



Western Australia

Industrial Lands (Kwinana) Agreement Act 1964

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Industrial Lands (Kwinana) Agreement Act 1964

An Act to approve, and give effect to, an agreement relating to the disposition of certain lands at Kwinana for industrial purposes.

1. Short title

This Act may be cited as the *Industrial Lands (Kwinana) Agreement Act 1964*¹.

2. Agreement approved and to take effect

The agreement of which a copy is set out in the Schedule is approved and shall, notwithstanding any other Act or law, take effect.

Schedule — Industrial Lands (Kwinana) Agreement

[s. 2]

[Heading amended: No. 19 of 2010 s. 4.]

AN AGREEMENT under seal made the twenty-fourth day of November 1964 BETWEEN the HONOURABLE DAVID BRAND, M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the said State and its instrumentalities (hereinafter referred to as “the State”) of the first part BP REFINERY (KWINANA) PROPRIETARY LIMITED a company which is deemed by the *BP Refinery (Kwinana) Limited Act 1962* to be incorporated under the *Companies Act 1961*, which is the assignee of “the Company” referred to in the agreement ratified by the *Oil Refinery Industry (Anglo-Iranian Oil Company Limited) Act 1952* (Act No. 1 of 1952) and which has its registered office in the said State at Kwinana (hereinafter referred to as “BP” which term shall include its successors and assigns) of the second part and CSBP & FARMERS LTD. a company incorporated under the *Companies Act 1961* and having its registered office at 133 St. George’s Terrace Perth in the said State (hereinafter referred to as “CSBP” which term shall include its successors and assigns) of the third part.

WHEREAS the parties hereto —

- (a) desire to enter into this Agreement with a view to the establishment and carrying on at Kwinana of —
 - (i) a plant for the manufacture of ammonia and other products (being such a mixture of substances as to be “petroleum” within the meaning of the agreement ratified by the said Act No. 1 of 1952) on part of the refinery site as defined in that agreement;
 - (ii) a plant on Area D (as hereinafter defined) for the manufacture by CSBP (using the said or other ammonia) of products including nitrogenous fertilisers.
- (b) desire to deal with certain lands for the said and other purposes.

NOW THIS AGREEMENT WITNESSETH and the parties hereto hereby covenant and agree with one another as follows:

Interpretation ²

1. In this Agreement subject to the context —

“Area A” means all that piece of land (comprising 100 acres or thereabouts) delineated and coloured partly in red and the remainder in hachure on the Plan marked “A” initialled by or on behalf of the parties hereto for the purposes of identification and being (subject to survey) the land more particularly described in Schedule “A” hereto but if the boundaries of the land are altered pursuant to clause 3 hereof means that land as so altered;

“Area B” means all that piece of land (comprising 115 acres or thereabouts) delineated and coloured blue on the said Plan marked “A” and being (subject to survey) the land more particularly described in Schedule “B” hereto but if the boundaries of the land are altered pursuant to clause 4 hereof means that land as so altered;

“Area C” means all that piece of land (comprising 75 acres or thereabouts) referred to in clause 4(a) of the said recited agreement ratified by Act No. 1 of 1952 and being the land more particularly described in Schedule “C” hereto;

“Area D” means all that piece of land (comprising 128 acres or thereabouts) delineated and coloured partly in brown and the remainder in hachure as aforesaid on the said Plan marked “A” and being (subject to survey) the land more particularly described in Schedule “D” hereto but if the boundaries of the land are altered pursuant to clause 6 hereof means that land as so altered;

“Area E” means all that piece of land enclosed by the prolongation easterly of the southern boundary of Area B the prolongation southerly of the eastern boundary of Area B and the south-east boundary of Area B and being the land delineated and coloured green on the said Plan marked “A”.

“associated company” means

- (a) any company notified in writing by CSBP to the Minister which is incorporated in the Commonwealth of Australia and which is —

- (i) a subsidiary of CSBP within the meaning of the term “subsidiary” in section 6 of the *Companies Act 1961*;
or
- (ii) a company in which CSBP holds not less than thirty per cent (30%) of the issued ordinary share capital;
and

(b) any company approved in writing by the Minister for the purposes of this Agreement which is associated directly or indirectly with CSBP in its business or operations hereunder;

“bulk cargo” means the bulk materials used or manufactured by CSBP and consigned for shipment or consigned for use by CSBP in connection with its operations;

“diversion road” means Pioneer Road from the intersection of Ocean Street to the intersection of Gulf Street with projection north-easterly until Mandurah Road is intersected;

“KNC” means the company incorporated under the name of Kwinana Nitrogen Company Proprietary Limited;

“Minister” means the Minister of the Crown to whose administration the ratifying Act is for the time being committed and otherwise the Minister for Industrial Development;

“Commissioners” means the Fremantle Harbour Trust Commissioners constituted under the *Fremantle Harbour Trust Act 1902*;

“ratifying Act” means the Act referred to in clause 2(1) hereof;

“refinery site” has the same meaning as in the said recited agreement ratified by Act No. 1 of 1952;

“the said State” means the State of Western Australia;

“ton” means a ton of 2,240 pounds weight;

“TP Board” means the Town Planning Board constituted under the *Town Planning and Development Act 1928*;

“wharf” includes jetty structure.

