

# Port Kembla Inner Harbour Construction and Agreement Ratification Act 1955 No 43

[1955-43]



New South Wales

## Status Information

### Currency of version

Current version for 1 July 2018 to date (accessed 19 April 2024 at 9:43)

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—

- **Repeal**

The Act was repealed by Sch 3 to the [Statute Law \(Miscellaneous Provisions\) Act 1991 No 17](#) and the repeal was later repealed by Sch 2 to the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 1993 No 108](#).

### 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 1 July 2018

# Port Kembla Inner Harbour Construction and Agreement Ratification Act 1955 No 43



New South Wales

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# Port Kembla Inner Harbour Construction and Agreement Ratification Act 1955 No 43



New South Wales

An Act to sanction and to provide for the construction and equipment of an inner harbour at Port Kembla; to authorise the construction of a railway from Coniston Marshalling Yards to the port boundary of that harbour; to ratify a certain Agreement made between The Broken Hill Proprietary Company Limited of the first part Australian Iron & Steel Limited of the second part and the Minister for Public Works for and on behalf of Her Most Gracious Majesty Queen Elizabeth II of the third part with respect to the exchange of lands, with respect to the granting to those Companies of an exclusive right to construct wharves on certain lands and with respect to certain other matters; to provide for the carrying into effect of that Agreement; to amend the *Public Works Act 1912*, and certain other Acts in certain respects; and for purposes connected therewith.

## Part 1 Preliminary

### 1 Name of Act

- (1) This Act may be cited as the *Port Kembla Inner Harbour Construction and Agreement Ratification Act 1955*.
- (2) (Repealed)

### 2 Definitions

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

**Agreement** means the Agreement, a copy of which is set out in the Second Schedule to this Act.

**A.I.S.** means Australian Iron & Steel Limited.

**B.H.P.** means the Broken Hill Proprietary Company Limited.

**Commissioner** means the Commissioner for Railways incorporated by the *Transport (Division of Functions) Act 1932*, or other the corporation controlling the Government Railways of New South Wales.

**Director** means the Director of Public Works or other the Permanent Head of Public Works of New South Wales or the person acting as such for the time being.

**Plan** means the plan referred to in section four of this Act.

## **Part 2**

### **3-8 (Repealed)**

## **Part 3 Ratification of Agreement**

### **9 Ratification of Agreement**

- (1) The Agreement 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 Minister for Public Works or the Maritime Services Board of New South Wales or the Commissioner or the Auditor-General are hereby sanctioned, authorised and confirmed.

### **10 Provision for closing public road**

- (1) The Minister is empowered to close by notice in the Gazette that part of Kembla Road (Main Road 295) comprised within the lands described in the First Part of the First Schedule to the Agreement and upon the publication in the Gazette of such notice any and every dedication of the lands described in the First Part of the First Schedule to the Agreement for public road shall absolutely cease and determine and the rights of any person to use the lands so described or any part thereof for the purposes of a road shall, subject to the reservation contained in clause thirty-three of the Agreement, be extinguished and so much of the lands so described as is not already vested in the Minister shall vest in the Minister. Thereafter the minister may convey the lands so described to B.H.P. pursuant to the provisions of clause two of the Agreement.
- (2) No claim against the Minister for compensation shall arise from or in respect of anything done by him pursuant to subsection one of this section or from or in respect of the vesting pursuant to that subsection of any land in the Minister.

### **11 Covenant to bind certain lands**

The provisions of clause twenty of the Agreement shall bind the lands described in the First and Third Schedules to the Agreement and every part thereof into whosoever hands the same may come and bind all persons interested therein.

## **12 Determination of rental by Secretary**

- (1) The Secretary is to determine the annual rental under clause 22 (f) of the Agreement.
- (2) In determining the annual rent:
  - (a) the Secretary has and may exercise all of the functions that a local land board could have exercised under this section and the Agreement immediately before the amendment of this section by the *Civil and Administrative Legislation (Repeal and Amendment) Act 2013*, and
  - (b) the Secretary's decision is taken to have the same effect for the purposes of the Agreement as a decision of a local land board would have had immediately before that amendment.
- (2A) For the avoidance of doubt, the amendment of this section (or a determination of annual rent as provided for by this section) does not constitute a breach of the Agreement.
- (3) An appeal by either party may be made to the Land and Environment Court from the determination by the Secretary 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 Director on the Minister's behalf.
- (4) In this section:

**Secretary** has the same meaning as in the *Crown Land Management Act 2016*.

## **13 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 wharf (which term 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) to be hereafter erected, constructed or provided over and along such portion of the Inner Harbour (to be constructed pursuant to Part 2 of this Act) as is described in paragraph (a) of clause twenty-two of the Agreement or upon lands adjoining or adjacent thereto as if the same were a public wharf and accordingly tonnage rates and berthing charges in accordance with the said Acts and regulations will be payable in respect of all vessels berthing at any such wharf subject to the following exceptions, such exceptions being applicable only during the period of ninety-nine years calculated from the date of commencement of the Agreement and only to vessels whilst berthed at any such wharf, namely that:

- (i) Any vessel carrying loading or discharging only cargo the property of B.H.P. and A.I.S. or either of them and/or of any other company or companies in which B.H.P. and A.I.S. or either of them holds at least one-third of the share capital shall be exempt from the payment of such tonnage rates and berthing charges.
- (ii) Any vessel carrying loading or discharging cargo part only of which is the property of B.H.P. and A.I.S. or either of them and/or of any other company or companies in which B.H.P. and A.I.S. or either of them holds at least one-third of the share capital shall be granted a rebate of such tonnage rates and berthing charges to the extent of the ratio which the part of the cargo which is the property of B.H.P. and A.I.S. or either of the and/or of an other company or companies in which B.H.P. and A.I.S. or either of them holds at least one-third of the share capital bears to the whole of such cargo.
- (iii) Any vessel the property of or chartered by B.H.P. and A.I.S. or either of them or the property of or chartered by any other company in which B.H.P. and A.I.S. or either of them holds at least one-third of the share capital 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 the exemptions referred to in the foregoing provisions of this section **cargo** does not include coal and coke shipped pursuant to any consent of the Minister given under clause twenty-nine of the Agreement.

#### **14 Section 327 of [Local Government Act 1919](#) not to apply to subdivisions**

Section three hundred and twenty-seven of the [Local Government Act 1919](#), as amended by subsequent Acts, shall not apply in respect of any subdivision of land made in connection with the Agreement.

### **First Schedule (Repealed)**

### **Second Schedule**

THIS AGREEMENT made the twenty-fourth day of October one thousand nine hundred and fifty five BETWEEN—THE BROKEN HILL PROPRIETARY COMPANY LIMITED a corporation incorporated under the laws of the State of Victoria and carrying on business in the State of New South Wales (hereinafter called “B.H.P.”) of the first part AUSTRALIAN IRON & STEEL LIMITED a company incorporated under the *Companies Act, 1936* of the State of New South Wales (hereinafter called “A.I.S.”) of the second part (the parties hereto of the first and second parts when hereinafter jointly referred to being termed “the Companies”) and THE HONOURABLE JOHN BROPHY RENSHAW the Minister for Public Works of the State of New South Wales for and on behalf of HER MOST GRACIOUS MAJESTY QUEEN ELIZABETH THE SECOND (hereinafter called “the Minister” which expression shall where the context demands include his successors in office) of the third part WHEREAS the Minister is about to submit to Parliament a Bill for an Act to authorise the extension of existing shipping facilities at Port Kembla in the State of New South Wales by the construction of an Inner Harbour leading from the present harbour AND WHEREAS with the object of expanding their industrial operations in the said State of New South Wales B.H.P. is desirous of obtaining the right to lease certain lands within the proposed Inner Harbour and to

construct and erect thereon wharves and other facilities for the purposes of the Company AND is also desirous of acquiring the lands described in the First Schedule hereto AND A.I.S. is desirous of acquiring the lands described in the Third Schedule hereto AND WHEREAS The Minister is desirous of acquiring from B.H.P. the lands described in the Second Schedule hereto and from A.I.S. the lands described in the Fourth Schedule hereto NOW IT IS HEREBY AGREED as follows:—

**1.**

In this Agreement 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:

“Authorising Act”—means the Act approving the Bill hereinbefore mentioned or otherwise authorising the construction of an Inner Harbour at Port Kembla aforesaid:

“Director”—means the 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:

“Gazette”—means the New South Wales Government Gazette:

“Indian Spring Low Water”—means the datum for sounding at Port Kembla being 12.61 feet below Bench Mark No. 5 on the concrete block near Number 3 Jetty as shown on plan catalogued 57/181 in the Department of Public Works New South Wales:

“Inner Harbour”—means the Inner Harbour which subject to authorisation by the Parliament of New South Wales the Minister will construct at Port Kembla generally within the area delineated on the plan annexed hereto and marked with the letter “A”:

“Minister”—means the Minister for Public Works of the State of New South Wales and after the commencement of the Authorising Act includes such Minister in his capacity of Constructing Authority for the purposes of that Act and the *Public Works Acts, 1912*, as amended.

