

Upon completion of the sale to the Company of the lands described in the said First Schedule hereto Special Lease 1952/333 Metropolitan shall cease and determine without prejudice nevertheless to the rights of either party against the other in respect of any antecedent breach of any covenant provision or condition therein contained or implied and the Minister shall grant to the Company a fresh lease of the land described in the Second Schedule hereto being part of the bed of Botany Bay for the period of ninety-nine years calculated from the date of completion of the sale to the Company of the lands described in the said First Schedule hereto at an annual rental of Two hundred pounds (£200) which annual rental shall however be subject to reappraisal as provided by sub-clause (d) of this Clause. The rental payable

under the Lease shall be payable annually in advance the first of such payments to be made on the date of commencement of the said period of ninety-nine years and the subsequent payments to be made annually in advance upon each anniversary of the date of the commencement of the period of ninety-nine years.

(b)

The Lease to be issued to the Company in accordance with the provisions of sub-clause (a) of this Clause shall be for the purpose of the construction and erection on the land thereby leased of jetties wharves and other facilities for loading and unloading goods and all jetties wharves and other facilities for loading and unloading goods and dolphins and other structures to be constructed and erected by the Company upon the land described in the Second Schedule hereto shall be constructed and erected by the Company at its own cost and expense and the work of constructing and erecting the same shall be carried out and completed in a proper and workmanlike manner and in accordance in all respects with specifications and plans previously approved of in writing by the Minister and all such work shall be carried out to the satisfaction of the Minister. The plans and specifications referred to in this sub-clause shall be furnished by the Company to the Minister at the cost and expense of the Company.

(c)

The lease to be issued to the Company in accordance with the provisions of sub-clause (a) of this Clause shall be limited to the surface of the land thereby leased and to a depth of 500 feet below such surface and shall be subject to the conditions set out in the Third Schedule hereto with such modifications and additions as may be agreed upon between the parties hereto.

(d)

The annual rental of Two hundred pounds (£200) shall be liable to reappraisal at the expiration of each period of ten years during the said period of ninety-nine years and in every such case the reappraised annual rental shall be such sum as is determined by the Local Land Board constituted under the *Crown Lands Consolidation Act, 1913*, as amended, or on appeal therefrom the Land and Valuation Court. The Act ratifying this Agreement shall provide—

- (i) that for the purpose of the Local Land Board determining the annual rental under this sub-clause such Board and the Chairman and Members thereof shall respectively have the same powers as when acting under the *Crown Lands Consolidation Act, 1913*, as amended, by subsequent Acts for the purpose of the said Board determining rentals thereunder; and
- (ii) that any appeal to the Land and Valuation Court from the determination by the Local Land Board of such annual rental under this sub-clause shall be made within twenty-eight days of the date of the determination by filing within such period notice of the appeal in the Office of the Registrar of the Land and Valuation Court and by serving within the same period notice of the appeal on the other party to the determination. An appeal on behalf of Her Majesty against any such determination may be made by the Minister or by the Under Secretary for Lands on the Minister's behalf; and
- (iii) that for the purpose of dealing with any and every such appeal the Land and Valuation Court and the Judge thereof shall have the same powers as when dealing with appeals from Local Land Boards under the *Crown Lands Consolidation Act, 1913*, as amended by

subsequent Acts.

(e)

The Minister on behalf of Her Majesty agrees with the Company that Her Majesty will not at any time during the said period of ninety-nine years grant to any person without the consent of the Company any right of occupancy of or any right to erect or construct or place any structure upon in or over the bed of Botany Bay adjoining or adjacent to the land described in the Second Schedule hereto which would interfere unreasonably with the exercise by the Company of any of the rights granted to the Company under the provisions of this Clause.

(f)

Nothing in this Agreement shall be construed to imply—

- (i) any right in the Company to erect jetties wharves or other facilities for loading or unloading goods or dolphins or any other structures upon any part of the bed of Botany Bay in addition to the rights expressly conferred upon the Company by this Clause; or
- (ii) any right in the Company to receive any concession in the event of Her Majesty or the Minister or other proper authority subsequently permitting the Company to erect jetties wharves or other facilities for loading or unloading goods or dolphins or other structures which the Company has not the right to erect under this Clause.

22.

(a)

The Company shall pay to the Minister on demand the costs of all surveys plans and departmental investigations made in connection with this Agreement by or for the following Departments of the State of New South Wales namely, the Department of Lands and the Department of Public Works and by or for the Board.

(b)

A certificate under the hand of the Under Secretary, Department of Lands, Sydney, or the person for the time being acting as such shall be conclusive evidence of the cost of any and every such survey plan and investigation.

23.

(a)

The Company hereby covenants with the Minister and with Her Majesty Her Heirs and Successors that the Company will before the First day of April 1955 carry out at its own cost and expense the following work that is to say:—

- (i) such original dredging and other work as may be necessary for the construction of a turning basin upon in or over that part of the bed of Botany Bay described in the Fourth Schedule hereto;
- (ii) such original dredging and other work for some distance outside the boundary of the land described in the Fourth Schedule hereto as is deemed necessary by the Company in order to provide a reasonable side slope to such turning basin not being steeper than one

vertical in three horizontal.

(b)

The Company hereby covenants that the original dredging of the area referred to in paragraph (i) of subclause (a) of this Clause will be to a swept depth sufficient to allow a minimum of 36 feet of clear water at Indian Spring Low Water.

(c)

The Minister for Public Works will without cost or expense to the Company carry out and complete before the First day of April 1955 such original dredging and other work as may be necessary for the construction of an approach channel upon in or over that part of the bed of Botany Bay described in the Fifth Schedule hereto and such other work as the Minister for Public Works may deem necessary outside the boundaries of the land described in the said Fifth Schedule to provide a reasonable side slope to such channel not being steeper than one vertical in three horizontal. The original dredging of the land in the Fifth Schedule hereto shall be to a swept depth sufficient to allow a minimum of 36 feet of clear water at Indian Spring Low Water.

(d)

On completion of the original dredging referred to in subclauses (a) and (c) of this Clause and when the said turning basin has been first used by the Company for or in connection with the discharge of crude oil for the Company's refining operations the Minister for Public Works or the Government of the State of New South Wales will commence and will during the currency of the lease referred to in Clause 21 hereof at the cost of Her majesty continue such dredging and other work as may be necessary to maintain—

- (i) the turning basin constructed as mentioned in paragraph (i) of subclause (a) of this Clause but excepting any part of the said turning basin which is within 60 feet from the face of any jetty or wharf at any time constructed or erected in pursuance of Clause 21 of this Agreement or being at any time upon the land described in the Second Schedule hereto;
- (ii) any approach channel constructed as mentioned in subclause (c) of this Clause;

PROVIDED HOWEVER that the Minister for Public Works or the Government of the said State shall be liable under this subclause (d) to maintain the said turning basin to the dimensions only and to the depth only of the turning basin as it exists at the time when such turning basin is first used by the Company for or in connection with the discharge of crude oil for the Company's refining operations or to such dimensions and to such depth as from time to time in the opinion of the Minister for Public Works are reasonable having regard to the normal requirements of shipping at the Company's berths whichever are the lesser and in no event shall the Minister for Public Works or the Government of the said State be liable to maintain the said turning basin or any part thereof to a depth greater than 36 feet clear water at Indian Spring Low Water AND PROVIDED FURTHER that neither the Minister for Public Works nor the Government of the said State shall be liable to maintain any part of such approach channel beyond a depth which from time to time in the opinion of the Minister for public Works is reasonable for the Company's requirements.

(e)

The liability of the Minister for Public Works or the Government of the State of New South Wales to carry out dredging operations under this Clause shall be governed by the availability of dredging equipment at any particular time having regard to the necessity to use such dredging equipment elsewhere in the said State.

(f)

In the event of the inability of the Minister for Public Works or the Government of the State of New South Wales to perform the original dredging and other work mentioned in subclause (c) of this Clause or to perform at any time the dredging and other work mentioned in subclause (d) of this Clause the Company may with the approval of the Minister for Public Works and subject to such terms and conditions as may from time to time be mutually agreed upon perform or cause to be performed such dredging and other work as shall in the opinion of the Minister for Public Works be necessary and in such event the cost of such dredging and other work shall be recoverable by the Company from the Minister for Public Works.

(g)

The Company shall give to the Minister for Public Works two months' notice in writing of its intention to commence using the said turning basin for or in connection with the discharge of crude oil for the Company's refining operations AND a certificate by the Director of Public Works or other the Permanent Head of the Department of Public Works or the person acting as such for the time being as to the date on which such turning basin is first used by the Company for or in connection with the discharge of crude oil for the Company's refining operations shall be prima facie evidence thereof.

24.

(a)

The Company hereby agrees with Her Majesty and the Act ratifying this Agreement shall contain provisions to the effect that the *Harbour and Tonnage Rates Act, 1920-1953*, and any Act amending or replacing the same and the regulations from time to time in force thereunder but insofar only as such Acts and regulations relate to the imposition collection and payment of tonnage rates and berthing charges shall apply to and in respect of every jetty or wharf (which terms for the purposes of this Clause shall include any structure landing place or facility where cargo may be loaded or discharged or where vessels may be berthed) now or hereafter erected constructed or provided upon any and every part of the land described in the Second Schedule hereto as if the same were a public wharf and that accordingly tonnage rates and berthing charges in accordance with the said Act and regulations will be payable in respect of all vessels berthing at any such jetty or wharf subject to the following exceptions, namely, that:—

- (i) Any vessel carrying loading or discharging only cargo and/or goods which are or have been or are about to become the property of the Company and/or of any affiliate of the Company shall be exempt from the payment of such tonnage rates and berthing charges;
- (ii) Any vessel carrying and/or loading and/or discharging cargo and/or goods part only of which is have been or is about to become the property of the Company and/or of any affiliate of the Company shall be granted a rebate of such tonnage rates and berthing charges to the extent of the ratio which that part of the cargo and/or goods which is

loaded and/or discharged and which is has been or is about to become the property of the Company and/or of any affiliate of the Company bears to the whole of the cargo and/or goods which is loaded and/or discharged;

- (iii) Any vessel the property of or chartered by the Company or the property of or chartered by any affiliate of the Company berthing for a purpose other than the loading or discharging of cargo shall be exempt from the payment of such tonnage rates and berthing charges.