Any reference in this Agreement to an Act means that Act as amended from time to time and includes any Act passed in substitution for that

Act and any regulations and by-laws made and for the time being in force under any such Act.

Marginal notes shall not affect the interpretation or construction hereof ².

Operation ²

2. (1) This Agreement shall be of no force or effect unless ratified by an Act of the Parliament of Western Australia which Act comes into operation before the 28th day of February, 1965 but if the Act so comes into operation the following provisions shall thereupon apply operate and take effect —

- (a) the State may by agreement acquire or compulsorily take or resume as for a public work within the meaning of the *Public Works Act 1902* any land or any estate or interest in land which in the opinion of the State is reasonably required for the purposes of this Agreement and may thereafter dispose of or deal with the same in accordance with or for the purposes of this Agreement apart from the provisions of that Act;
- (b) rights and obligations herein created conferred or imposed shall have statutory effect as if enacted by the ratifying Act; and
- (c) no Act regulation or by-law shall operate so as to prevent the State from fulfilling its obligations hereunder in accordance with and subject to the provisions hereof.

(2) If the ratifying Act does not so come into operation, none of the parties hereto shall have any claim against either or both of the others of them by reason of anything herein contained.

Area A ²

3. (1) As soon as conveniently may be after the coming into operation of the ratifying Act BP will submit to the TP Board a plan of subdivision of the refinery site in a form already approved (subject to survey) by the parties hereto and initialled by them or on their behalf for the purposes of identification or in any altered form upon which the parties hereto may mutually agree.

(2) The said plan of subdivision shall delineate separately the portions of Area A coloured red and hachured respectively as referred to in the definition of Area A in clause 1 hereof.

(3) The TP Board having prior to the execution hereof considered and tentatively approved the plan of subdivision referred to in subclause (1) of this clause will on the formal submission hereafter of the said plan or in any altered form as in this clause provided approve thereof without alteration thereto and without the affixing of any conditions or approval except such alterations and/or conditions if any as the parties hereto shall all agree to accept. The approval of the TP Board under this subclause shall be deemed to be an approval within the meaning and for the purposes of the *Town Planning and Development Act 1928*.

(4) In exchange for and in consideration of the transfer of an estate in fee simple free of trusts and encumbrances in Area B as mentioned in clause 4 hereof BP shall transfer to the State which shall take an estate in fee simple free of encumbrances in Area A subject to any alterations which the parties hereto shall have all agreed to accept as aforesaid.

(5) Possession of Area A shall be given to the State concurrently with the giving to BP of possession of Area B as hereinafter mentioned or on such other date if any as the State and BP may mutually agree upon.

(6) So much of Area A as is delineated and coloured red on the said plan but excluding the land between high and low water marks on the seashore (subject to any alteration agreed upon by all parties hereto as aforesaid) shall be deemed held and may be dealt with under the provisions of the *Industrial Development (Resumption of Land) Act 1945* as if acquired under section 11(1b) of that Act.

Area B²

4. (1) As soon as conveniently may be after the coming into operation of the ratifying Act the State shall —

- (a) acquire or compulsorily take or resume an estate in fee simple free of encumbrances in so much of Area B as then remains unalienated from the Crown;
- (b) submit to the TP Board a plan of subdivision showing Area B in a form already approved (subject to survey) by the parties hereto and initialled by them or on their behalf for the purposes of identification or in any altered form upon which the parties hereto may mutually agree;

- (c) cause the construction of the diversion road to be completed by the 31st day of August, 1965 and by that day to be opened to traffic;
- (d) in exchange for and in consideration of the transfer of an estate in fee simple free of encumbrances in Area A by instrument under the hand of the State transfer to BP which shall take an estate in fee simple free of trusts and encumbrances in Area B including the closed portions of roads mentioned in subclause (3) of this clause whereupon the provisions of the *Industrial Development (Resumption of Land) Act 1945* and of the *Industrial Development (Kwinana Area) Act 1952* shall be deemed to have been duly complied with and to be no longer applicable to Area B.

(2) The TP Board having prior to the execution hereof considered and tentatively approved the plan of subdivision referred to in subclause (1) of this clause will on the formal submission hereafter of the said plan or in any altered form as in this clause provided approve thereof without alteration thereto and without the affixing of any conditions of approval except such alterations and/or conditions if any as the parties hereto shall all agree to accept. The approval of the TP Board under this subclause shall be deemed to be an approval within the meaning and for the purposes of the *Town Planning and Development Act 1928*.

(3) By force of this Agreement and of the ratifying Act and with effect from the date possession is given of Area B as hereinafter mentioned —

- (a) all those portions of roads as at date hereof lie within Area B (being portions of Rockingham Road, Gulf Street and Richardson Street) shall be closed;
- (b) all rights of way over those portions of the roads so closed shall cease;
- (c) those portions of the roads so closed shall for all purposes be deemed to be added to and to form part of Area B and shall vest in Her Majesty as for an estate in fee simple in possession under the operation of the *Transfer of Land Act 1893*;
- (d) Area B with those additions shall be deemed for all purposes (including those of the said recited agreement ratified by Act No. 1 of 1952) to form part of the refinery site in lieu of Area A; and

- (e) Area A shall cease for all such purposes to form part of the refinery site;

and the said recited Act No. 1 of 1952 and the agreement ratified by that Act will be deemed amended or altered and read and construed accordingly.

