

Sydney Harbour Tunnel (Private Joint Venture) Act 1987 No 49

[1987-49]



New South Wales

Status Information

Currency of version

Historical version for 26 November 2012 to 30 June 2013 (accessed 28 March 2025 at 11:22)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Notes—

- **Does not include amendments by**
[Road Transport Legislation \(Repeal and Amendment\) Act 2013 No 19](#) (not commenced)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 3 April 2013

Sydney Harbour Tunnel (Private Joint Venture) Act 1987 No 49



New South Wales

Contents

Long title	4
Part 1 Preliminary	4
1 Name of Act	4
2 Definitions	4
3 Act binds Crown	5
Part 2 Construction of the Sydney Harbour Tunnel	5
4 Tunnelling works etc only to be carried out with the approval of the Commissioner	5
5 Ratification and approval of certain agreements	5
6 Commissioner authorised to exercise functions under the Net Bridge Revenue Loan Agreement etc	5
7 Operation of certain agreements	6
Part 3 Application of legislation to the tunnelling works etc	6
Division 1 The tunnelling works and the tunnelling site	6
8 Application of Environmental Planning and Assessment Act 1979	6
9 Application of other legislation	7
Division 2 The ancillary works and the ancillary sites	8
10 Application of Environmental Planning and Assessment Act 1979	8
11 Application of other legislation	8

Part 4 Miscellaneous	9
12 Vesting of land etc in the Commissioner	9
13 Revesting of land in previous owners	10
14 Sydney Harbour Tunnel not a public road or road or road related area	10
15 Protection of Sydney Harbour Tunnel from other development	11
16 Directions to councils	11
17 Limitation of appeals	12
18 Variation of the tunnelling site.....	13
19 Variation of the ancillary sites	13
19A Savings and transitional provisions	14
20 Regulations.....	14
Schedule 1 The tunnelling works	14
Schedule 2 The ancillary works	14
Schedule 3 The tunnelling site	15
Schedule 4 The ancillary sites	15
Schedule 5 The Ensured Revenue Stream Agreement	15
Schedule 6 The Net Bridge Revenue Loan Agreement	37
Schedule 7 Savings and transitional provisions	45

Sydney Harbour Tunnel (Private Joint Venture) Act 1987 No 49



New South Wales

An Act to facilitate the construction, maintenance and operation of the Sydney Harbour Tunnel.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Sydney Harbour Tunnel (Private Joint Venture) Act 1987*.

2 Definitions

(1) In this Act:

Commissioner means The Commissioner for Main Roads.

council has the same meaning as it has in the *Local Government Act 1993*.

regulation means a regulation made under this Act.

Sydney Harbour Tunnel means the tunnel authorised by, or constructed under, this Act.

(2) In this Act:

- (a) a reference to tunnelling works is a reference to the works described in Schedule 1,
- (b) a reference to ancillary works is a reference to the works described in Schedule 2,
- (c) a reference to the tunnelling site is a reference to the land described in Schedule 3,
- (d) a reference to an ancillary site is a reference to land described in Schedule 4,
- (e) a reference to the Ensured Revenue Stream Agreement is a reference to the agreement set out in Schedule 5, and

(f) a reference to the Net Bridge Revenue Loan Agreement is a reference to the agreement set out in Schedule 6.

(3) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

3 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Part 2 Construction of the Sydney Harbour Tunnel

4 Tunnelling works etc only to be carried out with the approval of the Commissioner

- (1) Tunnelling works shall not be carried out on the tunnelling site otherwise than with the approval of the Commissioner.
- (2) Ancillary works shall not be carried out on an ancillary site otherwise than with the approval of the Commissioner.
- (3) The Commissioner may modify an approval given under this section, but only at the request of the person to whom the approval was given.

5 Ratification and approval of certain agreements

The Ensured Revenue Stream Agreement and the Net Bridge Revenue Loan Agreement are ratified and approved.

6 Commissioner authorised to exercise functions under the Net Bridge Revenue Loan Agreement etc

- (1) The Commissioner may exercise any functions conferred or imposed on the Commissioner by the Net Bridge Revenue Loan Agreement.
- (2) The Commissioner may enter into, and may exercise any functions conferred or imposed on the Commissioner by, agreements for the purpose of or in connection with the financing, construction, development, disposition, sale, purchase, lease, licence, ownership, operation, maintenance or management of:
 - (a) the tunnelling works and the ancillary works,
 - (b) the tunnelling site and the ancillary sites (including any rights-of-way or other easements appurtenant to those sites), and
 - (c) the Sydney Harbour Tunnel.

7 Operation of certain agreements

(1) Any obligation imposed on the State by the Ensured Revenue Stream Agreement, or on the Commissioner by the Net Bridge Revenue Loan Agreement, being an obligation to make any payment (including any payment in respect of a loan) irrespective of any event or circumstance which otherwise would or might at law:

- (a) terminate, or permit termination of, the agreement, or
- (b) excuse compliance with or performance of, or provide a defence to, any proceedings to enforce the obligation,

shall operate and be enforceable in accordance with its terms, notwithstanding any provision of the *Frustrated Contracts Act 1978* or any other Act or statute or any rule of law to the contrary.

(2) Any provision of the Ensured Revenue Stream Agreement or the Net Bridge Revenue Loan Agreement that provides that the agreement shall not be terminated on account of any matter or thing referred to in the agreement and shall be enforceable notwithstanding any such matter or thing:

- (a) shall operate in accordance with its terms so that the agreement shall not be capable of being terminated except by express agreement between the parties or in the events or circumstances expressly provided for in the agreement, and
- (b) shall be enforceable in accordance with its terms,

notwithstanding any provision of the *Frustrated Contracts Act 1978* or any other Act or statute or any rule of law to the contrary.

Part 3 Application of legislation to the tunnelling works etc

Division 1 The tunnelling works and the tunnelling site

8 Application of *Environmental Planning and Assessment Act 1979*

- (1) For the purposes of this Act, the *Environmental Planning and Assessment Act 1979* (Parts 3, 4 and 6 excepted) applies, and shall be deemed always to have applied, to and in respect of the tunnelling works and the tunnelling site, but Parts 3, 4 and 6 of that Act do not apply, and shall be deemed never to have applied, to or in respect of those works or that site.
- (2) For the purposes of the application of Part 5 of the *Environmental Planning and Assessment Act 1979* to and in respect of the tunnelling works and the tunnelling site:
 - (a) the carrying out of the tunnelling works shall be deemed to require, and always to have required, the approval of the Commissioner,

- (b) the tunnelling works shall be deemed to be, and always to have been, an activity within the meaning of that Part,
 - (c) the Commissioner shall be deemed to be, and always to have been, the sole determining authority, within the meaning of that Part, with respect to the tunnelling works,
 - (d) the documents entitled “Sydney Harbour Tunnel Environmental Impact Statement” and “Sydney Harbour Tunnel Environmental Impact Statement Addendum” which were both put on public display on 19 December 1986 shall together be deemed to be, and always to have been, an environmental impact statement that:
 - (i) has been prepared, submitted, exhibited, considered and otherwise dealt with in accordance with that Part, and
 - (ii) complies with the requirements of that Part, and
 - (e) an approval that has been given by the Commissioner and that has been subsequently modified shall not, merely because it has been modified, be deemed to be a new approval.
- (3) Subsection 2 (e) shall not be construed as granting to the Commissioner any power to modify an approval that the Commissioner does not otherwise have any power to modify.

9 Application of other legislation

- (1) The provisions of:
- (a) the *Coastal Protection Act 1979* and any instrument in force under that Act, and
 - (b) the *Local Government Act 1993*, and any instrument in force under that Act, in relation to buildings,
- do not apply to or in respect of the tunnelling works.
- (2) The tunnelling works may be carried out notwithstanding anything in:
- (a) the *Royal Botanic Gardens and Domain Trust Act 1980*,
 - (b) the *Sydney Opera House Trust Act 1961*,
 - (c) the *Crown Lands Consolidation Act 1913*,
 - (d) the *Government Railways Act 1912*, or
 - (e) any instrument in force under any of those Acts.
- (3) Except to the extent that the regulations otherwise provide and subject to any

modifications specified in the regulations, the provisions of:

- (a) the *Maritime Services Act 1935*,
 - (b) the *Sydney Harbour Trust Act 1900*, and
 - (c) any instrument in force under any of those Acts,
- do not apply to or in respect of the tunnelling works.

Division 2 The ancillary works and the ancillary sites

10 Application of *Environmental Planning and Assessment Act 1979*

- (1) For the purposes of this Act, the *Environmental Planning and Assessment Act 1979* (Parts 3, 4 and 6 excepted) applies to and in respect of the ancillary works and the ancillary sites, but Parts 3, 4 and 6 of that Act do not apply to or in respect of those works or those sites.
- (2) For the purposes of the application of Part 5 of the *Environmental Planning and Assessment Act 1979* to and in respect of the ancillary works and the ancillary sites:
 - (a) the carrying out of the ancillary works shall be deemed to require the approval of the Commissioner,
 - (b) the ancillary works shall be deemed to be an activity within the meaning of that Part,
 - (c) the Commissioner shall be deemed to be the sole determining authority, within the meaning of that Part, with respect to the ancillary works, and
 - (d) an approval that has been given by the Commissioner and that has been subsequently modified shall not, merely because it has been modified, be deemed to be a new approval.
- (3) Subsection (2) (d) shall not be construed as granting to the Commissioner any power to modify an approval that the Commissioner does not otherwise have any power to modify.

11 Application of other legislation

- (1) The provisions of:
 - (a) the *Coastal Protection Act 1979* and any instrument in force under that Act, and
 - (b) the *Local Government Act 1993*, and any instrument in force under that Act, in relation to buildings,do not apply to or in respect of the ancillary works.

- (2) Except to the extent that the regulations otherwise provide and subject to any modifications specified in the regulations, the provisions of:
- (a) the *Maritime Services Act 1935*,
 - (b) the *Sydney Harbour Trust Act 1900*, and
 - (c) any instrument in force under any of those Acts,
- do not apply to or in respect of the ancillary works.

