

Western Australia

**Cement Works (Cockburn Cement Limited)  
Agreement Amendment Act 2010**

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As at 28 Oct 2010

No. 41 of 2010

Extract from [www.slp.wa.gov.au](http://www.slp.wa.gov.au), see that website for further information



Western Australia

# **Cement Works (Cockburn Cement Limited) Agreement Amendment Act 2010**

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	<b>Fifth Schedule — Third Variation Agreement</b>	





Western Australia

## **Cement Works (Cockburn Cement Limited) Agreement Amendment Act 2010**

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**No. 41 of 2010**

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***An Act to amend the *Cement Works (Cockburn Cement Limited)  
Agreement Act 1971.****

*[Assented to 28 October 2010]*

The Parliament of Western Australia enacts as follows:

**s. 1**

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**1. Short title**

This is the *Cement Works (Cockburn Cement Limited) Agreement Amendment Act 2010*.

**2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

**3. Act amended**

This Act amends the *Cement Works (Cockburn Cement Limited) Agreement Act 1971*.

**4. Section 2 amended**

In section 2 insert in alphabetical order:

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

**5. Section 6 inserted**

After section 5 insert:

**6. Ratification of Third Variation Agreement**

- (1) The Third Variation Agreement is ratified.
- (2) The implementation of the Third Variation Agreement is authorised.
- (3) Without limiting or otherwise affecting the *Government Agreements Act 1979*, the Third Variation

Agreement operates and takes effect despite any other  
Act or law.

**6. Fifth Schedule inserted**

After the Fourth Schedule insert:

**Fifth Schedule — Third Variation Agreement**

[s. 2]

**2010**

**THE HONOURABLE COLIN JAMES BARNETT  
PREMIER OF THE STATE OF WESTERN AUSTRALIA**

**and**

**THE HONOURABLE SIMON MCDONNELL O'BRIEN  
MINISTER FOR TRANSPORT**

**and**

**FREMANTLE PORT AUTHORITY**

**and**

**COCKBURN CEMENT LIMITED**

**ACN 008 673 470**

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**CEMENT WORKS (COCKBURN CEMENT LIMITED)  
AGREEMENT 1971  
VARIATION AGREEMENT**

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[Solicitor's details]

**THIS AGREEMENT** is made this 14 day of June 2010

**BETWEEN**

**THE HONOURABLE COLIN JAMES BARNETT** M.Ec., 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 (**State**)

**AND**

**THE HONOURABLE SIMON McDONNELL O'BRIEN** M.L.A.,  
Minister for Transport, being the Minister in the Government of the  
State of Western Australia for the time being responsible for the  
administration of the *Port Authorities Act 1999* (**Port Authorities  
Minister**)

**AND**

**FREMANTLE PORT AUTHORITY**, a body corporate established  
pursuant to the *Port Authorities Act 1999* (**Authority**)

**AND**

**COCKBURN CEMENT LIMITED** ACN 008 673 470 of Level 1,  
157 Grenfell Street, Adelaide, South Australia (**Company**).

**RECITALS**

- A.** The parties to this Agreement are now the parties to the  
agreement dated 18 February 1971 (as amended by an  
agreement dated 25 August 1971), the execution of which by  
the State was ratified by the *Cement Works (Cockburn Cement  
Limited) Agreement Act 1971*, as varied by:
- (a) an agreement dated 24 October 1986, ratified by the  
*Cement Works (Cockburn Cement Limited) Agreement  
Amendment Act 1986*; and
  - (b) an agreement dated 14 May 1997, ratified by the *Cement  
Works (Cockburn Cement Limited) Agreement  
Amendment Act 1997*.



The first mentioned agreement as so amended and varied is referred to in this Agreement as the **Principal Agreement**.

- B.** The parties wish to add to and vary the provisions of the Principal Agreement on the terms and conditions set out in this Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

1. Subject to the context, the words and expressions 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 shall endeavour to secure its passage as an Act prior to 30 September 2010 or such later date as the parties may agree.
3. (a) Clause 4 of this Agreement shall not come into operation unless or until an Act passed in accordance with clause 2 of this Agreement ratifies this Agreement.  
  