(b)

The Company shall keep or cause to be kept in proper books true and complete records of all such matters in relation to all vessels berthing at any jetty or wharf to which the provisions of sub-clause (a) of this Clause apply as may be necessary to enable the Board or other proper authority to determine the tonnage rates and berthing charges payable in respect of such vessels in accordance with sub-clause (a) of this Clause and the Act ratifying this Agreement and the Company shall allow and provide every reasonable facility for the Board or other proper authority and any person authorised by the Board or authority at all reasonable times to inspect and make copies of or extracts from such records AND the Company shall at such times as are required by the Board or authority during the period of ninety-nine years referred to in Clause 21 hereof furnish to the Board or other authority all such particulars as the Board or authority may deem necessary for the purpose of enabling the Board or authority to ascertain and determine the tonnage rates and berthing charges payable in respect of all vessels berthing at any jetty or wharf to which the provisions of subclause (a) of this Clause apply.

(c)

For the purposes of this Clause “affiliate” means any company incorporated under the laws of the Commonwealth or of any State or Territory of the Commonwealth in which for the time being a controlling interest is held (either directly or indirectly through an intermediary) by the same persons or entities as hold a controlling interest in the Company the party hereto.

25.

(a)

After payment by the Company of the purchase money in accordance with subclause (b) of Clause 2 and subject always to default not having been made by the Company under Clause 1 hereof the Minister will upon the application of the Company grant to the Company a license or licenses to lay down construct use and maintain in and through the land described in the Sixth Schedule hereto a pipe line for the conveyance from the Company’s Oil Refinery to the ocean of effluent from the Septic System serving the said Refinery and water ballast after treatment and waste waters from the Refinery works for a period of ninety-nine years from the date of completion of the sale to the Company of the lands described in the First Schedule hereto and subject to such terms and conditions (including conditions as to payment for or in respect of the license and for or in respect of the maintenance of the pipe line and for or in respect of access for the public across the line of pipes and for or in respect of the position of the ocean outlet and for or in respect of the examination analysis and treatment of such effluent water ballast and waste waters) as the Minister may determine.

(b)

After payment by the Company of the purchase money in accordance with subclause (b) of Clause 2 hereof and subject always to default not having been made by the Company under Clause 1 hereof the Board will upon the application of the Company grant to the Company—

- (i) a license or licenses to lay down construct use and maintain pipe lines for the conveyance of petroleum and petroleum products in all forms over part of the bed of Botany Bay from a point on the southern shore of Botany Bay near the Company's oil refinery to a point on the northern shore of Botany Bay in such position or positions as the Board may determine and for a period of ninety-nine years from the date of completion of the sale to the Company of the lands described in the First Schedule hereto and subject to such terms and conditions (including conditions as to payment for or in respect of the license and for or in respect of the maintenance of the pipe lines and for or in respect of the safeguarding of the future development including the dredging of Botany Bay and for or in respect of preventing interference with navigation or fishing) as the Board may determine;
- (ii) a license or licenses to lay down construct use and maintain in and through the land described in the Seventh Schedule hereto (being a further part of the bed of Botany Bay) a pipe line for the conveyance of waste water from the said Refinery and its discharge into Botany Bay at the northern extremity of such land for a period of ninety-nine years from the date of completion of the sale to the Company of the lands described in the First Schedule hereto and subject to such terms and conditions (including conditions as to payment for or in respect of the license and for or in respect of the maintenance of the pipe line and for or in respect of the safeguarding of the future development including the dredging of Botany Bay and for or in respect of preventing interference with navigation and fishing and for or in respect of the examination analysis and treatment of such waste water and for or in respect of the depth below the surface of the bed of the Bay at which the pipe line is to be laid and the length to which the pipe line is to extend into the Bay and the position of the outlet) as the Board may determine;
- (iii) a license or licenses to lay down construct use and maintain in and through the land described in the Eighth Schedule hereto (being a further part of the bed of Botany Bay) a pipe line for the conveyance of water ballast from tankers ashore for treatment for a period of ninety-nine years from the date of completion of the sale to the Company of the lands described in the First Schedule hereto and subject to such terms and conditions (including conditions as to payment for or in respect of the license and for or in respect of the maintenance of the pipe line and for or in respect of the safeguarding of the future development including the dredging of Botany Bay and for or in respect of preventing interference with navigation and fishing and for or in respect of the depth below the surface of the bed of the Bay at which the pipe line is to be laid) as the Board may determine.

(c)

No such pipe line as is referred to in subclause (a) of this Clause shall be laid down or constructed except in accordance with plans and specifications previously approved of in writing by the Minister and the work of laying down and constructing every such pipe line shall be carried out to the satisfaction of the Minister. The plans and specifications referred to in this subclause shall be furnished by the Company to the Minister at the cost and expense of the

Company. Provisions in or to the effect of the provisions of this subclause may be inserted in any license granted to the Company in pursuance of the provisions of subclause (a) of this Clause.

(d)

No such pipe line as is referred to in subclause (b) of this Clause shall be laid down or constructed except in accordance with plans and specifications previously approved of in writing by the Board and the work of laying down and constructing every such pipe line shall be carried out to the satisfaction of the Board. The plans and specifications referred to in this subclause shall be furnished by the Company to the Board at the cost and expense of the Company. Provisions in or to the effect of the provisions of this subclause may be inserted in any license granted to the Company in pursuance of the provisions of subclause (b) of this Clause.

(e)

Subject to the provisions hereinafter contained the Company may with the previous consent of the Board in writing assign any license granted to it in pursuance of the provisions of paragraph (i) of subclause (b) of this Clause and its rights and liabilities thereunder. In the case of any and every assignment under this subclause the assignee shall execute a deed whereby it covenants with the Board to observe and perform the provisions of the License on the part of the Company to be observed and performed in the same manner in all respects as if the name of such assignee had been inserted in the License in place of the name of the Company. Any consent by the Board to an assignment under this subclause shall not discharge the Company from any liability under the License and shall extend only to the permission actually given and shall not prejudice or affect any of the Board's rights or remedies in respect of any breach of the provisions of the License. No assignment under this subclause shall have the effect of increasing in any way the actual or contingent liability of the Board or Her Majesty under the License whether by way of damages or otherwise, to the intent that the Board or Her Majesty shall not be liable in any case to an extent in or to which the Board or Her Majesty would not have been liable had the assignment not been made.

26.

(a)

The Company hereby covenants and agrees with the Minister that the Company will at all times during the currency of this Agreement have and maintain in an efficient working condition upon the site of the Company's oil refinery sufficient standard design septic tanks approved of by the Board of Health and the Council of the Shire of Sutherland for the treatment of all such sanitary sewage upon the site of the said oil refinery as shall not be removed by the said Council by arrangement with the Company or through the said Council's sewage collection service or disposed of by any sewerage service hereafter installed by the Metropolitan Water Sewerage and Drainage Board or other public authority and the Company will dispose of the effluent from such tanks in a manner satisfactory to the Metropolitan Water Sewerage and Drainage Board and the said Council.

(b)

In no circumstances shall any of the effluent referred to in subclause (a) of this Clause be discharged by the Company into Botany Bay.

(c)

The Company hereby covenants with the Minister and with the Board and with Her Majesty Her Heirs and Successors that the Company will not permit any solid matter to be deposited or escape or any liquid matter to flow or percolate into Botany Bay or into any ditch or channel communicating therewith or so near thereto as to be liable to discharge into the same until such matter shall have been so sufficiently filtered or otherwise treated as to be innocuous to life and incapable of causing any destruction of or injury to fish or oysters or the breeding of fish or oysters or the young fry or ova of fish or the spat of oysters or any damage to the bed or banks of the said Bay or any pollution of the waters thereof AND THAT the Company will in discharging any liquid matter into Botany Bay at all times observe all the requirements of the Board the Metropolitan Water Sewerage and Drainage Board and the Chief Secretary's Department in regard to the prevention of the pollution of the waters of Botany Bay.

(d)

Covenants or conditions to the effect of the foregoing provisions of this Clause may be inserted in any lease of license granted to the Company by the Crown or the Minister or the Board for the purposes of or in connection with its said oil refinery.

(e)

Provisions to the effect of subclauses (a) (b) and (c) of this Clause will be included in the Crown Grants of the lands described in the First Schedule hereto and (without limiting the foregoing) the Act ratifying this Agreement may provide that such provisions of the said Crown Grants shall be deemed to be covenants by the Company for itself its successors and assigns with the Minister and his successors in office and the other parties with whom such covenants are expressed to be made and that such provisions shall bind the lands described in the First Schedule hereto and every part thereof into whosoever hands the same may come and bind the persons interested therein and that the Registrar General shall endorse every Crown Grant or Certificate of Title comprising such lands or any part thereof accordingly.

27.

(a)

The Company hereby covenants with the Minister that the Company will not upon any land comprised in any lease or license to it in connection with its said oil refinery or upon any land granted to or owned used or occupied by it in connection with such refinery at any time do or permit or suffer to be done anything which will in any way endanger the preservation of the historic Captain Cook's Landing Reserve (being the land described in the Ninth Schedule hereto) or the vegetation thereon.

(b)

A covenant or condition to the effect of the provisions of subclause (a) of this Clause may be inserted in every lease or license granted by the Crown or the Minister or the Board to the Company for the purposes of or in connection with the said oil refinery.

(c)

Provisions to the effect of subclause (a) of this Clause will be included in the Crown Grants of the lands described in the First Schedule hereto and (without limiting the foregoing) the Act

ratifying this Agreement may provide that such provisions of the said Crown Grants shall be deemed to be covenants by the Company for itself its successors and assigns with the Minister and his successors in office and that such provisions shall bind the lands described in the First Schedule hereto and every part thereof into whosoever hands the same may come and bind the persons interested therein and that the Registrar General shall endorse every Crown Grant or Certificate of Title comprising such lands or any part thereof accordingly.

28.

(a)

The Company hereby covenants with the Minister that the Company shall at its own expense commence at the date notified to it in that behalf by the Minister on or after the date of commencement of this Agreement and thereafter continuously proceed with the construction and erection of a substantial fence to the approval in all respects of the Minister on and along the lines forming the boundaries of the lands comprising the Company's oil refinery so that at the expiration of six months from the date so notified by the Minister the Company shall have at its own cost completed the full and proper construction and erection as aforesaid of the said fence and the Company covenants with the Minister to construct and erect at its own cost the said fence within the said period of six months in accordance in all respects with the foregoing provisions of this Clause.