Part 4 Miscellaneous

12 Vesting of land etc in the Commissioner

- (1) On the date of assent to this Act, the land shown:
- (a) coloured yellow, or
 - (b) hatched green with green edging,
- on the plan referred to in Schedule 3 vests in the Commissioner for an estate in fee simple, freed and discharged from any trusts, obligations, estates, interests, contracts, charges, rates, rights-of-way or other easements existing immediately before that date.
- (2) On the date of assent to this Act, an easement to drain water (within the meaning of section 88A of the *Conveyancing Act 1919*) is created in favour of the Commissioner in respect of the land shown coloured brown on the plan referred to in Schedule 3.
- (3) A person is not entitled to receive compensation from the Commissioner as a consequence of:
- (a) land having vested in the Commissioner by operation of subsection (1), or
 - (b) the easement to drain water having been created in favour of the Commissioner by operation of subsection (2).
- (4) If, after the date of assent to this Act, Schedule 3 is amended in such a manner as to include land within the tunnelling site that previously was not part of that site, the Governor may, by proclamation published in the Gazette, declare that the whole or any part of that land shall be vested in the Commissioner.
- (5) Upon publication of a proclamation under subsection (4), the land described in the proclamation shall vest in the Commissioner for an estate in fee simple, freed and discharged from any trusts, obligations, estates, interests, contracts, charges, rates, rights-of-way or other easements existing immediately before the publication of the proclamation.

- (6) A person (other than the Crown, a person representing the Crown or a council) is entitled to receive compensation from the Commissioner as a consequence of land having vested in the Commissioner by operation of subsection (5).
- (7) A claim for compensation under subsection (6) shall be dealt with as if it were a case in which a claim had been made because of the acquisition of land for public purposes under the *Public Works Act 1912* by notification published in the Gazette, and the Land and Environment Court has jurisdiction accordingly.

13 Revesting of land in previous owners

- (1) The estate in fee simple of the land vested in the Commissioner by operation of section 12 (other than land in respect of which compensation has been paid as referred to in section 12 (7)) shall not be disposed of otherwise than in the manner prescribed by this section.
- (2) The Governor may, by proclamation published in the Gazette, declare that any part of the land vested in the Commissioner by operation of section 12 shall be revested in the person in whom that part of the land was vested immediately before the land was so vested in the Commissioner.
- (3) Such a declaration may not be made in respect of any land the subject of a lease or licence entered into under an agreement referred to in section 6 (2) otherwise than in accordance with the terms of any such lease or licence.
- (4) Upon publication of a proclamation under subsection (2), the land described in the proclamation shall vest in the person specified therein for an estate in fee simple, subject to all trusts, obligations, estates, interests, contracts, charges, rates, rights-of-way and other easements then existing.
- (5) The Commissioner is not entitled to receive compensation from any person as a consequence of land having vested in that person by operation of subsection (4).
- (6) In this section, a reference to a person in whom land was vested immediately before the land was vested in the Commissioner by operation of section 12 is, in the case of a person who has ceased to exist, a reference to such other person as, in the opinion of the Commissioner, is the appropriate person in whom the land should be vested.

14 Sydney Harbour Tunnel not a public road or road or road related area

- (1) The Sydney Harbour Tunnel is not a public road or a road or road related area for the purposes of:
 - (a) the *Roads Act 1993*, or
 - (b) any other Act or law prescribed by the regulations for the purposes of this paragraph.

- (2) The provisions of the road transport legislation within the meaning of the *Road Transport (General) Act 2005* apply to and in respect of the Sydney Harbour Tunnel as if it were a road or road related area.

15 Protection of Sydney Harbour Tunnel from other development

- (1) Any person who intends to carry out development on any land along or adjacent to the course of the tunnelling works or the Sydney Harbour Tunnel shall, before commencing the development, advise the Commissioner of the intended development.
- (2) Whether or not the Commissioner has been advised of any such intended development, that development shall, if the Commissioner, by written notice served on the person intending to carry out the development, imposes reasonable conditions on the carrying out of the development which are related to the protection of the tunnelling works or the Sydney Harbour Tunnel, be carried out in accordance with those conditions.
- (3) A notice under subsection (2) shall not be served except with the consent of the Minister.
- (4) Nothing in this section affects any requirement relating to the carrying out of development imposed by or under the *Local Government Act 1993*, the *Environmental Planning and Assessment Act 1979* or any other Act.

- (5) In this section:

development means:

- (a) the erection of a building,
- (b) the demolition of a building, or
- (c) the carrying out of a work,

within the meaning of the *Environmental Planning and Assessment Act 1979*.

16 Directions to councils

- (1) If the Minister is satisfied that a council has exercised, or failed to exercise, a function conferred or imposed on it by or under any Act or law in a manner that is substantially and unreasonably prejudicial to:
 - (a) the carrying out of the tunnelling works, or
 - (b) the carrying out of the ancillary works,the Minister may give to the council such directions as the Minister considers appropriate.

- (2) A direction under this section shall not be given to a council unless the Minister:
 - (a) has notified the council and the Minister for Local Government that the Minister proposes to give such a direction, and
 - (b) has taken into consideration any representations made to the Minister by the council and the Minister for Local Government, within 7 days of such notification having been given, with respect to the giving of such a direction.
- (3) The Minister may revoke a direction given under this section.
- (4) A council shall comply with, and is by this Act empowered to comply with, a direction given under this section.

17 Limitation of appeals

- (1) No proceedings (whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief) shall lie in respect of:
 - (a) any decision by the Commissioner to grant approval to or in respect of the carrying out of the tunnelling works or the ancillary works,
 - (b) any condition imposed, or any modification required, by the Commissioner under section 112 of the *Environmental Planning and Assessment Act 1979* in respect of the tunnelling works or the ancillary works,
 - (c) any alleged contravention of or failure to comply with any such condition or modification,
 - (d) any decision, proceeding, step or other matter (including any consideration of the tunnelling works or the ancillary works under section 111 of the *Environmental Planning and Assessment Act 1979*) involved in the granting of any such approval, the imposition of any such condition or the requirement of any such modification, or
 - (e) any alleged contravention of or failure to comply with the provisions of Part 5 of the *Environmental Planning and Assessment Act 1979* with respect to the tunnelling works or the ancillary works.
- (2) This section has effect notwithstanding that any such proceedings were commenced before the date of assent to this Act, and has effect notwithstanding any decision in any such proceedings.
- (3) Any such proceedings pending in any court immediately before the date of assent to this Act are terminated.
- (4) Except in so far as the parties to any such proceedings (being proceedings pending

immediately before the date of assent to this Act) otherwise agree, the costs of or incidental to the proceedings incurred by a party to the proceedings shall be borne by the party, and shall not be the subject of any contrary order of any court.

(5) This section does not apply to proceedings taken by or on behalf of the Commissioner.

(6) In this section:

approval includes:

- (a) a consent, licence or permission or any form of authorisation, and
- (b) a provision of financial accommodation by the Commissioner to another person, not being a provision of such financial accommodation, or financial accommodation of such class or description, as may be prescribed by the regulations for the purposes of this paragraph.

18 Variation of the tunnelling site

(1) The Governor may, by regulation, amend Schedule 3:

- (a) by omitting any matter from that Schedule,
- (b) by inserting in that Schedule any matter which describes any land that is, in the opinion of the Minister, necessary for inclusion within that Schedule for the purpose of enabling the Sydney Harbour Tunnel to be constructed in accordance with this Act, or
- (c) by altering any matter contained in that Schedule.

(2) The Governor may, by regulation, omit Schedule 3 and insert instead a Schedule which describes any land that is, in the opinion of the Minister, necessary for inclusion within that Schedule for the purpose of enabling the Sydney Harbour Tunnel to be constructed in accordance with this Act.

(3) Such a regulation may not be made in contravention of the terms of any lease or licence entered into under an agreement referred to in section 6 (2).

19 Variation of the ancillary sites

(1) The Governor may, by regulation, amend Schedule 4:

- (a) by omitting any matter from that Schedule,
- (b) by inserting in that Schedule any matter which describes any land that is, in the opinion of the Minister, necessary for inclusion within that Schedule for the purpose of enabling the Sydney Harbour Tunnel to be constructed in accordance with this Act, or
- (c) by altering any matter contained in that Schedule.

(2) The Governor may, by regulation, omit Schedule 4 and insert instead a Schedule which describes any land that is, in the opinion of the Minister, necessary for inclusion within that Schedule for the purpose of enabling the Sydney Harbour Tunnel to be constructed in accordance with this Act.

(3) Such a regulation may not be made in contravention of the terms of any lease or licence entered into under an agreement referred to in section 6 (2).

19A Savings and transitional provisions

Schedule 7 has effect.

20 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1 The tunnelling works

(Section 2)

- 1** Works carried out on the tunnelling site for or associated with the construction, maintenance and operation of a tunnel beneath Sydney Harbour.
- 2** The location and establishment of new services and the re-location and re-establishment of existing services rendered necessary by the carrying out of the works referred to in item 1 of this Schedule.
- 3** Such works for the protection of the environment as the Commissioner may consider desirable or necessary as a consequence of the carrying out of any of the works referred to in item 1 of this Schedule.
- 4** Works the use of which is ancillary or incidental to any of the works referred to in the other items of this Schedule.

Schedule 2 The ancillary works

(Section 2)

- 1** Works carried out on an ancillary site for or associated with the fabrication of components for use in connection with the tunnelling works.
- 2** Works carried out on an ancillary site for or associated with the extraction, transport or storage of materials for use in connection with the tunnelling works.
- 3** The location and establishment of new services and the re-location and re-establishment of existing services rendered necessary by the carrying out of the works referred to in items 1 and 2 of this Schedule.
- 4** Such works for the protection of the environment as the Commissioner may consider desirable or necessary as a consequence of the carrying out of any of the works referred to in items 1 and 2 of

this Schedule.