**2.**

Subject to the provisions hereinafter contained the Minister hereby agrees to convey to B.H.P. in fee simple and B.H.P. agrees to accept the lands described in the First Schedule hereto by way of exchange for the land described in the Second Schedule hereto AND for the purpose of effecting such exchange B.H.P. hereby agrees to transfer to the Minister and the Minister agrees to accept such last mentioned lands.

**3.**

Subject to the provisions hereinafter contained the Minister hereby agrees to convey to A.I.S. in fee simple and A.I.S. agrees to accept the lands described in the Third Schedule hereto by way of exchange for the lands described in the Fourth Schedule hereto and for the purpose of effecting such exchange A.I.S. hereby agrees to transfer to the Minister and the Minister agrees to accept such last mentioned lands.

**4.**

**(a)**

The land described in the First Part of the First Schedule hereto comprises part of Main Road No. 295, otherwise called Kembla Road and upon the closing and assurance thereof as hereinafter provided all mines and deposits of coal, ironstone, kerosene shale, limestone, slate and other minerals therein and thereunder shall be excepted from the assurance to be executed by the Minister.

**(b)**

The lands described in the Second Part of the First Schedule hereto and in the Third Schedule hereto comprise part of an area of about 496 acres 2 roods 0 perches resumed by Notification published in the Gazette of the 1st day of September 1900 at p. 6865 under the Lands for Public Purposes Acquisition Act as adopted by the *Public Works Act of 1888* and by section 114 of the last mentioned Act no mines or deposits of coal, ironstone, kerosene shale, limestone, slate or other minerals under the said area were acquired and the same are excepted from the assurances to be executed by the Minister.

**(c)**

The conveyance by the Minister of the land described in the First Part of the Third Schedule hereto is subject to and the assurance by the Minister to A.I.S. of such land shall contain a reservation in favour of the Minister his successors and assigns of an easement and rights over the land described in the Fifth Schedule hereto with respect to electric transmission lines and other matters in and according to the form set out in the First Part of the Seventh Schedule hereto.

**(d)**

The land described in the First Part of the Third Schedule hereto is also subject to the rights of the Commissioner for Railways of the State of New South Wales the Vacuum Oil Company Proprietary Limited and Commonwealth Oil Refineries Limited in respect of the existing railway lines owned by them or any of them upon or over such land and appropriate provisions in favour of the said Commissioner and those Companies with respect to those lines and the rights of the said Commissioner and those Companies to continue using the same shall be inserted in the assurance by the Minister to A.I.S.

**(e)**

The lands described in the Second Schedule hereto are comprised in Certificate of Title registered Volume 6913 Folio 230 standing in the name of B.H.P. subject to the Notifications endorsed thereon namely:—

(i) an exception of the mines and minerals not acquired by the notifications of resumption referred to in Clause 4 of the Agreement set out in the First Schedule to the *Australian Iron & Steel Limited Agreement Ratification Act, 1936*:

(ii) the covenant in Clause 26 of the Agreement referred to in the last preceding sub-paragraph;

AND the lands described in the Second Schedule hereto are agreed to be transferred subject to such exception and covenant.

**(f)**

The lands described in the First and Second Parts of the Fourth Schedule hereto are comprised in



Certificate of Title registered Volume 4784 Folio 24 standing in the name of A.I.S. subject to the notifications endorsed thereon namely:

- (i) an exception of the mines and minerals not acquired by the notifications of resumption referred to in Clause 4 of the Agreement set out in the First Schedule to the *Australian Iron & Steel Limited Agreement Ratification Act, 1936*:
- (ii) the covenants and provisions in Clauses 26, 29, and 33 of the Agreement set out in the First Schedule to the *Australian Iron & Steel Limited Agreement Ratification Act, 1936*:
- (iii) the easements reserved to the Minister for Public Works by Transfer No. C480813 in favour of Electricity Transmission Line and Lights and Railway Line:

AND the lands described in the First and Second Parts of the Fourth Schedule hereto are agreed to be transferred subject to such exception covenants provisions and easements and also subject to the rights of A.I.S. in respect of the existing saltwater channel across that part of such lands as is described in the Sixth Schedule hereto and to the rights of the Commissioner for Railways of the said State Vacuum Oil Company Proprietary Limited and Commonwealth Oil Refineries Limited in respect of the existing railway lines owned by them or any of them and appropriate provisions in favour of the said Commissioner and of those Companies with respect to those lines and the rights of the said Commissioner and those Companies to continue using the same shall be inserted in the Transfer from A.I.S. to the Minister.

**(g)**

The lands described in the Third Part of the Fourth Schedule hereto are comprised as to part in Certificate of Title registered Volume 4784 Folio 24 and as to the residue in Certificate of Title registered Volume 6784 Folio 206 standing in the name of A.I.S. subject to the Notifications endorsed thereon namely:—

- (i) an exception of the mines and minerals not acquired by the notifications of resumption referred to in Clause 4 of the Agreement set out in the First Schedule to the *Australian Iron & Steel Limited Agreement Ratification Act, 1936*:
- (ii) the covenants and provisions in Clauses 26 and 33 of the Agreement set out in the First Schedule to the *Australian Iron & Steel Limited Agreement Ratification Act, 1936*:

AND the lands described in the Third Part of the Fourth Schedule hereto are agreed to be transferred subject to such exception covenants and provisions.

**5.**

**(a)**

Certain information as to the title to the lands comprised in the First and Third Schedules hereto is referred to in this Agreement and neither B.H.P. nor A.I.S. shall require or be entitled to be furnished with any further particulars as to the title of the Minister or any other person 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 Companies or either of them to or in

respect of the title to any of the said lands and no objection whatever shall be taken by the Companies or either of them to the power of the Minister to exchange and assure as provided by this Agreement the said lands described in the First and Third Schedules hereto.

**(c)**

Certain information as to the title to the lands comprised in the Second and Fourth Schedules hereto is referred to in this Agreement and the Minister shall not require or be entitled to be furnished with any further particulars as to the title of the Companies or either of them to any of such lands or with any abstract of the title to any of such lands but any instrument in respect of which a caveat is entered upon the Register (if in the possession of the Companies or either of them) and any documents of title in the custody of a mortgagee in regard to which the Companies or either of them have or has a right to require production shall be produced to the Minister or the Crown Solicitor of the State of New South Wales at the cost and expense of B.H.P. or A.I.S. (as the case may be).

**6.**

The lands described in the Second and Fourth Schedules hereto are to be assured by the Companies subject to the reservations, exceptions and conditions other than quit rent contained in the Crown Grants under which any of the lands were originally or are now held.

**7.**

There shall be excepted out of and from the lands described in the First and Third Schedules hereto and excluded from the said exchanges and the assurances to the Companies:—

- (a) All telegraph lines within the meaning of the *Post and Telegraph Act, 1901-1934*, of the Commonwealth constructed or laid upon in under or over such lands.
- (b) The electric cables and electricity transmission lines constructed or laid upon in or over the lands described in the First Schedule hereto by any Municipal or other local authority or by any body supplying electricity and all poles pipes wires fittings appurtenances equipment and appliances connected therewith.
- (c) All electric transmission lines constructed or laid in and upon the land described in the Third Schedule hereto and the signal lights and all poles, wires, fittings and appliances connected with such transmission lines and lights.
- (d) The existing oil pipelines fittings and appliances constructed or laid in or upon the land described in the Third Schedule hereto the property of Vacuum Oil Company Proprietary Limited or The Commonwealth Oil Refineries Limited.
- (e) All railway lines constructed or laid in or upon any part of the land described in the Third Schedule hereto and all rails, sleepers, cables, pipes, wires, equipment and fittings connected therewith.

**8.**

The lines of pipes for the conveyance of water constructed or laid in and through the lands described in the First Schedule hereto which are the property of the Metropolitan Water Sewerage and Drainage Board are not included in the said exchange but B.H.P. shall at its own cost make any necessary arrangements with the said Board with respect to them and the Minister shall if required

assist B.H.P. in making such arrangements.

**9.**

The Companies shall give to the Minister on the date of completion vacant possession of all lands described in the Second and Fourth Schedules hereto but subject to the rights of the Commissioner for Railways of the said State Vacuum Oil Company Proprietary Limited and Commonwealth Oil Refineries Limited.

**10.**

From the date of completion B.H.P. shall have peaceful and undisturbed possession of the lands described in the Second Part of the first Schedule hereto and A.I.S. shall subject to Clause 19 of this Agreement have peaceful and undisturbed possession of the lands described in the Third Schedule hereto.

**11.**

**(a)**

The Minister shall be empowered by the Act ratifying this Agreement to close that portion of Main Road 295 described in the First Part of the First Schedule hereto and the Minister not later than three months after the bridge on such road across Tom Thumb's Lagoon and the southern approach thereto have been demolished shall by notice in the Gazette close that portion of Main Road 295 as is described in the First Part of the First Schedule hereto and upon publication in the Gazette of such notice any and every dedication of such land for a public road shall absolutely cease and determine and subject to the reservation contained in Clause 33 hereof the right or of any person to use the same for the purpose of a road shall be extinguished and so much of such land as is not already vested in the Minister shall vest in the Minister and the Act ratifying this Agreement shall provide accordingly and authorise the Minister to convey such land to B.H.P. pursuant to the provisions of Clause 2 of this Agreement.

