

Broken Hill Proprietary Company Limited (Reclamation and Exchange) Agreement Ratification Act 1950 No 11

[1950-11]



New South Wales

Status Information

Currency of version

Repealed version for 1 September 1980 to 9 December 2004 (accessed 15 July 2024 at 12:19)

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The Act was repealed by the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2004 No 91](#), Sch 3 with effect from 10.12.2004.

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 10 December 2004

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New South Wales

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Broken Hill Proprietary Company Limited (Reclamation and Exchange) Agreement Ratification Act 1950 No 11



New South Wales

An Act to ratify a certain Agreement made between The Broken Hill Proprietary Company Limited of the one part and His Most Gracious Majesty King George VI of the other part with respect to the exchange of lands between the Company and the Crown, the reclamation of Platt's Channel and parts of South Channel and the granting to the Company of an exclusive right to construct wharves on certain lands; to provide for the carrying into effect of the said Agreement; to amend the *Crown Lands Consolidation Act 1913* and certain other Acts in certain respects; and for purposes connected therewith.

1 Name of Act

This Act may be cited as the *Broken Hill Proprietary Company Limited (Reclamation and Exchange) Agreement Ratification Act 1950*.

2 Definitions

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

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.

Company means The Broken Hill Proprietary Company Limited.

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

3 Ratification of Agreement

- (1) The said Agreement is hereby ratified 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 said Agreement, or which, by the said Agreement, are agreed, directed, authorised or permitted to be made, done or executed by or on behalf of His Majesty or the

Governor or the Minister or the Minister for Public Works or the Maritime Services Board of New South Wales or the Registrar-General or the Commissioner are hereby sanctioned, authorised and confirmed.

4 Vesting of certain lands in His Majesty

(1)

(a) In so far as any of the land described in the Fifth Part of the First Schedule to the said Agreement is not vested in His Majesty, such land, other than mines or deposits of coal, ironstone, kerosene shale, limestone, slate or other minerals under such land is hereby vested in His Majesty freed and discharged from all trusts, estates and interests affecting the same.

(b) The proclamation published in the Gazette of the seventh day of May, one thousand nine hundred and four, declaring part of the land described in the Fifth Part of the First Schedule to the said Agreement to be a public park is hereby revoked and the rights of all persons thereunder and the rights of any person to use the land described in the Fifth Part of the First Schedule to the said Agreement for the purposes of a public park are hereby extinguished.

(2) The land described in the Sixth Part of the First Schedule to the said Agreement is hereby divested from the Minister for Public Works and vested in His Majesty but such vesting shall not extend to any mines or deposits of coal, ironstone, kerosene shale, limestone, slate, or other minerals under such land, and shall be subject to the rights of Thomas Blamire Marshall under his existing tenancy from the Minister for Public Works of an area of one rood being part of the said land, and on and after the date of completion referred to in clause nineteen of the said Agreement the said Thomas Blamire Marshall shall for all purposes be deemed to hold the said area of one rood as a tenant of the Company at the rental and upon the terms and conditions subject to which he held the same as tenant of the Minister for Public Works.

(3) As soon as practicable after the wharf referred to in clause twenty-one of the said Agreement has been declared to be a public wharf in accordance with the provisions of subclause (d) of that clause and a public road leading from Selwyn-street to the site of such wharf has been established and constructed the Minister shall by notice in the Gazette close that part of Ingall-street comprised within the lands described in the Fourth Part of the First Schedule to the said Agreement and upon the publication in the Gazette of such notice any and every dedication of the lands described in the Fourth Part of the First Schedule to the said Agreement or any part thereof for public road shall absolutely cease and determine and the rights of any person to use such lands for the purposes of a road shall be extinguished and so much of such lands as are not already vested in His Majesty shall vest in His Majesty.

(4) The lands described in the First, Second and Third Parts of the First Schedule and in the Third Schedule and the land secondly described in the Fourth Part of the First

Schedule to the said Agreement are hereby freed from all reservations affecting such lands.

5 Declaration of public wharf

Upon publication in the Gazette of the notice referred to in subclause (d) of clause twenty-one of the said Agreement the provisions of the *Local Government Act 1919*, as amended by subsequent Acts, shall apply to the wharf and adjoining lands declared by such notice to be a public wharf as if such declaration had been made by the Governor under section four hundred and fourteen of that Act, as so amended, and as if the Governor had vested the control of the wharf so declared in the Council of the City of Newcastle.

6 Protection of certain land from erosion

- (1) Upon the issue of the Crown Grants of the lands described in the First Schedule to the said Agreement and of the land comprised in portion No 2872, parish of Newcastle, county of Northumberland, the provisions therein to the effect of paragraph (i) of subclause (f) of clause twenty-three of the said Agreement shall be deemed to be covenants by the Company for itself its successors and assigns with His Majesty His Heirs and Successors, and such provisions shall bind such lands and every part thereof into whosoever hands the same may come and bind all persons interested therein and the Registrar-General may make such endorsements upon any Crown Grant or certificate of title comprising such lands or any part thereof and such other entries in the register book or otherwise as he may think desirable in consequence thereof.
- (2) The covenants by the Company for itself its successors and assigns with His Majesty His Heirs and Successors contained in paragraph (i) of subclause (f) of clause twenty-three of the said Agreement shall bind the lands comprised in certificate of title volume 4840 folio 43 (other than the lands described in the Second and Third Parts of the Second Schedule to the said Agreement) and every part thereof into whosoever hands the same may come and bind all persons interested therein and the Registrar-General may make such endorsements upon any certificate of title comprising such lands or any part thereof and such other entries in the register book or otherwise as he may think desirable in consequence thereof.

7 Enforcement of provision for drainage of certain land

Upon the issue of the Crown Grants of the lands described in the First, Second and Third Parts of the First Schedule to the said Agreement, the covenants and conditions therein that the Company, its successors and assigns will at all times and to the satisfaction of the Minister and the Council of the City of Newcastle provide for the maintenance and proper discharge into the Hunter River through or over such lands of all drainage which at the date of commencement of the said Agreement was being discharged into Platt's Channel, shall bind such lands and every part thereof into whosoever hands the same may come and bind all persons interested therein and the Registrar-General may make such endorsements upon any Crown Grant or certificate of title comprising such lands or any

part thereof and such other entries in the register book or otherwise as he may think desirable in consequence thereof.

8 Provision for closing public road

In the event of the Company exercising the right conferred upon it by subclause (f) of clause twenty-five of the said Agreement to acquire the lands respectively described in the Third Part of the Second Schedule to the said Agreement, the First Part of the Third Schedule to the said Agreement, and the Second, Third and Fourth Parts of the Fourth Schedule to the said Agreement, the Minister shall by notice in the Gazette close any part of such lands which at the commencement of this Act is dedicated as a public road or which may, after such commencement, have been dedicated as a public road before the Company exercised such right, and upon the publication in the Gazette of such notice any and every dedication of such lands or any part thereof for public road shall absolutely cease and determine and the rights of any person to use the same for the purposes of a road shall be extinguished and such lands shall vest in His Majesty.

9 Resumption for road

- (1) At any time after the date of completion referred to in clause nineteen of the said Agreement the Governor may appropriate and resume the land described in the First Part of the Fourth Schedule to the said Agreement by Gazette notification under Division 1 of Part 5 of the *Public Works Act 1912*, as amended by subsequent Acts, for the purpose of a public road.
- (2) For the purposes of the *Public Works Act 1912*, as amended by subsequent Acts, such appropriation and resumption shall be deemed to be for the purpose of carrying out an authorised work within the meaning of that Act, as so amended, and the Minister for Public Works shall be the constructing authority in respect thereof.
- (3) Sections ninety-seven and one hundred and thirty-eight of the *Public Works Act 1912*, as amended by subsequent Acts, shall not apply in respect of the said appropriation and resumption.
- (4) The constructing authority may, notwithstanding the provisions of section eighty-one of the *Public Works Act 1912*, as amended by subsequent Acts, by notice in the Gazette dedicate the land so appropriated and resumed as a public road, and upon such dedication the provisions of the *Local Government Act 1919*, as amended by subsequent Acts, with respect to public roads, shall apply thereto accordingly.

10 Dedication of certain lands as public roads

At any time after the date of completion referred to in clause nineteen of the said Agreement the Minister may by notice in the Gazette dedicate as public roads the lands respectively described in the Third, Fourth, Sixth and Eighth Parts of the Second Schedule to the said Agreement, the First and Third Parts of the Third Schedule to the said

Agreement, and the Second Part of the Fourth Schedule to the said Agreement or any part of such lands, and upon such dedication the provisions of the *Local Government Act 1919*, as amended by subsequent Acts, with respect to public roads, shall apply thereto accordingly.

11 Dedication of certain land for public recreation

On and after the date of completion referred to in clause nineteen of the said Agreement the lands respectively described in the Fifth and Seventh Parts of the Second Schedule to the said Agreement and the Fourth Part of the Third Schedule to the said Agreement and every part of such lands shall be deemed to have become and to be Crown lands and to be dedicated for the purposes of public recreation in accordance with the provisions of the *Crown Lands Consolidation Act 1913*, as amended by subsequent Acts.

12 Vesting of certain lands in the Commissioner

At any time after the date of completion referred to in clause nineteen of the said Agreement the Minister may by notice in the Gazette declare the lands respectively described in the Ninth Part of the Second Schedule to the said Agreement and the Second Part of the Third Schedule to the said Agreement or any part of such lands to be vested in the Commissioner and thereupon such lands so declared shall vest in the Commissioner in fee simple subject however in the case of the land described in the Ninth Part of the Second Schedule to the said Agreement to the notifications referred to in subclause (d) of clause four of the said Agreement so far as the same are existing at the date of the publication of such notice.

The Registrar-General shall make all such cancellations, alterations and entries of and in the register book, certificates of title and otherwise as may be desirable in consequence thereof.

13 Protection of easements for electricity transmission, telephone lines, cables, water pipes and mains

The provisions of clause twenty-nine of the said Agreement and all or any easements and rights granted by the Company in pursuance of such clause shall bind the lands described in the First Schedule to the said Agreement and also the lands comprised in Crown Grant volume 5145 folio 220 and certificates of title volume 4840 folio 43, volume 5639 folio 72, volume 5390 folio 95, volume 5052 folio 234, volume 2987 folio 24, volume 5316 folio 104 and volume 5875 folio 222 (other than the lands described in the Second Schedule to the said Agreement) and also the lands comprised in portions Nos 2872, 2886 and 2884, parish of Newcastle, county of Northumberland, and every part thereof into whosoever hands the same may come and shall bind all persons interested therein, and the Registrar-General may make such endorsements on any Crown Grant or certificate of title comprising such lands or any parts thereof and such other entries in the register book or otherwise as he may think desirable in consequence thereof, or of the granting of any such easement or rights.

14 Restriction on use of certain lands for shipping of coal

- (1) Upon the issue of the Crown Grants of the lands described in the First Schedule to the said Agreement and of the land comprised in portion No 2872, parish of Newcastle, county of Northumberland, the provisions to the effect of subclause (a) of clause thirty of the said Agreement included in such Crown Grants shall be deemed to be covenants by the Company for itself, its successors and assigns with His Majesty, His Heirs and Successors and such provisions shall bind the said lands and every part thereof into whosoever hands the same may come and bind all persons interested therein and the Registrar-General may make such endorsements upon any Crown Grant or certificate of title comprising such lands or any part thereof and such other entries in the register book or otherwise as he may think desirable in consequence thereof.
- (2) The covenants by the Company for itself, its successors and assigns with His Majesty, His Heirs and Successors contained in subclause (a) of clause thirty of the said Agreement shall bind the lands comprised in certificate of title volume 4840 folio 43 (other than the lands described in the Second and Third Parts of the Second Schedule to the said Agreement) and every part thereof into whosoever hands the same may come and bind all persons interested therein and the Registrar-General may make such endorsements upon any certificate of title comprising such lands or any part thereof and such other entries in the register book or otherwise as he may think desirable in consequence thereof.

15 Determination of annual payment by local land board

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

Acts.

16 Provisions of Harbour and Tonnage Rates Act 1920-1935 to apply

The *Harbour and Tonnage Rates Act 1920-1935*, and any Act amending or replacing the same and the regulations from time to time in force thereunder but insofar only as such Acts and regulations relate to the imposition collection and payment of tonnage rates and berthing charges shall apply to and in respect of every 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) now or hereafter erected constructed or provided along the frontage of the proposed new southern boundary of South Channel between the points shown by the letters "A" and "P" on the plan marked "AA" annexed to the said Agreement, or along the frontage of portion No 2872 parish of Newcastle county of Northumberland between the point shown by the letter "A" on the said plan and the most easterly corner of such portion (being the point shown by the letter "Z" on the said plan), or upon lands adjoining or adjacent to such frontages 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 to vessels whilst berthed at any wharf now or hereafter erected constructed or provided along the said frontage of the said portion No 2872 or upon lands adjoining or adjacent thereto or along that portion of the said frontage of the proposed new southern boundary of South Channel which is situated between the point shown by the letter "A" on the said plan marked "AA" annexed to the said Agreement and a point five thousand nine hundred and fifty-seven feet to the westward thereof on such frontage or upon lands adjoining or adjacent to such portion of the last mentioned frontage on the north or the south namely that:

- (i) Any vessel carrying, loading or discharging only cargo the property of the Company and/or of any other company or companies in which the Company 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 Company and/or of any other company or companies in which the Company 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 Company and/or of any other company or companies in which the Company 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 Company or the property of or chartered by any other company in which the Company 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.

17 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 said Agreement.

18 Certain special purchase applications not to be affected

Except as provided in sections six, thirteen, fourteen and sixteen of this Act and in clauses twenty-three, twenty-nine, thirty, thirty-one, thirty-two and thirty-three of the said Agreement nothing in this Act or the said Agreement contained shall affect the following special purchase applications, namely:

No 38/30 Newcastle by the Company comprising portion No 2872, parish of Newcastle, county of Northumberland,

No 37/38 Newcastle by the Company comprising portion No 2886, said parish and county,

No 37/37A Newcastle by the Company comprising portion No 2884, said parish and county,

No 33/21 Newcastle by Rylands Brothers (Australia) Proprietary Limited comprising portion No 2883, said parish and county,

No 37/39 Newcastle by Stewarts and Lloyds (Australia) Proprietary Limited comprising portion No 2885, said parish and county,

No 36/53 Newcastle by Lysaghts Works Pty. Limited comprising portion No 2901, said parish and county:

Provided however that the Minister may upon the application of the respective applicants waive or vary any condition imposed in any such application relating to the facing or filling of the land included in such application.