(b)

In the event of the Company failing to comply with any of the foregoing provisions of this Clause the Minister may without prejudice to any other remedy of Her Majesty or the Minister under this Agreement by reason of such default of the Company do all such acts and things as the Minister may think necessary or desirable to remedy the default of the Company and the Company shall on demand pay to the Minister all costs and expenses incurred by the Minister in so doing and the same shall be recoverable by him from the Company in a Court of competent jurisdiction and a certificate of the Under Secretary, Department of Lands, or the person acting as such for the time being of the amount of such costs and expenses incurred by the Minister shall be prima facie evidence thereof and neither Her Majesty nor the Minister shall incur any liability towards the Company by reason of any damage whatsoever done to or upon the lands the subject of this Agreement or to or upon any adjoining or adjacent lands of the Company in the performance by the Minister, his employees, agents, workmen, servants or licensees of any act or thing permitted to be done by the Minister under the provisions of this Clause.

29.

Her Majesty Her Heirs and Successors and/or the Minister shall not be called upon or bound to pay the cost or any proportion of the cost of any dividing fence or fences between any land sold or leased by Her Majesty or the Minister to the Company and any remaining land of Her Majesty or the Minister and the Company will from time to time and at all times indemnify and keep indemnified Her Majesty Her Heirs and Successors and the Minister against all claims by any person or corporation whomsoever or whatsoever for such cost or any proportion thereof.

30.

The Company hereby covenants with the Minister that it will from time to time and at all times hereafter indemnify and keep indemnified Her Majesty Her Heirs and Successors and the Minister

his successors and assigns and the Government of the said State of New South Wales from and against all actions claims and demands which may at any time be brought or made against Her Majesty Her Heirs and Successors or the Minister his successors or assigns or the Government of the said State of New South Wales by or for any person body firm or corporation whomsoever or whatsoever in respect of any loss of life or of any injury to person or property or of any loss or damage occasioned by or arising out of or by reason or as a result of any act or thing done or omitted to be done by the Company its successors or assigns or its or their employees agents workmen servants or licensees in or in connection with or with respect to the exercise and enjoyment of any of the rights or privileges by this Agreement to be conferred on or granted to the Company or in or in connection with or with respect to the performance by the Company of any of the obligations or duties by this Agreement imposed upon the Company.

31.

Nothing in this Agreement contained shall affect in any way the liability of the Company or any other person to pay harbour rates in accordance with the provisions of the *Harbour and Tonnage Rates Act, 1920-1953*, and any Act amending or replacing the same and the regulations from time to time in force thereunder.

32.

The Company hereby covenants with the Minister that it will observe and perform and cause to be observed and performed the provisions of all statutes rules regulations ordinances and by-laws now or hereafter in force and all orders and directions which may be given under the same or any of them in so far as the same or any such order and direction relates to the Company's oil refinery or to the construction control management or user of the structures thereon or any of them or to any business or activity conducted by the Company on the refinery premises.

33.

(a)

Any notice or communication required to be or that may be given to the Company under or in connection with this Agreement by or on behalf of Her Majesty Her Heirs or Successors or the Minister shall be deemed to have been duly given if signed by the Under Secretary, Department of Lands, or the person acting as such for the time being.

(b)

Any notice or communication required to be or that may be given to the Company under or in connection with this Agreement by or on behalf of the Minister for Public Works shall be deemed to have been duly given if signed by the Director of Public Works or other the Permanent Head of the Department of Public Works, or the person acting as such Director or Permanent Head for the time being.

(c)

Any notice or communication required to be or that may be given to the Company under or in connection with this Agreement by or on behalf of the Board shall be deemed to have been duly given if signed by the Secretary to the Board or the person acting as such for the time being.

34.

This Agreement is subject to ratification by the Parliament of the State of New South Wales and shall come into effect when so ratified and the expression “the date of commencement of this Agreement” means the date of commencement of the Act which ratifies it PROVIDED that if this Agreement is not ratified by the said Parliament before the thirty-first day of December 1954 it shall become null and void.

35.

The Company will 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.

36.

Such of the provisions and conditions of this Agreement as require or prescribe any act or thing to be done or not to be done by the Company shall in addition to being read and construed as conditions of this Agreement be also read and construed as agreements whereby the Company covenants with the Minister to observe and perform the said provisions and conditions.

37.

In this Agreement or any Schedule hereto unless the context otherwise requires the singular includes the plural and vice versa and the following expressions shall have the meanings set opposite thereto respectively:—

“Auditor General” means the Auditor General for the State of New South Wales or the person acting as such for the time being.

“Board” means the Maritime Services Board of New South Wales.

“Minister for Public Works” means the Minister for Public Works of the State of New South Wales and his successors in office.

“Gazette” means the New South Wales Government Gazette.

“month” means calendar month.

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

THE FIRST SCHEDULE HEREINBEFORE REFERRED TO.

FIRST PART.

ALL THAT piece or parcel of land situated in the Parish of Sutherland, County of Cumberland, Sutherland Shire, comprising Portions 940, 957, 961 and 993:—

Firstly, COMMENCING on the south-eastern boundary of Portion 1 of 700 acres granted to James Birnie at a point 756.8 links from the south-western side of Polo Street; bounded thence on the north-east by a line bearing 113 degrees 19 minutes 30 seconds 2195 links, on the east by a line bearing 176 degrees 49 minutes 6223.6 links, on the south-east by a line bearing 260 degrees 13 minutes 5927.6 links to the south-eastern boundary of Portion 1 aforesaid, on part of the north-west by that boundary bearing 23 degrees 19 minutes 30 seconds 2523.8 links to the south-eastern side of a road from Cronulla to Kurnell again on the north-west by that side of that road

being lines bearing 90 degrees 41 minutes 30 seconds 210.8 links, 27 degrees 35 seconds 1022.6 links, 22 degrees 8 minutes 20 seconds 755.05 links, 37 degrees 3 minutes 560.5 links, 72 degrees 14 minutes 45 seconds 549.3 links and 5 degrees 26 minutes 20 seconds 217.85 links to the south-western corner of Portion 283, again on the north-east the north-west and the south-west by the south-western, south-eastern and north-eastern boundaries of that portion bearing 113 degrees 15 minutes 30 seconds 215.6 links, 23 degrees 12 minutes 1000 links and 293 degrees 9 minutes 20 seconds 939.4 links to the south-eastern boundary of Portion 1 aforesaid and again on the north-west by that boundary bearing 23 degrees 12 minutes 2317.1 links to the point of commencement and containing an area of 260 acres 2 roods 28 perches and shown on plan C. 6872 2030 in the Department of Lands.

Secondly, COMMENCING on the south-eastern boundary of Portion 1 aforesaid at the westernmost corner of Portion 570 and bounded thence on the north-east by the south-western boundary of Portion 570, bearing 113 degrees 15 minutes 30 seconds 619 links to the north-western side of a road from Cronulla to Kurnell on the south-east by that side of that road being lines bearing 185 degrees 26 minutes 20 seconds 184 links, 252 degrees 14 minutes 45 seconds 515.1 links, 217 degrees 3 minutes 605.4 links, 202 degrees 8 minutes 20 seconds 763.9 links, 207 degrees 35 seconds 956.2 links and 270 degrees 41 minutes 30 seconds 107 links to the south-eastern boundary of Portion 1 aforesaid and on the north-west by that boundary bearing 23 degrees 19 minutes 30 seconds 2860.1 links to the point of commencement and containing an area of 6 acres 1 rood 30 perches and shown on plan C. 6873 2030 in the Department of Lands.

AND ALSO ALL THAT piece or parcel of land situated in the Parish of Sutherland, County of Cumberland, Sutherland Shire comprising Portion 997 of 3 roods 22½ perches and shown on plan C 7066 2030 in the Department of Lands:—COMMENCING on the south-eastern boundary of Portion 1 of 700 acres granted to James Birnie at the north-western corner of Portion 993; bounded thence on the north-west by that boundary bearing 23 degrees 12 minutes 40.9 links, on the north-east by a line bearing 113 degrees 19 minutes 30 seconds 2174.7 links, on the east by a line bearing 176 degrees 49 minutes 45.7 links to the north-east corner of Portion 993 and thence on the south-west by the north-eastern boundary of that portion bearing 293 degrees 19 minutes 30 seconds 2195 links to the point of commencement.

SECOND PART

ALL THAT piece or parcel of land situated in the Parish of Sutherland, County of Cumberland, Sutherland Shire, comprising road 66 feet wide separating Portions 283 and 993 from Portions 570, 957 and 961, and road 80 feet wide traversing an area of 68 acres 1 rood 26½ perches, being acquired by Australian Oil Refining Limited, shown on plan Ms. 14668 Sy. in the Department of Lands, extending from the north western boundaries of Portions 283 and 570 to the western boundary of land in plan Ms. 14668 Sy. aforesaid and containing an area of 6 acres 2 roods 29 perches.

THE SECOND SCHEDULE HEREINBEFORE REFERRED TO.

ALL THAT piece or parcel of land situated in the Parish of Sutherland County of Cumberland Sutherland Shire comprising Portion 995 of 10 acres 2 roods 22 perches shown on plan C 7000-2030 Department of Lands:—

COMMENCING on the high water mark of Botany Bay at a point bearing 326 degrees 49 minutes 30 seconds 83 feet 6 inches from the north west corner of Lot A of 4 acres 1 rood 2 perches in Miscellaneous Plan of Subdivision (Real Property) 55460 on the south eastern side of Prince Charles Parade; and bounded thence on the south west and north west by lines bearing 321

degrees 18 minutes 45 seconds 2660 feet 2 inches, 288 degrees 33 minutes 40 seconds 68 feet 5 inches and 18 degrees 33 minutes 40 seconds 1034 feet; on the north east, and south east and again on the north east by lines bearing 108 degrees 33 minutes 40 seconds 104 feet, 198 degrees 33 minutes 40 seconds 897 feet 8 inches and 141 degrees 18 minutes 45 seconds 2693 feet 10 inches to the high water mark of Botany Bay aforesaid and thence generally on the south east by that high water mark generally south westerly to the point of commencement.