- 5 Works the use of which is ancillary or incidental to any of the works referred to in the other items of this Schedule.

Schedule 3 The tunnelling site

(Section 2)

All that piece or parcel of land shown by distinctive colouring, edging or hatching on the plan entitled "Plan of Land Required for Proposed Sydney Harbour Tunnel", and numbered 0000 412 SS 0586, a copy of which is sealed with the seal of the Commissioner and deposited in the office of the Department of Main Roads.

Schedule 4 The ancillary sites

(Section 2)

All that piece or parcel of land shown coloured blue on the plan entitled "The Port Kembla Casting Basin Allotment Plan", and numbered 0000 497 SS 0587, a copy of which is sealed with the seal of the Commissioner and deposited in the office of the Department of Main Roads.

Land that is the subject of a lease (including a concurrent lease) to the private sector under the [Ports Assets \(Authorised Transactions\) Act 2012](#) is excluded from this Schedule.

Schedule 5 The Ensured Revenue Stream Agreement

(Section 5)

THIS AGREEMENT is made the 29th day of June, 1987,

- BETWEEN 1. THE HONOURABLE LAURENCE JOHN BRERETON Minister for Public Works and Ports and Minister for Roads for and on behalf of HER MAJESTY QUEEN ELIZABETH THE SECOND IN RIGHT OF THE STATE OF NEW SOUTH WALES (the "Crown"); and
2. SYDNEY HARBOUR TUNNEL COMPANY LIMITED, a company incorporated in the State of New South Wales with its registered office at 100 Arthur Street, North Sydney (the "Company").

WHEREAS:

- A. Pursuant to obligations contained in the Lease the Company has agreed to design, construct and operate the Tunnel.
- B. In consideration of the Company agreeing to design, construct and operate the Tunnel, the Crown has agreed to make the payments set out in this Agreement to the Company to enable the Company to meet financial obligations in connection with the operation of the Tunnel and the payment of principal and interest upon moneys borrowed by it for the design, construction and operation of the Tunnel.

NOW THIS AGREEMENT WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

When used in this Agreement the following terms shall have the following meanings unless the context otherwise requires:

“Bridge Toll Collection Costs” means the sum of \$600,000 multiplied by a fraction the numerator of which is the CPI for the calendar quarter immediately preceding the calculation and the denominator of which is the CPI for the quarter ending 30th June 1986.

“Business Day” means any day on which trading banks are open for business in Sydney.

“Commissioner” means the Commissioner for Main Roads.

“CPI” means:

- (i) the “Weighted Average of Eight Capital Cities: All Groups Consumer Price Index” published quarterly by the Australian Bureau of Statistics as long as there is no change in the coverage, periodicity or reference base from that applying at the date of this Agreement;
- (ii) if such Index is published and there is a change in coverage and the Index is linked to previous CPI’s, such Index shall be the CPI;
- (iii) if such Index is revised to a new base and a conversion factor to apply to the old Index to make it comparable with the new Index is provided, then the conversion factor shall be applied to all previous CPI’s as published or otherwise revised in terms of this Agreement to calculate revised CPI’s in terms of the new reference base;
- (iv) if such Index is revised to a new base and a conversion factor to apply to the old Index to make it comparable with the new Index is not provided then the President of the Institute of Actuaries of Australia (or, if such Institute has ceased to exist, such other institute or body as then carries on the functions of such Institute), or his nominee, acting as an arbitrator (the “Arbitrator”) shall be called upon to calculate revised CPI’s for all CPI’s as published or otherwise revised in terms of this Agreement and the Arbitrator’s determination shall be conclusive;
- (v) if such Index is published but:
 - (A) there is a change in coverage and the Index is not linked to previous CPI’s; or
 - (B) there is a change in periodicity,then the Arbitrator shall be called upon to decide whether such Index is appropriate as a general indicator of the rate of price change for consumer goods and services in the capital cities of Australia or, if it is not, what other index shall be used as a substitute index for the purpose of calculating the payments due under this Agreement and the Arbitrator’s determination shall be conclusive;
- (vi) if there is a cessation in the publication of such Index and the Australian Bureau of Statistics publishes another Index which it states to be in replacement of such Index and the replacement Index is linked to old CPI’s then all CPI’s relevant to this Agreement shall be recalculated to the same reference base as the replacement Index;
- (vii) if there is a cessation in the publication of such Index and the Australian Bureau of Statistics

publishes another Index which it states to be in replacement of such Index but the replacement Index is not linked to old CPI's then the Arbitrator shall be called upon to calculate revised CPI's for all previous CPI's as published or otherwise revised in terms of this Agreement and the Arbitrator's calculation shall be conclusive;

- (viii) if there is a cessation in the publication of such Index and the Australian Bureau of Statistics does not publish another Index in replacement of such Index then the Arbitrator shall be called upon to provide an index which he determines to be appropriate as a general indicator of the rate of price change for consumer goods and services in the capital cities of Australia and the Arbitrator's determination shall be conclusive.

"Environmental Impact Determination" means the determinations of the Commissioner dated 29th May 1987 and made under the *Sydney Harbour Tunnel (Private Joint Venture) Act 1987* and Part V of the *Environmental Planning and Assessment Act 1979* in respect of the works referred to in Schedules 1 and 2 to the *Sydney Harbour Tunnel (Private Joint Venture) Act 1987*.

"ERS Toll" means:

- (i) from 1st September, 1992 until 30th June, 1993 inclusive—\$1.00;
- (ii) from 1st July, 1993 until 30th June, 2015 inclusive—\$1.03; and
- (iii) from 1st July, 2015 until 31st August, 2022—88 cents.

"Immersed Tube Section of the Tunnel" means the eight pre-cast concrete segments of the Tunnel to be constructed in the dry dock situated on the land described in Schedule 4 to the *Sydney Harbour Tunnel (Private Joint Venture) Act 1987* and to be placed on the bed of Port Jackson.

"Joint Venturers" means each of Transfield (SHTJV) Pty. Limited and Kumagai Gumi Co., Ltd. and "Joint Venturer" means either one of them.

"Lease" means the Lease dated the date of this Agreement between the Commissioner and the Company.

"Mortgagee" means any holder of a first ranking Security Interest over this Agreement who gives notice to the Crown pursuant to Clause 6.

"Notional Crew" means a notional representative labour force comprising one of each of the following classifications subject to the following awards respectively (except that if any one or more of the nominated awards do not apply to the particular classification then such award as is applicable to that classification shall apply):

Classification	Award
Electrician (Licensed)	Electricians and C State Award
Mechanic (Tradesman)	Metal Industry Award
Painter	National Building Trades Construction Award
Clerk Grade 1	Clerks (State) Award.

"Projected Traffic Volume" means during each of the periods set out in Schedule 1, one quarter of

the figure set out in the right hand column.

“Relevant Company” means any party to a Relevant Document other than the Crown, the Commissioner, Perpetual Trustee Company Limited, Westpac Banking Corporation and the party providing the Performance Bond.

“Relevant Document” means each of:

- (a) this Agreement;
- (b) the Net Bridge Revenue Loan Agreement dated the date of this Agreement between the Commissioner and the Company;
- (c) the Trust Deed dated the same date as this Agreement under which the Company has granted a charge in favour of Perpetual Trustee Company Limited;
- (d) the Deed of Covenant between ACTL Holdings Pty. Limited, Kumagai Gumi Co., Ltd., Perpetual Trustee Company Limited and the Commissioner;
- (e) the Lease;
- (f) the Shareholder Loan and Equity Agreement between the Shareholder, the Company, Kumagai Gumi Co., Ltd. and ACTL Holdings Pty. Limited providing, amongst other things, for a loan of \$40,000,000 to the Company from the Shareholder;
- (g) the Underwriting Agreement between the Company and Westpac Banking Corporation;
- (h) the Design and Construction Agreement between the Company and the Joint Venturers;
- (i) the Operation, Repair and Maintenance Agreement between the Company and the Commissioner;
- (j) the DMR Sub-contract between the Company and the Commissioner;
- (k) the Deed of Charge in favour of the Commissioner given by the Company;
- (l) the Performance Bond provided on behalf of the Joint Venturers in favour of the Company, in the amount of \$40,000,000;
- (m) the Guarantee and Indemnity between Kumagai Gumi Co., Ltd., Transfield Pty. Limited and other companies in the Transfield group of companies, the Company and the Commissioner;
- (n) the Subcontract Charge between Transfield Kumagai Contracting Pty. Limited and the Commissioner; and
- (o) any other document or agreement which the parties to this Agreement agree is to be a Relevant Document for the purposes of this Agreement,

and any document or agreement entered into under, or for the purpose of amending or novating, any of them.

“Security Interest” includes any mortgage, pledge or charge or any security or preferential interest or arrangement of any kind given by the Company.

“Shareholder” means Tunnel Holdings Pty. Limited.

“Special Account” means the account of the Company No. 032-099-88-9458 with Westpac Banking Corporation, 169 Miller Street, North Sydney or such other account as the Company and the Mortgagee notify the Crown in writing from time to time.

“Tax Act” means the *Income Tax Assessment Act 1936*.

“Tunnel” means the whole of the permanent works to be designed and constructed on and in the Tunnel Site (as defined in the Lease), the scope of which works is set out in the Scope of Works and Design Criteria contained in Schedule 1 to the Lease.

“Tunnel Toll Receipts” means the gross toll receipts of the Company paid into the Special Account from the operation of the Tunnel during the calendar quarter immediately preceding the date on which any calculation is made as certified by the Company’s auditors.