(4) The Registrar of Titles shall on the application of the registered proprietor for the time being of the refinery site and on payment of the prescribed fee cancel the relative certificate or certificates of title to the refinery site as it exists at the date hereof and issue a new certificate or new certificates of title in which Area B with the addition of those portions of the roads so closed will be included within the refinery site and Area A will be excluded therefrom.

(5) Possession of Area B (subject to any leases or tenancies of which notice in writing has been given to BP prior to possession) shall be given on the 1st day of September, 1965, or on such earlier date if the diversion road is completed before the 31st day of August, 1965 as the State and BP agree.

Area C ²

5. BP shall sell to the State which shall purchase an estate in fee simple free of encumbrances in Area C for the sum of Seven Hundred and fifty pounds (£750) payable in full on acceptance for registration of a transfer of the land. Vacant possession of the land will thereupon be given to the State and Area C shall be deemed held and may be dealt with under the provisions of the *Industrial Development (Resumption of Land) Act 1945* as if acquired under section 11(1b) of that Act.

Area D ²

6. (1) As soon as conveniently may be before or after the approval by the TP Board of the plan of subdivision mentioned in clause 4 hereof the State shall —

- (a) acquire or compulsorily take or resume an estate in fee simple free of encumbrances in so much of Area D as then remains alienated from the Crown;
- (b) submit to the TP Board a plan of subdivision showing Area D in a form already approved (subject to survey) by the parties hereto and initialled by them or on their behalf for the purposes of identification or in any altered form upon which the parties hereto may mutually agree;

(c) sell to CSBP which shall purchase an estate in fee simple free of trusts and encumbrances in Area D (subject to any alterations which the parties hereto shall have all agreed to accept as referred to in clause 3 hereof but including the closed portions of roads mentioned in subclause (4) of this clause) for the price calculated at the rate of £750 per acre, payable in three equal instalments the first of which instalments shall be paid on the 31st day of December, 1965, the second of which instalments shall be paid on the 31st day of December, 1968 and the third of which instalments shall be paid on the 31st day of December, 1970 provided that CSBP shall be at liberty to pay to the State the whole or balance of the purchase price of Area D at any time and the State shall by instrument under its hand transfer the land comprised in Area D to CSBP when the purchase price therefor is paid in full.

(2) Upon the sale as aforesaid the provisions of the *Industrial Development (Resumption of Land) Act 1945* and of the *Industrial Development (Kwinana Area) Act 1952* shall be deemed to have been duly complied with and to be no longer applicable to Area D.

(3) The TP Board having prior to the execution hereof considered and tentatively approved the plan of subdivision referred to in subclause (1) of this clause will on the formal submission hereafter of the said plan or in any altered form as in this clause provided approve thereof without alteration thereto and without the affixing of any conditions of approval except such alterations and/or conditions if any as the parties hereto shall all agree to accept. The approval of the TP Board under this subclause shall be deemed to be an approval within the meaning and for the purposes of the *Town Planning and Development Act 1928*.

(4) By force of this Agreement and the ratifying Act and with effect from the date possession is given pursuant to subclause (7) of this clause —

- (a) all those portions of roads (including any Metropolitan Regional Road) as at date hereof lie within Area D shall be closed;
- (b) all rights of way over those portions of the roads so closed shall cease; and
- (c) those portions of the roads so closed shall for all purposes be deemed to be added to and to form part of Area D and shall vest in Her Majesty as for an estate in fee simple in possession under the operation of the *Transfer of Land Act 1893*.

(5) The Registrar of Titles shall on the application of CSBP or other the person or company for the time being registered or entitled to be registered as the proprietor of Area D and on payment of the prescribed fee cancel the relative certificate or certificates of title to the whole or part of Area D and issue a new certificate or new certificates of title for Area D which will include those portions of the roads so closed (but subject to alteration if any as agreed by all the parties hereto as aforesaid).

(6) On the day possession is given of Area D as hereinafter mentioned CSBP will pay to the State as a contribution towards the cost of constructing the diversion road adjacent to the eastern boundary of Area D a sum calculated on the length of the closed portion of Rockingham Road within Area D and computed at the rate of £11,000 per mile.

(7) Possession of Area D (or if altered as aforesaid then as altered) shall be given to CSBP concurrently with the giving to BP of possession of Area B as hereinbefore mentioned or on such other date if any as the parties hereto may mutually agree upon.

(8) Upon the completion of the construction of the wharf the westward end of the southern boundary of Area D shall be adjusted and formed in manner following, namely, by a line commencing from the centre point of the shore end of the wharf if the wharf is in the form of a jetty or otherwise from such point of the wharf as the State and CSBP agree upon being extended inland for a distance of ten (10) chains beyond high water mark and parallel with the general direction of the then existing southern boundary of Area D and being joined to the then existing southern boundary of Area D by the shortest route.

(9) The land (within Area D) south and west of the line referred to in the preceding subclause shall be the subject of a plan of subdivision and be submitted to the TP Board and it shall be the duty of the TP Board to approve such plan without alteration thereto and without the affixing of any conditions of approval except such alterations and/or conditions if any as the State shall agree to accept and the approval of the TP Board under this subclause shall be deemed to be an approval by the TP Board within the meaning and for the purposes of the *Town Planning and Development Act 1928*.