**(b)**

To the extent that the provisions of Clauses 14 and 18 hereof relate to the agreement by the Minister to convey and assure the land described in the First Part of the First Schedule hereto to B.H.P. the expression "the date of commencement of this Agreement" shall be construed in those Clauses as the date of publication in the Gazette of the notice closing that part of Main Road 295 described in the First Part of the First Schedule hereto and the date of completion of the conveyance of such land shall be related to the date of commencement thus ascertained and determined in the manner defined in Clause 18.

**(c)**

B.H.P. shall not be entitled to possession of the land described in the First Part of the First Schedule hereto until the date of completion as ascertained in accordance with the last preceding sub-clause and such possession shall be subject to the rights which exist in respect of telegraph lines electric cables and electricity transmission lines referred to in Clause 7 hereof and the lines of pipes referred to in Clause 8 hereof until such time as B.H.P. with the assistance of the Minister (if required) makes satisfactory arrangements with the Authorities concerned in respect thereof.

**12.**

B.H.P. in respect of the lands agreed to be assured by it to the Minister and A.I.S. in respect of the

lands agreed to be assured by it to the Minister shall respectively 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 from which date the Minister shall be entitled to such rents and profits. 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 (if any) to that date in respect of the lands hereby agreed to be assured by the Minister to the respective Companies from which date B.H.P. or A.I.S. (as the case may be) shall be entitled to such rents and profits and shall pay or bear all such rates taxes assessments and outgoings. All necessary apportionments under this Clause shall be made and adjusted on completion.

**13.**

No error or misdescription of any of the lands agreed to be exchanged under this Agreement shall annul these exchanges or either of them but compensation (if demanded in writing before completion but not otherwise and if the Minister or B.H.P. or A.I.S. (as the case may be) is otherwise entitled thereto under this Agreement) shall be made to or given by the relevant parties hereto as the case may require and should the relevant 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 B.H.P. or A.I.S. (as the case may be) in accordance with the provisions of the *Arbitration Act, 1902*.

**14.**

**(a)**

All objections and requisitions (if any) which under this Agreement the Companies or either of them 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 and within twenty eight days from the date of commencement of this Agreement the Companies shall at their own expense tender to the Crown Solicitor such conveyances and assurances of the lands described in the First and Third Schedules hereto as may be necessary.

**(b)**

All objections and requisitions which under this Agreement the Minister shall be entitled to make shall be made and delivered to B.H.P. or to A.I.S. (as the case may be) or to its Solicitor 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 and within twenty eight days from the date of commencement of this Agreement the Crown Solicitor of the State of New South Wales shall at the expense of the Minister tender to B.H.P. or to A.I.S. (as the case may be) or its Solicitor a Memorandum or Memoranda of Transfer of the lands described in the Second and Fourth Schedules hereto in favour of the Minister.

**15.**

If any of the parties hereto shall be unable or unwilling to comply with or remove any objection or requisition which any other of them shall be entitled to make under this Agreement such party shall whether any attempt to remove or comply with such objection or requisition has been made or not and notwithstanding any negotiations or litigation whatsoever in respect thereof be at liberty to rescind this Agreement and in no case shall the party so rescinding the Agreement be liable for any damages costs charges expenses and losses whatsoever incurred by any other party in and about

this Agreement AND IT IS HEREBY DECLARED that seven days' notice of the intention of any of the parties hereto to rescind this Agreement shall be deemed reasonable notice of such intention under Section 56 of the *Conveyancing Act, 1919-1954*.

**16.**

All notices and documents hereunder may be served as mentioned in Section 170 of the *Conveyancing Act, 1919-1954*.

**17.**

Clauses 2 to 6 inclusive of the Conditions of Sale contained Schedule III of the *Conveyancing Act, 1919-1954*, shall not apply to this Agreement except insofar as the same or any part thereof are incorporated herein.

**18.**

Subject to Clause 39 of this Agreement the exchanges provided for in this Agreement shall be completed on a date within two months from the date of commencement of this Agreement (or such extended period as the Minister may agree to) by the Companies handing over to the Crown Solicitor at his office all the necessary assurances to the Minister and the Crown Solicitor handing over to the respective Companies all necessary assurances to each of them and the date on which such assurances are so handed over shall be treated as the date of completion of such exchanges.

**19.**

Within one month from the date of completion the Minister will serve or cause to be served notices terminating the rights of the Vacuum Oil Company Proprietary Limited and The Commonwealth Oil Refineries Limited under existing agreements with the Minister relating to oil pipelines in and over the said land described in the First Part of the Third Schedule hereto and pending the termination of such agreements the possession by A.I.S. of such land shall be subject to the rights of those Companies.

**20.**

The Companies and each of them hereby agree to grant to the Minister his successors or assigns without compensation easements and rights with respect to the erection operation and maintenance of all such additional electricity transmission and/or telephone lines as the Minister his successors or assigns may at any time hereafter desire to erect or construct in over or upon the lands described in the First and Third Schedules hereto or any part or parts thereof along routes approved of by the Company concerned and such easements and rights shall if the Minister his successors or assigns requires be so granted in a form similar to that set out in the Second Part of the Seventh Schedule hereto with respect to the electricity transmission lines and in a form similar to that set out in the Third Part of the Seventh Schedule hereto with respect to the telephone lines and shall include the land along the route of each such line to the width of 60 feet in the case of the electricity transmission lines and to such width not more than 60 feet along the route of the line as the Minister his successors or assigns thinks necessary in the case of telephone lines.

The Act ratifying this Agreement shall provide that the provisions of this Clause shall bind the lands described in the First and Third Schedule hereto and every part thereof into whosoever hands the same may come and bind all persons interested therein.

**21.**

The Companies hereby jointly and severally covenant with the Minister that upon being requested in writing so to do they, and each of them will grant to the Minister an easement and rights by a reasonable route over lands owned by the Companies or one of them (as the case may be) to construct and maintain an electricity transmission line for the purpose of operating electric dredges for and in connection with the construction and maintenance of the Inner Harbour.

**22.**

**(a)**

Subject to the provisions hereinafter appearing B.H.P. shall have the exclusive right from time to time and at all times during the period of ninety nine (99) years calculated from the date of commencement of this Agreement to construct and erect wharves and other facilities for loading and unloading goods and other structures upon any and every part of that portion of the Inner Harbour fronting the proposed boundary of the land of B.H.P. commencing near the left bank of Allan's creek (as re-aligned pursuant to this Agreement) and extending south easterly for a distance of approximately 3725 feet to a point near the western boundary of Main Road 295 as indicated by the letters "A" and "B" on the plan hereunto annexed and extending to a distance of 50 feet outwards into the Inner Harbour and which portion of the Inner Harbour is hereinafter referred to as the "said portion".

**(b)**

In consideration of the right conferred upon B.H.P. by sub-clauses (a) and (c) of this clause B.H.P. will pay to the Minister by way of rental firstly the annual sum of Five hundred pounds (£500) (subject to re-appraisal as provided by sub-clause (f) of this clause) in each and every year during the said period of ninety-nine (99) years the first of such payments to be made by B.H.P. within one month from the commencement of this Agreement and the subsequent payments to be annually in advance upon the anniversary of the date of the commencement of this Agreement and secondly the annual sums specified as additional rental in Clause 23 hereof in the amounts and at the times specified in the said Clause 23.

**(c)**

Upon completion of any wharf or other structure constructed or erected by or on behalf of B.H.P. under the provisions of this Clause B.H.P. shall be entitled to receive for the balance then unexpired of the said period of ninety-nine (99) years a lease of the part of the said portion upon which such wharf or other structure has been constructed or erected and B.H.P. shall not be called upon to pay in respect of any such lease any rental in addition to the said sums referred to in sub-clause (b) of this Clause and Clause 23 hereof PROVIDED HOWEVER that any lease or leases granted pursuant to this sub-clause shall include conditions in or to the effect of the conditions set out in the Eighth Schedule hereto.

**(d)**

All wharves structures and facilities which B.H.P. has the right to construct and erect pursuant to subclause (a) of this clause shall be of such type of construction as the Minister may acquire and shall be constructed and erected without cost or expense to the Minister in a proper and workmanlike manner to the satisfaction of the Minister and in accordance in all respects with specifications and plans previously approved in writing by the Minister. The specifications and plans referred to in this sub-clause shall be furnished by B.H.P. to the Minister without cost or expense to the Minister.

**(e)**

B.H.P. shall pay to the Minister on demand all costs and fees incurred and the cost of all surveys and plans made in connection with any lease granted to B.H.P. in accordance with the provisions of sub-clause (c) of this Clause or in connection with any wharf facility or other structure erected or proposed to be erected by B.H.P. in accordance with the provisions of this Clause.

**(f)**

The said sum of five hundred pounds (£500) shall be liable to reappraisal at the expiration of each period of twenty five years during the same period of ninety nine years and in every such case the re-appraised annual payment 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 by the Land and Valuation Court.