19 Certain deeds not to be affected

Except as provided in section six of this Act and in subclause (f) of clause twenty-three of the said Agreement nothing in this Act or the said Agreement contained shall affect the following deeds:

Deed dated 10 January 1946, made between the Company of the first part, His Majesty of the second part and The Maritime Services Board of New South Wales of the third part relating to special purchase applications Nos 37/37A, 37/38 and 38/30, Newcastle,

Deed dated 10 January 1946, made between Stewarts and Lloyds (Australia) Proprietary Limited of the first part, His Majesty of the second part and the Maritime

Services Board of New South Wales of the third part relating to special purchase application No 37/39, Newcastle,

Deed dated 21 December 1945, made between Rylands Brothers (Australia) Proprietary Limited of the first part, His Majesty of the second part and The Maritime Services Board of New South Wales of the third part relating to special purchase application No 33/21, Newcastle,

or any similar deed now or hereafter entered into between Lysaghts Works Pty. Limited of the first part, His Majesty of the second part and the Maritime Services Board of New South Wales of the third part relating to special purchase application No 36/53, Newcastle:

Provided however that the Minister may upon the application of any company being a party to any such deed waive or vary any condition imposed in any such deed relating to the facing or filling of the land the subject of such deed.

20 Certain disputes may be referred to Land and Environment Court

- (1) In the event of any dispute arising between the parties to the said Agreement as to the performance or non-performance by the Company of any of its obligations under clause twenty-three of the said Agreement the matter in dispute shall be referred to the Land and Environment Court for determination.
- (2) Any such reference shall be duly made if and when a notice in writing that the Minister or the Company has referred the matter in dispute to the Land and Environment Court is filed in the Court.
- (3) The Land and Environment Court shall have jurisdiction to hear and dispose of all matters so referred to it.

21 Powers of the Governor and the Company

- (1)
 - (a) The Company is hereby authorised, required and directed in accordance with the provisions of clause twenty-three of the said Agreement to construct the embankment along the whole of the proposed new southern boundary of South Channel between the approximate points marked "A" and "P" on the plan marked "AA" annexed to the said Agreement, and to carry out the excavations and reclamations along that boundary as required by such clause.
 - (b) The Company is hereby authorised to reclaim Platt's Channel and the parts of South Channel to be reclaimed under the provisions of the said Agreement and to exercise the rights conferred on the Company by subclauses (a) (c) and (d) of clause twenty-five, and subclauses (a) and (c) of clause twenty-seven of the said Agreement.
 - (c) The Company is hereby empowered to do such acts and things on, in or in relation

to any Crown land, public road or navigable waters as are, in the opinion of the Minister, necessary for the proper exercise and performance of the Company's powers and obligations under the said Agreement.

- (2) The Governor is hereby empowered from time to time by notification in the Gazette to declare that the rights of the public and the rights, powers and duties of the Maritime Services Board of New South Wales in and in respect of Platt's Channel and the parts of South Channel to be reclaimed under the provisions of the said Agreement are extinguished either in whole or to the extent specified in any such notification.

22 Certain persons may sue and be sued by the Company

It shall not be an objection to the Commissioner, the Minister for Public Works and the Maritime Services Board of New South Wales, or any of them suing the Company and being sued by the Company under the said Agreement that the Commissioner, the Minister for Public Works and the Maritime Services Board of New South Wales are not parties to the said Agreement.

23 Exemption from payment of stamp duty

Notwithstanding the provisions of the *Stamp Duties Act 1920-1949*, no stamp duty shall be payable by the Company in respect of the granting to and acceptance by it in fee simple of the lands described in the First Schedule to the said Agreement by way of exchange for the lands described in the Second Schedule to the said Agreement.

24 Notification of date of completion

As soon as practicable after the date of completion referred to in clause nineteen of the said Agreement the Minister shall publish in the Gazette a notice specifying such date.

Schedule

THIS AGREEMENT made the twenty-seventh day of March one thousand nine hundred and fifty 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 "the Company") of the one part and HIS MOST GRACIOUS MAJESTY KING GEORGE VI of the other part WHEREAS the Company is desirous of acquiring the lands described in the First Schedule hereto in exchange for the lands described in the Second Schedule hereto and of acquiring the right to lease certain lands below mean highwater mark adjoining part of the lands described in the First Schedule hereto for the purposes of the Company and with the object of expanding its industrial operations in the said State of New South Wales 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:

"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:

“Gazette” means New South Wales Government Gazette:

“Minister” means the Minister for Lands of the State of New South Wales and his successors in office:

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

“Month” means calendar month:

“R.L. 0.00” means the datum of Newcastle Harbour Works being 14.00 feet below the bench mark on the brass plate on the wall of the Customs House Building, Watt Street, Newcastle, and “R.L. 8.00” and “R.L. 9.00” respectively mean 8 and 9 feet above R.L. 0.00.

2.

Subject to the provisions hereinafter contained His Majesty hereby agrees to grant to the Company in fee simple and the Company agrees to accept the lands described in the First Schedule hereto by way of exchange for the lands described in the Second Schedule hereto AND for the purpose of effecting such exchange the Company hereby agrees to transfer and surrender to His Majesty and His Majesty agrees to accept such lastmentioned lands.

3.

(a)

The land described in the First part of the First Schedule hereto is Crown Lands comprising part of the bed of Platt’s Channel.

(b)

The lands described in the Second Part of the First Schedule hereto are Crown Lands comprising parts of the bed of the South Channel Hunter River.

(c)

The land described in the Third Part of the First Schedule hereto is Crown Lands comprising that part of Portion 23A on Spit Island covered by Reserve No. 56,146 from Sale or Lease generally (notified in the Gazette of the 11th day of May 1923 at page 2253) and also that part of Portion 23A covered by Reserve No. 62,867 from Sale and No. 62,868 from Lease generally for Access and Water Supply (notified in the Gazette of the 7th day of August 1931 at page 2876).

(d)

As to the land described in the Fourth Part of the First Schedule hereto—

- (i) part thereof is a public road one chain wide originally provided in a subdivision of Crown lands and aligned by Notice under Act 2 Vic. No. 2 published in the Gazette of the 17th day of February 1888 at page 1297
- (ii) the remainder thereof comprises Crown Lands formerly part of the bed of Platt’s Channel aforesaid

(e)

As to the land described in the Fifth Part of the First Schedule hereto—

- (i) part thereof is comprised in the Notification of Resumption published in the Gazette of the 5th day of December 1903 at page 9009 under the *Public Works Act, 1900*, whereby the land included in such Notification was resumed for a Public Recreation Ground and vested in the Minister but by that Notification no mines or deposits of coal ironstone kerosene shale limestone slate or other minerals under such lands were acquired and the same are excepted from this exchange. The land so resumed was by Proclamation published in the Gazette of the 7th day of May 1904 at page 3823 declared to be a public park within the meaning of the *Public Parks Act, 1902*, to be known as “Shelly Beach Park”
- (ii) The remainder thereof comprises Crown Lands formerly part of the bed of Platt’s Channel aforesaid added to Shelly Beach Park by reclamation and accretion:

(f)

The land described in the Sixth part of the First Schedule hereto is comprised in the Notification of Resumption published in the Government Gazette of the 30th day of December 1914 at page 7667 under the *Public Works Act, 1912*, whereby the land included in such Notification was resumed for the purpose of the construction of Harbour Improvements at Newcastle and vested in the Minister for Public Works but by that Notification no mines or deposits of coal ironstone kerosene shale limestone slate or other minerals under such lands were acquired and the same are excepted from this exchange.

4.

(a)

The land described in the First Part of the Second Schedule hereto is comprised in Certificate of Title registered Volume 5052 Folio 234 dated the 21st day of June 1939 standing in the name of the Company subject to the Notifications endorsed thereon namely:

- (i) an exception unto The Australian Agricultural Company and its assigns contained in Indentures of Conveyance registered No. 752 Book 1069, No. 970 Book 1131, No. 121 Book 1166, No. 935 Book 1210 and No. 936 Book 1210 of all mines and minerals lying and being in and under the land therein described and provisions contained in such Indentures of Conveyance as to damage occasioned by the land therein described or land in the vicinity thereof being undermined or left without support:
- (ii) the rights and easements (if any) for pipe line over part of the land comprised in the said Certificate of Title which were created in favour of the Minister for Public Works by Grant of Easement registered No. 344 Book 874:
- (iii) the easements affecting parts of the land comprised in the said Certificate of Title which were created in favour of The Hunter District Water Board by Transfer and Grant registered No. D291717 and Transfer and Grant registered No. D634821 respectively:

The land described in the First part of the Second Schedule hereto is agreed to be assured subject to such exception, provisions, rights and easements so far as the same are existing at the date of this Agreement.

(b)

The lands described in the Second and Third parts of the Second Schedule hereto are comprised in Certificate of Title registered Volume 4840 Folio 43 dated the 7th day of May 1937 standing in the name of the Company subject to the Notification endorsed thereon of the charges created by the Debentures referred to in such Notification and the lands described in the Second and Third parts of the Second Schedule hereto are agreed to be assured freed and discharged from the said Debentures.

(c)

The lands described in the Fourth Fifth and Sixth parts of the Second Schedule hereto are comprised in Certificate of Title registered volume 5390 Folio 95 dated 31st day of August 1943 standing in the name of the Company subject to the Notifications endorsed thereon including the following which affect the land secondly described in the Fourth part of the Second Schedule hereto:

- (i) An exception of all mines and minerals lying and being in and under Lots A. and C. in Miscellaneous Plan of Subdivision (O.S.) Registered No. 4777,
- (ii) Provisions contained in Indenture of Conveyance registered No. 502 Book 1661 as to damage occasioned by Lots A. and C. aforesaid or land in the vicinity thereof being undermined or left without support.

The land secondly described in the Fourth part of the Second Schedule hereto is agreed to be assured subject to such exception and provisions so far as the same are existing at the date of this Agreement.

(d)

The lands described in the Seventh, Eighth and Ninth Parts of the Second Schedule hereto are comprised in Certificate of Title registered Volume 5639 Folio 72 dated the 3rd day of February 1947 standing in the name of the Company subject to the Notifications endorsed thereon namely:—

- (i) An exception of all mines and minerals lying and being in and under part of the land comprised in the lastmentioned Certificate of Title
- (ii) Provisions contained in Indenture of Conveyance registered No. 548 Book 1726 as to damage occasioned by part of the land comprised in the lastmentioned Certificate of Title or land in the vicinity thereof being undermined or left without support.

The lands described in the Seventh, Eighth and Ninth parts of the Second Schedule hereto are agreed to be assured subject to such exception and provisions so far as the same are existing at the date of this Agreement.

(e)

The land described in the Tenth part of the Second Schedule hereto is comprised in Certificate of Title registered Volume 5875 Folio 222 dated the 23rd day of September 1948 standing in the name of the Company subject to the Notification endorsed thereon of an exception and reservation unto The Australian Agricultural Company its sequels in title and assigns of all

minerals mines veins seams and beds of coal in and under the land comprised in the lastmentioned Certificate of Title together with all underground rights of way and easements necessary to enable the Australian Agricultural Company and its assigns to work and carry away the minerals under such land as excepted and reserved by Transfer registered No. D610782 and the land described in the Tenth part of the Second Schedule hereto is agreed to be assured subject to such exception and reservation so far as the same are existing at the date of this Agreement.

5.

(a)

Certain information as to the title to the lands comprised in the First Schedule hereto is referred to in this Agreement and the Company shall not require or be entitled to be furnished with any further particulars as to the title of His Majesty or 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 save and except that the Minister will produce to the Company the deeds and documents that may be in his possession and that relate to such lands.

(b)

In so far as any of the lands described in the First Schedule hereto may not be vested in His Majesty the Act ratifying this Agreement shall contain provision whereby such land may be vested in His Majesty to enable a Crown Grant thereof to be issued as hereinafter provided and for the revocation so far as necessary of the Reservations and Proclamation referred to in sub-clauses (c) and (e) of Clause 3 hereof.

(c)

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

(d)

Certain information as to the title to the lands comprised in the Second Schedule hereto is referred to in this Agreement and neither His Majesty nor the Minister shall require or be entitled to be furnished with any further particulars as to the title of the Company to any of such lands or with any abstract of the title to any of such lands but the hereinbefore mentioned several Indentures of Conveyance and any instrument in respect of which a caveat is entered upon the Register (if in the possession of the Company) and any documents of title in the custody of a mortgagee in regard to which the Company 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 the Company.

6.

The lands described in the Second Schedule hereto are to be assured by the Company 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 Schedule hereto and excluded from the said exchange and the assurances to the Company:

- (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 under 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) The lines of pipes and other structures comprising the salt water installations the property of Rylands Brothers (Australia) Proprietary Limited Lysaghts Works Pty. Limited, Stewarts and Lloyds (Australia) Proprietary Limited and the Newcastle Chemical Company Proprietary Limited constructed or laid upon in under or over the lands described in the First Schedule hereto and all fittings equipment appurtenances and appliances 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 Hunter District Water Board are not included in the said exchange but the Company shall at its own cost make arrangements with the said Board with respect to them.

9.

(a)

Subject to the provisions elsewhere in this Agreement contained the Company shall give to His Majesty on the date of completion vacant possession of all lands described in the Second Schedule hereto other than:

- (i) the land described in the Seventh part of that Schedule which His Majesty agrees to take subject to the existing tenancy and occupancy by W. Hartup
- (ii) the land described in the Eighth part of that Schedule which His Majesty agrees to take subject to the existing tenancy and occupancy by W.P. Glover, and
- (iii) the land described in the Tenth part of that Schedule which His Majesty agrees to take subject to the existing tenancies and occupancies by F.R. Turnbull, T. Croese and S. Arnold and to such other tenancies and occupancies as may be created with the approval of the Minister provided that no tenancy or occupancy conferring any right of residence upon any part of the land described in the Tenth part of the Second Schedule hereto shall be created.

(b)

Notwithstanding the provisions of Clause 20 hereof the Company shall pending the issue of the Crown Grants referred to in that clause have peaceful and undisturbed possession of the lands described in the First Schedule hereto and shall be deemed to be the owner thereof for the purposes of the *Local Government Act, 1919*, and any other Act imposing rates, taxes or charges upon the owner of land subject however to the following provisions:

- (i) Until such time as the notice closing part of Ingall Street referred to in Clause 22 hereof has

been published the Company shall not do anything in relation to the lands respectively described in the First and Second parts of the First Schedule hereto or in the Third Schedule hereto which would interfere unreasonably with the use by any person of Platt's Channel as a means of access to the existing wharf at Ingall Street. The possession by the Company of the lands described in the First part of the First Schedule hereto shall also be subject to the rights which exist in respect of the salt-water installations referred to in Clause 7 and 23 hereof until such time as the Company makes satisfactory arrangements with the Companies concerned in respect of them

- (ii) The Company shall have no right to the possession of the land described in the Fourth Part of the First Schedule hereto until such time as the notice closing part of Ingall Street referred to in Clause 22 has been published. After the publication of such notice the possession of the Company of the lands described in the Fourth part of the First Schedule hereto shall be subject to the rights which exist in respect of the 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 the Company makes satisfactory arrangements with the authorities concerned in respect of them
- (iii) The Company hereby agrees that its possession of the land described in the Sixth part of the First Schedule hereto shall be subject to the weekly tenancy of an area of 1 rood in favour of Thomas Blamire Marshall. Subject only to the said weekly tenancy the Minister agrees to give to the Company vacant possession of the land described in the Sixth part of the First Schedule hereto within eighteen months of the date of commencement of this Agreement

(c)

As from the date of completion the relationship of landlord and tenant shall for all purposes be deemed to exist between the Company and the said Thomas Blamire Marshall in respect of the said weekly tenancy

10.

