

# Australian Lubricating Oil Refinery Limited Agreement Ratification Act 1962 No 16

[1962-16]



New South Wales

## Status Information

### Currency of version

Repealed version for 1 September 1980 to 5 July 2012 (accessed 12 July 2024 at 2:20)

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

### Provisions in force

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

### Notes—

- **Repeal**

The Act was repealed by Sch 5 to the [Statute Law \(Miscellaneous Provisions\) Act 2012 No 42](#) with effect from 6.7.2012.

### 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](#).

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# Australian Lubricating Oil Refinery Limited Agreement Ratification Act 1962 No 16



New South Wales

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# Australian Lubricating Oil Refinery Limited Agreement Ratification Act 1962 No 16



New South Wales

An Act to ratify a certain Agreement made between Australian Lubricating Oil Refinery Limited of the one part and the Minister for Lands for and on behalf of Her Most Gracious Majesty Queen Elizabeth II of the other part with respect to the sale to such Company of certain lands at Kurnell and the granting to such Company of the right to obtain licenses over certain adjacent lands; to provide for the carrying into effect of the said Agreement; and for purposes connected therewith.

## 1 Name of Act

This Act may be cited as the *Australian Lubricating Oil Refinery Limited Agreement Ratification Act 1962*.

## 2 Definitions

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

**Board** means the Maritime Services Board of New South Wales.

**Company** means Australian Lubricating Oil Refinery Limited.

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

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

## 3 Ratification of Agreement

- (1) The Agreement is hereby approved, ratified and confirmed and may be carried into effect notwithstanding the provisions of any other Act.
- (2) All acts, matters and things, for or with respect to which provision is made in the Agreement, or which, by the Agreement are agreed, directed, authorised or permitted to be made, done or executed by or on behalf of Her Majesty or the Governor or the Minister or the Board or the Auditor-General or the Registrar-General are hereby sanctioned, authorised and confirmed.

#### **4 Restrictions on sale or lease of lands in First Schedule to Agreement**

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

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

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

#### **5 Certain covenants by Company to bind lands in First Schedule to Agreement**

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

title comprising such lands or any part thereof accordingly.

- (3) The provisions to the effect of subclause (a) of clause twenty-three of the Agreement included in the Crown Grants of the lands described in the First Schedule to the Agreement shall without limiting the Agreement be deemed to be covenants by the Company for itself its successors and assigns with the Minister and his successors in office and shall bind the said lands and every part thereof into whosoever hands the same may come and bind the persons interested therein and the Registrar-General shall endorse every Crown Grant or certificate of title comprising such lands or any part thereof accordingly.

## **6 Certain persons may sue and be sued by the Company**

It shall not be an objection to the Board and the Council of the Shire of Sutherland or either of them suing the Company and being sued by the Company under the Agreement that the Board and the Council of the Shire of Sutherland or any of them are not parties to the Agreement.

## **7 (Repealed)**

## **Schedule**

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

### **1.**

#### **(a)**

The Company hereby covenants with the Minister that the Company without cost to the Minister or Her Majesty Her Heirs or Successors shall upon the date of commencement of this Agreement have commenced or caused to be commenced the erection and construction of permanent and fixed improvements upon the lands described in the First Schedule hereto and other lands now owned or hereafter to be acquired by the Company adjoining or adjacent to the lands described in the First Schedule hereto for the purpose of carrying on industrial operations thereon and shall thereafter proceed with or cause to be proceeded with such erection and construction so that at the expiration of four years from the Sixth day of June 1961 (hereinafter called “the date of commencement of work”) or of such further period if any as may be allowed by the Auditor-General in writing under the provisions hereinafter contained the Company shall have without cost to the Minister or Her Majesty Her Heirs and Successors erected and constructed or caused to be erected and constructed since the date of commencement of work upon the said lands and other lands as aforesaid permanent and fixed improvements to a cost which together with all

other expenditure incurred by the Company in relation to the project generally amounts to the equivalent of a least Eight million pounds (£8,000,000) Australian Currency for the purpose of carrying on industrial operations thereon and the Company covenants with the Minister to construct and to have constructed such permanent and fixed improvements to the said cost within the said period of four years from the date of commencement of work (or further period if any allowed in writing by the Auditor-General as aforesaid) accordingly.