(b) If by 10 December 2010 or such later date as may be agreed pursuant to clause 2 of this Agreement, clause 4 of this Agreement has not come into operation then unless the parties otherwise agree, this Agreement will then cease and determine and no party hereto will 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.
4. The Principal Agreement is hereby varied as follows:
  - (1) in clause 1(2):
    - (a) by inserting in the appropriate alphabetical positions the following new definitions:

“Area A” means the area marked “Area A” outlined in red on the Plan (excluding that part shaded grey on the Plan);

“Area B” means the area marked “Area B” outlined in orange on the Plan;

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“Environmental Approvals” means:

- (a) Ministerial Statement No. 000494 that a proposal may be implemented issued under the EP Act, as amended from time to time under the EP Act;
- (b) Ministerial Statement No. 000599 that a proposal may be implemented issued under the EP Act, as amended from time to time under the EP Act;

“Exploration Licences” means:

- (a) exploration licence number 70/1247;
- (b) exploration licences number 70/1136, 70/1298 and 70/1300; and
- (c) any exploration licences issued to the Company under the laws from time to time of Western Australia wholly in respect of all or part of Area B and in substitution wholly or in part for any of the abovementioned exploration licences;

“lapse” for the purposes of clause 6, is given its usual meaning of “a slight error” provided however a “lapse” will not be deemed to have occurred in the following circumstances:

- (a) where the Company has failed to perform the Company’s obligations in clause 6(1b) and any such act or omission causes or contributes to any loss, damage or inconvenience to the Authority that is substantial, such that any loss, damage or inconvenience has a material effect on the Authority’s operation of the Port (as determined by the Authority acting reasonably);
- (b) if port services are obstructed, delayed or a hazard exists which is caused or contributed

to by the Company and which obstruction, delay or hazard continues for a period of more than 12 hours (or such longer period as the Authority may in its discretion allow) after either:

- (i) the Company becomes aware, or should have been aware, of the obstruction to port services; or
- (ii) the Authority has notified the Company of such non-performance of the Company's obligations,

whichever is the sooner; or

- (c) in respect of port works or port facilities, where the Authority has given the Company reasonable time to remove the obstruction or hazard or to cease the delay to port works or port facilities and that obstruction, hazard or delay continues after the expiration of that reasonable time specified in the notice to the Company by the Authority;

“mining lease” means any mining lease granted pursuant to clause 6D and according to the requirements of the context shall describe the area of land demised as well as the instrument by which it is demised;

“Minister for Mines” means the Minister in the Government of the State for the time being responsible for the administration of the Mining Act;

“Plan” means the Plan marked “C” initialled by or on behalf of the parties for the purpose of identification;

“Port” means the Port of Fremantle, for which the Authority is established under the Port Authorities Act;

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“Port Authorities Act” means the *Port Authorities Act 1999*;

“Port Authorities Minister” means the Minister in the Government of the State for the time being responsible for the administration of the Port Authorities Act;

“port facilities” has, in respect of the Port, the meaning given by section 3(1) of the Port Authorities Act;

“port services” has, in respect of the Port, the meaning given by section 35(9) of the Port Authorities Act;

“port works” has, in respect of the Port, the meaning given by section 35(9) of the Port Authorities Act;

“Shipping Channels” means the areas delineated as “Existing Shipping Channel” and “Proposed Second Shipping Channel” respectively on the Plan;

“vessel” has the meaning given by sections 3(2) and 3(3) of the Port Authorities Act;

- (b) by deleting the existing definitions of “Fremantle Port Authority Act”, “Minister for Minerals and Energy”, “Minister for Works” and “shell sand”; and
  - (c) in the definition of “Land Act” by deleting “*Land Act 1933*” and substituting “*Land Administration Act 1997*”;
- (2) in clause 4:
- (a) by deleting in subclause (1) “Minister for Works” and substituting “Port Authorities Minister”; and

- (b) by inserting after subclause (2) the following new subclause:
  - “(3) Subject to obtaining all necessary approvals under the EP Act the Company may with the approval of the Authority (such approval not to be unreasonably withheld) dredge its approach channel to the jetty.”;
- (3) by deleting clause 5;
- (4) by deleting the heading to clause 6 and substituting it with the following new heading:

**“Right to Dredge Shell Sand in Area A”;**
- (5) in clause 6:
  - (a) by deleting subclause (1) and substituting the following new subclause:
    - “(1) The State and the Authority shall permit the Company, subject to the EP Act and to the Company complying with its obligations under this Agreement, during the currency of this Agreement and free of rent or other charges (other than royalty as hereinafter provided) 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 State from time to time (which approval shall not be unreasonably withheld):
      - (a) shell sand from those areas of the Port within Area A that are approved for dredging by or pursuant to the Environmental Approvals; and