The Company shall be entitled to the rents and profits to the date of completion and shall pay and bear all rates taxes assessments and outgoings to that date in respect of the lands hereby agreed to be assured by it to His Majesty from which date His Majesty shall be entitled to such rents and profits. His Majesty shall be entitled to the rents and profits to the date of completion and (subject as hereinafter mentioned) 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 His Majesty to the Company from which date the Company shall be entitled to such rents and profits and shall pay or bear all such rates taxes assessments and outgoings. Notwithstanding the provisions hereinbefore in this Clause contained the Company shall be liable to pay and bear the rates taxes assessments and outgoings (if any) assessed on or in respect of any of the lands comprised in the First Schedule hereto by reason of the Company occupying or having an interest in such lands prior to the date of completion and nothing in this clause shall relieve the Company of any liability under or by reason of its occupancy or interest in any of such lands at or prior to the date of completion. All necessary apportionments under this Clause shall be made and adjusted on completion.

11.

No error or misdescription of the lands agreed to be exchanged shall annul the exchange of the lands respectively described in the First and Second Schedules hereto but compensation (if

demanded in writing before completion but not otherwise and if His Majesty or the Company (as the case may be) is otherwise entitled thereto under this Agreement) shall be made to or given by the parties hereto as the case may require and should the parties be unable to agree between themselves as to the amount thereof such amount shall be settled by two arbitrators one to be appointed by the Minister and the other by the Company in accordance with the provisions of the *Arbitration Act, 1902*.

12.

(a)

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

(b)

All objections and requisitions which under this Agreement His Majesty shall be entitled to make shall be made and delivered to the Company 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 His Majesty tender to the Company or its Solicitor a Memorandum or Memoranda of Transfer of the lands comprised in the Second Schedule hereto. Such Memorandum or Memoranda of Transfer may be in favour of His Majesty or of such authority of the State as the Minister may decide.

13.

If either of the parties hereto shall be unable or unwilling to comply with or remove any objection or requisition which the 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 the other party in and about this Agreement AND IT IS HEREBY DECLARED that seven days' notice of the intention of either of the parties hereto to rescind this Agreement shall be deemed reasonable notice of such intention under Section 56 of the *Conveyancing Acts, 1919-1943*.

14.

Neither His Majesty His Heirs and Successors nor the Minister shall be called upon or bound to pay any proportion of the costs of any dividing fence or fences.

15.

All notices and documents hereunder may be served as mentioned in Section 170 of the *Conveyancing Acts, 1919-1943*.

16.

Clauses 2 to 6 inclusive of the conditions of sale contained in Schedule III of the *Conveyancing Acts, 1919-1943*, shall not apply in this Agreement except insofar as the same or any part thereof are incorporated herein.

17.

Such of the provisions and conditions of this Agreement as require or prescribe any Act or thing to be done or not to be done by the Company shall in addition to being read and construed as conditions of this Agreement be also read and construed as Agreements whereby the Company covenants with His Majesty His Heirs and Successors to observe and perform the said provisions and conditions.

18.

If the Company shall omit to fulfil observe or perform the provisions of this Agreement or any of them on the part of the Company to be fulfilled observed or performed the Minister may by notice in writing served on the Company call upon the Company to rectify the default complained of within a reasonable time (to be stated in the notice) after the service of such notice and if the Company shall fail after service of the said notice upon it to rectify the said default within such reasonable time the Minister may without prejudice to any other remedy of His Majesty under this Agreement by reason of such default of the Company do all such acts and things as the Minister may think necessary or desirable to remedy the default of the Company and the Company shall on demand pay to the Minister all costs and expenses incurred by the Minister in so doing and the same shall be recoverable by him from the Company in a Court of competent jurisdiction and a certificate of the Under Secretary, Department of Lands, or the person acting as such for the time being of the amount of such costs and expenses incurred by the Minister shall be prima facie evidence thereof and neither His Majesty nor the Minister shall incur any liability towards the Company by reason of any damage whatsoever done to or upon the lands the subject of this Agreement or to or upon any adjoining or adjacent lands of the Company in the performance by the Minister, his employees, agents, workmen, servants or licensees of any act or thing permitted to be done by the Minister under the provisions of this clause.

19.

The assurance by the Company of the lands described in the Second Schedule hereto 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 Company handing over to the said Crown Solicitor at his office all the necessary assurances to His Majesty and/or any authority of the State as hereinbefore mentioned, and the date on which such assurances are so handed over shall be treated as the date of completion for the purposes of this Agreement.

20.

(a)

As soon as practicable after the work agreed to be carried out by the Company under the provisions of paragraphs (i) (ii) and (iii) of subclause (a) of Clause 23 hereof has been carried out and completed to the satisfaction of the Minister a Crown Grant or Crown Grants shall subject to the provisions of this Clause be issued to the Company for the assurance to it in fee simple of the lands described in the First Schedule hereto.

(b)

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

(c)

There shall be excluded from the Crown Grant or Crown Grants so to be issued to the Company for the assurance to it of the lands respectively described in the Fifth and Sixth parts of the First Schedule hereto all mines or deposits of coal ironstone kerosene shale limestone slate or other minerals under such lands which were not acquired by the Notifications of Resumption referred to in Clause 3 hereof and in addition such Crown Grant or Crown Grants shall contain a reservation of all other minerals which such lands contain.

(d)

Every Crown Grant to be issued to the Company in accordance with subclause (a) of this Clause shall in addition to the reservation of minerals hereinbefore mentioned contain such other reservations and exceptions as are usually inserted by the Crown in Crown Grants issued for Special Purchases under Section 66 of the *Crown Lands Consolidation Act, 1913*, as amended, and for the purposes of this clause "minerals" shall have the same meaning as it has in the said Act.

(e)

Every Crown Grant to be issued to the Company in accordance with subclause (a) of this clause shall be limited to the surface of the land comprised in such Crown Grant and to a depth of 400 feet below such surface and shall contain a proviso in or to the effect that mining operations may have been and may be carried on upon and in the land below the land thereby granted and the lands adjoining the land thereby granted and the land below the same and metals and minerals may have been and may be removed therefrom and that the Crown Grant is made upon and subject to the condition that the Company and its assigns shall not be entitled to make or prosecute any claim for damages or take any proceedings either by way of injunction or otherwise against His Majesty His Heirs or Successors or the Government of the State of New South Wales or any lessee or lessees under any Mining Act or Acts of the said State of New South Wales or his or their executors administrators or assigns for or in respect of any damage or loss occasioned by the letting down subsidence or lateral movement of the land thereby granted or otherwise howsoever by reason of the following acts and matters that is to say by reason of His Majesty His Heirs or Successors or the Government of the said State of New South Wales or any persons on His Their or Its behalf or any lessee or lessees as aforesaid or his or their executors administrators or assigns having worked or then or thereafter working any mines or having carried on or then or thereafter carrying on mining operations or having searched for worked won or removed or then or thereafter searching for working winning or removing any metals or minerals under in or from the land below the land thereby granted or on in under or from any other lands situated laterally to the land thereby granted and the land below the same and whether on or below the surface of such other lands AND THAT His Majesty doth thereby expressly reserve unto His Majesty His Heirs and Successors the liberty and authority by reason of the acts and matters aforesaid or in the course thereof for His Majesty His Heirs and Successors and the Government of the said State of New South Wales and any person on His Their or Its behalf and any lessee or lessees as aforesaid and his or their executors administrators and assigns to from time to time let down without payment of any compensation whatsoever any part of the land thereby granted and/or of the surface thereof.

(f)

The Company shall not be entitled to any assurance from the Minister or the Crown with respect

to any part of the lands comprised in the First Schedule hereto except as is provided by this clause.

(g)

The Company shall pay to the Crown in respect of every Crown Grant to be issued to it under this clause (and prior to the issue of such Grant) a deed fee of the amount in like case usually payable on a Crown Grant for land specially purchased under section 66 of the *Crown Lands Consolidation Act, 1913*, as amended.

21.

(a)

The Company hereby covenants with His Majesty His Heirs and Successors that the Company shall at its own cost and expense commence at the date of commencement of this Agreement and thereafter proceed with the following work that is to say the erection construction and provision at the position to be determined by the Minister (to be approximately the site indicated by the letter "Q" on the plan annexed hereto and marked "AA") of wharfage and other facilities in conjunction therewith equivalent to the wharfage and other facilities in conjunction therewith equivalent to the wharfage and other facilities now provided at the northern extremity of Ingall Street.

(b)

The whole of the work to be erected constructed and provided as aforesaid is to be carried out and completed in a proper and workmanlike manner in accordance in all respects with specifications and plans previously approved of in writing by the Minister and all such work shall be carried out to the satisfaction of the Minister.

(c)

The work provided by subclause (a) of this clause to be carried out by the Company shall be carried out within such time and at such rate as the Minister shall determine.

(d)

Upon completion to the satisfaction of the Minister of the works referred to in subclause (a) of this clause the Minister shall by notice in the Gazette declare that the wharf so constructed and so much of the adjoining land as is necessary for the proper working thereof shall be a public wharf and shall vest the control thereof in the Council of the City of Newcastle and thereupon the provisions of the *Local Government Act, 1919*, as amended shall apply thereto as if such declaration had been made under Section 414 of that Act and the Act ratifying this Agreement shall provide accordingly.

22.

As soon as practicable after the wharf referred to in Clause 21 hereof has been declared to be a public wharf in accordance with the provisions of subclause (d) of that clause and a public road leading from Selwyn Street to the site of that wharf has been established and constructed the Minister shall by notice in the Gazette close that part of Ingall Street comprised in the Fourth part of the First Schedule hereto and upon the publication in the Gazette of such notice any and every dedication of the land described in the Fourth part of the First Schedule hereto or any part thereof for public road shall absolutely cease and determine and the rights of any person to use the same

for the purposes of a road shall be extinguished and so much of such land as is not already vested in His Majesty shall vest in His Majesty and the Act ratifying this Agreement shall provide accordingly.

23.

(a)

The Company hereby covenants with His Majesty His Heirs and Successors that the Company shall at its own expense within one month after the date of the commencement of this Agreement commence and thereafter continuously proceed with the following works that is to say:—

- (i) The Company shall construct a substantial embankment capable of preventing erosion of the back filling or of Spit Island along those parts of the proposed new southern boundary of the South Channel which are shown between the approximate points marked "A" and "Y" and between the approximate points marked "P" and "K" on the plan annexed hereto and marked "AA" so that at the expiration of seven years from the date of commencement of this Agreement the Company shall have at its own cost and expense completed the full and proper construction as aforesaid of so much of the said embankment as will lie between the approximate points marked "A" and "T" and between the approximate points marked "P" and "M" on the said plan and so that at the expiration of fifteen years from the date of commencement of this Agreement the Company shall have at its own cost and expense completed the full and proper construction of the whole of the said embankment to be constructed by the Company in accordance with the provisions of this paragraph. The parts of the said embankment to be completed within seven years from the date of the commencement of this Agreement shall be constructed in such a way as to effectively close off Platt's Channel from the South Channel to the satisfaction of the Minister. The whole of the said embankment to be constructed by the Company in accordance with the provisions of this paragraph shall be carried out to a height of at least R.L. 8.00 and to the satisfaction of the Minister.
- (ii) The Company shall excavate and level to the satisfaction of the Minister the part of Spit Island lying to the north of that part of the proposed new southern boundary of the South Channel which is shown between the approximate points marked "X" and "Y" on the plan annexed hereto and marked "AA" so that that part of Spit Island will be wholly excavated and levelled to R.L. 0.00 within seven years from the date of commencement of this Agreement and so that the whole of the work to be carried out by the Company under this paragraph will be fully and properly completed by the Company at its own cost and expense not later than the time of the completion of the construction as aforesaid of either the part of the said embankment which will lie between the approximate points marked "A" and "T" on the said plan or the part of the said embankment which will lie between the approximate points marked "P" and "M" on the said plan.
- (iii) Upon completion of the construction by the Company of the embankment referred to in paragraph (i) of this subclause the Company shall face the remainder of the proposed new southern boundary of the South Channel shown between the approximate points marked "K" and "Y" on the plan annexed hereto and marked "AA" with a substantial embankment capable of preventing erosion of the back filling or of Spit Island so that at the expiration of three years from the date of the completion of the embankment referred to in paragraph (i)

of this subclause the Company shall have at its own cost and expense completed the full and proper construction of the whole of the embankment to be constructed by the Company in accordance with the provisions of this paragraph. The whole of such last mentioned embankment shall be carried out to a height of at least R.L. 8.00 and to the satisfaction of the Minister and the Company shall fill in and/or level to and at such depth and height respectively as the Minister shall direct and to the satisfaction of the Minister such lands as should in the Minister's opinion be filled in and/or levelled so as to establish the embankment to be constructed in accordance with the provisions of this paragraph as the new southern boundary of that portion of the South Channel.

- (iv) The Company shall carry out in a manner approved by the Minister the reclamation of all the lands respectively described in the First and Second parts of the First Schedule hereto and in the Third Schedule hereto and so that the ultimate limit of the reclamation at mean highwater mark shall not extend northerly beyond the proposed new Southern boundary of the South Channel shown between the approximate points marked "A" and "P" on the plan annexed hereto and marked "AA". Any filling or facing placed by the Company below highwater mark on the northern side of the proposed new Southern boundary of the South Channel between the approximate points marked "A" and "P" on the said plan shall be on a batter not flatter than a slope of 2 horizontal to 1 vertical. Subject only to the provisions of subclause (g) of this clause all decisions of the Minister relating to the work to be carried out under the provisions of this paragraph shall be final and binding upon the Company.
- (v) The embankment to be constructed by the Company along the proposed new Southern boundary of the South Channel in accordance with the provisions of paragraphs (i) and (iii) of this subclause shall be an embankment of tipped ballast or such other type or types of construction as may be approved of in writing by the Minister or be partly an embankment of tipped ballast and partly such other type or types of construction approved of by the Minister as aforesaid.

(b)

The Company hereby covenants with His Majesty the King His Heirs and Successors that in the event of the bed of the South Channel being raised as a result of the Company from time to time reclaiming areas adjoining the proposed new Southern boundary of that Channel between the approximate points marked "A" and "P" on the said plan marked "AA" or reclaiming the area comprised in Special Purchase Application No. 38/30 Newcastle being Portion No. 2872 Parish of Newcastle County of Northumberland or any part thereof or subsequently raising the levels of areas so reclaimed the Company at its own cost and expense will promptly restore to the satisfaction of the Minister the part of the channel so affected to its natural depths as ascertained by Public Works Department Routine Surveys. If any additional surveys are carried out by the Department of Public Works, whether at the request of the Company or otherwise to ascertain the effect (if any) upon the bed of the said South Channel of such reclamation or raising of levels the Company shall pay to the Minister for Public Works on demand the cost of such surveys. The liability of the Company under this subclause in relation to any particular section of the work performed by the Company shall be limited to any alteration in level of the bed of South Channel occurring within one month after the Company has notified the District Surveyor, East Maitland by letter and supporting plan that it has completed the reclamation or raising of level (as the case may be) of that particular section.