**(b)**

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

**(c)**

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

**(d)**

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

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

**(e)**

The Company shall not unless the written consent of the Minister be first obtained, sell or dispose of or lease for a term exceeding three (3) years from the execution of the lease the lands described in the First Schedule hereto or any part thereof PROVIDED that this subclause shall cease to operate upon the Minister stating in writing that the Company has performed the provisions of subclause (a) of this Clause or upon the Company paying to the Minister the

liquidated damages covenanted by it in subclause (b) of this Clause to be paid to him or upon the Auditor-General certifying that the total sum arrived at by adding together the cost of the permanent and fixed improvements erected and constructed and caused to be erected and constructed within four years from the date of commencement of work (or such further time if any allowed by the Auditor-General in writing) by the Company upon the said lands and other lands as aforesaid for the purpose of carrying on industrial operations thereon and all other expenditure incurred by the Company in relation to the project generally is the equivalent of at least Eight million pounds (£8,000,000) Australian currency.

**(f)**

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

**(g)**

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

**(h)**

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

- (i) the works referred to in the Specification contained in the Third Schedule hereto;
- (ii) preliminary operations and training expenses;
- (iii) interest on debenture loans raised by the Company for the purpose of the project;
- (iv) royalties paid by the Company for the purposes of or in connection with the project;
- (v) design and purchasing expenses incurred for the purposes of or in connection with the project;

(vi) the acquisition of lands or interest in lands already or hereafter acquired by the Company for the purposes of or in connection with the project including agent's charges, conveyancing costs, stamp duty and other expenses properly paid in connection with such acquisition;

**(i)**

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

**(j)**

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

**2.**

**(a)**

IN CONSIDERATION of the aforesaid covenant by the Company contained in paragraph (a) of Clause 1 of this Agreement and subject to the provisions hereinafter contained the Minister hereby agrees to sell to the Company and the Company agrees to buy the lands described in the First Schedule hereto at and for the price of one hundred and fifty-three thousand three hundred pounds (£153,300 0s. 0d.).

**(b)**

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

**3.**

The lands described in the First Schedule hereto are Crown lands at present held by the Company under Permissive Occupancy 1961/148 Metropolitan granted to the Company under the *Crown Lands Consolidation Act, 1913*, as amended.

**4.**

**(a)**

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

**(b)**

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



**(c)**

If any road on which the lands sold abut shall not have been dedicated at the date of the commencement of this Agreement or at the date of the grant of the lands sold then the sale shall not include any land lying between any part of the lands sold and the middle line of any such road. Pending dedication the Company shall have the right to use as a road the roads on which the lands sold abut PROVIDED that the Minister or Her Majesty shall at any time and without any consent on the part of the Company and its sequels in title be at liberty to dedicate any of such roads as a public road and thereupon the right so granted to the Company shall absolutely cease and determine PROVIDED FURTHER that nothing herein contained shall impose upon the Minister or Her Majesty or the Council of the Shire of Sutherland any obligation or liability whatsoever with respect to the condition of the said roads or the construction maintenance or repair thereof or of any roadway upon or over the same nor impose any liability or obligation to dedicate the same as a public road.

**5.**

All the said lands are sold by Her Majesty and/or the Minister to the Company subject to the existing easements and encroachments and all such lands are sold subject to the reservations exceptions and conditions contained in the Crown Grants under which any of the lands were originally or are now held PROVIDED HOWEVER that the said lands shall be granted or assured to the Company free from the right of way in favour of the Commonwealth of Australia referred to in Certificate of Title Volume 7872 Folio 113. The Company shall not raise any objection or make any claim in respect of any encroachments by or on any part or parts of the lands described in the First Schedule hereto whether revealed by any present or future survey or otherwise. Subject to the provisions of this Clause vacant possession will be given on completion.

**6.**

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

**7.**

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

**8.**

On the completion of the sale to the Company of the lands described in the First Schedule hereto Permissive Occupancy 1961/148 Metropolitan shall cease and determine without prejudice nevertheless to the rights of either party against the other for any antecedent breach of any covenant provision or agreement therein contained or implied. Any necessary apportionment of rental paid or payable by the Company in respect of the occupancy shall be made and adjusted on completion.

