

Western Australia

**Cement Works (Cockburn Cement Limited)  
Agreement Act 1971**

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Western Australia

# **Cement Works (Cockburn Cement Limited) Agreement Act 1971**

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## **Cement Works (Cockburn Cement Limited) Agreement Act 1971**

**An Act to ratify an agreement made between the State, the Minister for Works, the Fremantle Port Authority and Cockburn Cement Limited, relating to cement and clinker manufacturing operations and for other purposes.**

**1. Short title**

This Act may be cited as the *Cement Works (Cockburn Cement Limited) Agreement Act 1971*<sup>1</sup>.

**2. Interpretation**

In this Act —

*the Agreement* means the agreement of which a copy is set forth in the First Schedule as amended by the agreement a copy of which is set forth in the Second Schedule;

*the Second Variation Agreement* means the agreement a copy of which is set forth in the Fourth Schedule;

*the variation agreement* means the agreement a copy of which is set forth in the Third Schedule.

*[Section 2 amended by No. 82 of 1986 s. 4; No. 27 of 1997 s. 4.]*

**3. Ratification of the Agreement**

The Agreement is ratified and shall, subject to its provisions, be carried out and take effect as if enacted in this Act.

**4. Variation agreement approved**

- (1) The variation agreement is approved and ratified.

**s. 5**

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- (2) The implementation of the variation agreement is authorised.
- (3) Without limiting or otherwise affecting the *Government Agreements Act 1979*, the variation agreement shall operate and take effect notwithstanding any other Act or law.

*[Section 4 inserted by No. 82 of 1986 s. 5.]*

**5. Ratification of the Second Variation Agreement**

- (1) The Second Variation Agreement is ratified.
- (2) The implementation of the Second Variation Agreement is authorised.
- (3) Without limiting or otherwise affecting the *Government Agreements Act 1979*, the Second Variation Agreement operates and takes effect despite any other Act or law.

*[Section 5 inserted by No. 27 of 1997 s. 5.]*

## **First Schedule — Cement Works (Cockburn Cement Limited) Agreement**

[s. 2]

*[Heading amended by No. 19 of 2010 s. 4.]*

THIS AGREEMENT under seal is made the 18th day of February One thousand nine hundred and seventy-one BETWEEN THE HONOURABLE SIR DAVID BRAND, K.C.M.G., M.L.A., Premier and Treasurer of the State of Western Australia, acting for and on behalf of the Government of the said State and its instrumentalities (hereinafter referred to as “the State”) of the first part THE MINISTER FOR WORKS as hereinafter defined (hereinafter referred to as “The Minister for Works”) of the second part, the FREMANTLE PORT AUTHORITY constituted by the *Fremantle Port Authority Act 1902* (hereinafter referred to as “the Authority”) of the third part, AND COCKBURN CEMENT LIMITED a company duly incorporated in Western Australia and having its registered office at third floor, Manufacturers’ Building, 212-220 Adelaide Terrace, Perth (hereinafter referred to as “the Company” which term shall include its successors and permitted assigns) of the fourth part.

WHEREAS the Authority, pursuant to the provisions of the Fremantle Port Authority Act, has exclusive control of the port of Fremantle and may with the approval of the Minister for Works undertake the dredging of any part of the port of Fremantle.

AND WHEREAS this Agreement is intended to supersede the agreement dated the 26th day of January, 1961 made between the first and fourth parties hereto (hereinafter referred to as “the 1961 agreement”).

NOW THIS AGREEMENT WITNESSETH —

1. (1) The 1961 agreement is hereby cancelled and to the extent inconsistent with this Agreement all rights and obligations of the parties thereto and all licenses thereunder are hereby terminated.

(2) In this Agreement subject to the context —

“apply” “approve” “approval” “consent” “certify” “direct” “notify”  
or “request” means apply approve approval consent certify  
direct notify or request (as the case may be) in writing;

- “Commonwealth” means the Commonwealth of Australia and includes the Government for the time being thereof;
- “Fremantle Port Authority Act” means the *Fremantle Port Authority Act 1902*;
- “Jetties Act” means the *Jetties Act 1926*;
- “Land Act” means the *Land Act 1933*;
- “miles” mean statute miles;
- “Mining Act” means the *Mining Act 1904*;
- “Minister” means the Minister in the Government of the State for the time being responsible for the administration of the ratifying Act and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office of the Minister;
- “Minister for Mines” means the Minister in the Government of the State for the time being responsible for the administration of the Mining Act;
- “Minister for Works” means the Minister of the Government of the State who is for the time being responsible for the administration of the *Fremantle Port Authority Act 1902*;
- “month” means calendar month;
- “notice” means notice in writing;
- “person” or “persons” include bodies corporate;
- “ratifying Act” means any Act which results from a Bill introduced in accordance with the terms of clause 2 hereof;
- “the jetty” means the jetty to be constructed by the Company pursuant to clause 4 hereof;
- “the sand banks” refers to the Success and Parmelia sand banks in Cockburn Sound delineated and coloured green on the map marked “A”, which map is initialled by the parties hereto for the purpose of identification;



“this Agreement” “hereof” and “hereunder” refers to this Agreement whether in its original form or as from time to time added to, varied or amended;

“works site” means the site on which the Company’s cement and clinker manufacturing operations and any other operations approved by the State from time to time are carried out and as is delineated and coloured blue on the map marked “B”, which map is initialled by the parties hereto for the purpose of identification;

marginal notes shall not affect the interpretation or construction hereof<sup>2</sup>;

reference in this Agreement to an Act shall include the amendments to such Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.

### **Ratification by Act of Parliament <sup>2</sup>**

2. In the event that the carrying into effect of any provision of this Agreement is found to be inconsistent with any law then at the request of any party hereto the State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement as soon as practicable but not later than the next Session of Parliament following such request and endeavour to secure its passage as an Act, but it is the intention of the parties that whether or not this Agreement is so ratified it shall operate and take effect so far as it is not inconsistent with any law.

### **Obligations of the Company <sup>2</sup>**

3. (1) The Company during the currency of this Agreement shall carry out cement and clinker manufacturing operations or any other operations approved by the State from time to time on the works site or such other sites owned by the Company which the State may approve.

(2) The Company shall perform and observe all the covenants conditions provisions and stipulations expressed or implied in the memorandum of mortgage dated the 21st day of December, 1960, and registered in the Office of Titles in Perth<sup>3</sup> under number 1977/1961 given in favour of the State to secure advances made to the Company.

**Jetty**<sup>2</sup>

4. (1) Notwithstanding the provisions of the Jetties Act the Authority shall permit the Company to erect on and from the shore in the approximate position marked "J", delineated and coloured blue on the said map marked "A", a jetty in accordance with plans and specifications and subject to reasonable terms and conditions to be agreed between the Company and the Authority. The Company may use the jetty for the removal of shell sand which it has obtained from Cockburn Sound in accordance with the terms of this Agreement and for any other purpose agreed to by the Authority or, in the event of the Authority's refusal, by the Minister for Works. No charge shall be imposed by the Authority for the use of the jetty for dredging or for the removal by any means of the shell sand to the Company's works on the works site. In the event of the jetty being used for any other purposes under this subclause charges will be made at reasonable rates to be arranged between the Company and the Authority.

(2) Any jetty erected under the provisions of this clause shall at all times be maintained by the Company in good order and condition to the reasonable satisfaction of the Authority.

**Removal of Coal Ash**<sup>2</sup>

5. During the currency of this Agreement the State shall grant to the Company the right without charge but at the Company's own cost in all respects to remove from the South Fremantle Power Station up to 75% of the monthly total of any coal ash (including flyash) which may result from the operations at that power station from time to time. If any special equipment becomes necessary at the power station for delivery and loading of the said ash into the vehicles of the Company such equipment shall be provided by the Company at its own expense. The Company shall notify the State Electricity Commission of Western Australia within fourteen (14) days of the date of this Agreement of its estimated requirements of the said ash for the period of six (6) months next following the date of that notification and thereafter of its estimated requirements for each succeeding period of six (6) months, each such subsequent notification to be given not less than fourteen (14) days before the commencement of the respective six (6) monthly period.

**Right to dredge shell sand**<sup>2</sup>

6. (1) The Authority shall subject to the Company complying with its obligations under this Agreement permit the Company for a period of forty (40)

years from the date hereof and free of rent royalty or other charges payable to the State or the Authority but at its own cost in all other respects to dredge and use for the purposes of the Company's cement and clinker manufacturing operations and any other operations approved by the Authority from time to time within that part of the sand banks as lie within a radius of five (5) miles from a point marked "R" in red on the said map marked "A". In considering applications from the Company for approval for areas from which shell sand may be obtained the Authority will have regard for technical and economic considerations related to the Company's operations and where the area requested is not approved, the Authority will give its reasons and will use its best endeavours to mutually agree with the Company on alternative locations from which shell sand may be obtained PROVIDED THAT the Company in obtaining the shell sand shall comply with any reasonable terms and conditions set by the Authority and communicated to the Company by notice and shall not in any event do or omit to do anything which creates a hazard to or obstruct or delays navigation nor anything which is detrimental to the navigable channels or port installations or will probably interfere with the efficient working of the port.