(c)

The Company is aware of the rights of Rylands Brothers (Australia) Proprietary Limited, Lysaghts Works Pty. Limited, Stewarts and Lloyds (Australia) Proprietary Limited and The Newcastle Chemical Company Proprietary Limited in respect of the salt-water installations referred to in paragraph (c) of Clause 7 hereof and it is agreed that this Agreement is entered into by His Majesty subject to those rights and upon the understanding that the Company shall at its own cost an expense make any necessary arrangements with the said companies with respect to such salt-water installations in so far as they are or may be affected by the reclamations to be carried out by the Company.

(d)

Subject only to the provisions as to time contained in subclause (a) of this clause the work to be carried out pursuant to the provisions of the preceding subclauses shall be carried out by the Company at and within such time or times and at such rate as the Minister shall determine.

(e)

All land at any time above mean high water mark and north of the proposed new southern boundary of the South Channel which is shown between the approximate points marked "A" and "P" on the plan annexed hereto and marked "AA" whether the same is Crown Land or land transferred to His Majesty under the provisions of this Agreement and whether such land is above mean high water mark because of accretion or otherwise shall remain or become the property of His Majesty, subject however to the right of His Majesty or the Company to excavate such land for the purpose of establishing or restoring the alignment of the Southern bank of the South Channel to the boundary shown between the points marked "A" and "P" on the said plan. Nothing in this subclause contained is to affect the provisions of subclause (a) of this clause.

(f)

(i) The Company (which expression wherever used in this paragraph shall include its successors and assigns) hereby covenants with His Majesty His Heirs and Successors that the Company shall at all times after the date of completion at its own cost and expense carry out all work which shall be necessary to protect and maintain from erosion and to the satisfaction of the Minister such lands above mean highwater mark as adjoin or are adjacent to the proposed new Southern boundary of the South Channel which is shown between the approximate points marked "A" and "P" on the plan annexed hereto and marked "AA" or as adjoin or are adjacent to the frontage of the said portion No. 2872 between the point shown by the letter "A" on the said plan and the most easterly corner of that portion (being the point marked "Z" on the said plan) and such work shall be carried out by the Company at and within such time or times and at such rate as the Minister shall determine AND THAT if the Company shall fail to comply with the provisions of this paragraph the Minister may by notice in writing served on the Company call upon the Company to rectify the default complained of within a reasonable time (to be stated in the notice) after the service of such notice and if the Company shall fail after service of the said notice upon it to rectify the said default within such reasonable time the Minister may without prejudice to any other remedy of His Majesty by reason of such default of the Company, do all acts and things as the Minister may think necessary or desirable to remedy the default of the Company and the Company shall on demand pay to the Minister all costs and expenses incurred by the Minister in so doing and the same shall be recoverable by him from the Company in a Court of competent jurisdiction

and a certificate of the Under Secretary, Department of Lands, or the person acting as such for the time being of the amount of such costs and expenses incurred by the Minister shall be prima facie evidence thereof and neither His Majesty nor the Minister shall incur any liability towards the Company by reason of any damage whatsoever done to or upon the lands referred to in this paragraph or to or upon any adjoining or adjacent lands of the Company in the performance by the Minister, his employees, agents, workmen, servants or licensees of any act or thing permitted to be done by the Minister under the provisions of this paragraph. Nothing in this subclause contained shall affect the provisions of subclause (e) of this clause.

- (ii) Provisions to the effect of paragraph (i) of this subclause shall be included in the Crown Grants of the lands described in the First Schedule hereto and of the land comprised in the said Portion No. 2872 and (without limiting the foregoing) the Act ratifying this Agreement shall provide that such provisions of the said Crown Grants shall be deemed to be covenants by the Company for itself its successors and assigns with His Majesty His Heirs and Successors and that such provisions shall bind the said lands and every part thereof into whosoever hands the same may come and bind all persons interested therein and that the Registrar-General may make such endorsements upon any Crown Grant or Certificate of Title comprising such lands or any part thereof and such other entries in the Register Book as he may think desirable in consequence thereof.
- (iii) The Act ratifying this Agreement shall contain provisions to the effect that the covenants by the Company for itself its successors and assigns with His Majesty His Heirs and Successors contained in paragraph (i) of this subclause shall bind the lands comprised in Certificate of Title Volume 4840 Folio 43 (other than the lands described in the Second and Third parts of the Second Schedule hereto) and every part thereof into whosoever hands the same may come and bind all persons interested therein and that the Registrar-General may make such endorsements upon any Certificate of Title comprising such lands or any part thereof and such other entries in the Register Book as he may think desirable in consequence thereof.

(g)

In the event of any dispute arising between the parties hereto as to the performance or non-performance by the Company of any of its obligations under this clause the matter in dispute shall be referred to the Land and Valuation Court for determination and the Act ratifying this Agreement shall provide:

- (i) that such reference shall be duly made if and when a notice in writing that the Minister or the Company has referred the matter in dispute to the Land and Valuation Court is given to the Registrar of the said Court
- (ii) that the Land and Valuation Court shall have power to hear and determine all matters so referred to such Court.

24.

His Majesty has entered into this Agreement subject to, and the Crown Grants to the Company of the lands described in the First, Second and Third parts of the First Schedule hereto shall contain covenants and conditions that the Company its successors and assigns will at all times to the satisfaction of the Minister and the Council of the City of Newcastle provide for the maintenance and proper discharge into the Hunter River through or over the lands described in the First, Second and

Third parts of the First Schedule hereto of all drainage at present being discharged into Platt's Channel. The Act ratifying this Agreement shall contain provisions to the effect that such covenants and conditions shall bind the lands described in the First, Second and Third parts of the First Schedule hereto and every part thereof into whosoever hands the same may come and bind all persons interested therein and that the Registrar-General may make such endorsements upon any Crown Grant or Certificate of Title comprising such lands or any part thereof and such other entries in the Register Book as he may think desirable in consequence thereof.

25.

(a)

Subject to the provisions hereinafter in this clause appearing the Company may place filling approved of by the Minister upon the strip of land 99 feet wide comprising the lands respectively described in the Third part of the Second Schedule hereto, the First part of the Third Schedule hereto, and the Second, Third and Fourth parts of the Fourth Schedule hereto (which strip of land is hereinafter in this clause referred to as "the reservation") and use the reservation without charge in conjunction with the adjoining lands for the purposes of the Company.

(b)

Subject to the provisions hereinafter in this clause appearing all filling placed upon the reservation before the date of this Agreement is to be considered as filling approved of by the Minister.

(c)

The Company hereby covenants with His Majesty His Heirs and Successors that the Company shall if and when it receives a notice in writing from the Minister that the reservation is required for the purpose of providing access to the South Channel—

- (i) within one year from the date of receipt of such notice remove at its own cost and expense and to the satisfaction of the Minister all plant, equipment, railways, roadways, transmission lines and other fixtures and fittings then upon the reservation other than those which comply with the provisions of subclause (d) of this clause,
- (ii) within such period as may be agreed between the Minister and the Company (or in default of such agreement within such period as the Minister shall consider reasonable) excavate the reservation to such a depth, or fill in the reservation to such a height as shall be necessary to provide a pavement level of R.L. 9.00 at the northern boundary of the reservation and graded therefrom to the southern boundary of the reservation in accordance with the diagram annexed hereto and marked "BB". All work to be carried out by the Company under this paragraph shall be carried out by the Company at its own cost and expense and such work shall be carried out and completed in a proper and workmanlike manner and in accordance in all respects with specifications and plans previously approved of in writing by the Minister and all such work shall be carried out to the satisfaction of the Minister. The plans and specifications referred to in this paragraph shall be furnished by the Company at the cost and expense of the Company.

(d)

At all times following the receipt of the notice referred to in the preceding subclause the

Company shall have the right to erect construct use and maintain at its own cost and expense bridges and/or other crossings required by the Company for the purposes of the Company over the reservation provided that such bridges and/or other crossings shall allow a minimum clearance of 17 feet 6 inches from the pavement level provided or to be provided on the reservation. All such bridges and/or crossings shall be erected constructed and maintained in a proper and workmanlike manner and to the satisfaction of the Minister and shall be of such a design as will prevent any articles or material falling therefrom to the roadway, and as will require only one pier not wider than three feet to be placed on the reservation such pier to be placed on the centre line of the reservation. The work of erecting and constructing all bridges and/or other crossings to be erected and constructed by the Company under this subclause after the Company has received the notice referred to in the preceding subclause shall be carried out and completed in accordance in all respects with specifications and plans previously approved of in writing by the Minister.

The Company shall submit to the Minister as soon as practicable after receiving the notice referred to in the preceding subclause specifications and plans of all bridges and/or other crossings then existing over the reservation which the Company does not propose to remove under the preceding subclause for approval by the Minister and the Company hereby covenants with His Majesty His Heirs and Successors that the Company will at its own cost and expense and in a proper and workmanlike manner and to the satisfaction of the Minister carry out all such alterations and removals as the Minister may require in respect of such bridges and/or other crossings. The plans and specifications referred to in this subclause shall be furnished by the Company to the Minister at the cost and expense of the Company. The Company shall not be required to make any payment for or in respect of the rights conferred upon it by this subclause.

(e)

Subject only to the provisions as to time contained in subclause (c) of this clause the work provided by the preceding subclauses 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.

(f)

Should it be decided by the Minister at any time that the reservation is not required for access to the South Channel the Company shall have the right to acquire the reservation upon payment to the Minister of an amount equal to the unimproved capital value of the reservation as determined by the Valuer-General of the State of New South Wales and upon payment of the amount so determined to receive a Crown Grant thereof subject to the exceptions reservations and provisions referred to in subclauses (c) (d) and (e) of Clause 20 hereof subclause (f) (i) of Clause 23 hereof and subclause (a) of Clause 30 hereof.

(g)

In the event of the Company exercising the right to acquire the reservation conferred upon it by the preceding subclause the Minister shall by notice in the Gazette close that part of Tourle Street being the land described in the Fourth part of the Fourth Schedule hereto and upon the publication in the Gazette of such notice any and every dedication of such land or any part thereof for public road shall absolutely cease and determine and the rights of any person to use the same for the purposes of a road shall be extinguished and such land shall vest in His Majesty and the Act ratifying this Agreement shall provide accordingly.

26.

(a)

The Company hereby covenants with His Majesty His Heirs and Successors that the Company shall fill in (with filling approved of by the Minister) and level to the satisfaction of the Minister the lands respectively described in the Second, Third and Fourth parts of the Third Schedule hereto so that such lands shall in the opinion of the Minister be wholly filled in and levelled to R.L. 8.00.

(b)

The work provided by the preceding subclause 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 but not so as to interfere unreasonably with the operations of the Company.

27.

(a)

Subject to the provisions hereinafter in this clause appearing and subject also to such conditions as may from time to time be imposed by the Minister the Company shall have the right to cross the lands respectively described in the Second, Third and Fourth parts of the Third Schedule and the Seventh part of the Second Schedule hereto but such right shall not be exercised outside the boundaries of the lands described in the Fifth Schedule hereto.

(b)

The right conferred upon the Company by this clause shall be exercised by the Company only for the purpose of effecting the reclamation of the Company's land upstream from the land described in the Fifth Schedule hereto and for no other purpose and in regard to the crossing of the lands respectively described in the Second and Third parts of the Third Schedule hereto such right shall only be exercised at R.L. 8.00.

(c)

The Company shall be at liberty at its own cost and expense to lay down construct use and maintain upon and over the land described in the Fifth Schedule hereto all such footways roadways and/or lines of railway together with all necessary rails sleepers embankments signals equipment and appliances incidental thereto as the Minister shall from time to time approve.

(d)

The Company shall if as and when required by the Minister erect and construct at its own expense on the boundaries of the land described in the Fifth Schedule hereto a good and substantial fence of a design and in accordance with specifications to be approved of by the Minister.

(e)

The Company shall at all times at its own cost and expense keep the said footways, roadways, railway lines, rails, sleepers, embankments, signals, equipment, appliances and fences in good order repair and condition to the satisfaction in all respects of the Minister and shall remove the same at its own cost and expense and to the satisfaction of the Minister when they are no longer required by the Company for the purpose of effecting the reclamation of the Company's land as aforesaid.

(f)

In the event of the Commissioner constructing railway lines on the land described in the Second part of the Third Schedule hereto such lines shall be constructed so that the rail level at the northern boundary of the land described in the Second part of the Third Schedule hereto shall be at a minimum height of 20 feet above R.L. 8.00.

(g)

In the event of the Minister or any other person or body acting on behalf of His Majesty constructing a road on the land described in the Third part of the Third Schedule hereto such road shall be constructed so that the pavement level at the northern boundary of the land described in the Third part of the Third Schedule hereto shall be at a minimum height of 20 feet above R.L. 8.00.

(h)

In the event of the Company desiring to continue to exercise the rights conferred upon it by this clause after the commencement of the construction of the railway lines and/or roadway referred to in sub-clauses (f) and (g) of this clause then any necessary bridging over the land described in the Fifth Schedule hereto shall be carried out at the cost and expense of the Company and to the approval in all respects of the Minister and/or the Commissioner (as the case may require) and if such work is not carried out by the Company itself the costs and expenses incurred by the Commissioner, the Minister and/or any other person or body acting on behalf of His Majesty in carrying out such work shall be paid by the Company on demand to the Commissioner and/or His Majesty as the case may require and the same shall be recoverable from the Company in a Court of competent jurisdiction and the respective certificates of the Secretary for Railways or the person acting as such for the time being and/or the Under Secretary, Department of Lands or the person acting as such for the time being of the amount of such costs and expenses respectively incurred by the Commissioner the Minister and/or other person or body acting on behalf of His Majesty shall be prima facie evidence thereof.

(i)

The work provided by any of the preceding subclauses 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 but not so as to interfere unreasonably with the operations of the Company.

(j)

The Company shall not be required to make any payment for or in respect of the rights conferred upon it by this clause.

28.

(a)

At any time after the date of completion the Governor may appropriate and resume the land described in the First part of the Fourth Schedule hereto by Gazette Notification under Division I of Part V of the *Public Works Act, 1912*, as amended for the purpose of a public road and for the purposes of the said Act such appropriation and resumption shall be deemed to be for the purpose of carrying out an authorised work within the meaning of that Act and the Minister for Public Works shall be the Constructing Authority in respect thereof and the Act ratifying this

Agreement shall provide accordingly and the Company hereby covenants with His Majesty His Heirs and Successors to pay to the Minister for Public Works on demand all compensation interest damages costs charges and expenses incurred by His Majesty and the Minister for Public Works in connection with such appropriation and resumption.

(b)

The Act ratifying this Agreement shall contain provisions to the effect that Sections 138 and 97 of the *Public Works Act, 1912*, as amended, shall not apply in respect of the said appropriation and resumption.

(c)

After the land described in the First part of the Fourth Schedule hereto has been appropriated and resumed as aforesaid the Constructing Authority may notwithstanding the provisions of section 81 of the *Public Works Act, 1912* by Notice in the Gazette dedicate such land as a public road and thereupon the provisions of the *Local Government Act, 1919*, as amended with reference to public roads shall apply thereto and the Act ratifying this Agreement shall contain provisions to the effect of this subclause.