“Weighted Index” means:

- (i) for the period beginning on 1st September, 1992 and expiring on 30th June, 1993—two; and
- (ii) after that date the amount calculated in accordance with the following formula:

$$= \left(d \times \frac{CPI^H}{CPI^1} \right) + \left(e \times \frac{CPI^2}{CPI^1} \right) + \left(f \times \frac{WI^2}{WI^1} \right) + \left(g \times \frac{EI^2}{EI^1} \right)$$

Weighted Index

where

$$e = (T \times A) / [A + B + C]$$

$$f = (T \times B) / [A + B + C]$$

$$g = (T \times C) / [A + B + C]$$

$$d = 1 - (e + f + g)$$

$$A = AA \times \frac{CPI^1}{CPI^3}$$

B

$$= BB \times \frac{WI^1}{WI^3}$$

C

$$= CC \times \frac{EI^1}{EI^3}$$

CPI^H is the highest CPI for any quarter between the quarter ended 30 June 1986 and the last full calendar quarter prior to the date on which the calculation of Weighted Index is being made (referred to in this definition of “Weighted Index” as the “last calendar quarter”).

CPI² is the CPI for the last calendar quarter.

CPI³ is the CPI for the calendar quarter immediately preceding the last calendar quarter.

CPI¹ is the CPI for the quarter ended 30 June 1986.

WI² is the cost of employment of the Notional Crew for the last calendar quarter.

WI³ is the cost of employment of the Notional Crew for the calendar quarter immediately preceding the last calendar quarter.

WI¹ is the cost of employment of the Notional Crew for the calendar quarter ended 30 June 1986.

EI² is the bulk supply tariff as published in the latest Annual Report of the Electricity Commission of the New South Wales for the last calendar quarter or if such tariff is not published, is the value of the product of EI¹ and CPI² divided by CPI¹.

EI³ is the bulk supply tariff as published in the latest Annual Report of the Electricity Commission of New South Wales for the calendar quarter immediately preceding the last calendar quarter or if such tariff is not published, is the value of the product of EI¹ and CPI³ divided by CPI¹.

EI¹ is the bulk supply tariff as published in the Annual Report of the Electricity Commission of New South Wales for the year ended 30 June 1986 namely 5.2224 cents per kilowatt hour.

AA is the percentage of actual operating expenditure of the Company incurred during the last calendar quarter, as certified by its auditors, remaining after deducting the sum of percentages calculated for BB and CC below.

BB is the percentage of the actual operating expenditure of the Company incurred during the last calendar quarter, as certified by its auditors, attributable to the cost of employment of the Company's personnel.

CC is the percentage of the actual operating expenditure of the Company incurred during the last calendar quarter, as certified by its auditors, attributable to the provision of electricity.

T is \$2,600,000 divided by the product of the Projected Traffic Volume for the last calendar

quarter and the ERS Toll for the last calendar quarter.

1.2 Interpretation

In this Agreement headings are for convenience only and shall not affect its interpretation and except to the extent the context otherwise requires:

- (a) words denoting the singular number shall include the plural and vice versa;
- (b) references to Clauses, Annexures and Schedules are references to them in and to this Agreement.

1.3 Calculation

All calculations under this Agreement shall be rounded upwards to the nearest \$100 and all intermediate calculations shall be made to 4 decimal places unless otherwise stated.

1.4 Business Days

If any payment is required to be made on a day which is not a Business Day, it shall be made on the preceding Business Day.

2. ENSURED REVENUE STREAM

2.1 Ensured Revenue Stream

The Crown grants the Company, unless and to the extent that the Mortgagee otherwise agrees in writing, the right to receive an amount calculated in accordance with the following formula and undertakes to make payment to the Company of such amount in the manner referred to in Clause 2.2:

$$\text{Amount payable} = \frac{(\text{ERS Toll} \times \text{Projected Traffic Volume} \times \text{Weighted Index})}{(\text{Tunnel Toll Receipts} + \text{Bridge Toll Collection Costs})}$$

Each such payment (referred to in this Agreement as an "Ensured Revenue Stream Payment") shall be made to the Special Account.

2.2 Calculation of Amount Payable and Payment

(a)

(First Payment of ERS)

Not later than 1st October 1992 the Company shall provide the Crown with a statement showing the calculation of the amount of the first Ensured Revenue Stream Payment which shall be paid on 10th October 1992. The amount shall be based upon the CPI for the calendar quarter ending on 30th June 1992 and shall be one third of the amount calculated by applying the formula contained in Clause 2.1.

(b)

(Adjustment of First Payment)

- (i) By 1st November 1992 or as soon thereafter as possible after the CPI for the calendar quarter ended 30th September 1992 becomes available the Company shall provide the Crown with a

further statement showing the calculation of the amount of the first Ensured Revenue Stream Payment based on the actual CPI for the calendar quarter ending on 30th September 1992 and, where any other variable in the formula in Clause 2.1 (including any variable in the definition of Weighted Index) was, for the purpose of calculating the payment under paragraph (a), calculated by reference to the calendar quarter ended 30th June 1992 (referred to in this Clause 2.2 as a "Past Period Variable"), based on the actual figure for that variable for the quarter ended 30th September 1992.

- (ii) The adjustment to the 10th October 1992 payment referred to in Clause 2.2 (a) required by such further statement shall be made on 10th November 1992 by the Crown making a payment to the Company of the relevant amount or deducting the relevant amount from any Ensured Revenue Stream Payment to be made on that date. If however the CPI for the calendar quarter ended 30th September 1992 or the actual figure for any other Past Period Variable for that quarter is not available by 5th November 1992, then in calculating the adjustment, if any, to be made, the CPI or relevant Past Period Variable shall be that used for the purpose of calculating the payment under paragraph (a).

(c)

(Subsequent monthly payments of ERS)

Within 32 days after the end of each calendar quarter for which the CPI is calculated after 30th September 1992 up to and including the calendar quarter ended 31st March 2022 the Company shall provide the Crown with a statement showing the calculation of the amount of the Ensured Revenue Stream Payments to be made by the Crown based upon the CPI applicable to the calendar quarter most recently ended. On the 10th day of the 2nd, 3rd and 4th months after the month in which such quarter ends, the Crown shall pay one third of the amount stated in the statement.

(d)

(Adjustment of subsequent monthly payments of ERS)

Once the CPI for each calendar quarter is known (by whichever of the means referred to in the definition of CPI in Clause 1.1) all Ensured Revenue Stream Payments by the Crown not already adjusted pursuant to this Clause 2.2 will require adjustment as each payment will have been made upon the basis of the CPI and other Past Period Variables for a preceding calendar quarter rather than on the basis of the CPI and other Past Period Variables calculated in respect of the calendar quarter during which the payments were made. Accordingly, on each occasion the Company delivers a statement showing calculations of the amount of payments to be made by the Crown pursuant to Clause 2.2 (c) and on the day the Company delivers a statement under Clause 2.2 (e) it shall also deliver a statement (an "Adjustment Statement") showing revised calculations of the Ensured Revenue Stream Payments which would have been payable in respect of the 4th, 3rd and 2nd most recent months if based on the actual CPI for the quarter containing those months and on such of the actual figures for the Past Period Variables as are then available for those months. An adjustment, being the difference between the amount paid and the amount shown in the Adjustment Statement in respect of each such month, shall be made on the next date on which the Crown is obliged to make a payment under Clause 2.2 (c) or 2.2 (e), as appropriate, by increasing or decreasing that payment, as appropriate. If the actual figure for any Past Period Variable is not available 5 days before the date on which any Adjustment Statement is

to be delivered then, in calculating the adjustment, if any, to be made under this paragraph, the relevant Past Period Variable shall be that used for the purpose of calculating the payment in respect of each such month under paragraph (c).

(e)

(Final ERS payments)

- (i) On 1st August 2022 the Company shall provide the Crown with a statement showing:
 - (A) a calculation of the amount of the Ensured Revenue Stream Payments to be made by the Crown based upon an estimate of the CPI for the calendar quarter to end on 30th September 2022; and
 - (B) a revised calculation of the adjustment to be paid pursuant to Clause 2.2 (d) on 10th August 2022 based upon the CPI and such of the actual figures for the Past Period Variables as are then available for the calendar quarter ended 30th June 2022.
- (ii) On 10th August, 2022 the Crown shall pay one third of the amount shown in the statement under (i) (A) above together with any adjustment in relation to (i) (B) above and on 10th September 2022 the Crown shall pay one third of the amount shown in the statement under (i) (A) above.
- (iii) For the purpose of (i) above, the estimate by the Company of the CPI for the calendar quarter to end on 30th September 2022 shall be the CPI for the calendar quarter ended 30th June 2022 divided by the CPI for the calendar quarter ended 31st March 2022 and the product thereof shall be multiplied by the CPI for the calendar quarter ended 30th June 2022.

2.3 Artificial CPI's

If CPI² is unavailable for any reason within 32 days of the end of the relevant calendar quarter, then the Ensured Revenue Stream Payment based upon each calendar quarter for which the CPI is calculated after 30th September 1992 up to and including the calendar quarter ended 31st March 2022 shall be calculated in terms of Clause 2.2 (c) except that CPI³ for the relevant calendar quarter shall be used in place of CPI².

If CPI² does not become available for any reason within 75 days of the end of the relevant calendar quarter, then the President of the Institute of Actuaries of Australia (or, if such Institute has ceased to exist, such other institute or body as then carries on the functions of such Institute), or his nominee, acting as an arbitrator (the "Arbitrator") shall be called upon to calculate an artificial CPI² within 42 days of request, which calculation shall be conclusive.

If CPI² becomes available within 120 days of the end of the relevant calendar quarter, then that CPI² shall be used to calculate adjustments to previously made Ensured Revenue Stream Payments and the appropriate adjustments shall be payable on the next monthly payment date.

If upon the expiration of 120 days from the end of the relevant calendar quarter no CPI² has become available, that artificial CPI² as calculated by the Arbitrator shall become CPI² for that relevant calendar quarter.

The artificial CPI² shall then be used for the calculation of adjustments to the previously made Ensured Revenue Stream Payments and the appropriate adjustments shall be payable on the next

monthly payment date.

If CPI² is subsequently published by the Australian Bureau of Statistics for a quarter in respect of which an artificial CPI² calculated under this Clause has been applied to calculations and Ensured Revenue Stream Payments, then no adjustment to past Ensured Revenue Stream Payments shall be made but such published CPI² shall apply for all other purposes of this Agreement.