**(g)**

The Act ratifying this Agreement shall provide—

- (i) That for the purpose of the Local Land Board determining the annual payment 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, 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 payment under this subclause 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: and
- (iii) That for the purpose of dealing with any and every such appeal the Land and Environment 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.

**(h)**

The Minister agrees with B.H.P. that he will not at any time during the said period of ninety nine years grant to any person without the consent of B.H.P. any right of occupancy of or any right to erect or construct or place any structure upon in or over the bed of the Inner Harbour adjoining or adjacent to the said portion which would interfere unreasonably with the exercise by B.H.P. of any of the rights granted to it under the provisions of this clause AND in any case shall not grant any such right closer to the said portion than a line generally 60 feet distant therefrom.

**(i)**

Nothing in this Agreement shall be construed to imply any right in B.H.P.—

- (i) to erect wharves or other facilities for loading or unloading goods or any other structure upon any part of the Inner Harbour in addition to the rights expressly conferred upon such Company by this clause:
- (ii) to deny to the Minister his agents servants and/or contractors access to the said portion for the purposes of the construction and/or the maintenance of the Inner Harbour:

(iii) to prevent or restrain the Minister his agents servants or contractors from removing from the said portion soil sand gravel rock and other materials which in the opinion of the Minister should be removed for the purpose of the construction and/or the maintenance of the Inner Harbour:

(iv) to direct the Minister as to the order in which berths shall be made available to B.H.P.

**23.**

**(a)**

When construction of the Inner Harbour has proceeded to the stage at which there is available for use along the frontage of the said portion a berth of 500 feet in length and sixty feet in width dredged to a depth of 28 feet below Indian Spring Low Water with a swinging basin 700 feet wide (including the width of the berth) dredged to a depth of 25 feet below Indian Spring Low Water and an approach channel not less than 250 feet wide from the existing Port Kembla Harbour to the said swinging basin and berth dredged to a depth of 25 feet below Indian Spring Low Water the Director shall within fourteen days issue to B.H.P. a certificate that such berth swinging basin and approach channel are available for use and certifying the date on which they first became available for use.

**(b)**

Upon the Minister making the first berth of 500 feet the swinging basin and the approach channel available as provided in subclause (a) of this clause B.H.P. covenants that it will pay by way of additional rental to the Minister in each and every year of the unexpired portion of the said period of ninety-nine years from the date of the commencement of this Agreement annual payments as follows:—

First	Year	...£50,000
Second	"	...£48,000
Third	"	...£46,000
Fourth	"	...£44,000
Fifth	"	...£42,000
Sixth	"	...£40,000
Seventh	"	...£38,000
Eighth	"	...£36,000
Ninth	"	...£34,000
Tenth	"	...£32,000
Eleventh	"	...£30,000
Twelfth	"	...£28,000
Thirteenth	"	...£26,000
Fourteenth	"	...£24,000



Fifteenth	"	...£22,000	
Sixteenth	" and each subsequent year —at the rate of	...£20,000	for each year and a proportionate part thereof for any period less than a year

the first of such payments shall be made within three months of the date of the issue of the certificate referred to in subclause (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 berth swinging basin and approach channel first became available for use.

**(c)**

The Minister shall not be entitled to any increase in the annual payments by way of additional rental mentioned in the last preceding subclause in respect of further berths along the frontage of the said portion made available to B.H.P. nor shall such payments be subject to re-appraisalment.

**24.**

**(a)**

B.H.P. covenants with the Minister that B.H.P. shall pay to the Minister the costs and expenses incurred by him in carrying out—

- (i) such original dredging or other work as may be necessary to provide a berth 500 feet long and 60 feet wide with a depth of not less than 28 feet below Indian Spring Low Water along the frontage of the said portion as provided in subclause (a) of Clause 23 hereof, and
- (ii) such further dredging or other work as may from time to time be required by B.H.P. for the provision of additional berths 60 feet wide along the frontage of the said portion or for the maintenance or deepening of berths PROVIDED HOWEVER that the Minister shall not be required to dredge or remove from the berths solid matter dropped from the wharves landing places or vessels using the berths.

**(b)**

Notwithstanding the covenant hereinbefore contained on the part of B.H.P. to pay to the Minister the costs and expenses incurred by him in carrying out the work referred to in subclause (a) of this Clause B.H.P. shall be permitted to carry out itself and at its own expense all the dredging as may be required from time to time by B.H.P. for the provision of additional berths 60 feet wide along the frontage of the said portion or the maintenance and deepening of berths subject to the approval of the Minister in writing being first obtained and upon such conditions as may be determined by the Minister.

**(c)**

The costs and expenses incurred by the Minister in carrying out the work provided by sub-clause (a) of this Clause shall be paid by B.H.P. to the Minister on demand and a Certificate of the Director of the amount of such costs and expenses incurred by the Minister shall be prima facie evidence thereof.

**25.**

**(a)**

B.H.P. hereby covenants that without cost to the Minister and when called upon in writing to do so by the Minister it shall realign and deepen the junction of Allan's Creek with the Inner Harbour the whole of the work to be carried out in accordance with plans prepared without expense to the Minister and approved by the Minister and within such time as he may specify PROVIDED HOWEVER that the intersection of the left bank of Allan's Creek at a height of ten (10) feet above Indian Spring Low Water with the south western boundary of the 8 acres 3 roods 39 perches described in the Second Part of the Second Schedule hereto to be acquired from B.H.P. shall be not less than three hundred (300) feet south easterly from the angle in that boundary formed by lines bearing 342 degrees 57 minutes and 312 degrees 57 minutes and marked with the letter "C" in the plan hereunto annexed AND PROVIDED FURTHER that the outlet of Allan's Creek shall be deepened to not less than 15 feet below Indian Spring Low Water and the bed of the creek shall be evenly graded from that depth at its outlet to the Inner Harbour to its existing depth at a point 300 feet upstream from the aforesaid intersection of the left bank of Allan's Creek with the said south western boundary.

**(b)**

B.H.P. hereby covenants that when the realignment and deepening of Allan's Creek has been completed in accordance with the plans approved by the Minister it shall at all times maintain the Creek in accordance with such plans without expense to the Minister.

**26.**

**(a)**

The Companies hereby jointly and severally covenant with the Minister that they or one of them without cost to the Minister shall upon the date on which the Director shall have certified that a berth 500 feet long a swinging basin and approach channel were first available for use as provided in sub-clause (a) of Clause 23 of this Agreement have commenced or caused to be commenced the erection and construction on lands at Port Kembla or thereabouts owned by the Companies or one of them of a blast furnace or furnaces adjacent to the Inner Harbour and other works and shall thereafter continuously proceed or cause to be proceeded with such erection and construction so that at the expiration of the period of six years from the date of such Certificate or of such further period, if any, as the Auditor General in writing may allow, the Companies or one of them shall have without cost to the Minister erected and constructed or caused to be erected and constructed upon such lands and upon the said portion after the date or commencement of this Agreement works and improvements to the cost of Twenty million pounds (£20,000,000) for the purpose of carrying on industrial operations on such lands and the Companies hereby jointly and severally covenant with the Minister to erect and construct such works and improvements to the said cost after the date of commencement of this Agreement and before the expiration of the said period of six years (or further period, if any, allowed in writing by the Auditor-General as aforesaid) accordingly.

**(b)**

On the event of the Companies failing to erect and construct or to cause to be erected or constructed upon the said lands and the said portion such works and improvements to a cost of Twenty million pounds (£20,000,000) as required by the last preceding sub-clause within the time therein provided the Companies hereby jointly and severally covenant 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 amount of Twenty million pounds (£20,000,000) exceeds the cost of such works and improvements erected and constructed or caused to be erected and constructed by the Companies or one of them upon the said lands and the said portion within the time specified in the last preceding subclause.

**(c)**

A certificate by the Auditor General of the cost of the works and improvements erected and constructed or caused to be erected and constructed by the Companies or one of them after the date of commencement of this Agreement and before the expiration of the said period of six years (or such further period if any allowed by the Auditor General in writing) upon the said lands and the said portion for the purpose of carrying on industrial operations thereon shall be final and conclusive and binding upon the parties hereto.

**(d)**

The Companies and each of them shall from time to time produce all books vouchers documents papers and evidence to, and allow the works and improvements to be inspected by the Auditor General (and persons authorised by him) for the purposes of subclauses (a) (c) and (e) of this Clause.

**(e)**

If through any cause beyond the control of the Companies and not arising from or due to or contributed to by any neglect default or misconduct of the Companies or either of them or their or its agents or servants delay occurs in the erection or construction by the Companies or either of them of such works and improvements as provided by subclause (a) of this clause the Companies or either of them 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 subclause (e) but not otherwise allow by writing under his hand such extension of time as he may think adequate.

**(f)**

Unless the Companies or either of them 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 Companies 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 their or its liability to erect and construct such works and improvements as provided by subclause (a) of this Clause within the time as therein provided or of any other liability or obligation of the said Companies and each of them under this Agreement.