(2) The Authority may by notice to the Company specifying any breach of the obligations imposed on the Company by this Agreement direct the Company to suspend, in respect of all or any part of any areas approved in accordance with subclause (1) of this clause, its operations for the obtaining of shell sand until such time as the said breach is remedied and such notice may direct the removal of any vessel or equipment being used in connection with the said operations and the Company shall comply with any such directions.

(3) Where a notice given pursuant to subclause (2) of this clause states that a hazard to navigation exists or that the navigable channels or port installations are being detrimentally affected such notice may require the Company to comply immediately with any directions given therein but in any other case where such a notice is given the Company shall not be required to comply with the directions given therein within less than four (4) months from the giving of that notice.

(4) Where a notice states that the Company's operations are creating a hazard to or are obstructing or delaying navigation or are detrimental to the navigable channels or port installations or will probably interfere with the efficient working of the port then no dispute or difference between the parties concerning that notice or the respective rights and obligations of the parties in relation thereto may be referred to arbitration pursuant to the provisions of clause 17 of this Agreement but any such dispute or difference shall be referred

to and settled by the arbitration of the Minister for Works and the Minister for Works after hearing submissions from the parties shall give such directions for the determination of that dispute or difference as he deems proper having regard to the maintenance of the efficiency of the port and the reasonable requirements of the Company and the parties shall comply with any such direction.

(5) Subject to the Company having complied with its obligations under this Agreement the Authority, at the request of the Company, shall extend the rights conferred by subclause (1) of this clause for a further period of ten (10) years, but subject to the same terms and conditions as are set out in that subclause.

(6) If and when it should become impracticable for the Company to obtain shell sand pursuant to this clause the State will use every endeavour to find other shell sand within a reasonably economic distance from the jetty, and if other shell sand is not available, then other equivalent material.

(7) Provided that it complies with the other provisions of this clause, the Company shall not be in breach of this Agreement simply by reason of a lapse in its compliance with any of the requirements set forth in the proviso to subclause (1) of this clause.

#### **Further obligations of the State <sup>2</sup>**

7. The State further agrees with the Company as follows: —

(1) To make available to the western boundary of the works site or at such other point thereon as may be agreed between the Company and the State in quantities sufficient for the reasonable requirements of the Company for its operations —

- (i) electricity at rates according to the standard schedule rates of the State Electricity Commission of Western Australia from time to time prevailing; and
- (ii) water at the ruling rates and charges for the time being imposed by the Metropolitan Water Supply Sewerage and Drainage Board pursuant to the provisions of the *Metropolitan Water Supply Sewerage and Drainage Act 1909*.

(2) That so long as the Company continues to perform its obligations under the provisions of this Agreement and continues to carry out cement and clinker manufacturing operations and any other operations approved by the

State from time to time on the works site or such other sites owned by the Company which the State may approve pursuant to Clause 3(1) hereof the State shall ensure that no person shall be granted any rights under the provisions of the Mining Act or the Land Act over the works site, or such other sites as aforesaid, or such other land as the State may in its absolute discretion approve subject to any reservations, qualifications or conditions that it thinks proper in any case, such other land being —

- (a) land owned by the Company during the currency of this Agreement;
- (b) Crown land within the meaning of the Mining Act (other than such as is, or may at any time be, constituted a reserve under the Land Act) in respect of which the Company has obtained a mining tenement for limestone and/or lime sand and no other mineral;
- (c) land owned by a third party in respect of which the Company has obtained a mining tenement for limestone and/or lime sand and no other mineral and the owner consents to the exemption provided by this subclause;

and the Company shall during the currency of this Agreement in respect of the works site and in respect of other sites approved pursuant to Clause 3(1) hereof and in respect of other land approved in accordance with this subclause and in respect of the sandbanks designated by Clause 6 of this Agreement be exempted from all provisions of the Mining Act and of the Land Act (other than any such provisions made applicable as a condition of any approval of the State given in accordance with this subclause).

### **Labour conditions <sup>2</sup>**

(3) During the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the labour conditions imposed by or under the Mining Act in regard to such mineral claims or mineral leases which in the opinion of the Minister for Mines are reasonably required by the Company for the purposes of its present or future cement and clinker manufacturing operations and any other operations approved by the State from time to time.

### **Licences <sup>2</sup>**

(4) During the currency of this Agreement and subject to the provisions of the relevant Acts the State will ensure that the Company is granted all necessary licenses subject to reasonable terms and conditions to be agreed between the State and the Company to enable the Company to carry on operations for quarrying or otherwise obtaining the raw materials required by the Company for its cement and clinker manufacturing operations and any other operations approved by the State from the works site or such other sites owned by the Company which the State may approve or such other land as the State may approve and will grant a permit for the use of explosives in such operations for quarrying or otherwise obtaining the said raw materials.

**Transport by Road <sup>2</sup>**

8. The State shall ensure that the Company will be permitted subject to the provisions of the relevant Act or Acts and regulations made thereunder for the time being in force to transport its products and raw materials by Load transport within a radius of forty (40) miles from the General Post Office Perth or within a radius of twenty (20) miles from the datum point marked "D" in red on the said map marked "B" without prejudice to the Company's rights to apply in the ordinary way for a license to carry by road over longer distances in individual cases.

**Railway revenue <sup>2</sup>**

9. (1) In consideration of the State having provided at the cost of the State a railway spur line connecting the northern boundary of the works site with the main Woodman's Point Jandakot railway line the Company shall guarantee to the State sufficient revenue to meet the actual cost of maintenance and operation interest and depreciation on the spur line at normal railway rates during such time as the traffic to and from the works site over the spur line fails to reach fifty thousand (50,000) tons per annum. When such traffic does reach or exceed fifty thousand (50,000) tons in any one year, the Company shall pay normal railway freight charges for its traffic.

(2) If the railway spur line mentioned in subclause (1) of this clause is extended beyond the works site or any other line is connected therewith (exclusive of the Company's siding) the Company shall be relieved of any further guarantee of revenue, but shall pay normal railway freight charges for its traffic.

(3) All railway sidings on the works site shall be constructed by the State at the expense of the Company.

**Use of local labour and material <sup>2</sup>**

10. The Company shall so far as reasonably and economically practicable use labour available within the State and give preference to bona fide Western Australian manufacturers and contractors in the placement of orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere. In calling tenders and letting contracts for works materials plant equipment and supplies the Company will ensure that bona fide Western Australian manufacturers and contractors are given reasonable opportunity to tender quote or otherwise be properly considered for such works materials plant equipment and supplies.

**Licenses and Consents <sup>2</sup>**

11. (1) The Company shall make all necessary applications from time to time to the Commonwealth and to the State for the grant to the Company of any licenses or consents under Commonwealth or State law required to permit this Agreement to be entered into and carried into effect.

(2) On the request of the Company the State shall make such representations as it considers reasonable to the Commonwealth in support of any application made by the Company to the Commonwealth under this Agreement.

**Acquisition of land <sup>2</sup>**

12. The State will at the expense of the Company where practicable co-operate with the Company in the acquisition of land from time to time required by the Company for its operations within the State.

**Indemnity <sup>2</sup>**

13. The Company will indemnify and keep indemnified the State the Minister for Works and the Authority and their respective servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Company pursuant to this Agreement or relating to its operations or arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

**Variation <sup>2</sup>**

14. The parties hereto may from time to time by mutual agreement in writing add to, vary or cancel all or any of the provisions of this Agreement or any lease license easement or right granted or demised hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

**Assignment <sup>2</sup>**

15. The Company shall not assign or otherwise dispose of the whole or any part of its rights hereunder without the prior consent of the State and, in the case of the rights conferred by clause 6 hereof, without the prior consent of the Minister for Works and the Authority. The State the Minister for Works and the Authority may each of them in their absolute discretion give or withhold consent or give consent subject to such conditions as they may determine.

**Power to extend periods <sup>2</sup>**

16. The State may at the request of the Company from time to time extend any period or date referred to in this Agreement for such period or to such later date as the State thinks fit, but there shall be no such extension with regard to any period or date referred to in clause 6 hereof unless approval therefor is also given by the Minister for Works and the Authority.

**Arbitration <sup>2</sup>**

17. Any dispute or difference between the parties arising out of or in connection with this Agreement or as to the construction of this Agreement or as to the rights duties or liabilities of any party thereunder or as to any matter to be agreed upon between the parties, or any of them, under this Agreement shall in default of agreement between the parties, or the relevant parties, as the case may be, and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the *Arbitration Act 1895*, PROVIDED THAT this clause shall not apply to any case where the State or any Minister in the Government of the State or the Authority is by this Agreement given either expressly or impliedly a discretionary power.