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- (b) shell sand from those areas, approved by the Authority from time to time, of the Port within Area A and in respect of which approval to dredge for shell sand (other than by or pursuant to the Environmental Approvals) has been granted to the Company under the EP Act.”;
- (b) by deleting subclause (1a) and substituting the following new subclauses:
  - “(1a) In considering applications from the Company for approval for areas of the Port within Area A from which shell sand may be obtained as referred to in paragraph (b) of subclause (1) of this clause, the Authority will have regard for (but not be bound by) 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 within areas of the Port within Area A from which shell sand may be obtained.
  - (1b) In obtaining shell sand as provided in this Agreement from areas of the Port within Area A including without limitation from a stockpile of shell sand, the Company 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 obstructs or delays navigation nor anything which is detrimental to the navigable channels or port works or will probably interfere (as determined by the Authority) with the efficient working of the Port.”;

- (c) in subclause (2):
  - (i) by deleting “any areas approved in accordance with subclause (1) of this clause” and substituting “the Port within Area A”; and
  - (ii) by inserting “including without limitation from any stockpile of shell sand” after “obtaining of shell sand”;
- (d) in subclause (3) by deleting “port installations” and substituting “port works”;
- (e) in subclause (4):
  - (i) by inserting “(and without limiting the generality of the foregoing being the Shipping Channels)” after “the navigable channels”;
  - (ii) by deleting “port installations” and substituting “port works”;
  - (iii) by deleting “the port” (in both places where it appears) and substituting “the Port”;
  - (iv) by inserting “(as determined by the Authority)” after the first substituted reference to “the Port”; and
  - (v) by deleting “Minister for Works” (in both cases where it appears) and substituting “Port Authorities Minister”;
- (f) by deleting subclause (5) and substituting the following new subclause:
  - “(5) The Company shall not be entitled during the currency of this Agreement to dredge shell sand from within Area A otherwise than in accordance with this Agreement including, without limitation, the dredging and management programme as approved

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from time to time under clauses 6A-6C to be implemented by the Company.”;

- (g) in subclause (6):
  - (i) by deleting “pursuant to this clause” and substituting “from within Area A pursuant to this Agreement”; and
  - (ii) by inserting at the end of that subclause the following new sentence:

“This subclause shall cease to apply after 18 February 2021.”;

- (h) in subclause (7) by deleting “the proviso to subclause (1)” and substituting “subclause (1b)”;
- (i) by inserting after subclause (7) the following new subclause:

“(8) The Company shall as soon as reasonably practicable after they have been prepared provide the Minister with a copy of all reports, plans and other documentation required to be prepared by the Company in compliance with the Environmental Approvals and any other approval given under the EP Act during the currency of this Agreement to operations of the Company within Area A.”;

- (6) in clause 6A by:

- (a) in subclause (1):
  - (i) deleting “the 31st day of December, 1986 and thereafter not later than the expiration of each successive two years” and substituting “31 December 2010 and thereafter not later than 31 December of each successive year”; and
  - (ii) deleting “upon the sand banks” and substituting “within Area A (including, but



not limited to, that part of Area A shown cross hachured on the Plan upon the grant to the Company of the mining lease”); and

- (b) in paragraph (d) of subclause (2):
  - (i) deleting all the words from the beginning of the paragraph up to and including “subsequent DMPs”; and
  - (ii) deleting “since that date” and substituting “since 31 December 1986”;
- (7) in clause 6B by:
  - (a) in subclause (1):
    - (i) inserting “subject to the EP Act” after “On receipt of a DMP the Minister shall”;
    - (ii) deleting the full stop at the end of paragraph (b) and substituting a comma; and
    - (iii) inserting the following proviso to paragraphs (a) and (b):

“provided always that where implementation of dredging and other activities referred to in the DMP have been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this subclause shall, if the case so requires, incorporate a requirement that the Company make such alterations to the DMP as may be necessary to make them accord with those conditions or procedures.”;
  - (b) deleting subclause (2) and inserting the following new subclause:

“(2) The Minister shall within two months after the receipt of a DMP give notice to the Company of his decision provided that in respect of a DMP, all or part of which