**(g)**

The term "works and improvements" in this Clause includes wharves and other structures on the said portion and plant and equipment installed thereon and buildings mills furnaces ovens railways levelling of land reclamation of land bridges roads drains and canals rolling stock and transport equipment and works and erections and other appurtenances to any of the foregoing and also includes fixed plant and machinery of any description and all costs and charges

associated therewith.

**27.**

Upon ratification of this Agreement and the authorisation of the construction of the Inner Harbour at Port Kembla by the Parliament of New South Wales the Minister will proceed with the construction of the Inner Harbour and will use his best endeavours to make available the entrance channel swinging basin and the first berth of 500 feet in length and 60 feet in width referred to in Clause 23 (a) for use by B.H.P. at the date at which that Company shall have completed the construction of a blast furnace and ancillary plant (being part of the works and improvements referred to in Clause 26 (g) hereof) which date is anticipated to be not later than the 31st December 1960 and the Minister shall make available from time to time information to enable B.H.P. to assess when the said entrance channel swinging basin and berth will be completed AND the Minister further agrees that in the event of it not being possible for him to make such entrance channel swinging basin and berth available at the time required by B.H.P. he will be prepared to negotiate with B.H.P. with a view to arranging for the completion of the said entrance channel swinging basin and berth by the date desired by B.H.P.

**28**

**(a)**

B.H.P. hereby agrees with the Minister 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 regulation relate to the imposition collection and payment of tonnage rates and berthing charges shall apply to and in respect of every wharf (which term 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) to be hereafter erected constructed or provided over and along the said portion or upon lands adjoining or adjacent thereto as if the same portion or upon lands adjoining or adjacent thereto as if the same were a public wharf and that accordingly tonnage rated and berthing charges in accordance with the said Acts and regulations will be payable in respect of all vessels berthing at any such wharf subject to the following exceptions, such exceptions being applicable only during the period of ninety nine years calculated from the date of commencement of this Agreement and only to vessels whilst berthed at any such wharf namely that:—

- (i) Any vessel carrying loading or discharging only cargo the property of the Companies or either of them and/or of any other company or companies in which the Companies or either of them holds at least one-third of the share capital shall be exempt from the payment of such tonnage rates and berthing charges:
- (ii) Any vessel carrying loading or discharging cargo part only of which is the property of the Companies or either of them and/or of any other company or companies in which the Companies or either of them holds at least one-third of the share capital shall be granted a rebate of such tonnage rates and berthing charges to the extent of the ratio which the part of the cargo which is the property of the Companies or either of them and/or of any other company or companies in which the Companies or either of them holds at least one-third of the share capital bears to the whole of such cargo:
- (iii) Any vessel the property of or chartered by the Companies or either of them or the property

of or chartered by any other company in which the Companies or either of them holds at least one-third of the share capital 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)**

B.H.P. 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 wharf to which the provisions of subclause (a) of this Clause apply as may be necessary to enable the Maritime Services Board of New South Wales or other proper authority to determine the tonnage rates and berthing charges payable in respect of such vessels in accordance with subclause (a) of this Clause and the Act ratifying this Agreement, and B.H.P. shall allow and provide every reasonable facility for the Maritime Services Board of New South Wales or other proper authority and any person authorised by such Board or authority at all reasonable times to inspect and make copies of or extracts from such records AND B.H.P. shall at such times as are required by such Board or authority during the period of ninety nine years referred to in Clause 22 hereof furnish to such Board or other authority all such particulars as such Board or other authority may deem necessary for the purpose of enabling such Board of authority to ascertain and determine the tonnage rates and berthing charges payable in respect of all vessels berthing at any wharf to which the provisions of subclause (a) of this Clause apply.

**29.**

The Companies for themselves and each of them and each of their successors and assigns hereby covenant with the Minister that the Companies and each of them and each of their successors and assigns will not at any time without the written consent of the Minister transport carry or permit to be transported or carried or to pass over the said portion any coal or coke other than as hereinafter provided, or use or permit or suffer to be used the wharves facilities and other structures to be erected along and over the said portion or any of them for or in the manner in connection with the shipment of any coal or coke, other than—

- (i) coal or coke shipped at the wharves cranes and other facilities for shipment at Port Kembla of the Minister or the Commissioner for Railways of the said State or the Maritime Services Board of New South Wales; and
- (ii) coal or coke shipped in a ship the property of or chartered by the Companies or either of them or the property of or chartered by any other company in which the Companies or either of them hold at least one-third of the share capital for the purpose of bunkering that ship; and
- (iii) coal or coke mined or produced by the Companies or either of them or any Company in which the Companies or either of them holds at least one-third of the share capital PROVIDED that such coal and coke is shipped for the sole purpose of being used and consumed by the Companies or either of them or any company in which the Companies or either of them holds at least one-third of the share capital PROVIDED ALWAYS that any consent given by the Minister under this clause shall not operate to extend the exemptions referred to in clause 28 hereof and coal and coke shipped pursuant to any such consent shall not be "cargo" within the exemptions referred to in the said Clause 28.

**30.**

Nothing in this Agreement contained shall affect in any way the liability of the Companies or either of them or any person or corporation 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.

**31.**

The Minister agrees that he will at the request of the Companies or one of them grant to the Companies or one of them the right to construct across such part of the land described in the First Part of the Fourth Schedule hereto as may be agreed upon an additional salt water channel for the purpose of obtaining salt water from the present Port Kembla Harbour and to construct an additional salt water channel for the purpose of obtaining salt water from either the present Port Kembla Harbour or the Inner Harbour in such position as the Minister and the Companies or either of them may agree upon, and in each case according to such plans as the Minister may approve and upon such conditions as the Minister may require.

**32.**

**(a)**

Neither B.H.P. nor A.I.S. shall assign transfer or part with the benefit of this Agreement or any right or privilege thereunder without the previous consent in writing of them Minister first had and obtained which consent may be given upon condition that the assignee shall execute a deed whereby he or it covenants with the Minister to observe and perform the provisions of this Agreement on the part of the Companies or either of them (as the case may be) to be observed and performed in the same manner in all respects as if the name of such assignee had been inserted in this Agreement in place of the name of the Company so assigning.

**(b)**

Any consent by the Minister to an assignment under this Clause shall not discharge the assigning Company from any liability under this Agreement and shall extend only to the permission actually given and shall not prejudice or affect any of the Minister's rights or remedies in respect of any breach of the provisions of this Agreement.

**(c)**

No assignment under this Clause shall have the effect of increasing in any way the actual or contingent liability of the Minister or Her Majesty under this Agreement, whether by way of damages or other wise, to the intent that the Minister or Her Majesty shall not be liable in any case or to any extent in or to which the Minister or Her Majesty would not have been liable had the assignment not been made.

**33.**

Until such time as the Minister shall have provided access from Flinders Street to the Northern Breakwater of Port Kembla Harbour and to the southern boundary of the Inner Harbour east of Main Road 295 (the Northern Breakwater and the said portion of the southern boundary of the Inner Harbour hereafter in this Clause being referred to as "the said area") along and over the land described in the First Part of the Fourth Schedule to this Agreement the Companies agree that they shall permit the Minister his servants and agents the Members of the Maritime Services Board their servants and agents and all other persons who with lawful purpose are seeking access to the said area to have a right of access with or without vehicles plant materials and equipment along and

over that route passing over lands owned by or to be conveyed pursuant to this Agreement to B.H.P. and A.I.S. which is now used for access to the said area or along and over such other reasonable route passing over lands of the Companies or either of them as may be agreed to by the Companies and the Minister.

**34.**

The Companies for themselves their successors and assigns hereby jointly and severally covenant with the Minister that they shall at all times permit the Minister the Members of the Maritime Services Board the Commissioner for Railways of the State of New South Wales their respective successors and their respective servants and agents to have access with or without vehicles plant materials and equipment by any reasonable route over lands of the Companies or either of them for purposes relating to the construction operation and maintenance of the Inner Harbour or any extension thereof that may be authorised from time to time.

**35.**

The Companies hereby jointly and severally covenant with the Minister that they will from time to time and at all times hereafter indemnify and keep indemnified Her Majesty Her Heirs and Successors and the Minister and 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 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 of or 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 any one or more of them the Companies or either of them their or either of their successors or assigns 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 and privileges by this Agreement to be conferred on or granted to the Companies or in connection with or with respect to the performance by either or both of the companies of any of the obligations or duties by this Agreement imposed upon the Companies or either of them.

**36.**

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

**37.**

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 Companies or either of them shall in addition to being read and construed as conditions of this Agreement be also read and construed as agreements whereby the Companies or one of them (as the case may be) respectively covenant with the Minister to observe and perform the said provisions and conditions.

**38.**

If the Companies or either of them shall omit to fulfil observe or perform the provisions of this Agreement or any of them on the part of the Companies or either of them to be fulfilled observed or performed the Minister may by notice in writing served on the Company in default call upon such 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 both the Companies shall fail after service of the said notice

upon the Company in default to rectify the said default within such reasonable time the Minister may without prejudice to any other remedy under this Agreement by reason of such default do all such acts and things as the Minister may think necessary or desirable to remedy the default and the Company in default 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 such Company in a Court of competent jurisdiction and a Certificate of the Director of the amount of such costs and expenses incurred by the Minister shall be primary facie evidence thereof and the Minister shall not incur any liability towards the Companies or either of them 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 Companies or either of them 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.