**Immunity <sup>2</sup>**

18. The Company shall not bring any action suit claim demand or other proceeding against the State the Minister for Works or the Authority because of any interference with the Company's rights under this Agreement as a result of intervention by the Commonwealth or any agency or instrumentality thereof or



any person or foreign state or body acting under licence or authority of the Commonwealth.

**Delays**<sup>2</sup>

19. This Agreement is made subject to any delays in the performance of obligations under this Agreement which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including delays caused by or arising from act of God, act of war, force majeure, act of public enemies, strikes, lockouts, stoppages, restriction of labour or other similar acts whether partial or general, shortage of essential materials reasonable failure to secure or delays of contractors riots or civil commotion.

**Notices**<sup>2</sup>

20. Any notice, consent or other writing authorised or required by this Agreement to be given, shall —

- (i) if from the State, be signed by the Minister or by any senior officer of the public service of the State acting by direction of the Minister;
- (ii) if from the Minister for Works, be signed by him or by any senior officer of the public service of the State acting by his direction;
- (iii) if from the Authority, be signed by the Chairman of Commissioners or by the General Manager acting by direction of the Commissioners;
- (iv) if from the Company, be signed by a director, manager or secretary of the Company or by any person or persons authorised in that behalf or by its solicitors as notified to the State from time to time,

and any such notice, consent or other writing shall be deemed to have been duly given if forwarded by prepaid registered post to the usual address of the party to whom it is directed and shall be deemed to have been given on the day on which it would be delivered in the ordinary course of post.

IN WITNESS whereof these presents have been executed the day and year first hereinbefore written.

SIGNED, SEALED AND DELIVERED  
by the said THE HONOURABLE SIR  
DAVID BRAND, K.C.M.G., M.L.A., in  
the presence of —

}

DAVID BRAND  
[L.S.]

ROSS HUTCHINSON.

The Common Seal of the MINISTER  
FOR WORKS was hereto affixed by  
THE HONOURABLE ROSS  
HUTCHINSON, D.F.C., M.L.A. the  
Minister for Works for the time being  
in the presence of —

}

ROSS HUTCHINSON  
[C.S.]

T. J. LEWIS.

The Common Seal of the  
FREMANTLE PORT AUTHORITY  
was hereunto affixed pursuant to a  
resolution of the said Authority by and  
in the presence of —

}

[C.S.]

J. McCONNELL,  
Chairman of Commissioners.

J. G. MANFORD,  
Commissioner.

C. A. FAULDS,  
Secretary.

The Common Seal of COCKBURN  
CEMENT LIMITED was hereunto  
affixed by authority of the Board and in  
the presence of —

}

[C.S.]

C. P. BIRD,  
Director.

L. G. S. HYLAND,  
Director.

**Second Schedule — Supplemental agreement amending  
Cement Works (Cockburn Cement Limited) Agreement**

[s. 2]

*[Heading amended by No. 19 of 2010 s. 4.]*

THIS AGREEMENT under seal is made the 25th day of August, One thousand nine hundred and seventy one BETWEEN: THE HONOURABLE JOHN TREZISE TONKIN M.L.A., Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (hereinafter referred to as “the State”) of the first part THE HONOURABLE COLIN JOHN JAMIESON M.L.A., the Minister for Works for the time being of the Government of the said State and in that capacity for the time being responsible for the administration of the *Fremantle Port Authority Act 1902* (hereinafter referred to as “the Minister for Works”) of the second part. FREMANTLE PORT AUTHORITY a body corporate constituted by the *Fremantle Port Authority Act 1902* (hereinafter referred to as “the Authority”) of the third part and COCKBURN CEMENT LIMITED a company duly incorporated in Western Australia and having its registered office Third Floor Manufacturers’ Building 212-220 Adelaide Terrace Perth (hereinafter referred to as “the Company” which terms shall include its successors and permitted assigns) the fourth part.

WHEREAS:

- (i) this Agreement is supplemental to an Agreement under seal dated the 18th day of February, 1971 made between THE HONOURABLE SIR DAVID BRAND K.C.M.G., M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities of the first part the Minister for Works as therein defined of the second part the Authority of the third part and the Company of the fourth part (which agreement is hereinafter referred to as “the principal agreement”);
- (ii) the parties hereto have agreed to add to the provisions of the principal agreement as hereinafter provided.

NOW THIS AGREEMENT WITNESSETH —

1. THE principal agreement is added to as hereinafter provided and shall be read and construed accordingly.

**Cement Works (Cockburn Cement Limited) Agreement Act 1971**  
Supplemental agreement amending Cement Works **Second Schedule**  
(Cockburn Cement Limited) Agreement

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2. Clause 1 of the principal agreement is amended by adding after the definition of “apply” “approve” “approval” “consent” “certify” “direct” “notify” and “request” in subclause (2) the following further definition —

“cement” means any form of cement or lime manufactured from calcareous material whether or not any other substance or mineral is added or used in the manufacture of such cement or lime;

IN WITNESS whereof these presents have been executed the day and year first hereinbefore written.

SIGNED SEALED AND DELIVERED  
by the said THE HONOURABLE JOHN  
TREZISE TONKIN M.L.A. in the  
presence of —

}

JOHN T. TONKIN.  
(L.S.)

R. J. SEDDON.

SIGNED SEALED AND DELIVERED  
by the said THE HONOURABLE  
COLIN JOHN JAMIESON M.L.A. in  
the presence of —

}

C. J. JAMIESON.  
(C.S.)

G. YEWERS,  
Classified Civil Servant,  
Public Works Dept.

The COMMON SEAL of the  
FREMANTLE PORT AUTHORITY  
was hereunto affixed pursuant to a  
resolution of the said Authority by and  
in the presence of —

}

(C.S.)

MAX B. GRACE,  
Acting Chairman of  
Commissioners.

W. J. HUGHES,  
Commissioner.

C. A. FAULDS,  
Secretary.

**Cement Works (Cockburn Cement Limited) Agreement Act 1971**  
**Second Schedule** Supplemental agreement amending Cement Works  
(Cockburn Cement Limited) Agreement

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The COMMON SEAL of COCKBURN  
CEMENT LIMITED was hereunto  
affixed by authority of the Board and in  
the presence of —

}

(C.S.)

L. G. S. HYLAND,  
Director.

D. W. BIBBY,  
Director.

## **Third Schedule — Variation agreement**

[s. 2]

*[Heading amended by No. 19 of 2010 s. 4.]*

THIS AGREEMENT under seal is made the 24th day of October 1986  
BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, M.L.A.,  
Premier of the State of Western Australia, acting for and on behalf of the  
Government of the said State and its instrumentalities (hereinafter called “the  
State”) of the first part THE HONOURABLE GAVAN JOHN TROY, B. Bus,  
A.F.A.I.M., J.P., M.L.A. the Minister in the Government of the said State for  
the time being responsible for the administration of the *Fremantle Port  
Authority Act 1902* of the second part FREMANTLE PORT AUTHORITY a  
body corporate constituted by the *Fremantle Port Authority Act 1902* of the  
third part and COCKBURN CEMENT LIMITED a company duly incorporated  
in Western Australia and having its registered office at 191 St. George’s  
Terrace, Perth (hereinafter called “the Company” which term shall include its  
successors and permitted assigns) of the fourth part.

WHEREAS the parties hereto desire to vary the Agreement defined in section 2  
of the *Cement Works (Cockburn Cement Limited) Agreement Act 1971* (which  
Agreement is hereinafter referred to as “the Principal Agreement”).

NOW THIS AGREEMENT WITNESSETH:

1. Subject to the context and subject as hereinafter appears the words and expressions use in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement (as varied by this Agreement).
2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.
3. The subsequent clauses of this Agreement shall not operate unless and until the Bill to ratify this Agreement referred to in clause 2 hereof is passed as an Act before the 31st day of December, 1986.
4. The Principal Agreement is hereby varied as follows —
  - (1) Clause 1 subclause (2) —
    - (a) by deleting the definition of “Mining Act” and substituting the following definition —

- “ “Mining Act” means the *Mining Act 1978*.”;
- (b) by deleting the definition of “Minister for Mines” and substituting the following definition —
- “ “Minister for Minerals and Energy” means the Minister of the Government of the State for the time being responsible for the administration of the Mining Act.”;
- (c) by adding after the definition of “ratifying Act” the following definition —
- “ “specified mineral” means mineral or minerals for use solely in the Company’s cement and clinker manufacturing operations or in any other operations approved by the State from time to time.”;
- (d) by substituting for the map marked “B” referred to in the definition of “works site”, the map marked “X” which map is initialled by or on behalf of the parties hereto for the purpose of identification.
- (2) By inserting after clause 6 the following clauses —
- “6A. (1) Not later than the 31st day of December, 1986 and thereafter not later than the expiration of each successive two years during the currency of this Agreement the Company shall submit to the Minister to the fullest extent reasonably practicable a dredging and management programme (hereinafter called a “DMP”) containing its proposals for dredging operations upon the sand banks for its shell sand requirements and for the monitoring, protection and management of the environment in connection therewith for the 10 year period commencing the 1st day of January immediately following the due date for submission of the DMP. The proposals for the first two years covered by each DMP shall be in the most detail and the proposals for the subsequent years covered by the DMP may be presented in progressively less detail.