(10) Forthwith after the submission of the plan of subdivision mentioned in the preceding subclause the land the subject thereof shall by force of this Agreement be excised from Area D and thereupon vest in Her Majesty as for an estate in fee simple in possession and shall be deemed held and may be dealt with under the provisions of the *Industrial Development (Resumption of Land)*

Act 1945 as if acquired under section 11(1b) of that Act. In respect of land so vested the State shall pay to CSBP compensation therefor computed at the same price per acre as CSBP paid to the State per acre for Area D.

(11) If at any time hereafter Her Majesty becomes possessed of such an estate as to be able to transfer to CSBP an estate in fee simple in both or either of the areas adjoining the southern boundary of Area D and shown coloured yellow and purple on the plan marked A and the TP Board approves or will approve of the plan of subdivision in respect of both or either of those areas then the Minister shall as soon as conveniently may be thereafter grant to CSBP an option to purchase both or either (as the case may be) of those areas at a price to be computed at the average price per acre paid by or on behalf of Her Majesty to acquire the alienated portions of the area or areas the subject of the option at the time or respective times of the exercise of the option. If CSBP desire to exercise the option it shall give notice to the Minister within the twenty-eight (28) days next following the receipt by it of the option, and the purchase price shall be paid by CSBP within the fourteen days next following a notice to CSBP advising it of the amount of the purchase price.

Area E²

7. (1) As soon as conveniently may be after the coming into operation of the ratifying Act the State shall acquire or compulsorily take or resume an estate in fee simple free of encumbrances in all or so much of the land comprised in Rockingham Lots 382, 383, 384 and 385 as then remains alienated from the Crown.

(2) In the event of —

- (a) there being a re-alignment of so much of Pioneer Road and the railway (which is hereafter to be constructed along the north-western side of the road) as is within Area E, and
- (b) the whole or portion of the land within Area E which adjoins the south-eastern boundary of Area B is in the absolute opinion of the State no longer required for road or railway purposes

then the Minister shall as soon as conveniently may be thereafter grant to BP an option to purchase the whole or that portion of that said land at the current market price of land in the neighbouring area thereof upon and subject to the provisions contained in subclause (3) of this clause.

(3) If BP desires to exercise the option BP shall give notice to the Minister within the three (3) calendar months next following the receipt by it of the option and pay the purchase price therefor within the twenty-eight (28) days next following the notice from the Minister advising it of the amount of the purchase price.

(4) If at any time prior to the re-alignment of Pioneer Road or the railway as mentioned in subclause (2) of this clause the State requires any portion of Area E for the purposes of industrial development the State shall be released and discharged from its obligations to BP under that subclause on giving to BP a notice stating that such land is so required and such notice shall be conclusive evidence that the land is required for the purposes of industrial development.

Further assurance ²

8. The parties hereto shall execute deliver and do all such documents acts and things as may be necessary or expedient to implement or give effect to the provisions hereof.

Exemptions from Stamp Duties ²

9. This Agreement and the documents necessary to give effect to the foregoing provisions hereof shall be exempt from stamp duties payable under the laws of the said State.

Terms of Agreement ²

10. This clause and the remaining provisions of this Agreement subject to clause 28 hereof will continue in force until and expire on the 1st day of January, 2014 unless CSBP by notice in writing to the State not later than the 1st day of January 2010 requires extension for such further period not exceeding twenty years as CSBP may nominate in such notice and this clause and the remaining provisions of this Agreement save for the right of renewal shall thereupon be extended accordingly.

Construction of plant ²

11. (1) CSBP will before the 30th day of June 1966 commence to erect and thereafter will diligently proceed with the construction and establishment on Area D of a plant estimated to cost (inclusive of all necessary ancillary buildings work plant equipment wharf and services) Five million pounds (£5,000,000) and designed to produce and capable of producing not less than a total of one hundred thousand (100,000) tons of nitrogenous fertilisers and

related products per annum and shall by the 31st day of December 1968 complete the construction and establishment aforesaid.

(2) Subject to the laws for the time being in force in the said State CSBP shall at all times in relation to such construction and establishment and in equipping and operating the said plant comply with accepted modern practice.

Wharf ²

12. (1) If the State desires the Commissioners to construct or to cause to be constructed in Cockburn Sound a wharf portion of which will be suitable for the operations of CSBP BP and KNC and which portion the State shall cause the Commissioners to set aside and reserve for the operations of CSBP, BP and KNC (which portion is hereinafter referred to as the "CSBP portion") the State shall by or before the 31st day of January 1965 give notice to CSBP of its desire so to do.

(2) As soon as conveniently may be after giving that notice the State will cause the Commissioners to commence or to cause to be commenced and by the 31st day of December 1968 or by such other day as CSBP nominates (provided that CSBP gives to the Commissioners not less than twelve (12) calendar months' notice of such other day) to complete or to cause to be completed the construction of the CSBP portion (providing forty (40) feet depth at low water mark) and approaches to the CSBP portion.