**39.**

In the event of the Minister acquiring any of the lands described in the Second and Fourth Schedules hereto by way of resumption such acquisition shall be deemed to have been made in pursuance of the exchanges contemplated by this Agreement and the Company from which such land is resumed shall not be entitled to receive compensation in respect of such resumption other than the conveyance to it of the lands described in the First or Third Schedule hereto (as the case may be); and the date of the publication of the notification of resumption shall be accepted as the sate of completion for the purposes of Clause 12 of the lands referred to in that notification of resumption.

**40.**

**(a)**

Any notice or communication required to be or that may be given to the Companies or either of them under or in connection with this Agreement by or on behalf of the Minister or Her Majesty Her Heirs or Successors shall be deemed to have been duly given if signed by the Director.

**(b)**

Any notice or communication required to be or that may be given to B.H.P. or to A.I.S. under or in connection with this Agreement by the Maritime Services Board of New South Wales shall be deemed to have been be duly given if signed by the Secretary to the Board or by the Harbour Master at Port Kembla or by the person for the time being acting in either of such offices.

**41.**

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 save as provided in sub-clause (c) of Clause 11 hereof 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 31st day of December 1955 it shall become null and void.

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

**FIRST SCHEDULE.**

**First Part.**

All that piece or parcel of land situate in the City of Greater Wollongong, Parish of Wollongong and



County of Camden being part of the site of Kembla Road shown on plan catalogued R12998-1603:

Commencing on the western side of Kembla Road at the northernmost corner of the land in Miscellaneous Plan of Subdivision (R.P.) registered No. 82626; and bounded thence on the west by that side of that road being lines bearing successively 355 degrees 45 minutes 10 seconds 770 feet  $6\frac{3}{4}$  inches and 351 degrees 14 minutes 30 seconds 590 feet; on the north-east by a line bearing 137 degrees 43 minutes 15 seconds 119 feet  $6\frac{1}{8}$  inches to the eastern side of Kembla Road aforesaid; on the east by that side of that road being lines successively bearing 171 degrees 14 minutes 30 seconds 492 feet  $11\frac{1}{2}$  inches and 175 degrees 44 minutes 30 seconds 743 feet 5 inches; and on the south-east by a line bearing 241 degrees 32 minutes 20 seconds 72 feet 6 inches to the point of commencement,—and having an area of 1 acre 3 roods  $3\frac{3}{4}$  perches or thereabouts.

#### **Second Part.**

All that piece or parcel of land situate as aforesaid being part of the land resumed for the construction of a Deepwater Harbour at Port Kembla by notification in Gazette of 1st September, 1900:

Commencing on the western side of Kembla Road at the southernmost north-eastern corner of the 507 acres 2 roods  $1\frac{1}{4}$  perches parcel of land shown in plan annexed to dealing G164265; and bounded thence on the south-west by part of the generally eastern boundary of that land being 131 feet  $7\frac{5}{8}$  inches of the arc of a circle of radius 700 feet the centre of which lies to the north-east of the chord which bears 307 degrees 34 minutes 15 seconds for a distance of 131 feet  $5\frac{3}{8}$  inches and a line bearing 312 degrees 57 minutes 52 feet 4 inches; on the north by a line bearing 91 degrees 32 minutes 40 seconds 75 feet  $7\frac{1}{4}$  inches; on the north-east by a line bearing 137 degrees 43 minutes 15 seconds 88 feet  $4\frac{3}{4}$  inches to the aforesaid western side of Kembla Road; and on the east by that side of that road bearing 171 degrees 14 minutes 30 seconds 48 feet  $11\frac{1}{4}$  inches to the point of commencement,—and having an area of 21 perches or thereabouts.

### **SECOND SCHEDULE.**

#### **First Part.**

All that piece or parcel of land situate in the City of Greater Wollongong, Parish of Wollongong and County of Camden being part of the land shown in plan annexed to dealing G.164265 and being also part of the land comprised in Certificate of Title Volume 6913 Folio 230:

Commencing at the northernmost north-eastern corner of the 507 acres 2 roods  $1\frac{1}{4}$  perches parcel of land shown in plan annexed to dealing G.164265; and bounded thence on the south-east by part of the northernmost south-eastern boundary of that land bearing 192 degrees 57 minutes 300 feet; on the south-west by a line bearing 324 degrees 24 minutes 50 seconds 508 feet  $5\frac{1}{4}$  inches to the northernmost north-eastern boundary of that land; and on the north-east by part of that boundary bearing 108 degrees 26 minutes 45 seconds 382 feet 9 inches to the point of commencement,—and having an area of 1 acre 1 rood  $9\frac{3}{4}$  perches or thereabouts.

#### **Second Part.**

All that piece or parcel of land situate as aforesaid being part of the land shown in plan annexed to dealing G.164265 and being also part of the land comprised in Certificate of Title Volume 6913 Folio 230:

Commencing on the generally eastern boundary of the 507 acres 2 roods  $1\frac{1}{4}$  perches parcel of land shown in plan annexed to dealing G.164265 at a point bearing 192 degrees 57 minutes and distant

2713 feet 7½ inches from the northernmost north-eastern corner of that land; and bounded thence on the north-east by part of that boundary being 2964 feet 6 inches of the arc of a circle of radius 2830 feet 10¾ inches the centre of which lies to the north-east of the chord which bears 162 degrees 57 minutes 2830 feet 10¾ inches to the said generally eastern boundary of that land; on the south-west by lines successively bearing 312 degrees 57 minutes 1334 feet 5 inches and 342 degrees 57 minutes 519 feet 7⅞ inches; and on the north-west by a line bearing 12 degrees 57 minutes 1334 feet 5 inches to the point of commencement,—and having an area of 8 acres 3 roods 39 perches or thereabouts.

### **THIRD SCHEDULE.**

#### **First Part.**

All that piece or parcel of land situate in the City of Greater Wollongong Parish of Wollongong and County of Camden being part of the land resumed for the construction of a Deepwater Harbour at Port Kembla by notification in Gazette of 1st September, 1900:

Commencing on the south-eastern boundary of the 19 acres 2 roods 29 perches parcel of land in Real Property Application 32740 at a point bearing 52 degrees 39 minutes and distant 106 feet 8⅞ inches from the southernmost corner of that land; and bounded thence on the north-west by part of that south-eastern boundary being a line bearing 52 degrees 39 minutes 548 feet 2 inches, 372 feet 8⅞ inches of the arc of a circle of radius 507 feet 10 inches the centre of which lies to the north-west of the chord which bears 31 degrees 37 minutes 35 seconds for a distance of 364 feet 1½ inches and another line bearing 10 degrees 36 minutes 10 seconds 565 feet 8½ inches; on the north-east by lines successively bearing 126 degrees 40 minutes 25 feet 9⅞ inches and 176 degrees 30 minutes 69 feet 1⅞ inches to the generally western boundary of the 9 acres 2 roods 16 perches parcel of land in Real Property Application 32740; generally on the east by part of that boundary of that land being a line bearing 190 degrees 36 minutes 10 seconds 487 feet 4¼ inches, 388 feet 6¼ inches of the arc of a circle of radius 823 feet 2¼ inches the centre of which lies to the east of the chord which bears 177 degrees 4 minutes 55 seconds for a distance of 384 feet 11⅞ inches and another line bearing 163 degrees 33 minutes 40 seconds 302 feet 7⅞ inches; on the south-east by a line bearing 258 degrees 10 minutes 40 feet 1⅝ inches to the north-eastern boundary of the 6 acres 2 roods 32½ perches of land in Real Property Application 32740; on the south-west by part of that boundary being a line bearing 343 degrees 33 minutes 40 seconds 299 feet 4¾ inches and 244 feet 1¼ inches of the arc of a circle of radius 863 feet 2½ inches the centre of which lies to the east of the chord which bears 351 degrees 39 minutes 50 seconds for a distance of 243 feet 3⅝ inches to the northernmost corner of the said 6 acres 2 roods 32½ perches parcel of land; again on the south-east by part of the north-western boundary of that land being 237 feet 2¾ inches of the arc of a circle of radius 547 feet 10 inches the centre of which lies to the north-west of the chord which bears 220 degrees 14 minutes 45 seconds for a distance of 235 feet 4⅝ inches and a line bearing 232 degrees 39 minutes 502 feet 2⅞ inches; and on the south by a line bearing 273 degrees 42 minutes 20 seconds 60 feet 10¾ inches to the point of commencement,—and having an area of 1 acre 3 roods 20½ perches or thereabouts.