(d)

At any time after the date of completion the Minister may by notice in the Gazette dedicate as public roads the lands respectively described in the Third, Fourth, Sixth and Eighth parts of the Second Schedule hereto, the First and Third parts of the Third Schedule hereto and the Second part of the Fourth Schedule hereto or any part of such lands and thereupon the provisions of the *Local Government Act, 1919*, as amended with reference to public roads shall apply thereto and the Act ratifying this Agreement shall contain provisions to the effect of this subclause.

(e)

On and after the date of completion the lands respectively described in the Fifth and Seventh parts of the Second Schedule hereto and the Fourth part of the Third Schedule hereto and every part thereof shall be deemed to have become and to be Crown Lands and to be dedicated for the purposes of public recreation in accordance with the provisions of the *Crown Lands Consolidation Act, 1913* and the Act ratifying this Agreement shall contain provisions to the effect of this subclause.

(f)

At any time after the date of completion the Minister may by Notice in the Gazette declare the lands respectively described in the Ninth part of the Second Schedule hereto and the Second part of the Third Schedule hereto or any part thereof to be vested in the Commissioner and thereupon such lands shall vest in the Commissioner in fee simple subject however in the case of the land described in the Ninth part of the Second Schedule hereto to the notifications referred to in subclause (d) of clause 4 hereof so far as the same are existing at the date of the publication of such notice. The Act ratifying this Agreement shall contain provisions to the effect of this subclause and that the Registrar-General shall make all such cancellations alterations and entries of and in the Register Book, Certificates of Title and otherwise as may be desirable in consequence thereof.

29.

The Company hereby agrees to grant to the Minister for Public Works and other Ministers of the Crown in right of the State of New South Wales and the Commissioner and other statutory authorities representing the Crown in right of the State of New South Wales and the Hunter District Water Board and the Postmaster General or any of them or their respective successors and assigns on request or requests without compensation easements and rights with respect to the erection, construction, laying, operation and maintenance—FIRSTLY of all such electricity transmission lines and cables, telephone lines and cables and water pipes and mains the property of His Majesty, the Minister for Public Works or other Minister of the Crown as aforesaid or the Commissioner or other statutory authority representing the Crown as aforesaid or the Hunter District Water Board or the Postmaster-General as are now upon in under or over the lands described in any part of the First Schedule hereto and SECONDLY of all such additional or substituted electricity transmission lines and cables, telephone lines and cables and water pipes and mains for the purpose of enabling such utilities to be made available for the development of the Islands in the Hunter River and other areas as the Minister for Public Works and other Ministers of the Crown as aforesaid and the Commissioner and other statutory authorities representing the Crown as aforesaid and the Hunter District Water Board and the Postmaster General or any of them or their respective successors and assigns may (whether the electricity lines and cables, telephone lines and cables and water pipes and mains firstly mentioned have or have not been removed) at any time hereafter desire to erect construct or lay upon in under or over the lands described in the First Schedule hereto or the lands comprised in Crown Grant Volume 5145 Folio 220 and in Certificates of Title Volume 4840 Folio 43 Volume 5639 Folio 72 Volume 5390 Folio 95 Volume 5052 Folio 234 Volume 2987 Folio 24 Volume 5316 Folio 104 and Volume 5875 Folio 222 standing in the name of the Company (other than the lands described in the Second Schedule hereto) or the lands comprised in Portions Nos, 2872, 2886 and 2884 Parish of Newcastle County of Northumberland the subject of Special Purchase Applications Nos. 38/30, 37/37A Newcastle or any part or parts thereof along routes determined by the Minister for Public Works or other Minister of the Crown as aforesaid or the Commissioner or other statutory authority representing the Crown as aforesaid or the Hunter District Water Board or the Postmaster General or their respective successors and assigns but not so as to interfere unreasonably with the Company's operations and all or any such easements or rights shall if the Minister for Public Works or other Minister of the Crown as aforesaid or the Commissioner or other statutory authority representing the Crown as aforesaid or the Hunter District Water Board or the Postmaster General or any of their respective successors and assigns require to be so granted in a form on the lines of that set out in the Sixth Schedule hereto.

The power of the Minister for Public Works and other Ministers of the Crown as aforesaid and the Commissioner and other statutory authorities representing the Crown as aforesaid and the Hunter District Water Board and the Postmaster General or any of them or their respective successors to assign the said easements and rights hereinbefore referred to in this clause shall be limited to power to assign from time to time the whole or any part or parts of any of the said easements or rights to the Crown or to any person or corporation for the time being authorised to supply to the public any of the utilities before mentioned.

In this clause the term "Postmaster General" shall mean the Postmaster General of the Commonwealth of Australia or other the proper authority of the Commonwealth for the time being controlling the provision and maintenance of public telephonic and/or telegraphic services.

The Act ratifying this Agreement shall contain provisions to the following effect namely, that the provisions of this clause shall bind the lands described in the First Schedule hereto and also the lands comprised in the said Crown Grant Volume 5145 Folio 220 and the said Certificates of Title

Volume 4840 Folio 43 Volume 5639 Folio 72 Volume 5390 Folio 95 Volume 5052 Folio 234 Volume 2987 Folio 24 Volume 5316 Folio 104 and Volume 5875 Folio 222 (other than the lands described in the Second Schedule hereto) and also the lands comprised in the said Portions 2872, 2886 and 2884 and every part thereof into whosoever hands the same may come and bind all persons interested therein and that the Registrar-General may make such endorsements on any Crown Grant or Certificate of Title comprising such lands or any parts thereof and such other entries in the Register Book as he may think desirable in consequence thereof.

30.

(a)

The Company for itself and its successors and assigns hereby covenants with His Majesty His Heirs and Successors that the Company its successors and assigns will not at any time without the written consent of the Governor of the State of New South Wales use or permit or suffer to be used the lands described in the First Schedule hereto or the lands comprised in Certificate of Title Volume 4840 Folio 43 or the land comprised in Portion No. 2872 Parish of Newcastle County of Northumberland or any part thereof for or in any manner in connection with the shipment of any coal other than coal shipped at the wharves cranes and other facilities for shipment at Newcastle of the Commissioner or the Maritime Services Board of New South Wales and other than coal 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 other than coal mined or owned by the Company and shipped by it for the sole purpose of being used and consumed by the Company or any other company in which the Company holds at least one-third of the share capital in the industrial undertakings of the Company or of any such company in which the Company holds at least one-third of the share capital.

(b)

Provisions to the effect of subclause (a) of this clause shall be included in the Crown Grants of the lands described in the First Schedule hereto and of the land comprised in the said Portion No. 2872 and (without limiting the foregoing) the Act ratifying this Agreement shall provide that such provisions of the said Crown Grants shall be deemed to be covenants by the Company for itself its successors and assigns with His Majesty His Heirs and Successors and that such provisions shall bind the said lands and every part thereof into whosoever hands the same may come and bind all persons interested therein and that the Registrar-General may make such endorsements upon any Crown Grant or Certificate of Title comprising such lands or any part thereof and such other entries in the Register Book as he may think desirable in consequence thereof.

(c)

The Act ratifying this Agreement shall contain provisions to the effect that the covenants by the Company for itself its successors and assigns with His Majesty His Heirs and Successors contained in subclause (a) of this clause shall bind the lands comprised in Certificate of Title Volume 4840 Folio 43 (other than the lands described in the Second and Third parts of the Second Schedule hereto) and every part thereof into whosoever hands the same may come and bind all persons interested therein and that the Registrar-General may make such endorsements upon any Certificate of Title comprising such lands or any part thereof and such other entries in the Register Book as he may think desirable in consequence thereof.

31.

(a)

Subject to the provisions hereinafter appearing the Company shall have the exclusive right from time to time and at all times during the period of ninety-nine years calculated from the date of commencement of this Agreement to construct and erect wharves and other facilities for loading or unloading goods and other structures upon any and every part of the bed of the Hunter River fronting the said Portion No. 2872 between the point marked "A" in the plan annexed hereto and marked "AA" and the most easterly corner of that portion and fronting that part of the embankment constructed by the Company in accordance with clause 23 hereof commencing at the said point marked "A" on the said plan and extending in a westerly direction for a distance of 5,957 feet but only to such distance outwards from that portion or embankment as may be approved in each case by the Minister. In consideration of the right conferred upon the Company by this subclause the Company will pay to His Majesty the annual sum of Two hundred pounds (£200) in each and every year during the said period of ninety-nine years, the first of such payments to be made by the Company on the date of completion of this Agreement and the subsequent payments to be made annually in advance upon the anniversary of the date of commencement of this Agreement. Upon completion of any wharf or other structure constructed by the Company under the provisions of this subclause the Company shall be entitled to receive for the balance then unexpired of the said period of ninety-nine years a lease of the part of the bed of the Hunter River upon which such wharf or other structure has been constructed and the Company shall not be called upon to pay in respect of any such lease any rental in addition to the said sum of Two hundred pounds (£200) hereinbefore referred to in this subclause.

(b)

All wharves facilities and other structures to be erected and constructed by the Company under the preceding subclause shall be erected and constructed by the Company at its own cost and expense and the work of erecting and constructing the same shall be carried out and completed in a proper and workmanlike manner and in accordance in all respects with specifications and plans previously approved of in writing by the Minister and all such work shall be carried out to the satisfaction of the Minister. The plans and specifications referred to in this subclause shall be furnished by the Company to the Minister at the cost and expense of the Company.

(c)

Every lease to be issued to the Company in accordance with the provisions of subclause (a) of this clause shall be limited to the surface of the land thereby leased and to a depth of 400 feet below such surface and shall include conditions in or to the effect of the conditions set out in the Seventh Schedule hereto.

(d)

The Company shall pay to the Minister on demand the cost of all surveys and plans made in connection with any lease granted to the Company in accordance with the provisions of subclause (a) of this clause or in connection with any wharf facility or other structure erected or proposed to be erected by the Company in accordance with the provisions of subclause (a) of this clause.

(e)

The said sum of Two hundred pounds (£200) shall be liable to reappraisal at the expiration of each period of twenty-five years during the said 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.

The Act ratifying this Agreement shall provide—

- (i) That for the purpose of the Local Land Board determining the annual payment under this subclause 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 Valuation Court and the Judge thereof shall have the same powers as when dealing with appeals from Local Land Boards under the *Crown Lands Consolidation Act, 1913* as amended.

(f)

The Minister on behalf of His Majesty agrees with the Company that His Majesty will not at any time during the said period of ninety-nine years grant to any person without the consent of the Company any right of occupancy of or any right to erect or construct or place any structure upon in or over the bed of the Hunter River adjoining or adjacent to that part of the said Portion No. 2872 or embankment referred to in subclause (a) hereof which would interfere unreasonably with the exercise by the Company of any of the rights granted to the Company under the provisions of this clause AND in any case shall not grant any such right closer to that portion or embankment than the line generally 50 feet distant therefrom.

(g)

Nothing in this Agreement shall be construed to imply—

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

32.

(a)

The Company hereby agrees with His Majesty and the Act ratifying this Agreement shall contain provisions to the effect that the *Harbour and Tonnage Rates Act, 1920-1935*, and any Act

amending or replacing the same and the regulations from time to time in force thereunder but insofar only as such Acts and regulations relate to the imposition collection and payment of tonnage rates and berthing charges shall apply to and in respect of every 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) now or hereafter erected constructed or provided along the frontage of the proposed new Southern boundary of South Channel between the points shown by the letters "A" and "P" on the said plan annexed hereto marked "AA" or along the frontage of the said Portion No. 2872 between the point shown by the letter "A" on the said plan and the most easterly corner of that Portion or upon lands adjoining or adjacent to such frontages as if the same were a public wharf and that accordingly tonnage rates and berthing charges in accordance with the said Act and regulations will be payable in respect of all vessels berthing at any such wharf subject to the following exceptions, such exceptions being applicable only to vessels whilst berthed at any wharf now or hereafter erected constructed or provided along the said frontage of the said Portion No. 2872 or upon lands adjoining or adjacent thereto or along that portion of the said frontage of the proposed new southern boundary of South Channel which is situated between the point shown by the letter "A" on the said plan annexed hereto marked "AA" and a point five thousand nine hundred and fifty-seven feet to the westward thereof on such frontage or upon lands adjoining or adjacent to such portion of the last-mentioned frontage on the north or the south namely that:—

- (i) Any vessel carrying loading or discharging only cargo the property of the Company and/or of any other company or companies in which the Company 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 Company and/or of any other company or companies in which the Company 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 Company and/or of any other company or companies in which the Company 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 Company or the property of or chartered by any other company in which the Company 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)

The Company shall keep or cause to be kept in proper books true and complete records of all such matters in relation to all vessels berthing at any 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 the Company 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 the Company shall at such times as are required by such Board or authority during the period of ninety-nine years referred to in Clause 31 hereof furnish to such Board or other authority all such particulars as such Board or authority may deem necessary for the purpose of

enabling such Board or 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.

33.

(a)

The Company hereby covenants with His Majesty His Heirs and Successors that the Company shall pay to the Minister for Public Works the costs and expenses incurred by him in carrying out all the following work that is to say:

- (i) Such dredging as may from time to time be required by the Company within a distance of 60 feet from the face of all berths, wharves and landing places at any time constructed erected or provided along the frontage of the proposed new Southern boundary of South Channel as aforesaid or of the said portion No. 2872 or upon land adjoining any such frontage.
- (ii) All such dredging and other work as may be necessary to carry out the construction of a channel to any berths wharves or landing places referred to in the last preceding paragraph which may be required by the Company.

(b)

Notwithstanding the covenant hereinbefore contained on the part of the Company to pay to the Minister for Public Works the costs and expenses incurred by him in carrying out the work referred to in subclause (a) of this Clause the Company shall be permitted to carry out itself and at its own expense all or any of the work referred to in paragraph (i) of subclause (a) of this Clause subject to the approval of the Minister for Public Works in writing being first obtained and upon such conditions as may be determined by the Minister for Public Works.

(c)

The costs and expenses incurred by the Minister for Public Works in carrying out the work provided by subclause (a) of this Clause shall be paid by the Company to the Minister for Public Works on demand and a certificate of the Under Secretary, Department of Public Works, or the person acting as such for the time being of the amount of such costs and expenses incurred by the Minister for Public Works shall be prima facie evidence thereof.

(d)

The Minister for Public Works or the Government of the said State of New South Wales will during the said period of ninety-nine years referred to in Clause 31 hereof at the cost of His Majesty maintain any channel constructed under the provisions of paragraph (ii) of subclause (a) of this clause to the dimensions to which such work has been carried out at the expense of the Company provided however that in the opinion of the Minister for Public Works the maintenance of such channel to such dimensions is reasonable having regard to the normal requirements of shipping at the Company's berths and the requirements elsewhere in the Port of Newcastle.

(e)

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

equipment elsewhere in the Port of Newcastle.

34.

Except where otherwise in this Agreement provided the Company shall pay to the Minister on demand the cost of all surveys and plans and all other fees and charges carried out made or arising in relation to the lands respectively described in the First Second Third Fourth and Fifth Schedules hereto in connection with the implementation of this Agreement and the same shall be recoverable in a Court of competent jurisdiction PROVIDED however that the Company will not be liable for the costs fees and charges (if any) incurred in connection with the acquisition and/or subdivision of land for rehousing persons at present residing upon lands the subject of this Agreement A certificate of the Under Secretary Department of Lands or the person for the time being acting as such of the amount of the costs fees and charges from time to time payable by the Company in accordance with this clause shall be prima facie evidence thereof.