THE THIRD SCHEDULE HEREINBEFORE REFERRED TO.

LEASE CONDITIONS: JETTY AREA

(1)

The Company shall at all times during the term of the lease at its own cost and expense and to the satisfaction of the Minister maintain repair and renew so as to keep in good order and condition all jetties wharves facilities dolphins and other structures now or hereafter constructed erected or provided upon the land leased unless the Minister shall agree in writing to the demolition and removal of any such jetty wharf facility dolphin or other structure in which case the Company shall at its own cost and expense demolish and remove such jetty wharf facility dolphin or other structure and such work shall be carried out to the satisfaction of the Minister.

(2)

Upon the expiration of the lease or upon the sooner determination thereof for any reason whatsoever the Company shall if as and when required in writing by the Minister carry out at its own cost and expense the work of the demolition and removal of such jetties wharves facilities dolphins and other structures upon the land hereby leased as the Minister may require and such work shall be carried out to the satisfaction of the Minister.

(3)

The Lease shall not confer any right to purchase the land.

(4)

The land leased shall be used only for the purposes for which it is granted.

(5)

The Company shall pay all rates taxes charges assessments and outgoings upon or in respect of the land leased or the Company's operations thereon during the currency of the lease.

(6)

The Company shall not assign sublet or part with the possession of the land leased or any part thereof without the consent in writing of the Minister.

(7)

The Company shall at all times at its own cost and expense and to the satisfaction of the Minister keep all jetties wharves facilities dolphins and other structures now or hereafter constructed erected or provided upon the land leased in good sanitary condition and free from rats and mice and the right is reserved to terminate the lease should the Minister be of the opinion that the public health is endangered thereby or any nuisance is committed.

(8)

The right of ingress egress and regress in over and out of the land leased and any jetties wharves facilities dolphins or other structures constructed erected or provided thereon is reserved to the Minister or any person or persons authorised by him in that behalf but not so as to interfere unreasonably with the operations of the Company.

(9)

Any necessary public service may be constructed or laid on the land leased without charge and either above or below the surface after giving to the Company one month's notice in writing of the intention to construct or lay any such public service but not so as to interfere unreasonably with the operations of the Company.

(10)

The Company shall if and when required by the Minister erect and construct at its own expense on the shore end of any jetty or wharf to be constructed or erected upon the land leased a good and substantial fence and gates of designs and in accordance with specifications to be approved of by the Minister AND the Company shall maintain such fence and gates in good order repair and condition to the satisfaction in all respects of the Minister AND no claim shall be made against Her Majesty or the Minister for any contribution towards the cost of such fence and gates or such maintenance.

(11)

In the event of the Company failing to carry out and complete any of the work provided by conditions (1) (2) (7) and (10) of the lease to be carried out by the Company the Minister may without prejudice to any other remedy of Her Majesty or the Minister by reason of such default of the Company, do all such acts and things as the Minister may think necessary to remedy the default of the Company, and the Company shall on demand pay to the Minister all costs and expenses incurred by the Minister in so doing with interest at the rate of four pounds (£4) per centum per annum and the same shall be recoverable by him from the Company in a court of competent jurisdiction and a certificate of the Under Secretary, Department of Lands, or the person acting as such for the time being of the amount of such costs and expenses incurred by the Minister shall be prima facie evidence thereof and neither Her Majesty nor the Minister shall incur any liability towards the Company by reason of any damage whatsoever done to or upon the land leased or any jetty wharf facility dolphin or structure thereon or to or upon any adjoining or adjacent lands above mean high water mark in the performance by the Minister his employees agents workmen servants or licensees of any act or thing permitted to be done by the Minister under the provisions of this condition.

(12)

The work provided by conditions (1) (2) (7) and (10) of this lease to be carried out by the Company shall be carried out at and within such time or times and at such rate as the Minister shall determine.

(13)

A breach of any of the conditions of the lease shall render the lease liable to forfeiture. Such forfeiture may be effected by publication in the Gazette of a notice signed by the Minister declaring the lease to be forfeited Provided however that no such notice shall be published in the Gazette unless the Minister has first served upon the Company a notice in or to the effect of the form set out

in the Sixth Schedule to the *Conveyancing Act, 1919-1953* specifying the particular breach complained of and if the breach is capable of remedy requiring the Company to remedy it and in case the Minister claims compensation in money requiring the Company to pay such compensation and the Company has failed within a reasonable time to remedy the breach if remediable or to pay reasonable compensation to the satisfaction of the Minister where compensation in money is required.

(14)

The Company will observe and perform and cause to be observed and performed the provisions of all statutes rules regulations ordinances and by-laws now or hereafter in force and all orders and directions which may be given under the same or any of them in so far as the same or any such order and direction relates to the land leased or to the construction control management or user of the jetties wharves facilities dolphins or other structures thereon or any of them or to any business or activity conducted by the Company on the land leased or to the conduct of any person using or upon the same or any jetty wharf facility dolphin or structure thereon.

(15)

The Company will not at any time do or permit or suffer to be done anything upon the land leased which will in any way endanger the preservation of the historic Captain Cook's Landing Place Reserve (or the vegetation thereon) being the following land—

ALL THAT piece or parcel of land situated in the Parish of Sutherland, County of Cumberland Sutherland Shire, comprising an area of 248 acres proclaimed as Public Park under the name of "Captain Cook's Landing Place" by notification in the Government Gazette on 9th July 1902 and shown on Plan Ms. 1541 Sydney in the Department of Lands: COMMENCING on the high water mark of Botany Bay at the prolongation of the north-eastern side of Polo Street; bounded thence on the south-west by that prolongation and the north-eastern side of Polo Street and its prolongation south-easterly to the Pacific Ocean, thence generally on the north-east and north and north-west by the high water mark of the Pacific Ocean and Botany Bay north-westerly, westerly and south-westerly to the point of commencement.

(16)

Mining operations may be carried on upon and in the lands below the land leased and upon and in the lands adjoining the land leased and the lands below the same and metals and minerals may be removed therefrom and Her Majesty the Queen and the Government of New South Wales and any lessee or lessees under any Mining Act or Acts of the said State shall not be subject to any proceedings by way of injunction or otherwise in respect of or be liable for any damage whatsoever occasioned by the letting down subsidence or lateral movement of the land hereby leased or any part thereof or otherwise howsoever by reason of the following acts and matters that is to say, by reason of Her Majesty or the said Government or any person on behalf of Her Majesty or the said Government or any lessee or lessees as aforesaid, having worked or now or hereafter working any mines or having carried on or now or hereafter carrying on mining operations or having searched for worked won or removed or now or hereafter searching for working winning or removing any metals or minerals under in or from the lands lying beneath the land hereby leased or any part thereof or on in under or from any other lands situated laterally to the land hereby leased or any part thereof or the lands lying beneath the same and whether on or below the surface of such other lands and by reason of the acts and matters aforesaid or in the course thereof Her Majesty the Queen reserves the liberty and authority for Herself and the Government of the said State and any person on behalf

of Her Majesty or the said Government and any lessee or lessees as aforesaid from time to time to let down without payment of any compensation whatsoever any part of the land hereby leased and/or of the surface thereof.

(17)

Any approach embankment shall not extend beyond low water mark and the inshore half of the jetty shall be an open piled structure.

(18)

The lighting system on the jetty shall be approved by Maritime Services Board and the lighting of the jetty shall at all times be carried out to the satisfaction of that Board.

(19)

Any oil pipeline shall be in accordance with the *Inflammable Liquid Act, 1915-1952*, and regulations thereunder.

(20)

The lessee Company shall take all necessary precautions to prevent any objectionable matter from entering the waters of Botany Bay.

(21)

The lessee Company shall indemnify and keep indemnified the Crown from and against all actions, suits and claims and demands of whatsoever nature and all costs, charges and expenses which may be brought against it or which it may incur in respect of any accident or injury whatsoever or for any damage which may be consequent on the use of the land leased for jetty notwithstanding that the conditions and covenants contained or referred to in this lease shall in all respects have been observed by the lessee or that any accident or injury shall arise from any act or thing which it may be authorised or compelled to do in respect of the conditions attached to the lease.

(22)

A conviction under the public Health Act, or the *Inflammable Liquid Act, 1915-1952* as the case may be will render the lease liable to forfeiture.

THE FOURTH SCHEDULE HEREINBEFORE REFERRED TO.

ALL THAT area of 38 acres or thereabouts commencing at a point bearing 325 degrees 19 minutes 45 seconds and distant 2986 feet 8 inches from Trigonometrical Station 2009 which is the centre of Captain Cook obelisk at Kurnell and bounded thence on the south-east generally by lines bearing 206 degrees 9 minutes 20 seconds 482 feet 7 inches, 256 degrees 3 minutes 285 feet 1 inch, 208 degrees 28 minutes 40 seconds 770 feet 2¼ inches; thence on the south-west generally by lines bearing 297 degrees 23 minutes 40 seconds 434 feet 9 3/4 inches 349 degrees 30 minutes 888 feet 8¼ inches; thence on the north-west generally by lines bearing 28 degrees 30 minutes 20 seconds 878 feet 8½ inches, 76 degrees 9 minutes 200 feet 4½ inches; thence on the north-east generally by lines bearing 105 degrees 28 minutes 30 seconds 587 feet 1 inch, 158 degrees 3 minutes 30 seconds 602 feet 1 inch to the point of commencement as shown upon a plan catalogued Ms. 14878 Sy.R in the Department of Lands, Sydney.

THE FIFTH SCHEDULE HEREINBEFORE REFERRED TO.

ALL THAT area of 24 acres or thereabouts commencing at a point bearing 325 degrees 19 minutes 45

seconds and distant 2986 feet 8 inches from Trigonometrical Station 2009 which is the centre of Captain Cook Obelisk at Kurnell and bounded thence on the south-west by a line bearing 338 degrees 3 minutes 30 seconds 602 feet 1 inch, on the north-west by a line bearing 73 degrees 19 minutes 46 seconds 1810 feet, on the north-east by a line bearing 159 degrees 30 seconds 601 feet 3 inches, on the south-east by a line bearing 253 degrees 19 minutes 46 seconds 1800 feet to the point of commencement as shown upon a plan catalogued Ms. 14878 Sy. R. in the Department of Lands, Sydney.