Any reference in this Clause 2.3 to CPI² and CPI³ shall be a reference to those expressions as defined in the definition of "Weighted Index".

2.4 Reduction in Ensured Revenue Stream Payment

If:

- (a) operations of the Tunnel do not commence on or before 1st September 1992 for any reason;
- (b) at any time after operation of the Tunnel has commenced it is closed for a period or periods exceeding seven consecutive days; or
- (c) savings in the cost of the ventilation system for the Tunnel are possible as a result of revised estimates of exhaust emission rates per vehicle,

the Company shall determine the savings in operating expenses (excluding financing expenses and tax provisions) resulting from such non-commencement, closure or savings in cost and, provided the consent of the Mortgagee is endorsed on the relevant notice, notify the Crown of the amount of such savings. The next succeeding Ensured Revenue Stream Payment by the Crown may at the discretion of the Crown be reduced by an amount not greater than the amount so notified.

2.5 Conditions Precedent

The obligation of the Crown to make Ensured Revenue Stream Payments is subject to the condition that it has received, in form and substance satisfactory to it, the following prior to the making of the first payment:

- (a) (Memorandum and Articles): a certified copy of the Memorandum and Articles of Association of each Relevant Company;
- (b) (Corporate authorisations): a certified copy of all corporate authorisations of each Relevant Company required for the execution and performance of each Relevant Document to which it is a party;
- (c) (Relevant Documents): a certified copy or, in the case of any Relevant Document to which the Company is a party, the original, of each duly executed, stamped and, where relevant, registered Relevant Document;
- (d) (Capital contribution): evidence that the Shareholder has contributed an initial \$200,000 capital to the Company, and is bound and will have the financial means to contribute additional capital of \$6,800,000; and
- (e) (Maritime Services Board): evidence that the Maritime Services Board has granted or will grant a lease of the land described in Schedule 4 to the [Sydney Harbour Tunnel \(Private Joint Venture\) Act 1987](#) and a licence for, amongst other things, access to the Port Jackson harbour bed.

3. OBLIGATIONS OF CROWN ABSOLUTE AND UNCONDITIONAL

3.1

The obligation of the Crown to make Ensured Revenue Stream Payments to the Company shall, subject to Clauses 2.4 and 2.5, be free from any right of set-off, shall be absolute, unconditional and irrevocable and shall not be affected by any default, event of force majeure or other event or circumstance which otherwise would or might at law terminate or permit termination of this Agreement or any of its provisions, or excuse compliance with or performance or provide a defence to any proceedings to enforce the Crown's obligations under this Agreement. The obligations of the Crown shall not be terminated on account of any such matter or thing and shall be enforceable notwithstanding any such matter or thing.

3.2

Without limiting the generality of Clause 3.1 the obligations of the Crown to make Ensured Revenue Stream Payments shall subject to Clauses 2.4 and 2.5 not be affected by the occurrence of any of the following:

- (i) the Tunnel not commencing operations or operating continuously;
- (ii) the Tunnel not having been completed;
- (iii) the Tunnel not being constructed;
- (iv) any interruption or cessation in the operation either in whole or part of the Sydney Harbour Bridge;
- (v) the failure of the Crown to receive any money in the form of tolls from the operation of the Sydney Harbour Bridge;
- (vi) the existence, currency or enforceability or legality of any agreement, arrangement or understanding whether oral or in writing between any persons in any way connected with the construction or operation of the Tunnel;
- (vii) any breach or alleged breach by any person of the terms of any such agreement, arrangement or understanding; or
- (viii) the cessation of the existence of any party to any such agreements, arrangements or understandings.

4. RENEGOTIATION

4.1 Renegotiation Events—General

Where one of the following events occurs either party may give notice (in the case of paragraph (c) below within 10 Business Days of receipt of the relevant income tax assessment, in which respect time shall be of the essence) to the other, which notice will only be validly given if the consent of the Mortgagee is endorsed on the notice, that it wishes to alter the Ensured Revenue Stream Payments. The events are as follows:

- (a) A material unforeseen increase or decrease in the cost of operating the Tunnel (excluding increases in financing costs and tax provisions) occurs as a result of circumstances beyond the

reasonable control of the Company (including, without limitation, any change in the law of New South Wales except for awards of industrial tribunals);

- (b) the CPI is on any of the dates specified in Schedule 2 less than the corresponding figure in Column 1 or greater than the corresponding figure set out in Column 2 of such Schedule; or
- (c) the Company or a company which is a group company of the Company pursuant to Section 80G of the Tax Act receives an income tax assessment to the effect that its claim for a deduction from its assessable income for depreciation on the Immersed Tube Section of the Tunnel is denied and/or to the effect that tax losses (to the extent that these relate to such depreciation) are denied.

4.2 Amount of Adjustment to ERS Payment

Promptly upon the receipt of a valid notice arising from one of the events set out in Clauses 4.1 (a), (b) or (c) above the amount payable pursuant to Clause 2.1 shall be amended and an adjustment shall be made. The adjustment shall be as follows:

- (a) Where the notice is given pursuant to Clause 4.1 (a) and there is an increase in the cost of operating the Tunnel the Crown shall pay to the Company the amounts certified by the Company's auditors in such notice as being the amount of the increase. Where there is a decrease the Company shall refund to the Crown the amount so determined by the Company's auditors.
- (b)
 - (i) Where the notice is given pursuant to Clause 4.1 (b) as a result of the CPI on any of the dates specified in Part A of Schedule 2 being less than the corresponding figure in Column 1 of Part A of Schedule 2 then not later than 1st October 1992 the Company's auditors shall prepare a statement showing the following calculation:

$$Z = \left(\frac{146}{CPI^6} + \frac{160}{CPI^7} + \frac{189}{CPI^8} + \frac{247}{CPI^9} + \frac{218}{CPI^{10}} + \frac{174}{CPI^{11}} + \frac{117}{CPI^{12}} + \frac{164}{CPI^{13}} - \frac{1065}{CPI^1} \right) \times \$1,000,000 \times \frac{CPI^{14}}{153}$$

where

CPI⁶ is the CPI for the full calendar quarter ending 31st December 1988

CPI⁷ is the CPI for the full calendar quarter ending 30th June 1989

CPI⁸ is the CPI for the full calendar quarter ending 31st December 1989

CPI⁹ is the CPI for the full calendar quarter ending 30th June 1990

CPI¹⁰ is the CPI for the full calendar quarter ending 31st December 1990

CPI¹¹ is the CPI for the full calendar quarter ending 30th June 1991

CPI¹² is the CPI for the full calendar quarter ending 31st December 1991

CPI¹³ is the CPI for the full calendar quarter ending 30th June 1992

CPI¹⁴ is the highest CPI for any full calendar quarter between the quarter ended 30 June 1986 and the last calendar quarter prior to the date on which the calculation of Z is being made

CPI¹ is the CPI for the full calendar quarter ended 30 June 1986.

If Z is greater than zero then all Ensured Revenue Stream Payments shall be adjusted by the addition of an amount equal to Z as calculated each quarter. If Z is less than or equal to zero then no adjustment shall be made under this sub-paragraph (i) to any Ensured Revenue Stream Payment.

- (ii) Where the notice is given pursuant to Clause 4.1 (b) as a result of the CPI on any of the dates specified in Part B of Schedule 2 (a "Quarter End Date") being less than the corresponding figure in Column 1 of Part B of Schedule 2 the Crown shall in addition to the amount, if any, payable under sub-paragraph (i) pay to the Company the amount certified by the Company's auditors as being the difference between:
 - (A) the amount payable by the Crown under Clause 2.1 calculated using the CPI^H (as defined in the definition of "Weighted Index" in Clause 1.1) applicable to the calendar quarter ended on the relevant Quarter End Date; and
 - (B) the amount which would have been payable by the Crown under Clause 2.1 if, in the calculation of Weighted Index, CPI^H was the figure set out in Column 1 of Part B of Schedule 2 opposite the relevant Quarter End Date.
 - (iii) Where the notice is given pursuant to Clause 4.1 (b) as a result of the CPI on any of the dates specified in Schedule 2 being greater than the corresponding figure set out in Column 2 of Schedule 2 the Company shall refund to the Crown the amount certified by the Company's auditors in such notice as being the net increase in expected revenue to the Company.
- (c) Where the notice is given pursuant to Clause 4.1 (c) the following provisions shall apply:
- (i) The Company (at the written request of the Crown) shall contest such assessment by lodging an objection against such assessment with the Commissioner of Taxation within the time required by Section 185 of the Tax Act. Such objection shall contain, amongst other things, such grounds as the Crown shall reasonably request in writing.
 - (ii) If any such objection shall be disallowed in whole or in part by the Commissioner of Taxation, the Company shall promptly (and, in any event, within 5 Business Days after becoming aware) serve notice of such disallowance upon the Crown, and (at the written request of the Crown) shall either (at the option of the Crown) lodge a request for reference to the Administrative Appeals Tribunal or refer the objection to the Supreme Court of a specified State or Territory or the Federal Court.
 - (iii) If any reference to the Administrative Appeals Tribunal is decided against the Company, the Company (at the written request of the Crown) shall refer the objection to the Supreme

Court of a specified State or Territory or the Federal Court, as directed by the Crown. If an appeal to a court is decided against the Company, then the Company (at the written request of the Crown) shall take such steps as the Crown may reasonably require to cause an appeal in relation thereto to be prosecuted to the extent requested by the Crown and permissible by law.