35.

The Company for itself and its assigns hereby covenants with His Majesty His Heirs and Successors that it will from time to time and at all times hereafter indemnify and keep indemnified His Majesty His Heirs and Successors and the Minister his successors and assigns and the Government of the said State of New South Wales from and against all actions claims and demands which may at any time be brought or made against His Majesty His Heirs and Successors or the Minister his successors or assigns or the Government of the said State of New South Wales by or for any person body firm or corporation whomsoever in respect of any loss of life or of any injury to person or property or of any loss or damage occasioned by or arising out of or by reason or as a result of any act or thing done or omitted to be done by the Company its successors or assigns or its or their employees agents workmen servants or licensees in or in connection with or with respect to the exercise and enjoyment of any of the rights or privileges by this Agreement agreed to be conferred on or granted to the Company or in or in connection with or with respect to the performance by the Company of any of the obligations or duties by this Agreement imposed upon the Company. PROVIDED HOWEVER that the Company shall not incur any liability under this Clause where the loss of life or injury to person or property or the loss or damage in respect of which the action claim or demand has been brought or made has not occurred or been sustained either upon the lands the subject of this Agreement or in the immediate vicinity thereof.

36.

On the date of completion the ungazetted Special Purchase Applications Nos. 41/35, 43/18, 43/19 and 43/20 Newcastle lodged by the Company shall be cancelled and thereupon all rights and obligations of the Company in respect thereof shall cease and determine.

37.

(a)

Except as provided by clauses 23, 29, 30, 31, 32 and 33 hereof nothing in this Agreement contained shall affect the following Special Purchase Applications, viz.:—

No. 38/30 Newcastle by the Company comprising Portion No. 2872 Parish of Newcastle County of Northumberland.

No. 37/38 Newcastle by the Company comprising Portion No. 2886 said Parish and County.

No. 37/37A Newcastle by the Company comprising Portion No. 2884 said Parish and County.

No. 33/21 Newcastle by Rylands Brothers (Australia) Proprietary Limited comprising Portion No. 2883 said Parish and County.

No. 37/39 Newcastle by Stewarts and Lloyds (Australia) Proprietary Limited comprising Portion No. 2885 said Parish and County.

No. 36/53 Newcastle by Lysaght's Works Pty. Limited comprising Portion No. 2901 said Parish and County.

PROVIDED however that the Minister may upon the application of the respective applicants waive or vary any condition imposed in any such application relating to the facing or filling of the land included in such application AND the Act ratifying this Agreement shall contain provisions to the effect of this subclause.

(b)

Except as provided in Clause 23 (f) hereof nothing in this Agreement contained shall affect the following deeds—

Deed dated 10th January 1946 made between the Company of the first part, His Majesty of the second part and The Maritime Services Board of New South Wales of the third part relating to Special Purchase Applications Nos. 37/37A, 37/38 and 38/30 Newcastle.

Deed dated 10th January 1946 made between Stewarts and Lloyds (Australia) Proprietary Limited of the first part, His Majesty of the second part and The Maritime Services Board of New South Wales of the third part relating to Special Purchase Application No. 37/39 Newcastle.

Deed dated 21st December 1945 made between Rylands Brothers (Australia) Proprietary Limited of the first part, His Majesty of the second part and The Maritime Services Board of New South Wales of the third part relating to Special Purchase Application No. 33/21 Newcastle.

or any similar deed now or hereafter entered into between Lysaght's Works Pty. Limited of the first part His Majesty of the second part and the Maritime Services Board of New South Wales of the third part relating to Special Purchase Application No. 36/53 Newcastle PROVIDED HOWEVER that the Minister may upon the application of any company being a party to any such Deed waive or vary any condition imposed in any such Deed relating to the facing or filling of the land the subject of such Deed AND the Act ratifying this Agreement shall contain provisions to the effect of this subclause.

38.

On the date of completion the Lease dated the First day of December 1944 to the Company of part of the land described in the Sixth part of the First Schedule hereto shall cease and determine and any necessary apportionment of rental paid or payable by the Company in respect of the Lease shall be made and adjusted on completion.

39.

Nothing in this Agreement contained shall affect in any way the liability of the Company or any

other person to pay harbour rates in accordance with the provisions of the *Harbour and Tonnage Rates Act, 1920-1935*, and any Act amending or replacing the same and the regulations from time to time in force thereunder.

40.

(a)

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

(b)

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

(c)

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

(d)

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

41.

(a)

Until such time as the Company has completed its obligations under Clauses 21, 23 (other than subclause (f)), 25 and 26 of this Agreement it shall not assign transfer or part with the benefit of this Agreement or any right or privilege thereunder without the previous consent in writing of the Minister first had and obtained which consent may be given upon condition that the Assignee shall execute a deed whereby it covenants with the Minister to observe and perform the provisions of this Agreement on the part of the Company to be observed and performed in the same manner in all respects as if the name of such assignee had been inserted in this Agreement in place of the name of the Company.

(b)

Any consent by the Minister to an assignment under this clause shall not discharge the 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 His Majesty under this Agreement, whether by way of damages or otherwise, to the intent that the Minister or His Majesty shall not be liable in any case or to any extent in or to which he or they would not have been liable had the assignment not been made.

42.

This Agreement is subject to ratification by the Parliament of the State of New South Wales and shall come into effect when so ratified and the expression "the date of commencement of this Agreement" means the date of commencement of the Act which ratifies it PROVIDED that if this Agreement is not ratified by the said Parliament before the 30th day of April 1950 it shall become null and void.

43.

The Act ratifying this Agreement shall also contain provisions—

- (a) authorising, requiring and directing the Company in accordance with the provisions of clause 23 hereof to construct the embankment along the whole of the proposed new southern boundary of the said South Channel between the approximate points marked "A" and "P" on the said Plan hereto annexed marked "AA", and to carry out the excavations and reclamations along that boundary as required by Clauses 23 hereof;
- (b) empowering the Governor from time to time by notification in the Gazette to declare that the rights of the public and the rights powers and duties of the Maritime Services Board of New South Wales in and in respect of Platt's Channel and the parts of South Channel to be reclaimed under the provisions of this Agreement are extinguished either in whole or to the extent specified in any such notification;
- (c) authorising the Company to reclaim Platt's Channel and the parts of South Channel to be reclaimed under the provisions of this Agreement and to exercise the rights conferred on the Company by Clauses 25(a) 25(c) 25(d) 27(a) and 27(c) of this Agreement;
- (d) empowering the Company to do such acts and things on in or in relation to any Crown Land, public road or navigable waters as are, in the opinion of the Minister necessary for the proper exercise and performance of the Company's powers and obligations under this Agreement; and
- (e) dispensing with the necessity to comply with the provisions of Section 327 of the *Local Government Act, 1919*, as amended, in respect of any subdivision of land made in connection with this Agreement.

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

**FIRST SCHEDULE TO AGREEMENT
(Descriptions of Areas to be granted to the Company.)
FIRST PART**

ALL THAT piece or parcel of land containing by admeasurement 193 acres be the same more or less situated in the County of Northumberland Parish of Newcastle being portion 2941—COMMENCING at the most Northerly North-eastern corner of portion 2872 of 3 acres 26 perches and bounded thence on the South-west by a North-eastern boundary of portion 2872 and a North-eastern boundary of portion

349 of 14 acres 21½ perches in all bearing North 82 degrees 52 minutes 30 seconds West 1672 feet 8 inches thence by the North-eastern boundaries of portions 2883 of 4 acres 1 rood 27 perches and 2901 of 3 acres 14 perches in all bearing North 82 degrees 55 minutes 20 seconds West 1318 feet ¾ inch thence by the North-eastern boundary of part of 3 acres 30 perches described in the Fourth Part hereof and the North-eastern boundaries of portions 2886 of 4 acres 31 perches 2885 of 3 acres 3 roods 35 perches and 2884 of 4 acres 3 roods 22 perches in all bearing North 82 degrees 54 minutes West 3379 feet 6 ¾ inches on the East by the Western boundary of portion 2884 bearing South 1 degree 36 minutes West 264 feet 7 inches on the South by the Northern boundary of 1 acre 11 perches granted to The Broken Hill Proprietary Company Limited bearing North 88 degrees 23 minutes West 33 feet to the original high-water mark of the right bank of Platts Channel again on the South-west on the South-east and again on the South by that high-water mark North-westerly thence South-westerly and thence Westerly to the Eastern boundary of portion 2946 of 1 rood 26½ perches on the West by part of the Eastern boundary of portion 2946 bearing North 22 minutes 20 seconds East 159 feet again on the South-west and South-east by lines dividing this land from portions 2946 and 2912 of 3 roods 3½ perches bearing North 59 degrees 19 minutes West 57 feet 4 inches North 83 degrees 25 minutes West 175 feet 1 inch North 77 degrees 8 minutes West 46 feet 5 inches South 81 degrees 41 minutes West 76 feet 9 inches North 5 degrees 55 minutes West 25 feet and thence South 67 degrees 15 minutes West 57 feet 10 inches again on the East by part of the Western boundary of portion 2912 bearing South 11 minutes West 13 feet 2 inches to the high-water mark of the right bank of Platts Channel again on the South-east and South-west by that high-water mark South-westerly and thence North-westerly to the Southern corner of 1 acre 1 rood described in the Second Part of the Third Schedule hereto on the North-west by part of the South-eastern boundary of that 1 acre 1 rood bearing North 50 degrees 19 minutes 20 seconds East 404 feet 5½ inches and generally on the North-east by the South-western boundary line of portion 2938 of 3 acres 1 rood 2 perches bearing South 61 degrees 53 minutes East 1091 feet 9 inches to the high-water mark of the left bank of Platts Channel thence by that high-water mark generally South-easterly to the South-western corner of portion 2939 of 27 acres 3 roods and thence by the South-western boundary line of portion 2939 bearing South 70 degrees 45 minutes East 2036 feet 7½ inches to the point of commencement EXCLUSIVELY of portion 2942 of 1 acre 2 roods 4½ perches situated within the external boundaries of the above described land Commencing on the high-water mark of the left bank of Platts Channel aforesaid at the South-eastern corner of 1 acre 1 rood 19 perches shown on plan catalogued Ms. 5121Md. at the Department of Lands Sydney and bounded thence on the East by a line bearing South 22 minutes 20 seconds West 713 feet 2 inches on the South-west by lines bearing North 59 degrees 19 minutes West 57 feet 4 inches and thence North 83 degrees 25 minutes West 49 feet 9½ inches on the West by a line bearing North 22 minutes 20 seconds East 645 feet 10½ inches to the high-water mark of the left bank of Platts Channel aforesaid and generally on the North by that high-water mark generally Easterly to the point of commencement.

SECOND PART

ALL THOSE pieces or parcels of land containing by admeasurement 31 acres 2 perches be the same more or less situated in the county of Northumberland Parish of Newcastle being portions 2938 and 2939 PART THEREOF being 3 acres 1 rood 2 perches portion 2938 COMMENCING at the Northernmost corner of portion 2941 aforesaid and bounded thence on the North-west by part of the South-eastern boundary of 1 acre 1 rood described in the Second Part of the Third Schedule hereto bearing North 50 degrees 19 minutes 20 seconds East 38 feet 10¼ inches to the Eastern corner of that 1 acre 1 rood on the North-east by lines bearing South 65 degrees 15 minutes 40 seconds East 648 feet 11 inches and thence South 70 degrees 20 minutes 40 seconds East 999 feet 1¾ inches to the high-water mark of the right bank of South Channel of the Hunter River generally on the South by that high-water mark generally Westerly to the most Northerly North-eastern corner of portion 2941 aforesaid and on the

South-west by a North-eastern boundary of portion 2941 bearing North 61 degrees 53 minutes West 1091 feet 9 inches to the point of commencement. AND ALSO OTHER PART THEREOF Being 27 acres 3 roods portion 2939 Commencing at the most Easterly South-eastern corner of portion 2941 aforesaid and bounded thence on the South-west by a North-eastern boundary of portion 2941 bearing North 70 degrees 45 minutes West 2036 feet 7½ inches to the high-water mark of the right bank of South Channel of the Hunter River and thence by that high-water mark North-westerly to the Easternmost corner of 10 acres 2 roods 15¼ perches described in the Second Part of the Second Schedule hereto and on the North-east by lines bearing South 78 degrees 25 minutes 20 seconds East 403 feet 5 inches South 70 degrees 42 minutes 20 seconds East 603 feet 5 inches and thence South 65 degrees 39 minutes 10 seconds East 4750 feet to the point of commencement.

THIRD PART

ALL THAT piece or parcel of land containing by admeasurement 13 acres 1 rood be the same more or less situated in the County of Northumberland Parish of Newcastle being portion 2940 COMMENCING on the high-water mark of the right bank of South Channel of the Hunter River at the North-eastern corner of portion 100 of 17 acres and bounded thence on the West by the Eastern boundary of portion 100 bearing South 20 seconds East 369 feet 6 inches to the high-water mark of the left bank of Platts Channel generally on the South-west by that high-water mark of Platts Channel generally South-easterly to its junction with the high-water mark of the right bank of South Channel of the Hunter River aforesaid and on the North-east by the lastmentioned high-water mark North-westerly to the point of commencement.

FOURTH PART

ALL THOSE pieces or parcels of land containing by admeasurement 3 acres 30 perches be the same more or less situated in the County of Northumberland Parish of Newcastle PART THEREOF Being the road 1 chain wide known as Ingall-street separating portion 108 of 30 acres 1 rood 19 perches from portion 109 of 28 acres 3 roods 24 perches and extending from the Easterly prolongation of the Southern boundary of portion 108 in a Northerly direction to a line connecting the North-eastern corner of portion 108 with the North-western corner of portion 109 AND ALSO OTHER PART THEREOF Being a strip of land 1 chain wide separating portion 2886 of 4 acres 31 perches from portion 2901 of 3 acres 14 perches and extending from a line connecting the South-eastern corner of portion 2886 with the South-western corner of portion 2901 in a Northerly direction to a South-western boundary of portion 2941 aforesaid.

FIFTH PART

ALL THAT piece or parcel of land containing by admeasurement 3 roods 3½ perches be the same more or less situated in the County of Northumberland parish of Newcastle at Mayfield West being portion 2912 COMMENCING on the high-water mark of the right bank of Platts Channel at the North-western corner of portion 2946 of 1 rood 26½ perches and bounded thence on the East by the Western boundary of portion 2946 bearing South 22 minutes 20 seconds West 147 feet 6½ inches on the South-west and South by lines dividing this land from the land comprised in Certificate of Title Volume 5390 Folio 95 bearing North 42 degrees 46 minutes West 85 feet 7¾ inches and thence South 86 degrees 54 minutes West 243 feet 2½ inches on the West by a line dividing it from the land comprised in that Certificate of Title and an Eastern boundary of portion 2941 aforesaid which Eastern boundary forms the high-water mark of the right bank of Platts Channel aforesaid in all bearing North 11 minutes East 113 feet 10½ inches and on the North-west and North-east by that high-water mark dividing it from portion 2941 bearing North 67 degrees 15 minutes East 57 feet 10 inches South 5 degrees 55 minutes East 25 feet North 81 degrees 41 minutes East 76 feet 9 inches South 77 degrees 8 minutes East 46 feet 5 inches and thence South 83 degrees 25 minutes East 125 feet 3½ inches to the point of commencement.