(3) Unless CSBP advises the State by notice on or before the 31st day of July 1965 of its intention to instal on that wharf such conveyors cranes appliances and facilities as are suitable for the efficient loading and discharge of vessels at the CSBP portion for the purposes of the operations of CSBP hereunder the State will cause the Commissioners to construct and instal those conveyors cranes appliances and facilities.

(4) The State will cause the CSBP portion to be constructed in such location and in accordance with such plans and specifications as are to the reasonable satisfaction of CSBP and BP.

(5) The State will at all times during the currency of this Agreement cause the Commissioners to maintain or to cause to be maintained in good order and condition the CSBP portion and the approaches thereto constructed under this clause.

(6) If the CSBP portion is constructed pursuant to the provisions of this clause then CSBP, BP and KNC will respectively pay to Commissioners for

their respective goods which are discharged upon or over or shipped from the CSBP portion the appropriate prescribed wharf charges applicable to the Inner Harbour cargoes except that for the period expiring on the 1st day of January 1988 in respect of bulk cargoes the wharf charges shall not be in excess of 2/9 per ton unless the inward general cargo rate for the Inner Harbour is increased above 13/6 per ton and from the date or respective dates of any such increase or increases the bulk wharf charges will increase in like proportion.

(7) Where and to the extent that the CSBP portion may be used by third parties without unduly hindering the operations of CSBP BP and KNC hereunder (a matter which shall be within the sole determination of CSBP) CSBP will permit the CSBP portion to be used by any other person or corporation for the handling of inward and outward cargo upon terms and conditions (including charges) to be determined by the Commissioners from time to time.

CSBP's wharf ²

13. (1) If the State is not desirous of constructing or causing to be constructed the wharf referred to in and pursuant to the provisions of clause 12 hereof then CSBP at its own expense and risk in all things but in close liaison with the Commissioners shall construct with all convenient speed a wharf suitable for the operations of CSBP hereunder but in all things subject to the approval of the Commissioners. Any dispute or difference between CSBP and the Commissioners under this clause shall be referred to and determined by the Minister whose decision shall be final and binding for all purposes.

(2) CSBP will at all times maintain in good order and condition the wharf and shore approaches within Area D and be responsible for proper insurance thereof.

(3) Where and to the extent that the wharf may be used by third parties without unduly hindering the operations of CSBP hereunder (a matter which shall be within the sole determination of CSBP) CSBP will permit the wharf to be used by any other person for the handling of inward and outward cargo upon terms and conditions (including charges) to be determined by the Commissioners from time to time provided however, that the collection and allocation of charges as between CSBP and the Commissioners shall be determined by mutual agreement between CSBP and the Commissioners.

(4) Subject to the provisions hereof and to the control of the Commissioners in the discharge of their statutory functions and powers CSBP

shall be entitled to use the wharf for its purposes hereunder and to control and manage it free of rental or license fee.

(5) CSBP will indemnify and keep indemnified the State against all actions claims costs and demands (not based on or arising out of the negligence of the State its agents servants or third party contractors) arising out of or in connection with the construction maintenance or use of its wharf and the operations on and from its wharf.

(6) BP and KNC shall each have the right to use CSBP's wharf upon the same terms and conditions as are made available to CSBP by the Commissioners.

(7) Within 6 months after the end or sooner determination of the currency of this Agreement CSBP may (except in so far as the State and CSBP may otherwise in writing mutually agree and subject to the next succeeding subclause) remove and carry away from the wharf (whether constructed under this or the immediately preceding clause) such plant equipment and removable buildings as it has installed constructed or placed thereon and shall fill in and consolidate and level off all holes and excavations thereby resulting and if within such period of 6 months CSBP fails so to consolidate and level off the State may so consolidate and level off and CSBP shall on demand pay to the State the amount of the costs and expenses so incurred and the plant equipment and removable buildings not removed by CSBP within the period aforesaid shall become the absolute property of the State.

(8) In the event of CSBP deciding to remove the said plant equipment and removable buildings it shall not do so without first notifying the State in writing of that decision and thereby granting to the State an option exercisable within 3 months of the service of such notice to purchase at valuation in situ the said plant equipment and removable buildings or any of them. Such valuation if not mutually agreed shall be made by such competent valuer as the State and CSBP may appoint or failing agreement as to such appointment then by two competent valuers one to be appointed by each party or by an umpire appointed by such valuers should they fail to agree.

Electricity ²

14. Subject to reasonable notice in writing from time to time of CSBP's requirements as to industrial electric power for both construction and operations purposes hereunder The State Electricity Commission of Western Australia will supply to the boundary of Area D fifty (50) cycle power on the Commission's terms and conditions for the time being for industrial users in the Metropolitan

Area for the supply of such power to meet CSBP's reasonable requirements in that regard but not exceeding 25,000 k.v.a. at any time without the Commission's consent.

Sea water²

15. CSBP may at its own cost in all things draw and use sea water for cooling purposes in its operations hereunder from such positions in Cockburn Sound as the Commissioners shall from time to time approve. Sea water so drawn may be returned to the sea in such positions as aforesaid admixed with effluent from manufacturing operations hereunder provided that the discharge is not dangerous or injurious to public health.