- (2) Each DMP shall include —
- (a) a plan to suitable scale showing, inter alia, the location of:
    - (i) proposed dredging areas;
    - (ii) proposed spoil dumping areas; and
    - (iii) any installations or works associated with the proposed dredging operationsin relation to significant physiographic and other features of the area;
  - (b) a description in reasonable detail of the proposed method of dredging and associated operations, the quantity and quality of the shell sand to be dredged each year and a schedule showing the sequence in which dredging operations are proposed to take place over the period covered by the DMP;
  - (c) a discussion of the feasible alternative dredging and spoil dumping areas and the principal factors influencing the choice of the proposed areas;
  - (d) as to the first DMP an assessment to the extent reasonably practicable of the impact of the dredging operations carried out by the Company prior to the 31st day of December, 1986 and as to subsequent DMPs a detailed assessment of all dredging operations carried out by the Company since that date together with in respect to all DMPs a detailed assessment of the likely impact of the proposed dredging operations and details of the measures proposed to prevent or ameliorate any adverse impact;
  - (e) such additional relevant information as the Company may consider appropriate or as the Minister may reasonably require.

- 6B. (1) On receipt of a DMP the Minister shall either:
- (a) approve of the DMP either wholly or in part; or
  - (b) require as a condition precedent to the giving of his approval to the DMP that the Company makes such alteration thereto or complies with such conditions in respect thereto as he thinks reasonable, and in such cases the Minister shall disclose his reasons for requiring such alterations or making such conditions.
- (2) The Minister shall within two months after receipt of a DMP give notice to the Company of his decision.
- (3) If the decision of the Minister is as mentioned in paragraph (b) of subclause (1) of this clause the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit a new DMP either generally or in respect to some particular matter.
- (4) If the decision of the Minister is as mentioned in the said paragraph (b) and the Company considers that the condition precedent is unreasonable the Company may within two months after receipt of the notice mentioned in subclause (2) of this clause elect to refer to arbitration the question of the reasonableness of the condition precedent.
- (5) The Company shall implement the decision of the Minister or an award made on arbitration as the case may be in accordance with the terms thereof.
- 6C. (1) It is recognised that from time to time, variations to approved DMPs may be necessary as a result of changes in conditions since the preparation and approval of a DMP.
- (2) Such necessary variations to any approved DMP may be implemented from time to time following agreement to them between the Company and the Authority.

- (3) In the event of any dispute regarding a proposed variation to an approved DMP, the proposed variation shall be submitted to the Minister in the form of a new DMP and the provisions of clause 6B shall *mutatis mutandis* apply to that DMP.
- 6D. The Company shall on or before the 31st day of March, 1987 surrender to the State the lease dated the 15th day of May, 1974 and made between The Commonwealth of Australia as lessor of the one part and the Company as lessee of the other part and all the lands comprised therein and upon such surrender the State shall grant to the Company a lease and licence in the form set out in the Schedule hereto in respect of the land therein described for the purposes and the term and at the rentals therein specified and on and subject to the terms and conditions therein contained.”.
- (3) Clause 7 —
- (a) subclause (2) —
- by deleting subclause (2) and substituting the following —
- “(2) That so long as the Company continues to perform its obligations under the provisions of this Agreement and continues to carry out cement and clinker manufacturing operations and any other operations approved by the State from time to time on the works site or such other sites owned by the Company which the State may approve pursuant to clause 3(1) hereof the State shall ensure that no person shall be granted any rights under the provisions of the Mining Act or the Land Act over the works site, or such other sites as aforesaid, or such other land as the State may in its absolute discretion approve subject to any reservations, qualifications or conditions that it thinks proper in any case, such other land being —
- (a) land owned by the Company during the currency of this Agreement;
- (b) land in respect of which the Company has obtained a mining tenement (as defined in the Mining Act) and which is —

- (i) Crown land within the meaning of the Mining Act (other than such as is, or may at any time be, constituted a reserve under the Land Act); or
- (ii) a State forest or timber reserve under the *Conservation and Land Management Act 1984*;
- (c) land owned by a third party in respect of which the Company has entered into an agreement with the owner for the extraction of limestone and/or lime sand therefrom and the owner consents to the exemption provided by this subclause;

and the Company shall during the currency of this Agreement in respect of the works site and in respect of other sites approved pursuant to clause 3(1) hereof and in respect of other land approved in accordance with this subclause and in respect of the sandbanks designated by clause 6 of this Agreement be exempted from all provisions of the Mining Act (subject to subclause (2a) of this clause) and of the Land Act (other than any provisions of the Mining Act and the Land Act or either of them made applicable as a condition of any approval of the State given in accordance with this subclause).”;

- (b) by inserting after subclause (2) the following subclause —

“(2a) Any exemption from the provisions of the Mining Act pursuant to subclause (2) of this clause shall apply in respect of any lands referred to in paragraph (b) of that subclause only so long as the land is —

  - (i) being mined by the Company for limestone, lime sand and/or specified mineral; or
  - (ii) in the opinion of the Minister for Minerals and Energy being held by the Company for the purpose of future mining for limestone, lime sand and/or specified mineral and the Company is not carrying out any mining operations (other than exploring for limestone, lime sand and/or specified mineral) thereon.”;

(c) subclause (3) —

by deleting subclause (3) and the marginal note thereto and substituting the following —

**Expenditure conditions**<sup>2</sup>

“(3) During the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the expenditure conditions imposed by or under the Mining Act in regard to such mining tenements (as defined in the Mining Act) which in the opinion of the Minister for Minerals and Energy are reasonably required by the Company for the purposes of its present or future cement and clinker manufacturing operations and any other operations approved by the State from time to time.”.

(4) By inserting after clause 7 the following clause —

“7A. During the currency of this Agreement the Company may with the prior consent of the State (which consent shall not be unreasonably withheld) dispose of any part or parts of the works site or such other sites approved by the State pursuant to clause 3(1) hereof or such other land owned by the Company during the currency of this Agreement the subject of an approval by the State in accordance with clause 7(2) hereof. Upon any such disposition, all the provisions of this Agreement shall cease to apply to the land disposed of and the said land shall thereupon cease to have the benefit of the rights and privileges conferred by this Agreement.”.

(5) Clause 8 —

by deleting “the said map marked “B”” and substituting the following —

“the said map marked “X””.

(6) By inserting after clause 10 the following clauses —

“10A. The Company shall keep the Minister fully informed in respect of, and when and in such form as reasonably required by the Minister from time to time report to the Minister on, the

measures it has taken, is taking or proposes to take for the monitoring, protection and management of the environment in respect of its operations including without limiting the generality of the foregoing provisions with respect to the following matters —

- (a) noise from the works site;
- (b) emissions and discharges into the air from the works site;
- (c) emissions, discharges and disposals of matter on or from the works site onto or into land;
- (d) sand recovery and washing at Woodman Point including the effects thereof on surrounding land and water areas;
- (e) the Company's operations under clauses 6 and 6B(5) hereof

and as and when required by the Minister the Company shall liaise and co-operate with the Minister on measures it is taking and take additional reasonable measures with respect to the monitoring, protection and management of the environment arising from its operations.

- 10B. (1) If the Company at any time during the currency of this Agreement desires to significantly modify, expand or otherwise vary its cement and clinker manufacturing operations carried on pursuant to this Agreement or desires to carry on operations other than the manufacturing of cement and clinker on the works site or such other sites owned by the Company which the State may approve pursuant to clause 3(1) hereof it shall give notice of such desire to the Minister and, if required by the Minister within 2 months of the giving of such notice, shall submit to the Minister (within such period as the Minister may reasonably allow) to the fullest extent reasonably practicable detailed proposals in respect of all matters covered by such notice and other relevant information as the Minister may reasonably require.
- (2) If the Minister does not require the Company to submit proposals under subclause (1) of this clause, the Company may, subject to compliance with all applicable laws, proceed with the modification,

expansion or variation of its activities carried on pursuant to this Agreement.