SIXTH PART

ALL THAT piece or parcel of land containing by admeasurement 16 acres be the same more or less situated in the County of Northumberland Parish of Newcastle being portion 2943 COMMENCING on the high-water mark of the right bank of Platts Channel at the Northernmost corner of the South-eastern part of the land comprised in Certificate of Title Volume 5639 folio 72 and bounded thence on the South-east by the North-western boundary of that part of the land comprised in that Certificate of Title bearing South 63 degrees 5 minutes West 836 feet 10½ inches on the South-west and again on the South-east by lines bearing North 41 degrees 47 minutes West 155 feet 10½ inches and thence South 63 degrees 5 minutes West 365 feet 1¼ inches to the Pacific State Highway again on the South-west by that highway bearing North 26 degrees 34 minutes West 11 feet 2¾ inches and thence North 41 degrees 47 minutes West 56 feet 8¾ inches on the North-west and again on the South-west by lines bearing North 63 degrees 5 minutes East 362 feet 1¾ inches and thence North 41 degrees 47 minutes West 676 feet 7 inches again on the North-west by part of the South-eastern boundary of the North-western part of the land comprised in Certificate of Title Volume 5639 Folio 72 aforesaid bearing North 63 degrees 8 minutes East 646 feet 9½ inches to the high-water mark of the right bank of Platts Channel aforesaid and on the North-east by that high-water mark dividing this land from portion 2941 aforesaid South-easterly to the point of commencement.

SECOND SCHEDULE TO AGREEMENT

(Descriptions of areas to be transferred by the Company to the Crown.)

FIRST PART

ALL THAT piece or parcel of land containing by admeasurement 293 acres 1 rood 20¾ perches be the same more or less situated in the County of Northumberland Parish of Newcastle at Shortland being part of the land comprised in Certificate of Title Volume 5052 Folio 234 and being also part of portion 96 of 2000 acres COMMENCING on the Northern side of Birmingham Place at the most Westerly South-western corner of the land comprised in Certificate of Title Volume 5052 Folio 234 and bounded thence on the South by Birmingham Place bearing South 89 degrees 29 minutes East 6 chains 14-7/10 links generally on the South East by the Newcastle Wallsend Coal Company's Railway bearing North 69 degrees 47 minutes East 10 chains 11 links North 67 degrees 28 minutes East 5 chains 5-2/10 links North 69 degrees 14 minutes East 2 chains 80 links North 69 degrees 59 minutes East 5 chains 65-5/10 links North 45 degrees 19 minutes East 2 chains 41-7/10 links North 69 degrees 46 minutes East 1 chain 60 links South 78 degrees 13 minutes East 1 chain 88-7/10 links South 20 degrees 14 minutes East 5 links North 73 degrees 14 minutes East 2 chains 2-8/10 links North 78 degrees 52 minutes East 1 chain 90-3/10 links thence North 85 degrees 30 minutes East 1 chain 54-1/10 links and thence by a road of variable width along that railway bearing North 5 minutes East 98-7/10 links South 88 degrees 3 minutes East 3 chains 3 links South 81 degrees 21 minutes East 2 chains 2 links South 79 degrees 7 minutes East 3 chains 19-2/10 links South 76 degrees 20 minutes East 2 chains 94-7/10 links South 78 degrees 27 minutes East 1 chain 47-8/10 links South 81 degrees 44 minutes East 2 chains 33-3/10 links South 88 degrees 12 minutes East 1 chain 64-3/10 links North 86 degrees 1 minute East 1 chain 66-7/10 links North 82 degrees 5 minutes East 2 chains 45-9/10 links North 74 degrees 16 minutes East 3 chains 1-5/10 links North 67 degrees 6 minutes East 38-6/10 links North 65 degrees 38 minutes East 1 chain 81-3/10 links North 63 degrees 59 minutes East 3 chains 38-8/10 links North 63 degrees 25 minutes East 2 chains 94-6/10 links North 64 degrees 8 minutes East 4 chains 49-7/10 links North 62 degrees 38 minutes East 5 chains 37-2/10 links and thence North 53 degrees 28 minutes East 4 chains 6-4/10 links on the North East by a Pipe Line 90-91/100 links wide bearing North 60 degrees 40 minutes 30 seconds West 33 chains 11-4/10 links again on the South East by a line in part crossing that Pipe Line bearing North 34 degrees 6 minutes East 21 chains 7-6/10 links again on the North East by the Main Northern Railway being 11 chains 51-8/10 links of the arc of a circle of 82 chains radius

the centre of which lies North Easterly of a chord bearing North 44 degrees 18 minutes 15 seconds West 11 chains 50-8/10 links and thence by that Railway bearing North 40 degrees 49 minutes West 3 chains 25 links thence North 38 degrees 43 minutes West 1 chain 40 links on the North West the North and again on the North West by lines bearing South 61 degrees 38 minutes West 20 chains 38-6/10 links South 16 degrees 23 minutes 30 seconds West 6 chains 98-8/10 links South 89 degrees 58 minutes 30 seconds West 5 chains 55 links North 89 degrees 48 minutes West 5 chains 7-3/10 links and thence South 54 degrees 52 minutes 30 seconds West 28 chains 5-8/10 links and on the West by part of the Western boundary of the land comprised in Certificate of Title Volume 5052 Folio 234 aforesaid bearing South 0 degrees 27 minutes 30 seconds West 34 chains 55-9/10 links to the point of commencement Exclusively of a reserve 90-91/100 links wide for Pipe Line passing through this land in a South Easterly direction the area of which has been deducted from the total area.

SECOND PART

ALL THOSE pieces or parcels of land containing by admeasurement 11 acres 3 roods 22 $\frac{1}{4}$ perches be the same more or less situated in the County of Northumberland Parish of Newcastle on Spit Island being parts of the land comprised in Certificate of Title Volume 4840 Folio 43 and being also parts of portions 93 of 19 acres 2 roods, 94 of 24 acres 2 roods, 95 of 22 acres, 97 of 18 acres, 98 of 18 acres 1 rood, 99 of 21 acres 2 roods and 100 of 17 acres PART THEREOF Being 1 acre 1 rood 7 perches COMMENCING on the high-water mark of the right bank of South Channel of the Hunter River at the Easternmost corner of portion 2938 aforesaid and bounded thence on the South-west and South by lines bearing South 71 degrees 10 minutes 40 seconds East 999 feet 1 $\frac{3}{4}$ inches south 72 degrees 50 minutes 40 seconds East 999 feet 1 $\frac{3}{4}$ inches South 85 degrees 20 minutes 20 seconds East 915 feet 2 inches and thence North 89 degrees 19 minutes 40 seconds East 42 feet to the high-water mark of the right bank of South Channel of the Hunter River aforesaid and generally on the North-east by that high-water mark generally North-westerly to the point of commencement AND ALSO OTHER PART THEREOF Being 10 acres 2 roods 15 $\frac{1}{4}$ perches COMMENCING on the high-water mark of the right bank of South Channel of the Hunter River at the Westernmost corner of portion 2939 aforesaid and bounded thence on the South-west and South-east by lines bearing North 78 degrees 25 minutes 20 seconds West 200 feet North 87 degrees 45 minutes 20 seconds West 603 feet 5 inches South 81 degrees 24 minutes 40 seconds West 603 feet 5 inches South 75 degrees 57 minutes 40 seconds West 878 feet 11 $\frac{1}{2}$ inches and thence South 80 degrees 24 minutes 40 seconds West 494 feet 6 $\frac{1}{2}$ inches to the high-water mark of the right bank of South Channel of the Hunter River aforesaid and on the North-west and North-east by that high-water mark North-easterly and thence South-easterly to the point of commencement.

THIRD PART

ALL THAT piece or parcel of land containing by admeasurement 1 acre 1 rood 19 perches be the same more or less situated in the County of Northumberland Parish of Newcastle on Spit Island being part of the land comprised in Certificate of Title Volume 4840 Folio 43 and being also part of portion 97 aforesaid COMMENCING on the high water mark of the left bank of Platts Channel at the North Western corner of portion 2942 aforesaid and bounded thence on the West by a line bearing North 22 minutes 20 seconds East 618 feet 4 $\frac{1}{4}$ inches to the high water mark of the right bank of South Channel of the Hunter River on the North by that high water mark bearing North 89 degrees 19 minutes 40 seconds East 99 feet $\frac{1}{4}$ inch on the East by a line bearing South 22 minutes 20 seconds West 587 feet 2 $\frac{1}{4}$ inches to the high water mark of the left bank of Platts Channel aforesaid and generally on the South by that high water mark dividing this land from portion 2942 aforesaid generally Westerly to the point of commencement.

FOURTH PART

ALL THOSE pieces or parcels of land containing by admeasurement 2 acres 1 rood 4 perches be the

same more or less situated in the County of Northumberland Parish of Newcastle at Mayfield West being parts of the land comprised in Certificate of Title Volume 5390 Folio 95 and being also parts of portions 96 aforesaid and 101 of 33 acres 16 perches PART THEREOF Being 2 acres 12³/₄ perches COMMENCING at a point where the Eastern side of Tourle Street meets the Northern side of Bull Street and bounded thence on the West by Tourle Street bearing North 24 minutes East 1619 feet 7 inches on the North East by a line bearing South 7 degrees 14 minutes 30 seconds East 496 feet 4 inches on the East by a line a Western boundary of 1 acre 2 roods 19³/₄ perches described in the Sixth part hereof and the Western boundary of 5 acres 21 perches described in the Fifth Part hereof in all bearing South 24 minutes West 1127 feet 4³/₄ inches to Bull Street aforesaid and on the South by Bull Street bearing North 89 degrees 49 minutes West 66 feet to the point of commencement AND ALSO OTHER PART THEREOF Being 31¹/₄ perches COMMENCING at the South Eastern corner of portion 2912 aforesaid and bounded thence on the North East by part of the South Western boundary of portion 2946 of 1 rood 26¹/₂ perches bearing South 42 degrees 46 minutes East 72 feet 4³/₄ inches to Tourle Street on the East by Tourle Street bearing South 22 minutes 20 seconds West 149 feet 9¹/₄ inches and on the South and West by lines bearing North 87 degrees 34 minutes 10 seconds West 49 feet 6¹/₄ inches and thence North 22 minutes 20 seconds East 200 feet 10 inches to the point of commencement.

FIFTH PART

ALL THAT piece or parcel of land containing by admeasurement 5 acres 21 perches situated in the County of Northumberland Parish of Newcastle at Mayfield West being part of the land comprised in Certificate of Title Volume 5390 Folio 95 and being also part of portions 101 aforesaid and 102 of 34 acres 1 rood 32 perches COMMENCING on the Northern side of Bull Street at the South Eastern corner of 2 acres 12³/₄ perches described in the Fourth Part hereof and bounded thence on the South by Bull Street bearing South 89 degrees 49 minutes East 676 feet 6 inches on the East by a Western boundary of 1 acre 2 roods 19³/₄ perches described in the Sixth Part hereof bearing North 24 minutes East 329 feet 1³/₄ inches on the North by a Southern boundary of that 1 acre 2 roods 19³/₄ perches bearing North 89 degrees 36 minutes West 676 feet 6 inches and on the West by part of the Eastern boundary of the aforesaid 2 acres 12³/₄ perches bearing South 24 minutes West 331 feet 8¹/₂ inches to the point of commencement.

SIXTH PART

ALL THAT piece or parcel of land containing by admeasurement 1 acre 2 roods 19³/₄ perches be the same more or less situated in the County of Northumberland Parish of Newcastle at Mayfield West being part of the land comprised in Certificate of Title Volume 5390 Folio 95 and being also part of portions 101 and 102 both aforesaid COMMENCING on the Northern side of Bull Street at the South Eastern corner of 5 acres 21 perches described in the Fifth part hereof and bounded thence on the South by Bull Street bearing South 89 degrees 49 minutes East 66 feet on the East and North by lines bearing North 24 minutes East 394 feet 10³/₄ inches and thence North 89 degrees 36 minutes West 742 feet 6 inches on the West by part of the Eastern boundary of 2 acres 12³/₄ perches described in the Fourth Part hereof bearing South 24 minutes West 66 feet again on the South by the Northern boundary of the aforesaid 5 acres 21 perches bearing South 89 degrees 36 minutes East 676 feet 6 inches and again on the West by the Eastern boundary of that 5 acres 21 perches bearing South 24 minutes West 329 feet 1³/₄ inches to the point of commencement.

SEVENTH PART

ALL THAT piece or parcel of land containing by admeasurement 12 acres 3 roods 18³/₄ perches be the same more or less situated in the County of Northumberland Parish of Newcastle at Sandgate being part of the land comprised in Certificate of Title Volume 5639 Folio 72 and being also part of portion 96 aforesaid COMMENCING on the high water mark of the right bank of Platts Channel at the North Western corner of portion 2945 of 2 acres 3 roods 38 perches being also a point where the South

Eastern side of Ferry Road meets that high water mark and bounded thence on the North West by Ferry Road bearing South 50 degrees 19 minutes 20 seconds West 196 feet 8 inches to River Road on the South West by River Road and a line in all bearing South 39 degrees 40 minutes 40 seconds East 561 feet again on the North West by a line bearing South 50 degrees 19 minutes 20 seconds West 734 feet 11³/₄ inches to the Pacific State Highway again on the South West by that highway bearing South 38 degrees 26 minutes 40 seconds East 106 feet 11 inches and thence South 36 degrees 36 minutes 40 seconds East 305 feet 7 inches on the South East by the North Western boundary of 3 acres 27¹/₄ perches described in the Eighth Part hereof bearing North 50 degrees 19 minutes 20 seconds East 1038 feet 3¹/₂ inches to the Southern corner of portion 2945 aforesaid on the high water mark of the right bank of Platts Channel and on the North East by that high water mark dividing this land from portion 2945 North Westerly to the point of commencement.

EIGHTH PART

ALL THAT piece or parcel of land containing by admeasurement 3 acres 27¹/₄ perches be the same more or less situated in the County of Northumberland Parish of Newcastle at Sandgate being part of the land comprised in Certificate of Title Volume 5639 Folio 72 and being also part of portion 96 aforesaid COMMENCING on the high water mark of the right bank of Platts Channel at the Eastern corner of 12 acres 3 roods 18³/₄ perches described in the Seventh Part hereof and bounded thence on the North West by the South Eastern boundary of that 12 acres 3 roods 18³/₄ perches bearing South 50 degrees 19 minutes 20 seconds West 1038 feet 3¹/₂ inches to the Pacific State Highway on the South West by that highway bearing South 36 degrees 36 minutes 40 seconds East 132 feet 2¹/₄ inches on the South East by the North Western boundary of 3 acres 33¹/₄ perches described in the Ninth Part hereof bearing North 50 degrees 19 minutes 20 seconds East 1052 feet 8¹/₂ inches to the high water mark of the right bank of Platts Channel aforesaid and on the North East by that high water mark dividing this land from 1 acre 13 perches described in the Third Part of the Third Schedule hereto bearing North 41 degrees 55 minutes 40 seconds West 109 feet 7³/₄ inches and thence North 47 degrees 18 minutes 40 seconds West 22 feet 7¹/₂ inches to the point of commencement.