Potable water²

16. (1) Subject to reasonable notice in writing from time to time of CSBP's requirements as to potable water for its purposes hereunder the Metropolitan Water Sewerage and Drainage Board shall provide to the boundary of Area D on that Board's terms and conditions for the time being prevailing for excess water supplied for industrial purposes such quantities of potable water as will meet CSBP's reasonable requirements in that regard but not exceeding two million (2,000,000) gallons in any one week without the said Board's consent.

(2) The State agrees that CSBP may sink on Area D such wells and bores into the sub-soil as CSBP thinks fit to a depth not exceeding Reduced Level Low Water Mark Fremantle minus five hundred (500) feet for the purpose of obtaining water for its purposes hereunder and the water so obtained and used will not be the subject of a charge by the State: Provided always that without the prior approval in writing of the said Board no well or bore shall be sunk within two chains of a boundary of Area D other than the western boundary and no well or bore shall in any event be sunk to a depth which shall cause the artesian basin to be tapped. CSBP will on request by the State from time to time give to the State particulars of the number depth and kind of wells and bores sunk by it and the precise situation of each respectively and the quantities and quality of water obtained from each respectively.

(3) CSBP shall so far as is reasonably practicable recirculate on its said plant the potable water used for cooling and/or processing purposes therein.

Harbour charges ²

17. (1) If a wharf is constructed pursuant to the provisions of clause 13 hereof then the rates charges and dues mentioned in the succeeding subclauses of this clause shall be chargeable.

(2) CSBP BP and KNC shall in relation to their respective goods which are discharged upon or over or shipped from its wharf pay to the Commissioners wharf charges as set out below: —

(a) On all inwards and outwards bulk cargoes

	Rate per Ton Weight.
Up to 100,000 tons per annum.....	1/4.5d.
Over 100,000 tons but not exceeding 200,000 tons per annum.....	1/2.85d.
Over 200,000 tons but not exceeding 300,000 tons per annum.....	1/1.2d.
Over 300,000 tons but not exceeding 400,000 tons per annum.....	11.55d.
Over 400,000 tons but not exceeding 500,000 tons per annum.....	9.9d.
Over 500,000 tons per annum.....	8.25d.

Wharf charges will be assessed on the aggregate of all inwards and outwards bulk cargoes during each financial year (commencing on the first day of July) at the rate appropriate to such aggregate and upon any alterations in the Commissioners general cargo Inner Harbour rate for wharfage on inwards goods for which other specific rates are not provided as fixed at the completion of review of rates in progress at the date hereof (hereinafter in this paragraph referred to as “the basic rate”) the rates shall increase or decrease proportionately to the alterations in the basic rate for the time being.

(b) On inwards and outwards cargoes, other than bulk cargoes and manufactured goods mentioned in paragraph (c) hereof

A sum equal to 25 per centum of the appropriate prescribed general cargo rates applicable to Fremantle Harbour Trust Inner Harbour cargoes (which rates as at the date of this Agreement are thirteen shillings and sixpence (13s. 6d.) per ton for inward cargoes and ten shillings (10s. -d.) per ton for outward cargoes).

- (c) On locally manufactured goods of CSBP exported in bagged or packaged form

50% of whatever rate may be prescribed from time to time for locally manufactured goods exported through the Inner Harbour.

(3) No charges shall be levied by the Commissioners in respect of vessels using CSBP's wharf, other than —

- (a) tonnage rates from time to time levied by the Commissioners for the Port of Fremantle on the gross registered tonnage of vessels;
- (b) the usual charges from time to time prevailing made by the Commissioners in respect of pilotage the bunkering of vessels and/or services rendered to or in respect of any vessel by the Commissioners.

(4) Save as aforesaid no other charges or dues (except for services actually rendered at the request of CSBP) shall be levied by the Commissioners or any other State authority upon inwards and outwards cargoes belonging to CSBP discharged upon or over or shipped from its wharf.

Rail connection ²

18. The State will ensure that Area D will be connected by rail to both the now existing narrow and the future proposed standard gauge railway systems.

Assignment ²

19. (1) CSBP with the consent in writing of the State shall have the right to assign or dispose of all or part of its rights and obligations under this Agreement or any interest therein or acquired thereunder and such consent shall not be arbitrarily or unreasonably withheld subject to the assignee or assignees executing in favour of the State a deed of covenant to comply with and observe the assigned obligations.

(2) When under the provisions of subclause (1) of this clause any interest of CSBP is disposed of or assigned to a company being at the date of disposal or assignment an associated company the State will not levy or exact any State Stamp Duties in respect of that disposal or assignment if effected for the purpose of construction reconstruction or reorganisation: PROVIDED THAT such disposal or assignment takes place prior to the 31st day of March 1972.

No acquisition of works ²

20. The State agrees that having regard to the particular nature of the industry proposed to be established by CSBP under this Agreement and subject to the performance by CSBP of its obligations hereunder the State will not resume or suffer or permit to be resumed by any State instrumentality or by any local or other authority of the said State any portion of Area D or of the wharf (constructed under clause 13 hereof) the resumption of which would impede CSBP's activities nor will the State create or grant or permit or suffer to be created or granted by an instrumentality or authority of the said State as aforesaid any road right of way or easement of any nature or kind whatsoever over or in respect of Area D without the consent in writing of CSBP first having been obtained which consent shall not be arbitrarily or unreasonably withheld.