- (3) On receipt of proposals pursuant to subclause (1) of this clause the Minister shall —
  - (a) approve of the said proposals either wholly or in part without qualification or reservation; or
  - (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of any matters (in addition to those required to be addressed pursuant to subclause (1) of this clause) which the Minister reasonably requires to be covered by the said proposals; or
  - (c) require as a condition precedent to the giving of his approval to the said proposals that the Company make such alteration thereto or comply with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such alteration or conditions.
- (4) The Minister shall within two months after receipt of proposals pursuant to subclause (3) of this clause give notice to the Company of his decision in respect to the same.
- (5) If the decision of the Minister is as mentioned in either of paragraph (b) or (c) of subclause (3) of this clause the Minister shall afford the company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (6) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (3) of this

clause, the Company may within two months after receipt of the notice mentioned in subclause (4) of this clause —

- (a) if the Company considers that the decision is unreasonable, elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision; or
- (b) advise the Minister that the Company does not wish to proceed with the matters the subject of the said proposal whereupon the said proposals shall lapse.

- (7) The Company shall implement the decision of the Minister or an award made on an arbitration as the case may be in accordance with the terms thereof.

10C. Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities hereunder that may be made by the State or by any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act from time to time in force.”.

- (7) Clause 17 —

- (a) by inserting after the clause designation “17” the subclause designation “(1)”;
- (b) by deleting “*Arbitration Act 1895*” and substituting the following —  
“*Commercial Arbitration Act 1985*”;
- (c) by inserting the following subclause —

“(2) Notwithstanding the provisions of Section 20 of the *Commercial Arbitration Act 1985* on any reference to arbitration pursuant to subclause (1) of this clause any party may be represented by a duly qualified legal practitioner or other representative.”.

- (8) By inserting after clause 20 the following schedule —





1. THE Lessor in consideration of the premises and also in consideration of the rent and covenants hereinafter reserved and contained and on the part of the Company to be paid performed and observed HEREBY —

(a) DEMISES AND LEASES to the Company that portion of the land described in the Second Schedule (hereinafter “the demised land”);

and

(b) GRANTS to the Company the rights liberties and authorities respectively set out in the Third Fourth Fifth and Sixth Schedules in respect of the several portions of the land described in those schedules (hereinafter “the licensed areas”)

TO HOLD AND ENJOY the same unto the Company UPON AND SUBJECT to the covenants conditions provisions powers and reservations herein contained for a term commencing on the 1st day of April 1987 and expiring on the day on which the period of the dredging rights conferred on the Company by clause 6(1) of the Agreement (including any extension thereof pursuant to clause 6(5) of the Agreement) terminates or is determined but determinable as hereinafter provided (hereinafter “the said term”) the Company YIELDING AND PAYING therefor to the Lessor an annual rent of EIGHT THOUSAND FOUR HUNDRED DOLLARS (\$8 400) to be paid in advance on the 1st day of April in each and every year commencing on the 1st day of April 1987 AND SUBJECT TO reappraisalment of the rent as provided in clause 4(c).

2. THE Company to the intent that the obligations may continue throughout the said term HEREBY COVENANTS with the Lessor as follows: —

(a) The Company will pay to the Lessor the rent hereby reserved (subject however to reappraisalment as herein provided) at the time and in the manner aforesaid without any abatement or deduction whatsoever;

(b) Subject to the Agreement the Company will pay and discharge on the due date for payment thereof all present and future rates taxes charges assessments duties impositions penalties and other outgoings whatsoever which now are or during the said term shall be assessed and charged upon or in respect of the demised land and the licensed areas and the services and utilities provided therefor and all charges for water electricity and power used and consumed thereon;

(c) The Company will at its own cost and expense in all things maintain the works and facilities now and hereafter established on the demised land

and the licensed areas for the purpose of dredging washing processing and pumping of shell sand and the Company will at no time during the said term without the prior consent of the Lessor use the demised land or the licensed areas for any other purpose;

- (d) The Company will not without the consent of the Lessor build erect or install on or affix to or permit or allow to be built erected or installed on or affixed to the demised land or the licensed areas any additional buildings structures or improvements (either above or below the surface of the demised land and the licensed areas) and will submit to the Lessor with each application for consent thereto for approval by the Lessor plans and specifications in duplicate of the proposed works AND will make complete and carry out the work to the satisfaction of the Lessor in accordance with the plans and specifications approved by the Lessor;
- (e) Except for the purposes of necessary maintenance repairs or reinstatement and then only for such length of time as shall be necessary and proper for such purpose, the Company will not pull down demolish or remove or cause to be pulled down demolished or removed during the term hereby granted any building structure or improvement erected in upon under or over the demised land or the licensed areas without the prior consent of the Lessor;
- (f) The Company will at its own expense and to the satisfaction of the Lessor at all times during the said term put keep and maintain the demised land and the licensed areas and all new altered and improved buildings erections additions and improvements (including inter alia all fences gates tanks roadways and pipelines) and also all plant machinery electrical installations and electrical and other fixtures and fittings which may be for the time being erected or in the process of construction or situation thereon therein or thereover in good and substantial repair order and condition and in clean tidy and sanitary condition and safe for workmen and visitors to the demised land and the licensed areas;
- (g) The Company will forthwith on demand of the Lessor and at its own cost and expense make good replace and restore any damage which may be caused to or suffered by the land and buildings of the Lessor or of any other lessees of the Lessor by reason of the erection construction operation working maintenance and use of the works and facilities established on the demised land and the licensed areas by the Company its servants agents contractors invitees or licensees;

- (h) The Company will at all times and in all respects at its cost and expense perform and comply with the provisions of all statutes (both State and Federal) now or hereafter in force and of all regulations statutory rules and by-laws made thereunder and all lawful requirements and orders of any authority statutory or otherwise which affect the demised land or the licensed areas or the use thereof or the construction operation maintenance and use of any work installation plant machinery equipment service or facility thereon or used in connection therewith or which impose any duty or obligation upon the owner or occupier of the demised land or the licensed areas AND in particular without derogating from the generality of the foregoing the Company will comply with the provisions of the *Fremantle Port Authority Act 1902* the *Local Government Act 1960* the *Electricity Act 1945* the *Factories and Shops Act 1963* the *Machinery Safety Act 1974* the *Water Authority Act 1984* and the *Health Act 1911* and all by-laws regulations proclamations and orders made thereunder and will perform discharge and execute all requisitions and work and do and perform all such acts and things upon and unto the demised land and the licensed areas or any pipeline or road or way or any part thereof as are or may be required or directed to be executed or done (whether by the Lessor or the Company) by any Local Authority Health Board Health Commissioner or Water Board or by any other local or public authority or by order or in pursuance of any statute (State or Federal) now or hereafter in force or by order or in pursuance of any by-law or regulation under any such statute;
- (i) The Company shall keep the land of the Lessor free and clean of any rubbish or spoil which may be spilt or deposited thereon by the Company or its servants workmen agents or contractors using the demised land the licensed areas or any pipeline or road or way and the Company will at all times take all such reasonable measures as are required by the Lessor for the purpose of preventing any materials whatsoever escaping from any pipeline or any road or way whilst they are in use and will install such devices for this purpose as are reasonably required by the Lessor;
- (j) At all times during the continuance of this lease and license the Company its officers agents servants and workmen will use their best endeavours to prevent any injury to or loss of life of any person and any damage of or injury to any property by reason of the erection construction maintenance and use of any powerline pipeline road or way on the licensed areas;
- (k) The Company will permit the Lessor or its agents workmen architects surveyors engineers or employees to enter upon the licensed areas to

carry out such works or services on the licensed areas (not being works or services which would if carried out prejudice or interfere with the use by the Company of the demised land or the licensed areas in accordance with the provisions of this Indenture) as the Lessor in its discretion shall deem fit PROVIDED THAT in exercising the rights conferred on it by this clause the Lessor shall use its best endeavours to ensure that use by the Company of the demised land and the licensed areas in accordance with the provisions of this Indenture is not prejudiced or interfered with;

- (l) The Company will permit the Lessor by its agents or servants with or without workmen and others at all reasonable times to enter upon and view the condition of the demised land and the licensed areas and will forthwith (so far as the Company is liable) execute all repairs and works reasonably required to be done thereto or to any improvements erected thereon by notice given by the Lessor PROVIDED ALWAYS THAT if the Company shall not within a space of fourteen (14) days after service of such notice commence and proceed diligently with the execution of the repairs and works mentioned in such notice it shall be lawful for the Lessor and its agents servants workmen architects surveyors engineers and employees to enter upon the demised land and the licensed areas and execute such repairs and works and the cost thereof shall be a debt due from the Company to the Lessor and bear interest at the rate of FIFTEEN per centum per annum and be forthwith recoverable by action;
- (m) The Company will permit the Lessor its servants agents or workmen at all times to enter upon and carry out such duties and exercise such powers upon the demised land and the licensed areas as it may be necessary or expedient to carry out or exercise in the administration or for the purposes of any enactment or any regulation made thereunder and the Company shall not be entitled to any compensation by reason of any inconvenience or disturbance or loss occasioned by any action other than negligence on the part of the Lessor its servants agents or workmen PROVIDED THAT the Lessor will use its best endeavours to ensure that all such duties are carried out and all such powers are exercised in such manner as not to interfere unduly with the operations of the Company in the use of their facilities upon the demised land and the licensed areas;
- (n) The Company will not without the prior consent of the Lessor carry on or permit or suffer to be carried on in or upon the demised land the licensed areas or any part thereof any noxious noisome or offensive trade or business occupation or calling or do or omit to be done or suffer to be done or omitted any act matter or thing whatsoever which shall at any

time during the said term be or grow to be a nuisance to the occupiers or owners of adjoining lands and properties;