THE SIXTH SCHEDULE HEREINBEFORE REFERRED TO.

ALL THAT piece or parcel of land situated at Kurnell in the Shire and Parish of Sutherland County of Cumberland containing an area of 1 acre 1 rood 8 perches more or less COMMENCING at a point on the eastern boundary of Portion 993 of 250 acres 28 perches excluding Portion 940 comprising part of Special Lease 52.285 Metropolitan held by Australian Oil Refining Limited, bearing 176 degrees 49 minutes 1 chain 51-5/10th links from the south-western corner of Portion 996 of 20 acres comprising Reserve 76248 from sale for Sanitary Purposes notified 25th September 1953 and bounded generally on the north-west by lines bearing 86 degrees 49 minutes 12 chains, 49 degrees 3 minutes 9 chains 56-2/10th links, 75 degrees 24 minutes 17 chains 32-3/10th links and 78 degrees 4 chains 15 links to the Low Water Mark of the Pacific Ocean, on the east by a line along that low water mark bearing 179 degrees 45 minutes 30-9/10th links, generally on the south-east by lines bearing 258 degrees 4 chains 8 links, 255 degrees 24 minutes 17 chains 24-5/10 links, 229 degrees 3 minutes 9 chains 59-5/10th links and 266 degrees 49 minutes 12 chains 10-4/10th links to the eastern boundary of Portion 993 aforesaid, and on the west by part of that boundary bearing 356 degrees 49 minutes 30-3/10th links to the point of commencement, as shown on Plan Ms. 14678 Sy. in the Department of Lands.

THE SEVENTH SCHEDULE HEREINBEFORE REFERRED TO.

ALL THAT piece or parcel of land situated in the Parish of Sutherland County of Cumberland Sutherland Shire, comprising an area of 1 acre 2 roods 1½ perches and shown on Plan Ms. 14877 Sydney in the Department of Lands COMMENCING on the high water mark of Botany Bay at a point bearing 352 degrees 49 minutes 30 seconds 96 feet from the north-eastern corner of Lot 12, Deposited Plan 7632, being a subdivision of Portion 1 of 700 acres, excluding 160 acres of salt water marshes and bounded thence on the north-east by a line bearing 352 degrees 57 minutes 1641 feet 4 5/8 inches, on the north-west by a line bearing 262 degrees 57 minutes 40 feet, on the south-west by a line bearing 172 degrees 57 minutes 1647 feet to the high water mark of Botany Bay aforesaid and on the south-east by that high water mark north-easterly to the point of commencement.

THE EIGHTH SCHEDULE HEREINBEFORE REFERRED TO.

ALL THAT piece or parcel of land situated in the Parish of Sutherland County of Cumberland, Sutherland Shire, comprising an area of 2 roods 4½ perches and shown on Plan Ms. 14877 Sydney Roll in the Department of Lands COMMENCING on the high water mark of Botany Bay at a point bearing 358 degrees 43 minutes 97 feet 11 inches from the north-eastern corner of Lot 12 Deposited Plan 7632 being a subdivision of Portion 1 of 700 acres excluding 160 acres of salt water marshes and bounded thence on the north-east by lines bearing 352 degrees 57 minutes, 2,298 feet 5 inches and 321 degrees 15 minutes 45 seconds, 19 feet and ½ an inch, on the south-west by a line bearing 172 degrees 57 minutes 2316 feet and 5/8 of an inch to the high water mark of Botany Bay aforesaid and on the south-east by that high water mark north-easterly to the point of commencement.

THE NINTH SCHEDULE HEREINBEFORE REFERRED TO.

ALL THAT piece or parcel of land situated in the Parish of Sutherland County of Cumberland, Sutherland Shire, comprising an area of 248 acres proclaimed as Public Park under the name of "Captain Cook's Landing Place" by notification in the Government Gazette on 9th July 1902 and shown on Plan Ms.

1541 Sydney in the Department of Lands COMMENCING on the high water mark of Botany Bay at the prolongation of the north-eastern side of Polo Street; bounded thence on the south-west by that prolongation and the north-eastern side of Polo Street and its prolongation south-easterly to the Pacific Ocean, thence generally on the north-east and north and north-west by the high water mark of the Pacific Ocean and Botany Bay north-westerly, westerly and south-westerly to the point of commencement.

The Common Seal of Australian Oil Refining Limited was affixed hereto in pursuance of a resolution of the Directors and in the presence of:

D. C. HARPER,
Secretary.

}

L.S.
A. J. HERRON,
Director.

Signed Sealed and Delivered by The Honourable Francis Harold Hawkins the Minister for Lands of the State of New South Wales for and on behalf of Her Most Gracious Majesty Queen Elizabeth II (but not so as to incur any personal liability under this Agreement) in the presence of:

A. R. JONES, J.P.

}

L.S.
F. H. HAWKINS.

Second Schedule Amending Agreement

THIS AGREEMENT made the 17th day of June One thousand nine hundred and sixty BETWEEN—AUSTRALIAN OIL REFINING PTY. LIMITED a Company duly incorporated under the Companies Acts of the State of New South Wales (hereinafter called “the Company”) of the first part THE HONOURABLE JOHN BROPHY RENSCHAW the Minister for Lands of the State of New South Wales for and on behalf of Her Most Gracious Majesty Queen Elizabeth II (hereinafter called “the Minister” which expression shall where the context admits include his successors in office) of the second part THE HONOURABLE PHILLIP NORMAN RYAN the Minister for Public Works of the said State for and on behalf of Her Most Gracious Majesty Queen Elizabeth II (hereinafter called “the Minister for Public Works” which expression shall where the context admits include his successors in office) of the third part and THE MARITIME SERVICES BOARD OF NEW SOUTH WALES a body corporate constituted by the *Maritime Services Act, 1935–1953* (hereinafter called “the Board”) of the fourth part WHEREAS this Agreement is made supplemental to an Agreement (hereinafter called “the Principal Agreement”) dated the 16th day of June 1954 made between the Company (formerly and in the Principal Agreement called Australian Oil Refining Limited) of the one part and the Honourable Francis Harold Hawkins the then Minister for Lands of the said State for and on behalf of Her Majesty of the other part which lastmentioned Agreement was duly approved ratified and confirmed by the Parliament of the State of New South Wales by the *Australian Oil Refining Limited Agreement Ratification Act, 1954* AND WHEREAS the Company has now established and is conducting an extensive oil refinery at Kurnell in the said State AND WHEREAS the Company proposes to further develop its said oil refinery and to use super tankers in connection therewith and in order that such super tankers may be so used it becomes necessary to deepen sections of Botany Bay and to make provision for the granting to the Company of certain further licenses including licenses to lay down construct use and maintain certain further pipe lines over parts of the bed of Botany Bay AND WHEREAS since the date of the Principal Agreement the Company has at its own expense with the consent of the Minister deepened part of the turning basin

referred to in clause 23 of the Principal Agreement AND WHEREAS the parties hereto have agreed to execute this Agreement for the purpose of varying the Principal Agreement in the manner herein after appearing NOW IT IS HEREBY AGREED as follows:—

1.

The Principal Agreement shall be read and construed—

- (a) as if there were added after Clause One of the Principal Agreement the following additional clause:—

“1A.

(a)

The Company hereby covenants with the Minister that the Company without cost to the Minister or Her Majesty Her Heirs or Successors shall upon the 1st day of January 1959 have commenced or caused to be commenced the erection and construction of further permanent and fixed improvements upon the lands described in the First Second Fourth Tenth and Twelfth Schedules hereto and the other lands now owned or hereafter acquired by the Company adjoining or adjacent to the lands described in the First Schedule hereto for the purpose of carrying on industrial operations thereon and shall thereafter proceed with or cause to be proceeded with such erection and construction so that at the expiration of three years from the said 1st day of January 1959 or of such further period if any as may be allowed by the Auditor-General in writing under the provisions hereinafter contained the Company shall have without cost to the Minister or Her Majesty Her Heirs and Successors erected and constructed or caused to be erected and constructed since the said 1st day of January 1959 upon the said lands and other lands as aforesaid permanent and fixed improvements to a cost which together with all other expenditure incurred by the Company in relation to the project generally since the said 1st day of January 1959 amounts to the equivalent of at least Eight million pounds (£8,000,000) Australian currency for the purpose of carrying on industrial operations thereon and the Company covenants with the Minister to construct and to have constructed such further permanent and fixed improvements to the said cost within the said period of Three years from the said 1st day of January 1959 (or further period if any allowed in writing by the Auditor-General as aforesaid) accordingly.

(b)

In the event of the Company failing to erect and construct or cause to be erected and constructed upon the said lands and other lands as aforesaid such further permanent and fixed improvements to a cost which together with all other expenditure incurred by the Company in relation to the project generally since the said 1st day of January 1959 amounts to the equivalent of at least Eight million pounds (£8,000,000) Australian currency as required by the preceding sub-clause within the time as thereby provided the Company hereby covenants to pay to the Minister as liquidated damages and not as penalty a sum calculated at the rate of Ten pounds (£10) per centum of the amount by which the sum of Eight million pounds (£8,000,000) in Australian currency exceeds the total sum (in Australian currency) arrived at by adding together the cost of such further permanent and fixed improvements erected and constructed and caused to be erected and constructed by the Company upon the said lands and other lands as aforesaid

within the time as aforesaid and all other expenditure incurred by the Company in relation to the project generally since the said 1st day of January 1959.

(c)

A certificate by the Auditor-General of the State of New South Wales as to the total sum arrived at by adding together the cost of the further permanent and fixed improvements erected and constructed and caused to be erected and constructed within the period of Three years from the said 1st day of January 1959 (or such further period if any allowed by the Auditor-General in writing under the provisions hereinafter contained) by the Company upon the said lands and other lands as aforesaid for the purpose of carrying on industrial operations thereon and all other expenditure incurred by the Company in relation to the project generally since the said 1st day of January 1959 shall be final and conclusive and binding upon the parties hereto.

(d)

The Company shall from time to time produce all relevant books vouchers documents papers and evidence to, and allow the permanent and fixed improvements on the said lands and other lands as aforesaid and all other relevant property assets and things to be inspected by

- (i) the Minister and persons authorised by him for the purpose of ascertaining the performance or non-performance by the Company of sub-clause (a) of this Clause; and
- (ii) the Auditor-General (and persons authorised by him) for the purposes of subclauses (a) (c) and (f) of this Clause.