Preservation of rights ²

21. The State hereby covenants and agrees with CSBP that subject to the due performance by CSBP of its obligations under this Agreement the State shall ensure that during the currency of this Agreement the rights of CSBP hereunder shall not in any way through any act of the State be impaired disturbed or prejudicially affected; PROVIDED THAT nothing in this clause shall apply to any law or requirement relating to safety.

Taxes and charges ²

22. The State shall not impose nor permit nor authorise any of its agencies or instrumentalities or any local or other authority to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of CSBP in the conduct of business incidental to its business hereunder nor will the State take or permit to be taken any other discriminatory action which would deprive CSBP of full enjoyment of the rights granted and intended to be granted under this Agreement.

Rating ²

23. Notwithstanding the provisions of any Act or anything done or purporting to be done under any Act the valuation of Area D shall for rating purposes be or be deemed to be on the unimproved value and shall not in any way be subject to any discriminatory rate: PROVIDED HOWEVER that nothing in this clause shall apply to any portion of Area D which shall be occupied as a permanent residence or upon which a permanent residence shall be erected.

Delegation to third parties²

24. Without affecting the liability of the parties under the provisions of this Agreement either party shall have the right from time to time to entrust to third parties the carrying out of any portion of the operations which it is authorised or obliged to carry out under this Agreement.

Prices²

25. The State will not at any time by legislation regulation or administrative action under any legislation of the said State as to prices prevent products produced by CSBP from being sold at prices which will allow CSBP to provide for such reasonable depreciation reserves and return on the capital employed in the production of those products as are determined by CSBP.

Dredging²

26. Subject to the approval in writing of the Commissioners as to times method and extent of dredging and to the depositing of spoil CSBP may at its own expense in all things carry out any dredging within Cockburn Sound reasonably required by CSBP for its operations hereunder.

Effluent²

27. (1) Subject to the provisions of this clause CSBP may discharge into Cockburn Sound into water not less than eight (8) fathoms deep at low water mark up to three hundred and fifty (350) tons in any one day of gypsum being effluent from the operations of CSBP hereunder.

(2) The discharge will be through pipes laid and maintained by CSBP at its expense in all things but in positions directed or approved by the Commissioners.

(3) (a) CSBP will be responsible for and carry out all dredging of Cockburn Sound that becomes necessary to remedy any shallowing or other alteration of the sea bed caused by the discharge of gypsum into the said Sound.

(b) The Commissioners may when and as often as in its opinion it becomes desirable that the said dredging be carried out notify CSBP in writing that it is required to dredge and remove gypsum discharged into Cockburn Sound to the extent required and to the locations specified by the Commissioners.

(c) If CSBP does not to the satisfaction of the Commissioners dredge and remove the gypsum to the extent so required and to the locations so specified within a period of 12 months after receipt of the said notice then the Commissioners may carry out the dredging and removal of gypsum to the extent required and to the locations so specified and the cost thereof shall be paid by CSBP to the Commissioners.

Default ²

28. (1) Subject to clause 30 hereof relating to delays if at any time during the continuance of this Agreement —

- (a) CSBP fails to comply with or carry out any of the obligations on its part contained herein or abandons or repudiates this Agreement the State may by notice in writing to CSBP specifying the failure terminate this Agreement;
- (b) the State fails to comply with or carry out any of the obligations on its part contained herein CSBP may by notice in writing to the State specifying the failure terminate this Agreement.

(2) The notice of termination shall be deemed to have been received on the day following its postage and shall take effect twelve (12) months after that date unless the State or CSBP as the case may be shall in the meantime have remedied the failure or shown to the satisfaction of the other party earnest intent to do so.

Variation ²

29. Any right or obligation herein contained affecting any two or more of the parties hereto may from time to time by the relevant parties affected be added to cancelled or varied to the extent that it is necessary so to do for the more efficient fulfilment of the objectives of this Agreement and references to this Agreement shall be deemed to be to this Agreement as varied in accordance with this clause.

Delays ²

30. (1) This Agreement shall be deemed to be 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 floods

and washaways strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors riots and civil commotion and delays due to overall Australian economic conditions or factors which could not reasonably have been foreseen.

(2) This clause shall apply only to delays of which and of the cause of which notice in writing is given by the party subject to the delay to the other party hereto within one month of the commencement of the delay.

North Fremantle site²

31. (1) CSBP covenants and undertakes

- (a) not to extend or enlarge the manufacturing capacity of its factory or works at present carried on at North Fremantle (in this clause referred to as “the said site”);
- (b) to vacate the said site and cease thereon carrying on the manufacture of superphosphate or any other manufacturing or industrial process whatsoever on or before the expiration of the term of the leases under which it is at present in occupation of the said site at North Fremantle.

(2) The State undertakes that the said site at North Fremantle will not be made available to any person or corporation for the purpose of carrying on any heavy or light industrial manufacturing business within the meaning of any town planning or zoning enactment or regulations or schemes applying from time to time to the area without first giving to CSBP the opportunity to carry on business at the said site on terms and conditions not less favourable than those proposed to be offered to the person or corporation to whom it is otherwise proposed to make the said site available except that the area will not be made available to any fertilizer chemical or petroleum industry without the prior approval of CSBP.