- (o) The Company will not do or leave undone or suffer to be done or left undone any act matter or thing whereby a nuisance or anything in the nature of or which may properly be deemed to be a nuisance by any local or public authority or within the meaning of any statute (State or Federal) now or hereafter in force or any regulations or by-laws made thereunder may exist or continue upon or in connection with the demised land or the licensed areas or any business carried on upon the same or the use or occupancy thereof AND will forthwith abate any such nuisance or alleged nuisance and carry out and comply with all the provisions of every such statute regulations or by-laws and of every requisition and order of any local or other public authority in reference thereto;
- (p) The Company will pay to the Lessor on demand all sums of money which the Lessor may at any time and from time to time hereafter pay or expend or be called upon to repay in or about or in connection with performing discharging or executing any requisitions or works or abating any nuisance or alleged nuisance or with undertaking any obligation or paying any money which the Company is obliged to perform discharge execute or pay pursuant to the terms hereof and which contrary to the agreement herein contained the Company neglects or fails to perform discharge execute or pay and to pay the same to the Lessor notwithstanding that by any statute by-law or regulation the Lessor is liable alone or jointly with the Company and/or others to perform discharge execute or pay for the same or any part thereof;
- (q) The Company shall insure and keep insured at its own cost and expense all buildings structures and improvements erected or made by the Company on the demised land and the licensed areas from loss or damage by fire storm tempest and/or explosion and will provide to the Lessor or its agents on request full particulars of such insurance;
- (r) The Company will not do or permit to be done anything whereby the policy or policies of insurance or coverage in respect of damage by fire on any property of the Crown or of any instrumentality of the Crown or of the Lessor in or about the neighbourhood of the demised land and the licensed areas may become void or voidable AND where the rate of premium on any policy or policies of insurance in respect of any property of the Crown or any instrumentality of the Crown or the Lessor —

- (i) which is insured against damage by fire at the date of commencement of this lease and licence is increased on account of any of the purposes for which the demised land or the licensed area is or is about to or may hereafter be used pursuant to this Indenture;

or

- (ii) which is hereafter insured against damage by fire is in excess of the rate or premium which would be payable if the demised land or the licensed area were not used for all or any of the purposes for which it is leased or licensed pursuant to this Indenture as the case may be

THEN the Company shall at all times during the currency of this Indenture in respect of that policy or those policies pay to the Lessor the amount by which the premium or premiums thereon is increased or is in excess of the amount of the premium or premiums which would be payable if the demised land and the licensed areas were not used for all or any of the purposes for which it is leased or they are licensed;

- (s) The Company will at its own cost and expense in all things provide install and maintain at the most advantageous point on the demised land and the licensed areas such fire fighting and control equipment and fire protection services as are agreed on from time to time between the Lessor and the Company and as shall be in conformity with all statutory fire control standards applicable in respect of the demised land and the licensed areas and the purposes for which they are used and in case of any difference or dispute between the Lessor and the Company touching this subclause the difference or dispute shall be referred to the Chief Officer of the Western Australian Fire Brigades Board whose determination shall be final and conclusive between the Lessor and the Company;
- (t) The Company will indemnify and keep indemnified the Lessor the Minister for Lands and the Fremantle Port Authority and their respective servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Company pursuant to this Indenture or the Agreement or relating to its operations or arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's works or services the subject of this Indenture or the Agreement or the plant apparatus or equipment installed in connection therewith;

- (u) The Company will not affix or exhibit or cause or permit to be affixed or exhibited on any part the demised land or the licensed areas any poster signboard neon sign or other advertisement except as shall be first approved by the Lessor (which approval shall not be unreasonably withheld);
- (v) The Company will not except in accordance with the provisions of the Agreement assign mortgage charge encumber sublet dispose of or part with possession of the demised land or the licensed areas or any part thereof or its interest under this Indenture or procure allow or suffer the demised land or the licensed areas or any part thereof to be assigned mortgaged charged encumbered sublet disposed of or the possession thereof parted with for all or any part of the said term and the provisions of Sections 80 and 82 of the *Property Law Act 1969* are expressly excluded from this Indenture;
- (w) The Company will at all times during the said term duly and punctually observe perform and comply with all the covenants agreements conditions provisions and obligations on the part of the Company contained or implied in the Agreement;
- (x) The Company will pay all stamp duty on this Indenture and all usual counterparts;
- (y) Subject to clause 4(d) the Company will yield up the demised land the licensed areas and all buildings fences gates tanks pipelines roads ways fixtures fittings plant machinery and other improvements thereon therein or thereover at the expiration or sooner determination of this Indenture in good and substantial repair and condition and as the case may require in proper working order and condition as shall be in accordance with its covenants herein contained.

3. THE Lessor HEREBY COVENANTS with the Company that the Company paying the rent hereby reserved and duly and punctually observing performing and complying with the terms covenants agreements stipulations and conditions herein and on its part to be observed performed and complied with shall peaceably hold and enjoy the demised land and the licences rights liberties and authorities hereby granted during the said term without any interruption by the Lessor or any person rightfully claiming under or in trust for the Lessor.

4. AND IT IS MUTUALLY AGREED AND DECLARED by and between the parties hereto as follows: —



- (a) If —
- (i) the rent hereby reserved or any part thereof is unpaid for one month after becoming payable (whether formally demanded or not) and such default continues for a further period of one month after notice by the Minister for Lands to the Company specifying the non-payment complained of; or
  - (ii) the Company fails or ceases to use the demised land or the licensed areas for the purposes aforesaid for a continuous period of one hundred and eighty (180) days without the approval of the Lessor (such approval not to be unreasonably withheld); or
  - (iii) any covenant on the Company's part herein contained or implied is not performed or observed and the default in such performance or observance continues for one month after service of a notice on the Company calling upon it to remedy such default within that time or such longer period as may be specified in that notice; or
  - (iv) the Company shall go into liquidation either voluntarily or involuntarily (except for the purposes of reconstruction or amalgamation); or
  - (v) the Agreement terminates
- THEN in any of the said cases it shall be lawful for the Lessor at any time thereafter to re-enter into and upon the demised land and licensed areas or any part thereof in the name of the whole and the same to have again repossess and enjoy and to determine the rights liberties and authorities hereinbefore granted to the Company and eject the Company from the demised land and the licensed areas as if this Indenture had never been executed without making any compensation to the Company but without prejudice to any right of action of the Lessor in respect of any breach of the Company's covenants or agreements or of any terms conditions and provisions herein contained;
- (b) Subject to the provisions of the Agreement it shall be lawful at all times for the Lessor —
- (i) to require the Company to consent to the granting of such easements (including easements without dominant tenements) or rights in or over the licensed areas as may from time to time be

necessary for the overall development of the licensed areas or for the overall development or use of the surrounding lands; and

- (ii) to use or permit the use of the licensed areas as may be necessary for the overall development or use of the licensed areas or for the overall development or use of the surrounding lands

PROVIDED ALWAYS that no such grant requirement use or permission to use shall be made if such grant requirement use or permission to use (as the case may be) would unduly prejudice the Company or unduly interfere with the operations of the Company under the Agreement;

- (c) The Lessor shall be at liberty to reappraise the annual rent of the demised land and the licensed areas in respect of —

- (i) each three (3) year period of the said term commencing on the 1st day of April 1990;

and

- (ii) the balance of the said term commencing on the 1st day of April 2020

AND subject to the Minister for Lands or a person authorised by him in that behalf within the period of three (3) months immediately preceding the first day of the period in respect of which the reappraised rent is payable giving notice to the Company stating therein the amount of the reappraised rent and the period in respect of which it is payable the reappraised rent so notified shall be payable for the demised land and the licensed areas during the period notified at the times and in the manner hereinbefore provided and in all respects the demised land and the licensed areas shall continue to be held by the Company on the same terms and conditions as are herein contained unless within one month from the date of that notice the Company by notice addressed to the Minister for Lands objects to the reappraised rent so notified and requests a determination of the rent to be applicable for the relevant period in which event the rent shall be submitted for arbitration as hereinafter provided and the rent so determined shall be payable in respect of the demised land and the licensed areas for the relevant period and until the rent is so determined the Company shall pay to the Lessor the reappraised rent notified by that notice without any deduction or abatement and upon the rent being so determined the Lessor will refund any rent which according to such determination appears to have been overpaid or such rent shall be adjusted as required by the determination PROVIDED THAT in the event of the rent determined

being the same as or greater than the rent notified by the notice aforesaid all costs of the determination shall be borne by the Company and in the event of such rent being less than notified as aforesaid all such costs shall be borne by the Lessor PROVIDED FURTHER THAT in determining the amount of the reappraised rent no regard shall be had to the value of any buildings structures improvements plant or equipment constructed or erected on or affixed to the demised land or the licensed areas at the cost and expense of the Company AND PROVIDED ALSO THAT in the event of failure to reappraise the annual rent of the demised land and the licensed areas in respect of any period as aforesaid then the annual rent payable for that period shall be the annual rent payable in respect of the immediately preceding period;