- (iv) If any reference to the Administrative Appeals Tribunal or (as the case may be) any proceedings before such Supreme Court or Federal Court are decided in favour of the Company but the Commissioner of Taxation appeals against any such decision, the Company shall promptly (and, in any event, within 5 Business Days after becoming aware of the same) serve notice of such appeal on the Crown and (at the written request of the Crown) take such steps as the Crown may reasonably require before whatever court such appeal is to be heard.
- (v) Any request for the Company to take any action under sub-paragraphs (i) to (iv) inclusive may only be made by the Crown if within 30 days after notice by the Company to the Crown of the assessment, decision or appeal in question, the Crown requests in writing that such assessment, decision or appeal be contested or be the subject of an appeal. Further, the Crown shall and does hereby indemnify the Company from and against all liabilities, losses, costs and expenses which the Company may suffer, incur or sustain as the direct result of objecting to or contesting or appealing from any such assessment, decision or appeal including, without limitation:
 - (1) reasonable legal fees on a solicitor and client basis and disbursements; and
 - (2) the amount of any interest or penalty which is actually incurred as a result of contesting or appealing any such assessment, decision or appeal.

In pursuance of the foregoing, if it becomes necessary in connection with any objection, reference or appeal under this Clause 4.2 (c) to make any payment to the Commissioner of Taxation on account of a disputed assessment, such payment shall be made by the Crown forthwith upon receiving notice from the Company to do so.

- (vi) Notwithstanding any objection, reference or proceedings undertaken or made by or on behalf of the Company pursuant to sub-paragraphs (i) to (iv) of this Clause 4.2 (c), the Crown shall pay the amount certified by the Company's auditors (a copy of which certificate shall be annexed to the notice given by the Company pursuant to Clause 4.1 (c)) as being the additional tax payable. Forthwith, upon the determination of such proceedings, objection or reference, the Company and the Crown shall make such payments by way of adjustment as the Company's auditors determine to be necessary to give effect to the outcome of such proceedings, objection or reference.
- (vii) Any determination made by the Company's auditors for the purposes of this Agreement shall be conclusive and binding on the parties to this Agreement (in the absence of manifest error) and this Agreement shall be deemed to have been amended so as to incorporate that determination, as if it had become effective immediately upon the date specified in or by reference to the relevant income tax assessment.
- (viii) Any reference in this Clause 4.2 (c) to the Company includes a reference to a company which is a group company of the Company pursuant to Section 80G of the Tax Act and the

Company shall procure that any such group company complies with its obligations under this Clause 4.2 (c) accordingly.

4.3 Renegotiation Events—Construction Cost

Where the cost of constructing the Tunnel is increased as a result of any of the following events either party may give notice to the other (with a copy to the Mortgagee) that it wishes an alteration in the amount payable by the Crown to the Company under Clause 2.1. The events are as follows:

- (a) change in the law of New South Wales affecting the design and construction of the Tunnel except for awards of industrial tribunals;
- (b) injunctive or other proceedings or relief under the law of New South Wales except where due to:
 - (i) the negligence fraud or wilful misconduct of the Company, the Joint Venturers or their sub-contractors;
 - (ii) non-compliance with the Environmental Impact Determination; or
 - (iii) the Company's non-compliance with the Lease;
- (c) failure of the Commissioner to comply with its obligation under Clause 2.5 of the Lease; or
- (d) acts or omissions by the Crown outside the terms of the Lease having a direct effect on the Tunnel.

4.4 Additional Payment by Crown

Where notice is given pursuant to Clause 4.3 the Company will use its best endeavours to obtain additional funding on terms acceptable to it to meet the increased costs. Where such funding is available the Crown shall pay to the Company an amount certified by the Company's auditors in the notice as being necessary to repay such additional funding and to meet all interest and other charges payable with respect to it. Where it is not possible to arrange additional funding on terms acceptable to the Company the Crown shall pay to the Company the amount certified by the Company's auditors as being the additional cost.

5. EVIDENCE OF CALCULATIONS

(a)

The Company shall procure that the Company's auditors make any calculations (and furnish appropriate certificates in respect of such calculations) which such auditors are required to make in accordance with any provision of this Agreement.

(b)

The Company shall promptly provide the Crown with sufficient information (including, without limitation, a certified copy of any certificates furnished by its auditors) to enable it to check and verify any calculations made by the Company or the Company's auditors pursuant to any provision of this Agreement.

6. COMPANY'S RIGHT TO GIVE SECURITY INTEREST OVER THIS AGREEMENT

For the purpose of securing its obligations to any person or persons providing financial accommodation

to it, the Company may give a Security Interest over this Agreement and its rights to payment from the Crown to any person who provides financial accommodation to the Company or to any trustee for any such person. Where any person holding a first ranking Security Interest gives notice of its interest to the Crown no amendment to this Agreement or variation of any payment to be made under this Agreement (other than a variation pursuant to Clauses 2.4, 4.1 or 4.2 made as a result of a notice endorsed by the Mortgagee or a variation pursuant to Clause 4.3) and no waiver of the performance of any of the obligations of the Crown under this Agreement shall be effective unless approved in writing by the Mortgagee.

7. NOTICES

Any notice, approval, consent or other communication given or made to or by a party under this Agreement shall be in writing delivered to the address or sent to the telex number or facsimile number of the recipient shown below or to such other address, telex number or facsimile number as the recipient may have notified the sender and shall be deemed to be duly given or made:

- (a) (in the case of delivery in person or by facsimile transmission) when delivered to the recipient at such address or facsimile number; or
- (b) (in the case of telex) on receipt by the sender of the answerback code of the recipient at the end of transmission.
 - (i) The Crown:
The Minister for Roads,
C/- The Commissioner for Main Roads,
4th Floor, 309 Castlereagh Street,
Sydney, N.S.W. 2000
Telex No.: AA121825
Facsimile: (02) 218 6794
 - (ii) The Company:
Sydney Harbour Tunnel Company Limited,
3rd Floor, 100 Arthur Street,
North Sydney, N.S.W. 2060
Telex No.: AA21396 Answerback: TRANSHO
Attention: The Secretary
Facsimile: (02) 922 2834

8. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of New South Wales.

9. RESTRICTION ON ASSIGNMENTS

Neither the Crown nor the Company shall assign or transfer all or any part of its rights or obligations under this Agreement without the prior consent of the other of them and the Mortgagee. This Agreement shall be binding upon and inure to the benefit of each party and its respective successors and permitted assigns.

IN WITNESS the parties have executed this Agreement on the date first written on page 1 of this Agreement.

SIGNED by THE HONOURABLE LAURENCE JOHN BRERETON
Minister for Public Works and Ports and Minister for Roads for
and on behalf of HER MAJESTY QUEEN ELIZABETH THE
SECOND IN RIGHT OF THE STATE OF NEW SOUTH WALES in
the presence of:

LAURENCE JOHN BRERETON

KEVIN B. FORD

SIGNED for and on behalf of SYDNEY HARBOUR TUNNEL
COMPANY LIMITED by CARLO SALTERI and TADAO MITANI its
Attorneys under Power of Attorney dated 29 June 1987 in the
presence of:

By his signing of this Agreement each
Attorney states that at the time of signing he
has received no notice of revocation of the
Power of Attorney pursuant to which he so
signs.

M. OTSUKA

CARLO SALTERI
Attorney
TADAO MITANI
Attorney

SCHEDULE 1

Period	Annual toll paying vehicles using Sydney Harbour Bridge and the Tunnel
1st July 1992—30th June 1993	36.7 million
1st July 1993—30th June 1994	37.1 million
1st July 1994—30th June 1995	37.4 million
1st July 1995—30th June 1996	37.8 million
1st July 1996—30th June 1997	38.2 million
1st July 1997—30th June 1998	38.5 million
1st July 1998—30th June 1999	38.9 million
1st July 1999—30th June 2000	39.2 million
1st July 2000—30th June 2001	39.5 million
1st July 2001—30th June 2002	39.8 million
1st July 2002—30th June 2003	40.1 million
1st July 2003—30th June 2004	40.4 million
1st July 2004—30th June 2005	40.6 million
1st July 2005—30th June 2006	40.9 million
1st July 2006—30th June 2007	41.0 million
1st July 2007—30th June 2008	41.2 million

1st July 2008—30th June 2009	41.5 million
1st July 2009—30th June 2010	41.7 million
1st July 2010—30th June 2011	41.9 million
1st July 2011—30th June 2012	42.1 million
1st July 2012—30th June 2013	42.2 million
1st July 2013—30th June 2014	42.4 million
1st July 2014—30th June 2015	42.5 million
1st July 2015—30th June 2016	42.7 million
1st July 2016—30th June 2017	42.8 million
1st July 2017—30th June 2018	43.0 million
1st July 2018—30th June 2019	43.1 million
1st July 2019—30th June 2020	43.2 million
1st July 2020—30th June 2021	43.3 million
1st July 2021—30th June 2022	43.4 million
1st July 2022—30th June 2023	43.4 million

SCHEDULE 2

Dates	CPI	
	Column 1	Column 2
PART A		
30/06/86	153.00	153.00
30/09/86	155.61	155.97
31/12/86	158.26	159.00
31/03/87	160.96	162.09
30/06/87	163.71	165.24
30/09/87	166.50	168.45
31/12/87	169.34	171.72
31/03/88	172.23	175.06
30/06/88	175.17	178.46
30/09/88	178.16	181.93
31/12/88	181.20	185.46
31/03/89	184.29	189.06

30/06/89	187.43	192.74
30/09/89	190.63	196.48
31/12/89	193.88	200.30
31/03/90	197.19	204.19
30/06/90	200.55	208.15
30/09/90	203.97	212.20
31/12/90	207.45	216.32
31/03/91	210.99	220.52
30/06/91	214.59	224.81
30/09/91	218.25	229.17
31/12/91	221.97	233.63
31/03/92	225.76	238.17
PART B		
30/06/92	229.61	242.79
30/09/92	231.31	245.77
31/12/92	233.03	248.79
31/03/93	234.76	251.84
30/06/93	236.50	254.93
30/09/93	238.25	258.06
31/12/93	240.02	261.23
31/03/94	241.80	264.43
30/06/94	243.60	267.68
30/09/94	245.40	270.96
31/12/94	247.22	274.29
31/03/95	249.06	277.65
30/06/95	250.90	281.06
30/09/95	252.76	284.51
31/12/95	254.64	288.00
31/03/96	256.53	291.54
30/06/96	258.43	295.11
30/09/96	260.35	298.74