State law to apply²

32. This Agreement shall be interpreted according to the laws for the time being in force in the said State.

Arbitration²

33. Any dispute or difference between any two or more of the parties arising out of or in connection with this Agreement or as to the construction of this

Agreement or of any variation thereof or as to the rights duties or liabilities of any party hereunder or as to any matter to be agreed upon between any two or more of the parties in terms of this Agreement shall in default of agreement between the parties 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*.

Notices ²

34. Any notice consent option or other writing authorised or required by this Agreement to be given or sent by the State if signed by the Minister or by any senior officer of the Civil Service of the said State acting by direction of the Minister and forwarded by prepaid post to the addressee being a party hereto at its registered office in the said State and by either of the other parties hereto if signed on behalf of that party by a director manager secretary or attorney of that party and forwarded by prepaid post to the Minister and any such notice option consent or writing shall be deemed to have been duly given on the day on which it would be delivered in the ordinary course of post.

SCHEDULE A.

AREA A.

All that portion of land bounded by lines starting from a point on the north-western side of Rockingham Road situate 12 and one tenth links north-easterly from the intersection of that side with the prolongation north-westerly of the north-eastern side of Beach Street and extending south-westerly along that side of Rockingham Road aforesaid to the southern corner of lot 1 of Cockburn Sound locations 244 and 704 as shown on Land Titles Office³ diagram 16889; thence north-westerly and generally northerly along boundaries of that lot to a point situate 270 degrees from the starting point and thence 90 degrees 34 chains 9 and seven tenths links to that point; being part of lot 1 aforesaid and being the land delineated and coloured partly in red and the remainder in hachure on the said Plan marked "A".

SCHEDULE B.

AREA B.

All that portion of land bounded by lines starting from the intersection of the north-western side of Rockingham Road with the western side of Mandurah Road and extending south-westerly 4 chains 92 and nine tenths links along that

side of Mandurah Road and onwards 180 degrees 19 minutes 34 chains 14 and one tenth links; thence 186 degrees 3 minutes 2 chains 79 and six tenths links; thence 197 degrees 31 minutes 2 chains 79 and six tenths links; thence 208 degrees 58 minutes 2 chains 79 and six tenths links; thence 214 degrees 42 minutes 16 chains 43 links; thence 270 degrees 29 chains 81 and eight tenths links to the north-western side of Rockingham Road aforesaid and thence north-easterly along that side to the starting point; being lots 321, 322, 325 to 328 inclusive and 331 of Cockburn Sound location 244 as shown on Land Titles Office³ plan 3837, lots 335 to 351 inclusive and 357 to 364 inclusive as shown on Land Titles Office³ plan 3836, lots 4 to 7 inclusive as shown on Land Titles Office³ diagram 21109, lots 1, 2 and 3 as shown on Land Titles Office³ diagram 13500, parts of lots 315 to 320 inclusive, 332 and 333 as shown on Land Titles Office³ plan 3837 aforesaid, parts of lots 334, 352 to 356 inclusive, 365 to 369 inclusive and 371 as shown on Land Titles Office³ plan 3836 aforesaid together with parts of Rockingham Road, Gulf Street and Richardson Street and being the land delineated and coloured blue on the said Plan marked "A".

SCHEDULE C.

AREA C.

ROCKINGHAM LOT 639.

SCHEDULE D.

AREA D.

All that portion of land bounded by lines starting from a point on the north-western side of Rockingham Road situate 12 and one tenth links north-easterly from the intersection of that side with the prolongation north-westerly of the north-eastern side of Beach Street and extending 90 degrees 29 chains 81 and eight tenths links; thence 214 degrees 42 minutes 29 chains 39 and nine tenths links; thence 270 degrees 17 chains 3 and nine tenths links to the eastern corner of lot 7 of Cockburn Sound location 244 as shown on Land Titles Office³ diagram 14302; thence north-westerly along the north-eastern boundaries of that lot, lot 6 and part of lot 8 being the subject of Certificate of Title Volume 1167 Folio 830 and south-westerly along the north-western boundary of that part of lot 8 to the north-eastern side of Ocean Street; thence north-westerly along that side and onwards to the north-western side of Rockingham Road aforesaid; thence south-westerly 1 chain 77 and two tenths links along that side; thence 270 degrees to the high water mark of

THE COMMON SEAL OF CSBP &
FARMERS LTD was hereunto affixed by
authority of the directors in the presence
of —

}

[C.S.]

A. McA. BATTY,
Director.

E. THORLEY LOTON,
Director.

K. A. MARTIN,
Secretary or authorised
Signatory.

Notes

- ¹ This is a compilation of the *Industrial Lands (Kwinana) Agreement Act 1964* 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

Short title	Number and year	Assent	Commencement
<i>Industrial Lands (Kwinana) Agreement Act 1964</i>	93 of 1964	14 Dec 1964	14 Dec 1964
Reprint 1: The <i>Industrial Lands (Kwinana) Agreement Act 1964</i> as at 22 Aug 2003			
<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)

- ² Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.
- ³ Lands Titles Office diagrams and plans are now being held by the Western Australian Land Information Authority (see the *Land Information Authority Act 2006* s. 100).