- (d) If at the expiration or sooner determination of this Indenture there shall be no subsisting material breach of any condition herein contained on its part to be observed and performed the Company may at any time within three (3) months (or such longer period not exceeding six (6) months as the Minister in his discretion may determine) immediately following such expiration or sooner determination as aforesaid take down remove and carry away the buildings structures improvements plant and equipment erected or brought upon the demised land or (with the exception of any road or way) the licensed areas by the Company. The Company shall fill in consolidate and level off any unevenness excavation or hole caused thereby and leave the demised land and the licensed areas in a clean and tidy condition PROVIDED that no compensation shall be payable to the Company in respect of the buildings structures and improvements not so removed from the demised land nor in respect of any part of the powerlines pipelines and the roads and ways remaining on the licensed areas at the expiration of the aforesaid period and thereupon they shall become the absolute property of the Lessor;
- (e) (i) Any dispute or difference between the parties arising out of or in connection with this Indenture or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Indenture or any such amendment variation or addition or as to the rights duties or liabilities of any party thereunder or as to any matter to be agreed upon between the parties under this Indenture shall in default of agreement between the parties and in the absence of any provision in this Indenture to the contrary be referred to and settled by arbitration under the provisions of the *Commercial Arbitration Act 1985* PROVIDED THAT this paragraph shall not

apply to any case where the Lessor the State or any Minister in the Government of the State is by the Agreement or this Indenture given either expressly or impliedly a discretionary power;

- (ii) Notwithstanding the provisions of Section 20 of the *Commercial Arbitration Act 1985* on any reference to arbitration pursuant to paragraph (i) of this subclause any party may be represented by a duly qualified legal practitioner or other representative;
- (f) Any notice consent or other writing authorised or required by this Indenture to be given or sent shall be deemed to have been duly given or sent by the Lessor if signed by the Minister for Lands or by any senior officer of the public service of the State acting by direction of that Minister and forwarded by prepaid registered post to the Company at its registered office for the time being in the State and by the Company if signed by a director manager or secretary of the Company or by any person or persons authorised in that behalf or by its solicitors as notified to the State from time to time and forwarded by prepaid registered post to the Minister for Lands at his office in Perth AND any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post;
- (g) In this Indenture unless the contrary intention appears —
- “the Agreement” means the Agreement (of which a copy is set out in the First Schedule to the *Cement Works (Cockburn Cement Limited) Agreement Act 1971*) as amended by the two Agreements (of which copies are set forth in the Second and Third Schedules to that Act) all of which Agreements were ratified by that Act;
- “apply” “approve” “approval” “consent” “direct” “notify” “notice” or “request” means apply approve approval consent direct notify notice or request (as the case may be) in writing;
- “Crown” means the Crown in right of the State of Western Australia;
- “Minister” means the Minister in the Government of the State for the time being responsible (under whatsoever designation style or title) for the administration of the *Cement Works (Cockburn Cement Limited) Agreement Act 1971* and includes the successors in office of that Minister;

“Minister for Lands” means the Minister in the Government of the State for the time being responsible (under whatsoever designation style or title) for the administration of the *Land Act 1933* and includes the successors in office of that Minister;

“month” means calendar month;

“person” or “persons” include bodies corporate;

“the State” means the State of Western Australia;

Reference in this Indenture to any Act shall include the amendments to such Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof or which forms part of and is incorporated therein and the regulations for the time being in force thereunder.

#### FIRST SCHEDULE

(“the land”)

Lots 51, 52, 53, 54, 55 and 59 on L.T.O. Plan 14756, Lots 56, 57 and 58 on L.T.O. Plan 14758 and Lot 61 on L.T.O. Diagram 67078 (copies of the said plans and diagram having been initialled by or on behalf of the Lessor and the Company for the purpose of identification).

#### Encumbrance

As to Lots 56, 57, and 58 on L.T.O. Plan 14758 only —  
Transfer                      (Water Authority easement).

#### SECOND SCHEDULE

(“the demised land”)

THAT portion of Lot 59 on L.T.O. Plan 14756 delineated and outlined grey.

#### THIRD SCHEDULE

#### Power Lines

The right for the Company its servants agents and workmen at all times and for all purposes connected with the demised land and the licensed areas and with or without vehicles to enter upon those portions of the land hereunder in this

Schedule mentioned (“this licensed area”) and to construct and maintain thereon or therein a power line or power lines and the Company agrees with the Lessor:

- (a) The term “power line” includes all poles wires cables fittings and equipment associated therewith;
- (b) All power lines shall be constructed to specifications approved by the State Energy Commission of Western Australia and shall be completed and thereafter maintained in a standard to the reasonable satisfaction of both the Commission and the Lessor;
- (c) Forthwith after opening up any part of this licensed area to fill in the same and clear and make safe and level the surface thereof;
- (d) As to any section of a power line which is laid or to be laid underground to ensure that the same is covered to a depth of at least seventy five (75) centimetres and does not interfere with Telecom Australia telegraph or telephone lines;
- (e) As to any line overhead or underground which is laid in any part of this licensed area subject to the easement hereinbefore notified as an encumbrance in favour of the Water Authority of Western Australia to comply with any conditions relating thereto lawfully imposed by that Authority;

and

- (f) Not to make any alterations or additions to any power line without the prior consent of the Lessor which consent shall not be unreasonably withheld.

The land referred to in this Schedule comprises Lots 52, 53 and 54 and that portion of Lot 55 coloured green all on L.T.O. Plan 14756, Lots 57 and 58 on L.T.O. Plan 14758 and that portion of Lot 61 on L.T.O. Diagram 67078 coloured purple.

#### FOURTH SCHEDULE

##### Rights of Way

The right for the Company its servants agents workmen and others thereunto authorised by the Company in common with others from time to time entitled to use the same to go pass and repass at all times hereafter during the said term and for all purposes connected with the demised land and the licensed areas either

with or without vehicles into and out of and from the demised land through over and along the road or way or several roads or ways situated on those portions of the land hereunder in this Schedule mentioned (“this licensed area”) and the Company agrees with the Lessor:

- (a) The Company will pay to the Lessor the whole or an equitable part of the cost of making good any damage to or deterioration of the roads and ways as may be reasonably required by the Lessor having regard to the use of those roads and ways by others;
- (b) As to any road or way which is situated on any part of this licensed area subject to the easement hereinbefore notified as an encumbrance in favour of the Water Authority of Western Australia to comply with any conditions relating thereto lawfully imposed by that Authority;
- (c) In respect of the portion of Lot 61 on L.T.O. Diagram 67078 coloured brown the rights hereinbefore in this Schedule conferred shall not arise or be exercisable until such time as the State or the Lessor completes the construction thereon of a road or way (notice of which completion shall be given to the Company) and upon such notice being given the rights hereinbefore in this Schedule conferred in respect of the portion of Lot 52 on L.T.O. Plan 14756 coloured orange shall immediately cease and determine.

The land referred to in this Schedule comprises Lots 52, 53, 55, that portion of Lot 54 coloured green and that portion of Lot 59 coloured red all on L.T.O. Plan 14756, Lots 57 and 58 on L.T.O. Plan 14758 and that portion of Lot 61 on L.T.O. Diagram 67078 coloured brown.

#### FIFTH SCHEDULE

##### Car Parking

The right for the Company its servants agents workmen and others thereunto authorised by the Company to use those portions of the land hereunder in this Schedule mentioned as are now or hereafter during the said term set aside for the purposes of motor vehicle parking and vehicular and pedestrian access (“this licensed area”) and the Company agrees with the Lessor:

As to any part of this licensed area subject to the easement hereinbefore notified as an encumbrance in favour of the Water Authority of Western Australia to comply with any conditions relating thereto lawfully imposed by that Authority.

The land referred to in this Schedule comprises those portions of Lots 52 and 53 on L.T.O. Plan 14756 and Lot 58 on L.T.O. Plan 14758 all coloured yellow.