(e)

The Company shall not after the said 1st day of January 1959 unless the written consent of the Minister be first obtained, sell or dispose of or lease for a term exceeding three years from the execution of the lease the lands described in the First Schedule hereto or any part thereof PROVIDED that this sub-clause shall cease to operate upon the Minister stating in writing that the Company has performed the provisions of sub-clause (a) of this Clause or upon the Company paying to the Minister the liquidated damages covenanted by it in sub-clause (b) of this Clause to be paid to him or upon the Auditor-General certifying that the total sum arrived at by adding together the cost of the further permanent and fixed improvements erected and constructed and caused to be erected and constructed within Three years from the said 1st day of January 1959 (or such further time if any allowed by the Auditor-General in writing) by the Company upon the said lands and other lands as aforesaid for the purpose of carrying on industrial operations thereon and all other expenditure incurred by the Company in relation to the project generally since the said 1st day of January 1959 is the equivalent of at least Eight million pounds (£8,000,000) Australian currency.

(f)

If through any cause beyond the control of the Company and not arising from or due to or contributed to by any neglect default or misconduct of the Company or its agents or servants delay occurs in the erection or construction by the Company of such further

permanent and fixed improvements as provided by sub-clause (a) of this Clause the Company may from time to time within six months of the happening or occurring of the event or matter causing the delay apply in writing to the Auditor-General for an extension of time on account of such event or matter setting forth the cause of such application and the Auditor-General shall if he thinks the cause sufficient and within the foregoing provisions of this sub-clause (f) but not otherwise allow by writing under his hand such extension of time as he may think adequate.

(g)

Unless the Company shall make such application within the time and in the manner aforesaid and unless and until the Auditor-General shall allow such extension or extensions of time as aforesaid the Company shall not by reason of any delay arising as in the preceding subclause mentioned or for any other reason whatsoever be relieved in any way or to any extent of its liability to erect and construct such further permanent and fixed improvements as provided by sub-clause (a) of this Clause within the time as therein provided or of any other liability or obligation of the Company under this agreement.

(h)

In this Clause the term 'permanent and fixed improvements' includes buildings structures fencing storage tanks railways permanent pipe lines levelling of land reclamation of land wharves roads drains and canals and works and erections and other appurtenances to any of the foregoing and also includes fixed plant and machinery of any description and the term 'all other expenditure incurred by the Company in relation to the project generally' includes expenditure incurred by the Company prior to the expiration of the said period of Three years (or further period, if any, allowed in writing by the Auditor-General as aforesaid) but after the said 1st day of January 1959 upon or in relation to—

- (i) the dredging of Botany Bay for the construction of and to secure safe access to wharves and other works;
- (ii) preliminary operations and training expenses;
- (iii) interest on debenture loans raised by the Company for the purpose of the project;
- (iv) royalties paid by the Company for the purposes of or in connection with the project;
- (v) design and purchasing expenses incurred for the purposes of or in connection with the project;
- (vi) the acquisition of lands or interests in lands acquired by the Company after the said 1st day of January 1959 for the purposes of or in connection with the project including agent's charges, conveyancing costs, stamp duty and other expenses properly paid in connection with such acquisition;
- (vii) the construction of the pipe lines referred to in paragraph (i) of the Sub-clause (a) of Clause 25A hereof;

(viii) the construction of pipe lines and other works under on or over any public road on Kurnell peninsula;

and the term 'industrial operations' includes such purposes associated therewith or incidental thereto as are conducive to carrying out such industrial operations and the term 'project' means the oil refinery and the building works and installations appurtenant thereto erected or to be erected on under or over all the lands referred to in paragraph (a) of Clause 1A of this agreement."

(b) as if there were added at the end of Clause 6 of the Principal Agreement the following words viz:—

"And all moneys payable to the Minister for Public Works under this Agreement shall be paid to the Minister for Public Works in cash in Sydney free of exchange."

(c) as if there were inserted in paragraphs (i) and (ii) of Sub-clause (f) of Clause 21 of the Principal Agreement after the words "this Clause" the following words viz:—

"or Clauses 23A, 25 and 25A."

(d) as if there were added after subclause (d) of Clause 23 of the Principal Agreement the following additional subclause:—

"(da)

The Minister for Public Works or the Government of the State of New South Wales will as from 1st day of May 1960 and during the currency of the lease referred to in Clause 21 hereof at the cost of Her Majesty perform such dredging and other work as may be necessary to maintain that part of the said turning basin which is constructed upon or in or over that part of the bed of Botany Bay described in the Thirteenth Schedule hereto (such part of the said turning basin being hereinafter referred to as 'the deepened part of the turning basin') but excepting any part of the deepened part of the turning basin which is within 60 feet from the face of any jetty or wharf at any time constructed or erected in pursuance of Clause 21 of this Agreement or being at any time upon the land described in the Second Schedule hereto PROVIDED HOWEVER that the Minister for Public Works or the Government of the said State shall be liable under this subclause (da) to maintain the deepened part of the turning basin to the dimensions only and to the depth only of the deepened part of the turning basin as it existed at the said 1st day of May 1960 or to such dimensions and to such depth as from time to time in the opinion of the Minister for Public Works are reasonable having regard to the normal requirements of shipping at the Company's berths whichever are the lesser and in no event shall the Minister for Public Works or the Government of the said State be liable to maintain the deepened part of the turning basin or any part thereof to a depth greater than 38 feet clear water at Indian Spring Low Water".

(e) as if there were inserted in sub-clause (f) of clause 23 of the Principal Agreement after the word letter and parentheses "subclause (d)" the following words letters and parentheses viz:—

“or subclause (da)”.

- (f) as if there were added after Clause 23 of the Principal Agreement the following additional Clauses:—

“23A.

(a)

The Company hereby covenants with the Minister for Public Works and with Her Majesty Her Heirs and Successors that the Company will before the 1st day of May 1960 carry out the following work that is to say:—

- (i) such original dredging and other work as may be necessary for the construction of a submarine terminal for super tankers upon in or over that part of the bed of Botany Bay described in the First and Second Parts of the Tenth Schedule hereto including such original dredging and other work as may be necessary for the construction of a mooring berth or basin (as part of the said submarine terminal for super tankers) upon in or over that part of the bed of Botany Bay described in the Eleventh Schedule hereto (being part of the land described in the First Part of the Tenth Schedule hereto) and such original dredging and other work as the Minister for Public Works may deem necessary outside the boundaries of the lands described in the said Tenth and Eleventh Schedules in order to provide a reasonable side slope to such submarine terminal and to such mooring berth or basin not being steeper than one vertical in three horizontal and the original dredging of the land described in the First Part of the Tenth Schedule hereto other than the land described in the Eleventh Schedule hereto shall be to a swept depth sufficient to allow a minimum of 39 feet of clear water at Indian Spring Low Water and the original dredging of the land described in the Second Part of the Tenth Schedule hereto shall be to a swept depth sufficient to allow a minimum of 38 feet of clear water at Indian Spring Low Water and the original dredging of the land described in the Eleventh Schedule hereto shall be to a swept depth sufficient to allow a minimum of 43 feet of clear water at Indian Spring Low Water.
- (ii) such original dredging and other work as may be necessary for the construction of an approach channel upon in or over that part of the bed of Botany Bay described in the Twelfth Schedule hereto and such original dredging and other work as the Minister for Public Works may deem necessary outside the boundaries of the land described in the said Twelfth Schedule in order to provide a reasonable side slope to such approach channel not being steeper than one vertical in three horizontal and the original dredging of the land described in the Twelfth Schedule hereto shall be to a swept depth sufficient to allow a minimum of 38 feet of clear water at Indian Spring Low Water.

(b)

On completion of the original dredging and other work referred to in subclause (a) of this Clause and when the said submarine terminal has been first used by the Company for or in connection with the discharge of crude oil and/or the loading of bunkers or other refinery products for the Company’s operations the Minister for Public Works or

the Government of the State of New South Wales will within one week from the receipt by the Minister for Public Works of notice in writing from the Company of its having commenced so using the said submarine terminal commence and will during the currency of the lease referred to in Clause 21 hereof at the cost of Her Majesty continue such dredging and other work as may be necessary to maintain:—

- (i) the submarine terminal constructed as mentioned in paragraph (i) of subclause (a) of this Clause but excepting the mooring berth or basin constructed as mentioned in the said paragraph (i) of subclause (a) of this Clause and excepting also any part of the said submarine terminal which is within 60 feet from the face of any jetty or wharf at any time constructed or erected in pursuance of Clause 21 of this Agreement or being at any time upon the land described in the Second Schedule hereto;
- (ii) any approach channel constructed as mentioned in paragraph (ii) of sub-clause (a) of this Clause;

PROVIDED HOWEVER that the Minister for Public Works or the Government of the said State shall be liable under this sub-clause (b) to maintain the said submarine terminal to the dimensions only of the submarine terminal as it exists at the time when such submarine terminal is first used by the Company for or in connection with the discharge of crude oil and/or the loading of bunkers or other refinery products for the Company's operations or to such dimensions as from time to time in the opinion of the Minister for Public Works are reasonable having regard to the normal requirements of shipping at the Company's berths whichever are the lesser AND PROVIDED FURTHER that the Minister for Public Works or the Government of the said State shall not be liable under this sub-clause (b) to maintain any part of the said submarine terminal to a depth greater than the depth of such part as it exists at the time when such submarine terminal is first used by the Company for or in connection with the discharge of crude oil and/or the loading of bunkers or other refinery products for the Company's operations nor to a depth greater than the depth which from time to time in the opinion of the Minister for Public Works is reasonable having regard to the normal requirements of shipping at the Company's berths whichever is the lesser and in no event shall the Minister for Public Works or the Government of the said State be liable to maintain the part of the said submarine terminal described in the Second Part of the Tenth Schedule hereto or any part thereof to a depth greater than 38 feet clear water at Indian Spring Low Water nor to maintain the balance of the said submarine terminal (excepting the mooring berth or basin) or any part thereof to a depth greater than 39 feet clear water at Indian Spring Low Water AND PROVIDED FURTHER that neither the Minister for Public Works nor the Government of the said State shall be liable to maintain any part of the such approach channel beyond a depth which from time to time in the opinion of the Minister for Public Works is reasonable for the Company's requirements and in no event shall the Minister for Public Works or the Government of the said State be liable to maintain any part of such approach channel to a depth greater than 38 feet clear water at Indian Spring Low Water.