**9.**

**(a)**

The Company hereby covenants with the Minister that the Company will at its own expense construct execute and complete the works set out in the Specification contained in the Third Schedule hereto in accordance in all things with the said Specification and this Agreement and will complete the works referred to in Clauses 1 and 2 of the said Specification within a period of two (2) years from the date of commencement of this Agreement and will complete all other works referred to in the said Specification prior to the expiration of four (4) years from the Sixth day of June 1961 or such further period as may be allowed by the Minister in writing.

**(b)**

In the event of the Company failing to comply with the foregoing provisions of this Clause the Minister may without prejudice to any other remedy of the Minister by reason of such default of the Company do all such acts and things as in the opinion of the Minister may be 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 the Minister from the Company in a court of competent jurisdiction and a certificate of the Under Secretary of the amount of such costs and expenses incurred by the Minister shall be prima facie evidence thereof.

**(c)**

Upon completion of the road work and drainage work referred to in the said Specification in the manner therein described the Company shall as regards any of the said roads or part thereof not for the time being dedicated as a public road and vested in the Council of the Shire of Sutherland be responsible for the maintenance repair and cleaning and other work in connection with such road and all drains and facilities thereof and will indemnify and keep indemnified the said Council from all actions suits proceedings claims demands costs and expenses whatsoever arising out of the use maintenance repair or cleaning of such roads, drains and facilities.

**(d)**

The agreements by the Company contained in this Clause shall be taken by the Council in full satisfaction and discharge of all claims which the Council now has or may hereafter have against the Company in respect of the drainage of the land to be drained by the said drains.

**10.**

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

**11.**

The Minister shall be entitled to the rents and profits to the date of completion and shall pay and bear all rates taxes assessments and outgoings to that date in respect of the lands comprised in the First Schedule hereto other than the rates taxes assessments and outgoings payable by the

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

**12.**

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

**13.**

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

**14.**

If the Minister shall be unable or unwilling to comply with or remove any objection or requisition which the Company shall be entitled to make under this Agreement the Minister shall whether he or Her Majesty Her Heirs or Successors shall or shall not have attempted to remove or comply with such objection or requisition and notwithstanding any negotiations or litigation whatsoever in respect thereof be at liberty to rescind this Agreement and in no case shall Her Majesty or Her Heirs or Successors or the Minister be liable for any damages costs charges expenses and losses whatsoever incurred by the Company in and about this Agreement AND IT IS HEREBY DECLARED that seven days' notice of the intention of the Minister to rescind this Agreement shall be deemed reasonable notice of such intention under Section 56 of the *Conveyancing Act, 1919-1954*.

**15.**

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

**16.**

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

**17.**

If the Company shall omit to fulfil observe or perform the provisions of this Agreement on the part of the Company to be fulfilled observed or performed the Minister may by notice in writing served on the Company call upon the Company to rectify the default complained of within a reasonable time (to be stated in the notice) after the service of such notice and if the Company shall fail after service

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

**18.**

**(a)**

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

**(b)**

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

**(c)**

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

**(d)**

Every Crown Grant to be issued to the Company in accordance with this Clause shall be limited to the surface of the land comprised in such Crown Grant and to a depth of 500 feet below such surface and shall contain a proviso to the effect that mining operations may have been and may be carried on upon and in the land below the land thereby granted and the lands adjoining the land thereby granted and the land below the same and metals and minerals may have been and may be removed therefrom and that the Crown Grant is made upon and subject to the condition that the Company and its assigns shall not be entitled to make or prosecute any claim for damages or take any proceedings either by way of injunction or otherwise against Her Majesty Her Heirs or Successors or the Government of the State of New South Wales or any lessee or lessees under any Mining Act or Acts of the said State of New South Wales or his or their executors administrators or assigns for or in respect of any damage or loss occasioned by the letting down subsidence or lateral movement of the land thereby granted or otherwise howsoever by reason of the following acts and matters that is to say by reason of Her Majesty Her Heirs or Successors or the Government of the said State of New South Wales or any persons on Her Their or Its behalf or any lessee or lessees as aforesaid or his or their executors administrators or assigns having worked or then or thereafter working any mines or having carried on or then or thereafter carrying on mining operations or having searched for 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 land situated laterally to the land thereby granted and the land below the same and whether on or below the surface of such other lands AND THAT Her Majesty doth thereby expressly reserve unto Her Majesty Her

Heirs and Successors the liberty and authority by reason of the acts and matters aforesaid or in the course thereof for Her Majesty Her Heirs and Successors and the Government of the said State of New South Wales and any person on Her Their or Its behalf and any lessee or lessees as aforesaid and his or their executors administrators and assigns from time to time to let down without payment of any compensation whatsoever any part of the land thereby granted and/or of the surface thereof.