#### **Second Part.**

All that piece or parcel of land situate as aforesaid being part of the land resumed for the construction of a Deepwater Harbour at Port Kembla by notification in Gazette of 1st September, 1900:

Commencing on the eastern side of Kembla Road at the north-western corner of the 19 acres 2 roods 29 perches parcel of land in Real Property Application 32740; and bounded thence on the north by a line bearing 91 degrees 32 minutes 40 seconds 565 feet 4¾ inches to the generally northern boundary

of that land; and generally on the south by part of that boundary being 582 feet  $\frac{1}{4}$  inch of the arc of a circle of radius 700 feet the centre of which lies to the north of the chord which bears 271 degrees 32 minutes 40 seconds for a distance of 565 feet  $4\frac{3}{4}$  inches to the point of commencement,—and having an area of 2 roods  $3\frac{1}{4}$  perches or thereabouts.

#### **FOURTH SCHEDULE.**

##### **First Part.**

All that piece or parcel of land situate in the City of Greater Wollongong, Parish of Wollongong and County of Camden being part of the 9 acres 2 roods 16 perches parcel of land in Real Property Application 32740 and being also part of the land comprised in Certificate of Title Volume 4784 Folio 24:

Commencing on the Mean High Water Mark of the South Pacific Ocean at the easternmost corner of the 1 rood  $16\frac{1}{2}$  perches parcel of land shown in plan B annexed to dealing F.949963; and bounded thence on the south-west by the north-eastern boundary of that land bearing 288 degrees 37 minutes 10 seconds 371 feet  $\frac{1}{8}$  inch; again on the south-west by part of the generally western boundary of the 9 acres 2 roods 16 perches parcel of land in Real Property Application 32740 bearing 343 degrees 33 minutes 40 seconds 96 feet  $1\frac{1}{4}$  inches; on the north-west by a line bearing 78 degrees 10 minutes 133 feet  $10\frac{3}{8}$  inches; generally on the west by lines successively bearing 348 degrees 10 minutes 235 feet  $7\frac{1}{8}$  inches, 350 degrees 22 minutes 406 feet  $6\frac{1}{2}$  inches and 356 degrees 30 minutes 495 feet  $9\frac{3}{8}$  inches to the generally western boundary of the aforesaid 9 acres 2 roods 16 perches parcel of land in Real Property Application 32740; again on the north-west by part of that boundary bearing 10 degrees 36 minutes 10 seconds 144 feet  $7\frac{1}{4}$  inches to the north-western corner of that land; on the north-east by the north-eastern boundary of that land bearing 120 degrees 30 seconds 185 feet 1 inch to the aforesaid Mean High Water Mark of the South Pacific Ocean; and generally on the east by that Mean High Water Mark southerly to the point of commencement,—and having an area of 6 acres 2 roods  $4\frac{3}{4}$  perches or thereabouts.

And also all that piece or parcel of land situate as aforesaid being part of the 19 acres 2 roods 29 perches parcel of land in Real Property Application 32740 and being also part of the land comprised in Certificate of Title Volume 4784 Folio 24:

Commencing at the north-eastern corner of the 19 acre 2 rood 29 perches parcel of land in Real Property Application 32740; and bounded thence on the south-east by part of the south-eastern boundary of that land bearing 190 degrees 36 minutes 10 seconds 80 feet  $2\frac{1}{4}$  inches; on the south-west and south by lines bearing respectively 306 degrees 40 minutes 102 feet  $9\frac{3}{8}$  inches and 271 degrees 32 minutes 40 seconds 307 feet 4 inches to the generally northern boundary of that land; and generally on the north by part of that boundary being 43 feet  $3\frac{1}{4}$  inches of the arc of a circle of radius 700 feet the centre of which lies to the north-west of the chord which bears 65 degrees 57 minutes 10 seconds for a distance of 43 feet  $3\frac{1}{8}$  inches and 379 feet  $\frac{1}{4}$  inch of the arc of a circle of radius 400 feet the centre of which lies to the south of the chord which bears 91 degrees 19 minutes 50 seconds for a distance of 365 feet  $\frac{1}{4}$  inch to the point of commencement,—and having an area of 1 rood  $37\frac{1}{4}$  perches or thereabouts.

##### **Second Part.**

All that piece or parcel of land situate as aforesaid being part of the 6 acres 2 roods  $32\frac{1}{2}$  perches parcel of land in Real Property Application 32740 and being also part of the land comprised in Certificate of Title Volume 4784 Folio 24:

Commencing on the north-western boundary of the 6 acres 2 roods 32½ perches parcel of land in Real Property Application 32740 at a point bearing 52 degrees 39 minutes and distant 102 feet 6½ inches from the north-western corner of that land; and bounded thence on the north-west by part of that boundary bearing 52 degrees 39 minutes 76 feet 1½ inches; on the north by a line bearing 93 degrees 42 minutes 20 seconds 672 feet 9⅞ inches to the north-eastern boundary of the said 6 acres 2 roods 32½ perches parcel of land; on the north-east by part of that boundary bearing 163 degrees 33 minutes 40 seconds 71 feet 3⅞ inches to the north-eastern corner of the 1 acre 1 rood 27¼ perches parcel of land in Plan B annexed to dealing F.949963; on the south-west and south by the north-eastern and the northern boundaries of that land respectively bearing 288 degrees 37 minutes 10 seconds 65 feet 8 inches and 273 degrees 42 minutes 20 seconds 691 feet 3 inches to the point of commencement,—and having an area of 3 roods 12¼ perches or thereabouts.

### **Third Part.**

All that piece or parcel of land situate as aforesaid being part of the 19 acres 2 roods 29 perches parcel of land in Real Property Application 32740 and being also part of the land comprised in Certificates of Title Volume 4784 Folio 24 and Volume 6784 Folio 206:

Commencing on the eastern side of Kembla Road at the southernmost corner of the said 19 acres 2 roods 29 perches parcel of land in Real Property Application 32740; and bounded thence on the west by part of the said eastern side of Kembla Road bearing 355 degrees 44 minutes 30 seconds 5 feet 11⅝ inches; on the north-west by a line bearing 52 degrees 39 minutes 97 feet 8⅞ inches; on the north by a line bearing 93 degrees 42 minutes 20 seconds 7 feet 7⅜ inches to the south-eastern boundary of the said 19 acres 2 roods 29 perches parcel of land; and on the south-east by part of that boundary bearing 232 degrees 39 minutes 106 feet 8⅞ inches to the point of commencement, and having an area of 1¾ perches or thereabouts.

And also, all that piece or parcel of land situate as aforesaid being part of the 1 acre 1 rood 27¼ perches parcel of land in plan B annexed to dealing F.949963; and being also part of the land in Certificate of Title Volume 6784 Folio 206:

Commencing on the eastern side of Kembla Road at the westernmost north-western corner of the said 1 acre 1 rood 27¼ perches parcel of land in Plan B annexed to dealing F.949963; and bounded thence on the north-west by the north-western boundary of that land bearing 52 degrees 39 minutes 102 feet 6½ inches; on the north by part of the northern boundary of that land bearing 93 degrees 42 minutes 20 seconds 7 feet 7⅜ inches; on the south-east by a line bearing 232 degrees 39 minutes 111 feet 6½ inches to the said eastern side of Kembla Road; and on the west by that side of that road bearing 355 degrees 44 minutes 30 seconds 5 feet 11⅝ inches to the point of commencement,—and having an area of 1¾ perches or thereabouts.

### **FIFTH SCHEDULE.**

All that piece or parcel of land situate in the City of Greater Wollongong, Parish of Wollongong and County of Camden being part of the land described in the first part of the third schedule to this agreement:

Commencing on the north-western boundary of the 6 acres 2 roods 32½ perches parcel of land in Real Property Application 32740 at a point bearing 216 degrees 51 minutes 24 seconds and distant 171 feet 8¾ inches from the northernmost corner of that land; and bounded thence on the south-east by part of the north-western boundary of that land aforesaid being 10 feet 10⅝ inches of the arc of a circle of

radius 547 feet 10 inches the centre of which lies to the north-west of the chord which bears 226 degrees 26 minutes 38 seconds for a distance of 10 feet 10<sup>5</sup>/<sub>8</sub> inches; on the south-west by a line bearing 293 degrees 16 minutes 13 seconds 44 feet <sup>1</sup>/<sub>2</sub> inch to the south-eastern boundary of the 19 acres 2 roods 29 perches parcel of land in Real Property Application 32740; on the north-west by part of that boundary being 11 feet <sup>5</sup>/<sub>8</sub> inch of the arc of a circle of radius 507 feet 10 inches the centre of which lies to the north-west of the chord which bears 48 degrees 23 minutes 35 seconds for a distance of 11 feet <sup>5</sup>/<sub>8</sub> inch; and on the north-east by a line bearing 113 degrees 16 minutes 13 seconds 43 feet 7<sup>5</sup>/<sub>8</sub> inches to the point of commencement.

And also all that piece or parcel of land situate as aforesaid being part of the land described in the first part of the third schedule to this agreement.