(c)

The liability of the Minister for Public Works or the Government of the State of New

South Wales to carry out dredging and other work under this Clause shall be governed by the availability of dredging equipment at any particular time having regard to the necessity to use such dredging equipment elsewhere in the said State.

(d)

In the event of the inability of the Minister for Public Works or the Government of the State of New South Wales to perform at any time the dredging and other work mentioned in sub-clause (b) of this Clause the Company may with the approval of the Minister for Public Works and subject to such terms and conditions as may from time to time be mutually agreed upon perform or cause to be performed such dredging and other work as shall in the opinion of the Minister for Public Works be necessary and in such event the cost of such dredging and other work shall be recoverable by the Company from the Minister for Public Works.

(e)

The Company shall give to the Minister for Public Works notice in writing of its having commenced using the said submarine terminal for or in connection with the discharge of crude oil and/or the loading of bunkers or other refinery products for the Company's operations.

(f)

The Company covenants with the Minister for Public Works and with Her Majesty Her Heirs and Successors that no part of the work hereinbefore in sub-clause (a) of this Clause referred to shall be carried out except in accordance with plans and specifications previously approved of in writing by the Minister for Public Works and the Company will carry out all the work hereinbefore in sub-clause (a) of this Clause referred to on the most economical basis and in accordance with such conditions as the Minister for Public Works may have imposed or may impose and to the satisfaction in all respects of the Minister for Public Works.

23B.

(a)

Subject to the provisions hereinafter contained the Minister for Public Works shall make payments to the Company during the financial years 1959-1960 and 1960-1961 by way of reimbursement of cost as hereinafter mentioned to the amount of the cost to the Company of carrying out the works referred to in sub-clause (a) of Clause 23A of this Agreement PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED that the Minister for Public Works shall not be liable by virtue of this sub-clause (a) to pay to the Company any greater amount than Four hundred and fiftyone thousand pounds (£451,000).

(b)

The payments so to be made by the Minister for Public Works shall subject to the provisions of this Agreement be made by such instalments as the Minister for Public Works from time to time shall see fit to advance as the carrying out of works proceed and the Company will upon applying to the Minister for Public Works for any such instalment deliver to the Minister for Public Works such evidence as he may require as

to the cost of the work for the time being carried out towards the completion of the said works and that such work is being carried out in accordance in all respects with the provisions of this Agreement. The payments so to be made by the Minister for Public Works shall not at any time exceed in the aggregate the cost to the Company of such part of the works referred to in sub-clause (a) of Clause 23A of this Agreement as shall then have been carried out by the Company AND the Minister for Public Works shall not be called upon to pay to the Company during the financial year ending on the 30th day of June 1960 more than Two hundred thousand pounds (£200,000).

(c)

A certificate by the Auditor-General as to the cost to the Company of carrying out the works referred to in sub-clause (a) of Clause 23A of this Agreement and/or as to the amount paid by the Minister for Public Works to the Company under this Clause of this Agreement shall be final and conclusive and binding upon the parties hereto.

(d)

The Company shall from time to time produce all relevant books vouchers documents papers and evidence to and allow the work carried out by it under sub-clause (a) of Clause 23A of this Agreement to be inspected or checked by surveys soundings or otherwise by—

- (i) the Minister for Public Works and persons authorised by him for the purpose of ascertaining the performance or non-performance by the Company of its obligations under Clause 23A; and
- (ii) the Auditor-General (and persons authorised by him) for the purposes of enabling him to ascertain the cost to the Company of carrying out the works referred to in sub-clause (a) of Clause 23A of this Agreement.

(e)

It is a condition precedent to the right of the Company to claim any payment whatsoever from the Minister for Public Works under this Clause that it has fulfilled all the obligations on its part to be fulfilled under this Agreement so far as such obligations are capable of being fulfilled at the time when a claim for payment is made.

(f)

The making of any progress payment to the Company under this Clause shall not be taken as proof of admission of any particular work or works having been executed or done or of the cost thereof or of any work having been executed or done to the satisfaction of the Minister for Public Works but shall only be taken to be payment on account.

23C.

(a)

When the works referred to in sub-clause (a) of Clause 23A of this Agreement have been completed the Director shall as soon as reasonably practicable issue a certificate that the submarine terminal is available for use and certifying the date on which it first

became available for use and such certificate shall be conclusive evidence of all matters therein set out and absolutely final and binding on the parties hereto AND so that the Director may be in a position without delay to issue such a certificate the Company shall within fourteen days after the works referred to in sub-clause (a) of Clause 23A of this Agreement have been completed furnish to the Director a statement that such works have been completed.

(b)

The Company covenants with the Minister for Public Works that upon the submarine terminal becoming available for use the Company will pay by way of rental to the Minister for Public Works in each and every year of the period of fifteen years from the date on which the said submarine terminal first becomes available for use annual payments as follows:—

- (i) during each of the first three years after the commencement of the said period of fifteen (15) years a sum equal to one-sixth of the total amount payable by the Minister for Public Works to the Company under Clause 23B of this Agreement;
- (ii) during each of the succeeding three (3) years a sum equal to one-ninth of the said total amount;
- (iii) during each of the next succeeding three years a sum equal to one-eighteenth of the said total amount; and
- (iv) during each of the next succeeding six years (being the last six years of the said period of fifteen years) a sum equal to one-thirtysixth of the said total amount

and the first of such payments shall be made within three months of the date of the issue of the certificate referred to in sub-clause (a) of this Clause and each subsequent payment will be made annually in advance upon the anniversary of the date set out in such certificate as the date on which the submarine terminal first became available for use.

(c)

In case the Company shall make default in payment for the space of fourteen days after the due date for payment thereof of any such annual rental or any part thereof then interest at the rate of Six pounds (£6) per centum per annum on such sum as shall not have been paid (to be calculated from the due date for payment of the same to the date of actual payment thereof) shall be payable to the Minister for Public Works by and be recoverable from the Company.

(d)

In case the Company shall make default in payment for the space of fourteen days after the due date for payment thereof of any such annual rental payable by it to the Minister for Public Works under this Clause or any part thereof the balance of the rental for the said term of Fifteen (15) years shall at the option of the Minister for Public Works immediately become due and payable by the Company to the Minister for Public Works together with interest thereon at the rate aforesaid to the date of payment.”

- (g) as if there were added after Clause 25 of the Principal Agreement the following additional Clauses—

“25A.

(a)

After completion to the satisfaction of the Minister for Public Works of the original dredging and other work referred to in Sub-clause (a) of Clause 23A hereof and subject always to default not having been made by the Company under Clause 23C hereof the Board will upon the application of the Company grant to the Company—

- (i) a license or licenses to lay down construct use and maintain pipe lines for the conveyance of crude oil or refinery products over parts of the bed of Botany Bay
- (A) from a point situated in the said mooring berth or basin to the breasting island of the jetty or wharf constructed or erected pursuant to Clause 21 hereof; and
- (B) from a point situated in the said mooring berth or basin to a point on the northern shore of Botany Bay at or in the vicinity of Yarra Point

in such position or positions as the Board may determine and for the residue then unexpired of the period of ninety nine years referred to in Clause 25 hereof and subject to such terms and conditions (including conditions as to payment for or in respect of the license and as to the maintenance of the pipe lines and as to the safeguarding of the future development including the dredging of Botany Bay and as to preventing interference with navigation or fishing and as to the depth below the surface of the bed of Botany Bay at which the pipe lines are to be laid) as the Board may determine:

- (ii) a license to use the said submarine terminal (including the mooring berth or basin forming part thereof and the mooring buoys mooring lines and anchors and other facilities connected therewith) for the mooring of super tankers and as a point from which to discharge cargoes of crude oil and/or load bunkers or other refinery products into and for conveyance through the pipe lines referred to in paragraph (i) of sub-clause (a) of this Clause 25A for the residue then unexpired of the period of ninety nine years referred to in Clause 25 hereof and subject to such terms and conditions (including conditions as to payment for or in respect of the license and as to maintenance of the said mooring berth or basin mooring buoys mooring lines and anchors and other facilities and as to the safeguarding of the future development of Botany Bay and as to preventing interference with navigation or fishing) as the Board may determine.

(b)

No such pipe line as is referred to in paragraph (i) of subclause (a) of this Clause shall be laid down or constructed except in accordance with plans and specifications previously approved of in writing by the Board and the work of laying down and constructing every such pipe line shall be carried out to the satisfaction of the Board. The plans and specifications referred to in this sub-clause shall be furnished by the Company to the Board at the cost and expense of the Company. Provisions in or to the

effect of the provisions of this subclause may be inserted in any license granted to the Company in pursuance of the provisions of sub-clause (a) of this Clause to lay down construct use and maintain pipe lines.

25B.