31/12/96	262.28	302.40
31/03/97	264.22	306.11
30/06/97	266.18	309.87
30/09/97	268.16	313.67
31/12/97	270.15	317.52
31/03/98	272.15	321.42
30/06/98	274.17	325.36
30/09/98	276.20	329.36
31/12/98	278.25	333.40
31/03/99	280.31	337.49
30/06/99	282.39	341.63
30/09/99	284.49	345.82
31/12/99	286.60	350.07
31/03/00	288.72	354.37
30/06/00	290.87	358.71
30/09/00	293.02	363.12
31/12/00	295.20	367.57
31/03/01	297.39	372.08
30/06/01	299.59	376.65
30/09/01	301.81	381.27
31/12/01	304.05	385.95
31/03/02	306.31	390.69
30/06/02	308.58	395.48
30/09/02	310.87	400.34
31/12/02	313.17	405.25
31/03/03	315.50	410.22
30/06/03	317.84	415.26
30/09/03	320.19	420.35
31/12/03	322.57	425.51
31/03/04	324.96	430.73
30/06/04	327.37	436.02

30/09/04	329.80	441.37
31/12/04	332.25	446.79
31/03/05	334.71	452.27
30/06/05	337.19	457.82
30/09/05	339.69	463.44
31/12/05	342.21	469.13
31/03/06	344.75	474.88
30/06/06	347.31	480.71
30/09/06	349.88	486.61
31/12/06	352.48	492.58
31/03/07	355.09	498.63
30/06/07	357.73	504.75
30/09/07	360.38	510.94
31/12/07	363.05	517.21
31/03/08	365.75	523.56
30/06/08	368.46	529.98
30/09/08	371.19	536.49
31/12/08	373.95	543.07
31/03/09	376.72	549.74
30/06/09	379.51	556.48
30/09/09	382.33	563.31
31/12/09	385.16	570.23
31/03/10	388.02	577.22
30/06/10	390.90	584.31
30/09/10	393.80	591.48
31/12/10	396.72	598.74
31/03/11	399.66	606.08
30/06/11	402.63	613.52
30/09/11	405.61	621.05
31/12/11	408.62	628.67
31/03/12	411.65	636.39

30/06/12	414.70	644.20
30/09/12	417.78	650.55
31/12/12	420.88	656.96
31/03/13	424.00	663.43
30/06/13	427.15	669.97
30/09/13	430.31	676.57
31/12/13	433.51	683.23
31/03/14	436.72	689.97
30/06/14	439.96	696.77
30/09/14	443.22	703.63
31/12/14	446.51	710.56
31/03/15	449.82	717.57
30/06/15	453.16	724.64
30/09/15	456.52	731.78
31/12/15	459.91	738.99
31/03/16	463.32	746.27
30/06/16	466.75	753.62
30/09/16	470.22	761.05
31/12/16	473.70	768.55
31/03/17	477.22	776.12
30/06/17	480.76	783.77
30/09/17	484.32	791.49
31/12/17	487.91	799.29
31/03/18	491.53	807.16
30/06/18	495.18	815.12
30/09/18	498.85	823.15
31/12/18	502.55	831.26
31/03/19	506.28	839.45
30/06/19	510.03	847.72
30/09/19	513.82	856.07
31/12/19	517.63	864.51

31/03/20	521.47	873.03
30/06/20	525.34	881.63
30/09/20	529.23	890.32
31/12/20	533.16	899.09
31/03/21	537.11	907.95
30/06/21	541.10	916.90
30/09/21	545.11	925.93
31/12/21	549.15	935.05
31/03/22	553.22	944.27
30/06/22	557.33	953.57
30/09/22	561.46	962.97
31/12/22	565.63	972.46
31/03/23	569.82	982.04
30/06/23	574.05	991.71
30/09/23	578.31	1001.49
31/12/23	582.59	1011.35
31/03/24	586.92	1021.32
30/06/24	591.27	1031.38
30/09/24	595.65	1041.55
31/12/24	600.07	1051.81

Schedule 6 The Net Bridge Revenue Loan Agreement

(Section 5)

THIS AGREEMENT is made the 29th day of June, 1987

- BETWEEN 1. THE COMMISSIONER FOR MAIN ROADS a corporation sole established pursuant to the [State Roads Act 1986](#), of 309 Castlereagh Street, Sydney (the "Commissioner"); and
2. SYDNEY HARBOUR TUNNEL COMPANY LIMITED, a company incorporated in the State of New South Wales with its registered office at 100 Arthur Street, North Sydney (the "Company").

WHEREAS:

- A. Pursuant to obligations contained in the Lease the Company has agreed to design, construct and operate the Tunnel.

- B. In consideration of the Company agreeing to design, construct and operate the Tunnel the Commissioner has agreed to make certain loans to the Company on the terms of this Agreement.

NOW THIS AGREEMENT WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

“Business Day” means any day on which trading banks are open for business in Sydney.

“Crown” means The Honourable Laurence John Brereton Minister for Public Works and Ports and Minister for Roads for and on behalf of Her Majesty Queen Elizabeth the Second in Right of the State of New South Wales.

“Date of Completion” means the date on which the Tunnel is first opened to the public for the passage of vehicular traffic.

“DMR Deed of Charge” means the deed of charge dated the same date as this Agreement between the Company as mortgagor and the Commissioner as mortgagee.

“ERS Agreement” means the Ensured Revenue Stream Agreement dated the same date as this Agreement between the Company and the Crown.

“Government Agency” means any government or any governmental, semi governmental or judicial entity or authority.

“Joint Venturer” means each of Transfield (SHTJV) Pty. Limited and Kumagai Gumi Co., Ltd. and “Joint Venturer” means either of them.

“Lease” means the Lease between the Commissioner and the Company dated the same date as this Agreement.

“Loans” means the loans made by the Commissioner pursuant to Clause 2.1.

“Mortgagee” means any holder of a first ranking Security Interest over this Agreement who gives notice to the Commissioner pursuant to Clause 7.

“MSF Account” means the account of that name referred to in Clause 3.3 of the Operation, Repair and Maintenance Agreement.

“Operating Account” means the account of that name referred to in Clause 3.2 of the Operation, Repair and Maintenance Agreement.

“Operation, Repair and Maintenance Agreement” means the agreement so entitled dated the same date as this Agreement between the Commissioner and the Company.

“Relevant Company” means any party to a Relevant Document other than the Crown, the Commissioner, Perpetual Trustee Company Limited, Westpac Banking Corporation and the party providing the Performance Bond.

“Relevant Document” means each of:

- (a) this Agreement;
- (b) the ERS Agreement;
- (c) the Trust Deed;
- (d) the Deed of Covenant between ACTL Holdings Pty. Limited, Kumagai Gumi Co., Ltd., Perpetual Trustee Company Limited and the Commissioner;
- (e) the Lease;
- (f) the Shareholder Loan and Equity Agreement between the Shareholder, the Company, Kumagai Gumi Co., Ltd. and ACTL Holdings Pty. Limited providing, amongst other things, for a loan of \$40,000,000 to the Company from the Shareholder;
- (g) the Underwriting Agreement between the Company and Westpac Banking Corporation;
- (h) the Design and Construction Agreement between the Company and the Joint Venturers;
- (i) the Operation, Repair and Maintenance Agreement;
- (j) the DMR Sub-contract between the Company and the Commissioner;
- (k) the DMR Deed of Charge;
- (l) the Performance Bond provided on behalf of the Joint Venturers in favour of the Company, in the amount of \$40,000,000;
- (m) the Guarantee and Indemnity between Kumagai Gumi Co., Ltd., Transfield Pty. Limited and other companies in the Transfield group of companies, the Company and the Commissioner;
- (n) the Subcontract Charge between Transfield Kumagai Contracting Pty. Limited and the Commissioner; and
- (o) any other document or agreement which the parties to this Agreement agree is to be a Relevant Document for the purposes of this Agreement,

and any document or agreement entered into under, or for the purpose of amending or novating, any of them.

“Security Interest” includes any mortgage, pledge or charge or any security or preferential interest or arrangement of any kind given by the Company.

“Senior Debt” means all money (other than the Loans) which the Company is or may become actually or contingently liable to pay on any account, including (without limitation) any money payable pursuant to any contractual obligation where such payment is conditional upon the performance by another person of an obligation owed to the Company.

“Senior Creditor” means any person to whom the Company owes Senior Debt.

“Shareholder” means Tunnel Holdings Pty. Limited.

“Special Account” means the account of the Company No. 032-099-88-9458 with Westpac Banking

Corporation, 169 Miller Street, North Sydney or such other account as the Company and the Mortgagee notify the Commissioner in writing from time to time.

“Trust Deed” means the deed dated the same date as this Agreement under which the Company has granted a charge in favour of Perpetual Trustee Company Limited.

“Tunnel” means the whole of the permanent works to be designed and constructed on and in the Tunnel Site (as defined in the Lease), the scope of which works is set out in the Scope of Works and Design Criteria contained in Schedule 1 to the Lease.

1.2 Interpretation

In this Agreement headings are for convenience only and shall not affect its interpretation and except to the extent the context otherwise requires:

- (a) words denoting the singular number shall include the plural and vice versa;
- (b) references to Clauses, Annexures and Schedules are references to clauses, annexures and schedules of this Agreement; and
- (c) references to any party to this Agreement or any other document or agreement shall include its successors or permitted assigns.

1.3 Business Days

If any payment is required to be made on a day which is not a Business Day, it shall be made on the preceding Business Day.