**(e)**

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 except as is provided by this Clause.

**(f)**

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

**19.**

**(a)**

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

**(b)**

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

**20.**

**(a)**

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

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

**21.**

**(a)**

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

**(b)**

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

**22.**

**(a)**

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

**(b)**

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

**(c)**

The Company hereby covenants with the Minister and with the Board and with Her Majesty Her Heirs and Successors that the Company will not permit any solid matter to be deposited or escape or any liquid matter to flow or percolate into Botany Bay or into any ditch or channel communicating therewith or so near thereto as to be liable to discharge into the same until such matter shall have been so sufficiently filtered or otherwise treated as to be innocuous to life and incapable of causing any destruction of or injury to fish or oysters or the breeding of fish or

oysters or the young fry or ova of fish or the spat of oysters or any damage to the bed or banks of the said Bay or any pollution of the waters thereof AND THAT the Company will in discharging any liquid matter into Botany Bay at all times observe all the requirements of the Board the Metropolitan Water Sewerage and Drainage Board and the Chief Secretary's Department in regard to the prevention of the pollution of the waters of Botany Bay.

**(d)**

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

**(e)**

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

**23.**

**(a)**

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

**(b)**

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

**(c)**

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

**24.**

**(a)**

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

**(b)**

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

**25.**

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

**26.**

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



the obligations or duties by this Agreement imposed upon the Company.

**27.**

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

**28.**

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

**29.**

This Agreement is subject to ratification by the Parliament of the State of New South Wales and shall come into effect when so ratified and the expression "the date of commencement of this Agreement" means the date of commencement of the Act which ratifies it PROVIDED that if this Agreement is not ratified by the said Parliament before the Thirty-first day of December 1962 it shall become null and void.

**30.**

The Company will not at any time without the consent in writing of the Minister first obtained assign transfer or in any manner make over this Agreement or the benefit of this Agreement to any person body or corporation.

**31.**

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

**32.**

Any opinion to be formed by the Minister under this Agreement may be formed by him on such materials as he himself may think sufficient and in such case the Minister shall be deemed to be exercising merely administrative functions.

**33.**

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

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

"Board" means the Maritime Services Board of New South Wales.

“month” means calendar month.

“Under Secretary” means the Under Secretary, Department of Lands of the State of New South Wales, or the person acting as such for the time being.

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

**THE FIRST SCHEDULE HEREINBEFORE REFERRED TO.**

ALL THAT piece or parcel of land situate in the Parish of Sutherland, County of Cumberland, Sutherland Shire comprising Portions 1079 and 1078—

FIRSTLY: COMMENCING on the south eastern boundary of Portion 993 at a point bearing 80 degrees 13 minutes 9.6 links from the south western corner of that portion and bounded thence on the north west by part of that boundary aforesaid bearing 80 degrees 13 minutes 5920.5 links; on the east and south east by lines bearing 176 degrees 49 minutes 716.8 links and 220 degrees 8 minutes 512.2 links; again on the south east by a north western side of a road one chain wide bearing 243 degrees 9 minutes 791.3 links; on the south by a northern side of the road aforesaid bearing 269 degrees 15 minutes 4458.9 links; and on the south west by a north eastern side of a road one chain wide bearing 323 degrees 47 minutes 641.1 links to point of commencement and containing an area of 54 acres and shown on Plan C. 8286 2030 in the Department of Lands.