If at any time any such pipe line as is referred to in paragraph (i) of sub-clause (a) of Clause 25A or any mooring buoys mooring lines and anchors or other structures fixtures installations or facilities forming part of or in any way connected with the said submarine terminal shall in the opinion of the Board interfere with development along any of the foreshores of Botany Bay or interfere with access to or egress from or navigation in Botany Bay the Board shall be entitled to give to the Company notice requiring the Company to remove within the time stated in the notice (not being less than two years) all or any of such pipe lines mooring buoys mooring lines and anchors structures fixtures installations and facilities (in this Clause collectively called 'the pipe lines') either entirely from the said Bay or to such other position or depth or height as may be specified in the notice (provided that any such removal to a position or depth or height not within the limits of the lands which the pipe lines or any part thereof so required to be removed actually occupy at the time of the giving of the notice shall be subject to the consent of the Minister for Public Works and of the Minister and to any conditions imposed in respect of such consent) and in such case the Company shall at its own cost and expense complete the removal so required within the time stated in the notice accordingly and such removal shall be carried out to the satisfaction of the Board and in the event of the Company failing to comply with any such notice the Board may by itself or its servants or agents make good the failure of the Company at the Company's expense and cost and such expense and cost shall be repaid by the Company to the Board or as it may direct on demand and no liability shall be incurred by the Board or by any Minister of the Crown or by the Government of the State of New South Wales to compensate the Company for any loss or damage suffered by the Company by reason of anything done by the Board or any such Minister or the said Government or the servants or agents of any of them under or pursuant to this Clause PROVIDED THAT:—

- (a) upon any such removal of the pipe lines or any part thereof entirely from the said Bay any license granted in respect of the pipe lines or the part thereof so removed shall as from the date of such removal cease and determine but without prejudice nevertheless to any right or claim which may have accrued to the Board against the Company prior thereto:
 - (b) upon any such removal of the pipe lines or any part thereof to a position or depth or height other than that actually occupied thereby at the time of the giving of the said notice the provisions of any license granted in respect of the pipe lines or the part thereof so removed shall in all respects apply mutatis mutandis to the pipe lines and every part thereof in such other position or depth or height and to the land or lands on under over or across which the same may from time to time be:
 - (c) a covenant or condition to the effect of the preceding provisions of this Clause may be inserted in every such license as is referred to in this Clause."
- (h) as if there were substituted for subclause (d) of Clause 26 of the Principal Agreement the following subclause:—

“(d)

Covenants or conditions to the effect of the foregoing provisions of this Clause may be inserted in any lease or license granted to the Company by the Crown or the Minister or the Board for the purposes of or in connection with the said oil refinery and in any license granted to the Company pursuant to Clause 25A of this Agreement to lay down construct use and maintain pipe lines for the conveyance of crude oil or refinery products from a point situated in the said mooring berth or basin to a point on the northern shore of Botany Bay at or in the vicinity of Yarra Point.”

- (i) as if there were added at the end of subclause (b) of Clause 27 of the Principal Agreement the following words viz:—

“and in case such a covenant is so inserted in any such license granted pursuant to Clause 25A of this Agreement the same may be expressed to be made with the grantor of the license.”

- (j) as if there were added at the end of Clause 27 of the Principal Agreement the following subclauses:—

“(d)

The Company hereby covenants with the Minister that the Company will not upon any land comprised in any license granted to it pursuant to Clause 25A of this Agreement to lay down construct use and maintain pipe lines for the conveyance of crude oil or refinery products from a point situated in the said mooring berth or basin to a point on the northern shore of Botany Bay at or in the vicinity of Yarra Point do permit or suffer to be done anything which will in any way endanger the preservation of the historic Captain Cook’s Landing Reserve (being the land described in the Ninth Schedule hereto or the vegetation thereon.

(e)

A covenant or condition to the effect of the provisions of sub-clause (d) of this Clause may be inserted in every such license as is referred to in that sub-clause and in case such a covenant is so inserted the same may be expressed to be made with the grantor of the License.”

- (k) as if there were inserted at the end of Clause 37 of the Principal Agreement the following words, viz:—

“‘Director’ means Director of Public Works or other Permanent Head of the Department of Public Works of the State of New South Wales or the person acting as such for the time being.”

- (l) as if there were added after Clause 37 of the Principal Agreement the following clause:—

“38.

Any opinion to be formed by the Minister for Public Works or the Director or the Auditor-General under this Agreement may be formed by him on such materials as he himself may think sufficient and in any such case the Minister for Public Works or the Director or the Auditor-General (as the case may be) shall be deemed to be exercising merely administrative functions.”

(m) as if there were added after the Ninth Schedule to the Principal Agreement the following, viz:—

“THE TENTH SCHEDULE HEREINBEFORE REFERRED TO.

FIRST PART.

COMMENCING at a point bearing 317 degrees 44 minutes 35 seconds and distant 2,498.66 feet from Trigonometrical Station 2009, which is the centre of Captain Cook obelisk at Kurnell; and bounded thence on the south-east by a line bearing 228 degrees 29 minutes 30 seconds 301.79 feet; on the south-west by lines successively bearing 288 degrees 9 minutes 10 seconds 898.73 feet, 319 degrees 56 minutes 20 seconds 862.34 feet and 335 degrees 36 minutes 20 seconds 472.15 feet; on the west by a line bearing 5 degrees 56 minutes 15 seconds 1,256.74 feet; on the north-west by a line bearing 53 degrees 7 minutes 50 seconds 750 feet; on the north-east by a line bearing 100 degrees 59 minutes 20 seconds 1,049.24 feet; and on the east by a line bearing 178 degrees 29 minutes 50 seconds 2,670.92 feet to the point of commencement, as shown on the plan catalogued 73/99 in the Department of Public Works, Sydney.

Note: Bearings are referred to Refinery Grid North and are 8 degrees 45 minutes less than if referred to Trigonometrical Meridian.

SECOND PART.

COMMENCING at the easternmost south-eastern corner of the land described in the Tenth Schedule—First part, being a point bearing 317 degrees 44 minutes 35 seconds and distant 2,498.66 feet from Trigonometrical Station 2009, which is the centre of Captain Cook obelisk at Kurnell; and bounded thence on the west by the eastern boundary of the land described in the Tenth Schedule—First Part bearing 358 degrees 29 minutes 50 seconds, 2,670.92 feet; on the north-east by a line bearing 135 degrees 1,272.79 feet; on the east by a line bearing 174 degrees 17 minutes 20 seconds 954.74 feet; and on the south-east by a line bearing 228 degrees 26 minutes 40 seconds 1,236.13 feet to the point of commencement, as shown on plan catalogued 73/99 in the Department of Public Works, Sydney.

Note: Bearings are referred to Refinery Grid North and are 8 degrees 45 minutes less than if referred to Trigonometrical Meridian.

THE ELEVENTH SCHEDULE HEREINBEFORE REFERRED TO.

COMMENCING at a point bearing 327 degrees 19 minutes 20 seconds and distant 4,204.9 feet from Trigonometrical Station 2009, which is the centre of Captain Cook obelisk at Kurnell; and bounded thence on the south-east, south-west, north-west and north-east by lines bearing 196 degrees 8 minutes 40 seconds 395.6 feet, 286 degrees 15 minutes 40 seconds 1,000 feet, 16 degrees 8 minutes 40 seconds 395.6 feet and 106 degrees 15 minutes 40 seconds 1,000 feet respectively to the point of commencement, as shown on plan catalogued 73/99 in the Department of Public Works, Sydney.

Note: Bearings are referred to Refinery Grid North and are 8 degrees 45 minutes less than if referred to Trigonometrical Meridian.

THE TWELFTH SCHEDULE HEREINBEFORE REFERRED TO.

COMMENCING at the south-eastern corner of the land described in the Tenth Schedule—Second Part, being a point bearing 344 degrees 12 minutes 10 seconds and distant 2,774.13 feet from Trigonometrical Station 2009, which is the centre of Captain Cook obelisk at Kurnell; and bounded thence on the west by the eastern boundary of the land described in the Tenth Schedule—Second Part bearing 354 degrees 17 minutes 20 seconds 954.74 feet on the north-east by a line bearing 106 degrees 15 minutes about 1,130 feet to its intersection with the contour line on the bed of Botany Bay at the depth of 38 feet below Indian Spring Low Water; generally on the east by that contour line generally southerly to a point which bears 85 degrees from the point of commencement; and on the south by a line bearing 265 degrees about 1,040 feet to the point of commencement, as shown on the plan catalogued 73/99 in the Department of Public Works, Sydney.

Note: Bearings are referred to Refinery Grid North and are 8 degrees 45 minutes less than if referred to Trigonometrical Meridian.

THE THIRTEENTH SCHEDULE HEREINBEFORE REFERRED TO.

COMMENCING at a point bearing 306 degrees 49 minutes 50 seconds and distant 3,039.56 feet from Trigonometrical Station 2009, which is the centre of Captain Cook obelisk at Kurnell, such commencing point being on a south-western boundary of the land described in the Tenth Schedule—First Part at a bearing of 288 degrees 9 minutes 10 seconds and distance of 554.28 feet from the southernmost corner of that land; and bounded thence on the south-east by a line along the face of the fenders on the north-western side of the Australian Oil Refining Pty. Ltd. jetty bearing 199 degrees 35 minutes 20 seconds 900 feet; on the south-west and north-west by lines bearing 289 degrees 35 minutes 20 seconds 150 feet and 19 degrees 35 minutes 20 seconds 896.24 feet respectively to the aforesaid south-western boundary of the land described in the Tenth Schedule—First Part; and on the north-east by part of that boundary bearing 108 degrees 9 minutes 10 seconds 150.05 feet to the point of commencement, as shown on plan catalogued 73/99 in the Department of Public Works, Sydney.

Note: Bearings are referred to Refinery Grid North and are 8 degrees 45 minutes less than if referred to Trigonometrical Meridian.

2.

The Principal Agreement as varied by this Agreement shall continue in force according to the tenor thereof.

3.

The Act ratifying this Agreement shall contain a prohibition to the effect of subclause (e) of Clause 1A of the Principal Agreement as amended by this Agreement.

4.

This Agreement is subject to ratification by the Parliament of the State of New South Wales and shall come into effect when so ratified.

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

THE COMMON SEAL of AUSTRALIAN OIL
REFINING PTY. LIMITED was affixed hereto in
pursuance of a resolution of the Directors and
in the presence of:

D.B. HENRY,
Secretary.

}

J.O. FIFER
Managing Director

(L.S.)

SIGNED SEALED AND DELIVERED by THE
HONOURABLE JOHN BROPHY RENSHAW the
Minister for Lands of the State of New South
Wales for and behalf of Her Most Gracious
Majesty Queen Elizabeth II (but not so as to
incur any personal liability under this
Agreement) in the presence of:

J.T. CONNELL, J.P.

}

J.B. RENSHAW

SIGNED SEALED AND DELIVERED by THE
HONOURABLE PHILLIP NORMAN RYAN the
Minister for Public Works of the State of New
South Wales for and on behalf of Her Most
Gracious Majesty Queen Elizabeth II (but not
so as to incur any personal liability under this
Agreement) in the presence of:

W.G. GILROY.

}

P.N. RYAN

THE COMMON SEAL of THE MARITIME
SERVICES BOARD OF NEW SOUTH WALES was
hereto duly affixed in pursuance of a
resolution of the Board and in the presence of
the Commissioners whose signatures are set
opposite hereto and

S. COHEN
Secretary

}

J. SIMPSON
W.D. DONALDSON

Commissioners

(L.S.)