NINTH PART

ALL THAT piece or parcel of land containing by admeasurement 3 acres 33¹/₄ perches be the same more or less situated in the County of Northumberland Parish of Newcastle at Sandgate being part of the land comprised in Certificate of Title Volume 5639 Folio 72 and being also part of portion 96 aforesaid COMMENCING on the high water mark of the right bank of Platts Channel at the Eastern corner of 3 acres 27¹/₄ perches described in the Eighth Part hereof and bounded thence on the North West by the South Eastern boundary of that 3 acres 27¹/₄ perches bearing South 50 degrees 19 minutes 20 seconds West 1052 feet 8¹/₂ inches to the Pacific State Highway on the South West by that highway bearing South 36 degrees 36 minutes 40 seconds East 132 feet 2¹/₄ inches on the South East by a line bearing North 50 degrees 19 minutes 20 seconds East 1064 feet 11³/₄ inches to the high water mark of the right bank of Platts Channel aforesaid and on the North East by that high water mark dividing this land from 1 acre 1 rood described in the Second Part of the Third Schedule hereto bearing North 41 degrees 55 minutes 40 seconds West 132 feet 1¹/₄ inches to the point of commencement.

TENTH PART

ALL THAT piece or parcel of land containing by admeasurement 1 acre 1 rood 8 perches be the same more or less situated in the County of Northumberland Parish of Newcastle at Hexham being part of the land comprised in Certificate of Title Volume 5875 Folio 222 and being also part of portion 96 aforesaid COMMENCING on the high water mark of the right bank of Ironbark Creek at the most Northerly North Western corner of portion 96 and bounded thence on the West by part of a Western boundary of portion 96 bearing South 39 minutes West 6 chains 69-7/10 links on the South West by

the road from Maitland to Newcastle bearing South 51 degrees 31 minutes East 63-3/10 links on the East and South East by lines bearing North 39 minutes East 5 chains 27-4/10 links and thence North 75 degrees 26 minutes East 4 chains 51-7/10 links again on the East by a line bearing North 1 degree 3 minutes 20 seconds East 2 chains 40-94/100 links to the high water mark of the right bank of Ironbark Creek aforesaid and on the North West by that high water mark South Westerly to the point of commencement Exclusively of a tidal Creek passing through this land in a Westerly direction the area of which has been deducted from the total area.

THIRD SCHEDULE TO AGREEMENT

FIRST PART

ALL THAT piece or parcel of land containing by admeasurement 1 acre 2 roods 4½ perches be the same more or less situated in the County of Northumberland Parish of Newcastle being portion 2942 within the external boundaries of portion 2941 aforesaid COMMENCING on the high water mark of the right bank of Platts Channel at the North Western corner of portion 2946 aforesaid and bounded thence on the West by a line bearing North 22 minutes 20 seconds East 645 feet 10½ inches to the high water mark of the left bank of Platts Channel generally on the North West by that high water mark dividing this land from 1 acre 1 rood 19 perches described in the Third Part of the Second Schedule hereto generally North Easterly to the South Eastern corner of that 1 acre 1 rood 19 perches on the East by a line bearing South 22 minutes 20 seconds West 713 feet 2 inches to the high water mark of the right bank of Platts Channel aforesaid and on the South West by that high water mark dividing it from portion 2946 aforesaid bearing North 59 degrees 19 minutes West 57 feet 4 inches and thence North 83 degrees 25 minutes West 49 feet 9½ inches to the point of commencement.

SECOND PART

ALL THAT piece or parcel of land containing by admeasurement 1 acre 1 rood be the same more or less situated in the County of Northumberland Parish of Newcastle at Sandgate COMMENCING on the high water mark of the right bank of Platts Channel at the Southern corner of 1 acre 13 perches described in the Third part hereof and bounded thence on the North West by the South Eastern boundary of that 1 acre 13 perches bearing North 50 degrees 19 minutes 20 seconds East 385 feet 3½ inches on the North East by a line bearing South 65 degrees 15 minutes 40 seconds East 146 feet 4¼ inches on the South East by the North Western boundary of portion 2938 and the North Western boundary line of portion 2941 both aforesaid in all bearing South 50 degrees 19 minutes 20 seconds West 443 feet 3¾ inches to the high water mark of the right bank of Platts Channel aforesaid and on the South West by that high water mark dividing this land from 3 acres 3¾ perches described in the Ninth Part of the Second Schedule hereto bearing North 41 degrees 55 minutes 40 seconds west 132 feet 1¼ inches to the point of commencement.

THIRD PART

ALL THAT piece or parcel of land containing by admeasurement 1 acre 13 perches be the same more or less situated in the County of Northumberland Parish of Newcastle at Sandgate COMMENCING on the high water mark of the right bank of Platts Channel at the Southern corner of portion 2945 aforesaid and bounded thence on the North West by the South Eastern boundaries of portions 2945 and 2944 of 31½ perches in all bearing North 50 degrees 19 minutes 20 seconds East 329 feet 5 inches on the North East by a line bearing South 65 degrees 15 minutes 40 seconds East 146 feet 4¼ inches on the South East by the North Western boundary of 1 acre 1 rood described in the Second Part hereof bearing South 50 degrees 19 minutes 20 seconds West 385 feet 3½ inches to the high water mark of the right bank of Platts Channel aforesaid and on the South West by that high water mark dividing this land from 3 acres 27¾ perches described in the Eighth Part of the Second Schedule hereto bearing North 41 degrees 55 minutes 40 seconds West 109 feet 7¾ inches and thence North 47

degrees 18 minutes 40 seconds West 22 feet 7½ inches to the point of commencement.

FOURTH PART

ALL THAT piece or parcel of land containing by admeasurement 3 acres 29½ perches be the same more or less situated in the County of Northumberland Parish of Newcastle at Sandgate being portions 2944 and 2945 COMMENCING on the high water mark of the right bank of Platts Channel at the Northern corner of 12 acres 3 roods 18¾ perches described in the Seventh Part of the Second Schedule hereto being also a point where the South Eastern side of Ferry Road meets that high water mark and bounded thence on the North East by lines bearing South 62 degrees 45 minutes 40 seconds East 1001 feet 3¾ inches and thence South 65 degrees 15 minutes 40 seconds East 57 feet 6¼ inches on the South East by the North Western boundary of 1 acre 13 perches described in the Third Part hereof bearing South 50 degrees 19 minutes 20 seconds West 329 feet 5 inches to the high water mark of the right bank of Platts Channel aforesaid and on the South West by that high water mark dividing this land from the aforesaid 12 acres 3 roods 18¾ perches North Westerly to the point of commencement.

FOURTH SCHEDULE TO AGREEMENT

FIRST PART

ALL THAT piece or parcel of land containing by admeasurement 2 roods 23 perches be the same more or less situated in the County of Northumberland Parish of Newcastle at Mayfield West being part of the land comprised in Conveyance Book 1869 No. 41 and being also part of portion 96 aforesaid COMMENCING on the Western side of Tourle Street at the South Eastern corner of 31¼ perches described in the Fourth Part of the Second Schedule hereto and bounded thence on the East by Tourle Street, bearing South 23 minutes 15 seconds West 752 feet on the South West and West by lines bearing North 7 degrees 14 minutes 30 seconds West 372 feet 1½ inches and thence North 22 minutes 20 seconds East 385 feet and on the North by the Southern boundary of the aforesaid 31¼ perches bearing South 87 degrees 34 minutes 10 seconds East 49 feet 6¼ inches to the point of commencement.

SECOND PART

ALL THAT piece or parcel of land containing by admeasurement 1 rood 26½ perches be the same more or less situated in the County of Northumberland Parish of Newcastle at Mayfield West being portion 2946 COMMENCING on the high water mark of the right bank of Platts Channel at the North Eastern corner of portion 2912 aforesaid and bounded thence on the West by the Eastern boundary of portion 2912 bearing South 22 minutes 20 seconds West 147 feet 6½ inches on the South West by the North Eastern boundary of 31¼ perches described in the Fourth Part of the Second Schedule hereto and a line in all bearing South 42 degrees 46 minutes East 96 feet 6¼ inches on the South by a line bearing South 89 degrees 36 minutes East 33 feet on the East by a line dividing this land from part of the land comprised in Certificate of Title Volume 5390 Folio 95 and a Western boundary of portion 2941 aforesaid in all bearing North 22 minutes 20 seconds East 183 feet 8 inches to the high water mark of the right bank of Platts Channel aforesaid and on the North East by that high water mark dividing this land from portion 2942 aforesaid bearing North 59 degrees 19 minutes West 57 feet 4 inches and thence North 83 degrees 25 minutes West 49 feet 9½ inches to the point of commencement.

THIRD PART

ALL THAT piece or parcel of land containing by admeasurement 8 perches be the same more or less situated in the County of Northumberland Parish of Newcastle at Mayfield West being part of the land comprised in Certificate of Title Volume 5390 Folio 95 and being also part of 31¼ perches described in the Fourth Part of the Second Schedule hereto COMMENCING at the most Westerly South Western corner of portion 2946 aforesaid and bounded thence on the North East by part of the South Western

boundary of portion 2946 bearing South 42 degrees 36 minutes East 72 feet 4¾ inches to Tourle Street on the East by Tourle Street being also the Western boundary of ½ perch described in the Fourth Part hereof bearing South 22 minutes 20 seconds West 17 feet 7¾ inches on the south by a line bearing North 89 degrees 36 minutes West 49 feet 6 inches and on the West by part of the Western boundary of the aforesaid 31¼ perches bearing North 22 minutes 20 seconds East 70 feet 9 inches to the point of commencement.

FOURTH PART

ALL THAT piece or parcel of land containing by admeasurement ½ perch be the same more or less situated in the County of Northumberland Parish of Newcastle at Mayfield West being part of Tourle Street COMMENCING on the South Western boundary of portion 2946 aforesaid at the North Eastern corner of 31¼ perches described in the Fourth Part of the Second Schedule hereto and bounded thence on the West by part of the Eastern boundary of that 31¼ perches being also the Eastern boundary of 8 perches described in the Third Part hereof bearing South 22 minutes 20 seconds West 17 feet 7¾ inches on the South by a line bearing South 89 degrees 36 minutes East 16 feet 6 inches to the most Southerly South Western corner of portion 2946 aforesaid and on the North East by part of the South Western boundary of portion 2946 bearing North 42 degrees 36 minutes West 24 feet 1½ inches to the point of commencement.

FIFTH SCHEDULE TO AGREEMENT

ALL THAT piece or parcel of land being the site of a proposed easement 44 feet wide for railway vehicular and foot traffic within the area of 12 acres 3 roods 18¾ perches described in the Seventh Part of the Second Schedule hereto and the areas of 1 acre 13 perches and 1 acre 1 rood respectively described in the Third and Second Parts of the Third Schedule hereto extending in all from the South Eastern side of Ferry Road Sandgate in a South Easterly direction to the South Eastern boundary of the aforesaid 1 acre 1 rood and shown on plan catalogued Ms.5120 Md. at the Department of Lands Sydney.

SIXTH SCHEDULE TO AGREEMENT

FORM OF EASEMENT

THE BROKEN HILL PROPRIETARY COMPANY LIMITED a corporation carrying on business in the State of New South Wales (herein called Transferor) being registered as the proprietor of an estate in fee simple in the land hereafter described subject however to such encumbrances liens and interests as are notified hereunder in consideration of Ten shillings, the receipt whereof is hereby acknowledged, paid to the Transferor by ⁽¹⁾ (herein called Transferee) doth hereby transfer grant and confirm unto the Transferee his/its successors and assigns full and free right and liberty for the transferee his/its successors and assigns at all times hereafter to use and maintain for the purpose of

the transmission of electrical energy the electricity transmission lines
and cables communication the telephone lines and cables the
passage or conveyance of water the lines of pipes } 2

(if any) together with poles pipes structures wires fittings equipment appliances and appurtenances connected therewith at present constructed erected installed and laid upon in under and over all that piece of land situate in the Parish of Newcastle County of Northumberland being that part of the land comprised in

Crown Grant }
Certificate of Title } Registered Volume Folio

shown on the Plan annexed hereto and marked "A" and also for the purpose aforesaid to construct erect instal lay use and maintain upon in under and over the said land along routes determined by the

Transferee his/its successors or assigns but not so as to interfere unreasonably with the Company's operations any one or more

electricity transmission lines and cables telephone lines and cables
lines of pipes

}
2

(together with poles pipes structures wires fittings equipment appliances and appurtenances connected therewith) in substitution for or in duplication of or in addition to the aforesaid

electricity transmission lines and cables telephone lines and cables
lines of pipes

}
2

now upon in under and over the said land and also from time to time to inspect the condition of and amend and repair all or any of the said

electricity transmission lines and cables telephone lines and cables
lines of pipes

}
2

poles pipes structures wires fittings equipment appliances and appurtenances (now and hereafter upon in under and over the said land) and for the purposes aforesaid or any of them at all reasonable times to enter upon go return pass and repass through along and over the said land 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 land provided always and it is hereby agreed and declared that in the event of the transferee his/its successors or assigns ceasing at any time hereafter to use any of the said

electricity transmission lines and cables telephone lines and cables
lines of pipes

}
2

poles pipes structures wires fittings equipment appliances or appurtenances for the purpose aforesaid he/it or they may remove the same from the said land, making good any damage occasioned by such removal.

(1)

Insert name of Minister or Authority to whom easement is to be granted.

2

Delete unnecessary words according to nature of easement to be granted.

SEVENTH SCHEDULE TO AGREEMENT 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.

(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 Minister 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.

(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 unreasonably with the operations of the Company.

(10)

The Company shall not at any time without the written consent of the Governor of the State of New South Wales 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, other than coal shipped at the wharves cranes and other facilities for shipment at Newcastle of the Commissioner or the Maritime Services Board of New South Wales or other the Authority controlling the Port of Newcastle and other than coal 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 other than coal mined or owned by the Company and shipped by it for the sole purpose of being used and consumed by the Company or any other company in which the Company holds at least one-

third of the share capital in the industrial undertakings of the Company or of any such 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 His Majesty 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 Under Secretary, Department of Lands, or the person acting as such for the time being of the amount of such costs and expenses incurred by the Minister shall be prima facie evidence thereof and neither His 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)

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

(14)

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 Acts, 1919-1943*, 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:

COLIN YORK SYME,
LEONARD DARLING,

two of such Directors

and of R. G. NEWTON,

Secretary.

}

L.S.
C.Y. SYME.
L. DARLING.

Signed Sealed and Delivered by William Francis Sheahan the Minister for Lands of the State of New South Wales for and on behalf of His Majesty the King in the presence of:

A.R.JONES, J.P.

}

W. SHEAHAN