SECONDLY: COMMENCING on the southern side of a road one chain wide separating Portion 1079 from 1078 at a point bearing 143 degrees 47 minutes 122.8 links from the south western corner of Portion 1079 and bounded thence on the north and north west by the southern and south eastern boundaries of that road bearing 89 degrees 15 minutes 4410.8 links and 63 degrees 9 minutes 735.6 links; generally on the south east by lines bearing 191 degrees 25 minutes 1191.6 links; 202 degrees 0 minutes 736.5 links, 242 degrees 13 minutes 471.2 links; 231 degrees 30 minutes 320.32 links 200 degrees 38 minutes 1130.3 links and 213 degrees 56 minutes 583.1 links; generally on the south west by north eastern sides of a road one chain wide bearing 294 degrees 43 minutes 1165.7 links, 299 degrees 48 minutes 260.2 links, 309 degrees 59 minutes 260.3 links, 320 degrees 10 minutes 260.3 links, 330 degrees 21 minutes 260.2 links, 335 degrees 27 minutes 936.3 links and 323 degrees 47 minutes 1685.2 links to point of commencement and containing an area of 103 acres 2 roods 35 perches and shown on plan C. 8286 2030 in the Department of Lands.

**THE SECOND SCHEDULE HEREINBEFORE REFERRED TO.**

ALL THAT piece or parcel of land situated at Kurnell in the Shire and Parish of Sutherland, County of Cumberland, containing an area of 2 acres 2 roods 29 perches, more or less, COMMENCING at a point on the eastern boundary of Portion 1079 bearing 176 degrees 49 minutes 130.3 links from the north eastern corner of that Portion, and comprising a strip of land 75.76 links wide, 45.46 links on the south of and 30.30 links on the north of lines bearing 89 degrees 33 minutes 2870.4 links and 90 degrees 34 minutes 670 links, as shown on plan C. 8286 2030 in the Department of Lands.

**THE THIRD SCHEDULE HEREINBEFORE REFERRED TO.**

**SPECIFICATION**

**1.**

The Company shall construct at its own expense a road centrally situated on the designed road

along that part of the south-western boundaries of Portion 1079, and Portion 1078 extending 50 chains south-easterly from the north-western corner of Portion 1079, in the Parish of Sutherland, County of Cumberland. The standard of construction shall be a formation width of 36 feet comprising a 24 feet bituminous carriageway with 6 feet wide fully constructed soil cement stabilised shoulders on each side. The construction shall comply with Department of Main Roads standards for heavy industrial loading and shall include all such drains culverts and other drainage works and facilities as the Council of the Shire of Sutherland shall require and all work shall be completed to the satisfaction of the said Council.

**2.**

The Company at its own expense shall reclaim and fill the whole of the land within the designed road one chain wide dividing Portion 1078 from Portion 1079, in the Parish of Sutherland, County of Cumberland to the final levels of the adjacent land and shall provide a strip of consolidated gravel 16 feet wide and 6 inches deep placed centrally to final levels slightly above the adjacent land to the satisfaction of the Minister for Lands.

**3.**

Reclamation and levelling of the land sold to the Company under the Agreement shall be carried out by the Company in accordance with the requirements of the Council of the Shire of Sutherland, the final discharge of water from the land to be such that the water can be satisfactorily disposed of at an invert level not less than two feet of standard datum at Captain Cook Drive. Should reclamation or levelling of the Site interfere with the natural drainage of Crown land adequate drainage provision is to be made by the Company at its cost to preserve the status quo in the drainage of Crown lands.

**4.**

The Company shall maintain the existing tracks in use through the land sold or provide alternative access and the public shall have the right to use those tracks or alternative access until the road referred to in item (1) has been satisfactorily completed.

**5.**

The type, size and location of all structures to be erected on the subject land and the treatment and landscaping of the land shall be subject to the approval of the Minister for Local Government.

**6.**

Drainage of the land sold and specifications for all structures to be erected on the land shall be subject to such conditions as may be imposed by the Council of the Shire of Sutherland.

**THE FOURTH SCHEDULE HEREINBEFORE REFERRED TO.**

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

THE COMMON SEAL OF AUSTRALIAN  
LUBRICATING OIL REFINERY LIMITED was affixed hereto in  
pursuance of resolution of the Directors and in the presence  
of:

R.W. Searle, Secretary.

}

D. C. HARPER,  
Director.

L.S.

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

W.J. BROADFOOT, J.P.

}

K. C. COMPTON.

L.S.