2. NET BRIDGE REVENUE LOANS

2.1 Loans

Subject to Clause 4, unless and to the extent that the Mortgagee otherwise agrees in writing, the Commissioner shall if requested by notice in writing from the Company make loans to the Company on each of the following dates in the following amounts:

DATE	AMOUNT
	\$m
10th July 1987	2.500
On the 10th day of each of the months	
from August 1987 until July 1988	inclusive 2.483
" August 1988 until January 1989	" 2.550
" February 1989 until July 1989	" 3.467
" August 1989 until July 1990	" 3.983
" August 1990 until July 1991	" 4.017
" August 1991 until July 1992	" 4.142
10th August 1992	4.250

10th September 1992

4.248

The Loans will be paid into the Special Account.

2.2 Repayment

Subject to the terms of this Agreement and in particular to Clause 2.4 the Loans will become repayable on 31 December, 2022 or the determination of the Lease whichever is later.

2.3 Interest

The Loans will be interest free.

2.4 Funds for repayment

Subject to the terms of this Agreement the Loans will be repayable out of funds available as at the repayment date comprising:

- (a) the amount uncalled or called and unpaid in respect of the four million ordinary shares of one dollar each issued paid as to one cent on the Date of Completion; and
- (b) the net assets of the Company excluding all funds in the Operating Account and all funds in the MSF Account as at the date of the repayment.

3. REPRESENTATIONS AND WARRANTIES

The Company makes the following representations and warranties for the benefit of the Commissioner as at the date of this Agreement.

- (a) (Status): It is a corporation validly existing under the laws of the State of New South Wales.
- (b) (Corporate power): It has the corporate power to enter into and to perform its obligations under this Agreement and each other Relevant Document to which it is a party.
- (c) (Corporate authorisations): It has taken all necessary corporate action to authorise the entry into and performance of this Agreement and each other Relevant Document to which it is a party.
- (d) (Agreement binding): This Agreement and each other Relevant Document to which it is a party is a valid and binding obligation enforceable in accordance with its terms.
- (e) (Transaction permitted): Neither the execution and performance by it of this Agreement and each other Relevant Document to which it is a party nor any transaction contemplated under it or them will violate in any respect any provision of:
 - (i) any treaty or law or any judgment, ruling, order or decree of any Governmental Agency binding on it;
 - (ii) its memorandum or articles of association; or
 - (iii) any other document or agreement which is binding upon it or its assets.
- (f) (No litigation): No litigation, arbitration, tax claim, dispute or administrative proceeding is current or pending or is, to its knowledge threatened against it or any of its assets.

- (g) (Scope of business): It does not carry on any business other than that necessary to comply with its obligations under the Relevant Documents.

4. CONDITIONS PRECEDENT

The obligation of the Commissioner to provide the Loans is subject to the condition that he has received, in form and substance satisfactory to him, the following prior to the making of the first Loan:

- (a) (Memorandum and Articles): a certified copy of the Memorandum and Articles of Association of each Relevant Company;
- (b) (Corporate authorisations): a certified copy of all corporate authorisations of each Relevant Company required for the execution and performance of each Relevant Document to which it is a party;
- (c) (Relevant Documents): a certified copy or, in the case of any Relevant Document to which the Company is a party, the original, of each duly executed, stamped and, where relevant, registered Relevant Document;
- (d) (Capital contribution): evidence that the Shareholder has contributed an initial \$200,000 capital to the Company, and is bound and will have the financial means to contribute additional capital of \$6,800,000;
- (e) (No default): a certificate from a director of the Company that no Relevant Company is in default under any Relevant Document to which it is a party;
- (f) (Maritime Services Board): evidence that the Maritime Services Board has granted or will grant a lease of the land described in Schedule 4 to the *Sydney Harbour Tunnel (Private Joint Venture) Act 1987* and a licence for, amongst other things, access to the Port Jackson harbour bed; and
- (g) (Special Account): evidence that the Special Account has been established and that the acts, matters and things required to be done to ensure that withdrawals from the Special Account may only be made with the consent of the Commissioner in accordance with Clause 5.2 of the Trust Deed have been done.

5. OBLIGATION OF COMMISSIONER ABSOLUTE AND UNCONDITIONAL

5.1

Subject to Clause 4 the obligation of the Commissioner to make Loans to the Company under Clause 2 shall be free from any right of set-off, shall be absolute, unconditional and irrevocable and shall not be affected by any default, event of force majeure or other event or circumstance which otherwise would or might at law terminate or permit termination of this Agreement or any of its provisions, or excuse compliance with or performance of or provide a defence to any proceedings to enforce the Commissioner's obligations under this Agreement. The obligations of the Commissioner shall not be terminated on account of any such matter or thing and shall be enforceable notwithstanding any such matter or thing.

5.2

Without limiting the generality of Clause 5.1 the obligations of the Commissioner under Clause 2 shall not be affected by the occurrence of any of the following:

- (a) the Tunnel not commencing operations or operating continuously;
- (b) the Tunnel not having been completed;
- (c) the Tunnel not being constructed;
- (d) any interruption or cessation in the operation either in whole or part of the Sydney Harbour Bridge;
- (e) the failure of the Commissioner to receive any money in the form of tolls from the operation of the Sydney Harbour Bridge;
- (f) the existence, currency or enforceability or legality of any agreement, arrangement or understanding whether oral or in writing between any persons in any way connected with the construction or operation of the Tunnel;
- (g) any breach or alleged breach by any person of the terms of any such agreement, arrangement or understanding; or
- (h) the cessation of the existence of any party to any such agreements, arrangements or understandings.

6. SUBORDINATION

6.1

The Loans will be subordinated to the payment of all Senior Debt of the Company and accordingly the Commissioner will not claim or receive from the Company by set off or in any other manner any part of the Loans until all Senior Debt has been paid.

6.2

In the event of any payment or distribution of assets of the Company in cash or in kind upon any dissolution, winding up, liquidation or reorganisation of the Company, the Senior Creditors shall first be entitled to receive payment in full of their indebtedness before the Commissioner receives any payment in respect of the Loans.

6.3

Any distribution to which the Commissioner would be entitled but for the provisions of this Agreement shall be paid or delivered by the liquidator directly to the Senior Creditors rateably according to their indebtedness until they have been paid in full.

6.4

If notwithstanding Clause 6.2 any distribution is received by the Commissioner in respect of the Loans such distribution shall be paid over to the Senior Creditors for application rateably against their Senior Debt until the Senior Debt has been paid in full and until such payment in full shall be held in trust by the Commissioner for the Senior Creditors. For the purposes of this Clause the Commissioner may rely on a certificate from the Mortgagee as to the identity of Senior Creditors and the amount of their Senior Debt.

6.5

Without prejudice to the Company's obligations under the DMR Deed of Charge, the Company shall not without the prior written consent of the Commissioner enter into any contract or arrangement or otherwise incur obligations (whether present or future, actual or contingent) of any kind whatsoever (including, without limitation, any sub-contract of its obligations under the Operation, Repair and Maintenance Agreement) otherwise than on terms appropriate to an arms length commercial transaction in the ordinary course of the Company's business or by virtue of which the Company's ability to repay the Loans in accordance with Clause 2.2 will or may be prejudiced.

6.6

Notwithstanding anything else in this Agreement the Loans shall only be repayable if the Commissioner has made all Loans which it is required to make under Clause 2.1 and if those Loans have been paid into the Special Account.

7. COMPANY'S RIGHT TO GIVE SECURITY INTEREST OVER THIS AGREEMENT

For the purpose of securing its obligations to any person or persons providing financial accommodation to it, the Company may give a Security Interest over this Agreement and its rights to receive Loans. Where any person holding such a Security Interest gives notice of its interest to the Commissioner no amendment to this Agreement and no waiver of the performance of any of the obligations of the Commissioner under this Agreement shall be effective unless approved in writing by the Mortgagee.

8. PROHIBITION ON ASSIGNMENTS

Neither the Company nor the Commissioner may sell, assign or transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the other of them and the Mortgagee. If such consent is given this Agreement shall be binding upon and inure to the benefit of each party and its respective successors and assigns.

9. WAIVER OF IMMUNITY

The Commissioner waives its immunity (if any) under any act or rule of law from legal proceedings or proceedings by way of arbitration which may be instituted against the Commissioner in the enforcement of this Agreement, notwithstanding any act or rule of law to the contrary.

10. NOTICES

Any notice, approval, consent or other communication given or made to or by a party under this Agreement shall be in writing delivered to the address or sent to the telex number or facsimile number of the recipient shown below or to such other address, telex number or facsimile number as the recipient may have notified the sender and shall be deemed to be duly given or made:

- (a) (in the case of delivery in person or by facsimile transmission) when delivered to the recipient at such address or facsimile number; or
- (b) (in the case of telex) on receipt by the sender of the answerback code of the recipient at the end of transmission.
 - (i) The Commissioner:
The Commissioner for Main Roads,
4th Floor, 309 Castlereagh Street,
Sydney, N.S.W. 2000
Telex No.: AA121825
Facsimile: (02) 218 6794

- (ii) The Company:
Sydney Harbour Tunnel Company Limited,
3rd Floor, 100 Arthur Street,
North Sydney, N.S.W. 2060
Telex No.: AA21396 Answerback: TRANSHO
Attention: The Secretary
Facsimile: (02) 922 2834

11. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of New South Wales.

IN WITNESS the parties have executed this Agreement on the date first written on page 1 of this Agreement.

I, BERNARD GODFREY FISK THE
COMMISSIONER FOR MAIN ROADS hereunto
affix the official Seal of the Commissioner for
Main Roads in the presence of:

}

BERNARD GODFREY FISK

DAVID J. TAYLOR

SIGNED for and on behalf of SYDNEY
HARBOUR TUNNEL COMPANY LIMITED by
TADAO MITANI and CARLO SALTERI its
Attorneys under Power of Attorney dated 29
June, 1987 in the presence of:

}

By his signing of this Agreement each Attorney
states that at the time of signing he has received no
notice of revocation of the Power of Attorney
pursuant to which he so signs.

TERENCE BURKE

TADAO MITANI
Attorney
CARLO SALTERI
Attorney

Schedule 7 Savings and transitional provisions

(Section 19A)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Traffic Legislation Amendment Act 1997, but only in relation to the amendments made to this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its

publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.