Commencing on the north-eastern boundary of the 6 acres 2 roods 32<sup>1</sup>/<sub>2</sub> perches parcel of the land in Real Property Application 32740 at a point bearing 175 degrees 12 minutes 56 seconds and distant 136 feet 10<sup>3</sup>/<sub>4</sub> inches from the northernmost corner of that land; and bounded thence on the north by a line bearing 87 degrees 55 minutes 4 seconds 11 feet 4 inches; on the east by a line bearing 177 degrees 55 minutes 4 seconds 10 feet; on the south by a line bearing 267 degrees 55 minutes 4 seconds 10 feet to the north-eastern boundary of the 6 acres 2 roods 32<sup>1</sup>/<sub>2</sub> perches parcel of land in Real Property Application 32740 aforesaid; and on the south-west by part of that boundary being 10 feet 1 inch of the arc of a circle of radius 863 feet 2<sup>1</sup>/<sub>2</sub> inches the centre of which lies to the north-east of the chord which bears 350 degrees 19 minutes 37 seconds for a distance of 10 feet 1 inch to the point of commencement.

#### **SIXTH SCHEDULE.**

All that piece or parcel of land situate in the City of Greater Wollongong, Parish of Wollongong and County of Camden:

Commencing at a point on the northernmost western boundary of the said land firstly described in the first part of the fourth schedule to this agreement bearing 176 degrees 30 minutes and distant 139 feet 4 inches from its intersection with the generally western boundary of the 9 acres 2 roods 16 perches parcel of land in Real Property Application 32740; and bounded thence on the north-east by lines successively bearing 95 degrees 45 minutes 113 feet 6<sup>5</sup>/<sub>8</sub> inches and 118 degrees 44 minutes 87 feet 4<sup>1</sup>/<sub>2</sub> inches to the Mean High Water Mark of the South Pacific Ocean; on the east by that Mean High Water Mark southerly to a point bearing 176 degrees 30 minutes and distant 47 feet 3<sup>1</sup>/<sub>2</sub> inches; on the south-west by lines successively bearing 298 degrees 44 minutes 104 feet 5<sup>5</sup>/<sub>8</sub> inches and 275 degrees 45 minutes 98 feet 11 inches to the said northernmost western boundary of the land firstly described in the first part of the fourth schedule to this agreement; and on the west by part of that boundary bearing 356 degrees 30 minutes 40 feet 6<sup>3</sup>/<sub>4</sub> inches to the point of commencement.

#### **SEVENTH SCHEDULE.**

##### **First Part.**

##### **ELECTRICITY TRANSMISSION LINE AND LIGHTS.**

##### **RESERVATION IN FAVOUR OF THE MINISTER.**

Reserving unto the Minister for Public Works (hereinafter called the Minister) his successors and assigns full and free right and liberty for the Minister his successors and assigns at all times hereafter to use and maintain for the purpose of the transmission of electrical energy and the making and exhibition of signal lights the lines of structures poles cables fittings wires and lights at present constructed erected installed used and laid upon ALL THOSE pieces of land.

(Insert Description)

and also for the purpose aforesaid to construct erect instal lay use work and maintain in and upon the said lands any structures poles cables fittings wires and lights in substitution for or in duplication of or in addition to the said lines of structures poles cables fittings wires and lights and all necessary guys and appliances and also from time to time to inspect the condition of and amend and repair the said Transmission Lines and lights and all structures poles cables wires lights guys fittings and appliances hereinbefore referred to and for the purposes aforesaid or any of them at all times to enter upon go return pass and re-pass through along and over the said lands with or without servants workmen and other persons horses carts waggons motors and any vehicles materials and appliances and to make all necessary excavations in or under the said lands provided always and it is hereby agreed and declared that in the event of the Minister his successors or assigns ceasing at any time to use the said Transmission Lines and structures poles cables wires lights guys fittings and appliances for the conveyance of electricity and the making or exhibition of lights by him or them the same may be removed by the Minister his successors or assigns from the said lands.

### **Second Part.**

#### **ELECTRICITY TRANSMISSION LINE.**

##### **RESERVATION TO BE INCLUDED IN THE ASSURANCE TO THE COMPANY BY THE MINISTER.**

Reserving unto the Minister for Public Works (hereinafter called the Minister) and his successors and assigns full and free right and liberty for the minister his successors and assigns at all times hereafter to use and maintain for the purpose of the transmission of electrical energy the lines of structures, poles, cables, fittings, and wires at present constructed erected installed and laid in and upon all those pieces of land

(Insert Description)

and also for the purpose aforesaid to construct erect instal lay use and maintain in and upon the said lands any structures poles cables fittings or wires in substitution for or in duplication of or in addition to the said lines of structures poles cables fittings and wires and all necessary guys and appliances and also from time to time to inspect the condition of and amend and repair the said Transmission Lines and all structures poles cables wires guys fittings and appliances hereinbefore referred to and for the purposes aforesaid or any of them at all times to enter upon go return pass and repass through along and over the said lands with or without servants workmen and other persons horses carts waggons motors materials and any vehicles and appliances and to make all necessary excavations in or under the said lands provided always and it is hereby agreed and declared that in the event of the Minister his successors or assigns ceasing at any time hereafter to use the said Transmission Lines and structures poles cables wires guys fittings and appliances for the conveyance of electricity by him or them or they may remove the same from the said lands and the Company for itself its successors and assigns of the said lands hereby covenants with the Minister his successors and assigns of the said easement and rights that no building structure or work other than railway lines roads or underground pipes cables or other conduits shall be at any time erected or constructed upon the said lands unless the same shall be first approved of in writing by the Minister his successors or assigns as aforesaid.

### **Third Part.**

#### **RESERVATION IN FAVOUR OF THE MINISTER**

Reserving unto the Minister for Public Works (hereinafter called the Minister) his successors and assigns full and free right and liberty for the Minister his successors and assigns at all times hereafter to use and maintain for the purposes of a telephone line (including the operation thereof by means of electricity) the lines of structures poles cables fittings and wires at present constructed erected

installed or laid in and upon All those pieces of land

(Insert Description)

and also for the purposes aforesaid to construct erect instal lay use and maintain in and upon the said lands any structures poles cables fittings and wires in substitution for or in duplication of or in addition to the said lines of structures poles cables fittings and wires and all necessary guys and appliances and also from time to time to inspect the condition of and amend and repair the said telephone lines and all structures poles cables wires guys fittings and appliances hereinbefore referred to and for the purposes aforesaid or any of them at all times to enter upon go return pass and re-pass through along and over the said lands with or without surveyors servants workmen and other persons horses carts waggons motors and any vehicles and appliances and to make all necessary excavations in or under the said lands provided always and it is hereby agreed and declared that in the event of the Minister his successors or assigns ceasing to use the said telephone lines and structures poles cables wires guys fittings and appliances hereinbefore referred to for the purposes of a telephone line he or they may remove the same from the said lands.

#### **EIGHTH SCHEDULE. LEASE CONDITIONS**

**(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 wharves facilities 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 wharf facility or other structure, in which case the Company shall at its own cost and expense demolish and remove such wharf facility or other structure and such work shall be carried out to the satisfaction of the Minister and within such period as the Minister may require.

**(2)**

Upon the expiration of the lease or upon the sooner determination thereof for any reason whatsoever the Company shall if as and when requested in writing by the Ministry carry out at its own cost and expense the work of the demolition and removal of such wharves facilities 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 and within such period as the Minister may require.

**(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 wharves facilities 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 wharves facilities 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 unreasonable with the operations of the Company.

**(10)**

The Company shall not at any time without the written consent of the Minister use or permit or suffer to be used the land leased or any part thereof or any wharf facility or other structure now or hereafter constructed erected or provided thereon for or in any manner in connection with the shipment of any coal or coke, other than

- (i) coal or coke shipped at the wharves cranes and other facilities for shipment at Port Kembla of the Minister or the Commissioner for Railways of the said State of New South Wales or the Maritime Services Board of New South Wales; and
- (ii) coal or coke shipped in a ship the property of or chartered by the Company or the property of or chartered by any other Company in which the Company holds at least one-third of the share capital, for the purpose of bunkering that ship; and
- (iii) coal or coke mined or produced by the Company or any company in which the Company holds at least one-third of the share capital provided that such coal and coke is shipped for the sole purpose of being used and consumed by the Company or any company in which the Company holds at least one-third of the share capital.

**(11)**

In the event of the Company failing to carry out and complete any of the work provided by conditions (1) (2) and (7) of the lease to be carried out by the Company the Minister 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 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 and the same shall be recoverable by him from the Company in a Court of competent jurisdiction and a Certificate of the Director 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 wharf facility 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) and (7) of the 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, 1919-1954*, 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.

THE COMMON SEAL of THE BROKEN HILL PROPRIETARY COMPANY LIMITED was hereunto affixed by the Authority of its Board of Directors in the presence of:

R.G. NEWTON  
Secretary.

} L.S.  
C.Y. Syme  
E. Lewis  
Directors.

THE COMMON SEAL of AUSTRALIAN IRON & STEEL LIMITED was hereunto affixed by the Authority of its Board of Directors in the presence of:

R.G. NEWTON  
Secretary.

} L.S.  
C.Y. SYME  
E. LEWIS  
Directors.

SIGNED SEALED AND DELIVERED by THE HONOURABLE JOHN BROPHY RENSHAW the Minister for Public Works of the State of New South Wales for and on behalf of Her Majesty the Queen in the presence of:

J.C. Humphrey

} J.B. RENSHAW