#### SIXTH SCHEDULE

##### Pipelines

The right for the Company its servants agents and workmen at all times and for all purposes connected with the demised land and the licensed areas and with or without vehicles to enter upon those portions of the land hereunder in this Schedule mentioned (“this licensed area”) and to lay construct use and maintain thereon or therein a line or lines of pipes for pumping water sand or spoil and the Company agrees with the Lessor;

- (a) The term “pipeline” includes all pumps tanks fittings and appliances associated therewith;
- (b) The Company shall at all times during the said term observe perform and comply with any lawful condition or requirement at any time made by the Water Authority of Western Australia regarding the laying construction use and maintenance of any pipeline;
- (c) Not to make any alterations or additions to any pipeline without the prior consent of the Lessor which consent shall not be unreasonably withheld;
- (d) Whenever reasonably required by the Lessor so to do but in any event not later than the expiration of the serviceable life of the pipeline presently constructed on Lots 51 on L.T.O. Plan 14756 and 56 on L.T.O. Plan 14758 to lay and construct a new pipeline for the same purpose alongside the pipeline presently constructed on Lots 52 and 54 on L.T.O. Plan 14756 and Lot 61 on L.T.O. Diagram 67078 and on commissioning of the new pipeline to remove the pipeline from Lots 51 and 56 to the extent reasonably required by the Lessor;
- (e) Upon commissioning of the new pipeline referred to in paragraph (d) the rights hereinbefore in this Schedule conferred in respect on Lots 51 and 56 shall immediately cease and determine without any abatement of rent.

The land referred to in this Schedule comprises Lots 51, 54, that portion of Lot 55 coloured green and those portions of Lots 52 and 53 coloured yellow and green all on L.T.O. Plan 14756, Lots 56, 57 and 58 on L.T.O. Plan 14758 and Lot 61 on L.T.O. Diagram 67078.



IN WITNESS whereof this Indenture has been executed by or on behalf of the parties hereto the day and year first aforesaid.

THE Common Seal of the MINISTER FOR LANDS was hereunto affixed by me:      }

.....  
MINISTER FOR LANDS

in the presence of  
.....

THE Common Seal of COCKBURN CEMENT LIMITED was hereunto affixed by authority of the Board and in the presence of:      }

..... Director

..... Secretary

”

5. The State acknowledges that the Company has performed and observed the covenants conditions provisions and stipulations expressed or implied in the memorandum of mortgage referred to in clause 3(2) of the Principal Agreement.

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by the said THE HONOURABLE BRIAN THOMAS BURKE, M.L.A. in the      }

BRIAN BURKE

presence of —

D. PARKER  
MINISTER FOR MINERALS AND ENERGY

SIGNED by the said THE  
HONOURABLE GAVAN JOHN  
TROY, B. Bus., A.F.A.I.M., J.P.,  
M.L.A. in the presence of —      }      GAVAN TROY

B. MARSHALL  
ADMINISTRATIVE OFFICER  
MINISTER FOR TRANSPORT AND SMALL BUSINESS

THE COMMON SEAL of  
FREMANTLE PORT AUTHORITY  
was hereunto affixed pursuant to a  
resolution of the said Authority by and  
in the presence of —      }      (C.S.)

Chairman of Commissioners    T. J. LEWIS

Commissioner    J. R. WATSON

A/Secretary    R. SIMPSON

THE COMMON SEAL of  
COCKBURN CEMENT LIMITED was  
hereunto affixed by authority of the  
Board and in the presence of —      }      (C.S.)

Director    D. W. BIBBY

Secretary    B. J. FARRELL

*[Third Schedule inserted by No. 82 of 1986 s. 6.]*

## **Fourth Schedule — Second Variation Agreement**

[s. 2]

*[Heading amended by No. 19 of 2010 s. 4.]*

THIS AGREEMENT is made the 14th day of May 1997

B E T W E E N:

**THE HONOURABLE RICHARD FAIRFAX COURT**, B.Com., M.L.A.,  
Premier of the State of Western Australia, acting for and on behalf of the said  
State and its instrumentalities from time to time (hereinafter called “the State”)  
of the first part

AND

**THE HONOURABLE ERIC JAMES CHARLTON**, M.L.C., Minister in the  
Government of the said State for the time being responsible for the  
administration of the *Fremantle Port Authority Act 1902* of the second part

AND

**FREMANTLE PORT AUTHORITY** a body corporate constituted by the  
*Fremantle Port Authority Act 1902* of the third part

AND

**COCKBURN CEMENT LIMITED** A.C.N. 008 673 470 a company  
duly incorporated in Western Australia and having its registered office at  
Lot 242 Russell Road East, Munster (hereinafter called “the Company”) which  
term shall include its successors and permitted assigns of the fourth part

WHEREAS:

- (a) The parties are the parties to the agreement between them dated the 18th day of February 1971 which agreement was ratified by the *Cement Works (Cockburn Cement Limited) Agreement Act 1971*;
- (b) The said agreement has been varied by an agreement dated the 24th day of October 1986 approved and ratified by the *Cement Works (Cockburn Cement Limited) Agreement Amendment Act 1986* and as so varied is hereinafter called “the Principal Agreement”;
- (c) The parties hereto desire to vary the Principal Agreement.

NOW THIS AGREEMENT WITNESSES:

1. Subject to the context and save as otherwise defined herein words and phrases used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1997 or such later date as the parties hereto may agree.
3.
  - (1) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not commence to operate until the Bill referred to in Clause 2 has been passed by the Parliament of Western Australia and comes into operation as an Act.
  - (2) If before 31 December 1997 or such later date as may be agreed pursuant to Clause 2 the said Bill has not come into operation as an Act then unless the parties hereto otherwise agree this Agreement shall cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of done performed or omitted to be done or performed under this Agreement.
  - (3) On the said Bill coming into operation as an Act all provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.
4. The Principal Agreement is hereby varied as follows:
  - (1) Clause 1 subclause 2 —  
by inserting in the appropriate alphabetical position the following definitions —  
  
““alternative material” means material mined and used by the Company as an alternative to shell sand for the Company’s cement and clinker manufacturing operations or any other operation approved by the State from time to time;”  
  
““EP Act” means the *Environmental Protection Act 1986*;” and  
  
““shell sand” for the purpose of payment of royalties under the Mining Act means limestone;”

- (2) Clause 6 subclause (1) —
- (a) by deleting “royalty”; and
  - (b) by inserting after “charges” the following —  
“*(other than royalty as hereinafter provided)*”.
- (3) By adding after subclause (1) of Clause 6 subclause (1a) as follows —
- “(1a) The Company shall in respect of all shell sand or alternative material mined by the Company on Crown land pursuant to this Agreement pay to the State royalties at the rates from time to time prescribed under the Mining Act and shall comply with the provisions of the Mining Act and regulations made thereunder with respect to the filing of production reports and payment of royalties PROVIDED THAT the quantity of shell sand or alternative material on which royalty is to be paid is that quantity which has been fully prepared for presentation to kiln processes quantified at the nearest measurement point prior to kiln entry and adjusted to a dry basis PROVIDED FURTHER THAT in the year 1 July 1997 to 30 June 1998 the Company shall only be required to pay to the State royalties at the rate of one third the rate prescribed under the Mining Act and in the year 1 July 1998 to 30 June 1999 the Company shall only be required to pay to the State royalties at the rate of two thirds the rate prescribed under the Mining Act.”.
- (4) By adding after subclause (2) of Clause 6A a new subclause (3) as follows —
- “(3) The Company shall not be required to include in a DMP material already submitted by the Company in connection with a proposal referred to the Environmental Protection Authority under Section 38 of the EP Act.”.
- (5) By deleting Clause 10C and substituting the following —
- “10C. Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising



THE COMMON SEAL of  
**COCKBURN CEMENT LIMITED**  
A.C.N. 008 673 470 was hereunto  
affixed by Authority of the Board in the  
presence of —

} [C.S.]

---

Director

DONALD ERNEST  
HUGH McDONALD

---

Secretary

ANTHONY OWEN  
DOBBS

*[Fourth Schedule inserted by No. 27 of 1997 s. 6.]*

# **Cement Works (Cockburn Cement Limited) Agreement Act 1971**

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## **Notes**

- <sup>1</sup> This is a compilation of the *Cement Works (Cockburn Cement Limited) Agreement Act 1971* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### **Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Cement Works (Cockburn Cement Limited) Agreement Act 1971</i>	45 of 1971	10 Dec 1971	10 Dec 1971
<i>Cement Works (Cockburn Cement Limited) Agreement Amendment Act 1986</i>	82 of 1986	9 Dec 1986	9 Dec 1986 (see s. 2)
<i>Cement Works (Cockburn Cement Limited) Agreement Amendment Act 1997</i>	27 of 1997	24 Sep 1997	24 Sep 1997 (see s. 2)
<b>Reprint of the <i>Cement Works (Cockburn Cement Limited) Agreement Act 1971</i> as at 17 May 2002</b> (includes amendments listed above)			
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)

- <sup>2</sup> Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.

- <sup>3</sup> Documents formerly registered in the Office of Titles are now being held by the Western Australian Land Information Authority (see the *Land Information Authority Act 2006* s. 100).