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contains a proposal (as defined in the EP Act) which is to be assessed under Part IV of the EP Act, the Minister shall give notice to the Company of his decision in respect of that DMP within two months after the later happening of receipt of the DMP and service on him of an authority under section 45(7) of the EP Act in respect of that proposal.”; and

- (c) by inserting after subclause (5) the following new subclause:

“(6) The parties acknowledge that pending the approval by the Minister of the DMP required to be submitted by the Company under clause 6A(1) by 30 September 2010, the dredging and management programme for the period 2009–2018 marked “A” and initialled by or on behalf of the Company and the Minister for the purpose of identification is the current approved DMP to be implemented by the Company under this Agreement.”;

- (8) in clause 6C by:

- (a) deleting subclause (2) and inserting the following new subclause:

“(2) Such necessary variations to any approved DMP may be implemented from time to time following agreement to them:

- “(a) in respect of areas of the Port within Area A, between the Company and the Authority; and  
(b) in respect of other areas of Area A, between the Company and the Minister.”; and

- (b) in subclause (3) by deleting “regarding” and substituting “between the Company and the Authority regarding, in respect of an area of the Port within Area A,”;
- (9) by re-designating clause 6D as clause 6G and inserting the following new clauses:
  - “6D. (1) On application made not later than 20 December 2010 (or such later date as the Minister may approve pursuant to clause 16) by the Company to the Minister for Mines in such manner as the Minister for Mines may direct for a mining lease of the land within Area A shown cross hachured on the Plan and which is then held by the Company under exploration licence number 70/1247, the State shall subject to the EP Act and the conditions set out in the following subclauses and insofar as is permitted by laws relating to native title cause a mining lease of the land so applied for to be granted to the Company.
  - (2) The grant of the mining lease referred to in subclause (1) of this clause shall be subject to the conditions that:
    - (a) the mining lease may be granted before the area leased has been surveyed but in that case shall be granted subject to the condition that the area leased shall be surveyed by or on behalf of the State at the Company’s expense and shall accord with that survey;
    - (b) the mining lease shall only permit the Company to mine shell sand in accordance with this Agreement;
    - (c) the mining lease shall only be granted on the surrender of

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- exploration licence number  
70/1247 in respect of all of that  
part of Area A shown cross  
hachured on the Plan;
- (d) the rental payable in respect of the mining lease shall be that prescribed from time to time under the Mining Act;
  - (e) royalties in respect of shell sand from the mining lease shall be payable as provided in clause 6E;
  - (f) any assignment or other disposal of the mining lease shall be subject to clause 15;
  - (g) the Company shall not be entitled to a renewal of the term of the mining lease; and
  - (h) the mining lease shall be granted under and except as otherwise provided in this Agreement subject to the Mining Act but in the form of Schedule 2 hereto.
- (3) Notwithstanding any provisions of the Mining Act to the contrary, the term of the mining lease shall be for a period commencing on the date of grant of the mining lease and ending on 18 February 2031, subject to the sooner determination of the said term upon the earlier determination of this Agreement.
- (4) For the purposes of this Agreement and without limiting the operation of subclauses (1) to (3) above, the application of the Mining Act is specifically modified:

- (a) in section 71 by deleting “after receiving a recommendation of the mining registrar or the warden in accordance with section 75,”;
  - (b) by deleting sections 74(1)(a), (ca) and (d), 74(2), 74(3) and 75; and
  - (c) in section 82(1b) by deleting “, in accordance with proposals approved, deemed to be approved or determined under the agreement.”
- (5) The State shall ensure that 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 the mining lease.
- (6) The Company shall at all times permit the State and third parties to have access to and to pass over the mining lease so long as (except in the case of access or passage by naval ships or civilian ships supporting military functions) that access and passage does not unduly prejudice or interfere with the activities of the Company under this Agreement.
- (7) Notwithstanding the provisions of this clause and the Mining Act, with the approval of the Minister the Company may from time to time (with abatement of future rent in respect to the area surrendered but without any abatement of rent already paid or any rent which has become due and has been paid in advance) surrender to the State all or any portion or portions of the mining lease.

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- (8) Notwithstanding any provisions of the Mining Act to the contrary, the holding by the Company of exploration licence number 70/1247 over that part of Area A shown cross hachured on the Plan shall not entitle it to be granted a mining lease over that land otherwise than in accordance with this clause.
- (9) If the Company does not apply for a mining lease as contemplated by this clause by the latest date for such application under subclause (1), then exploration licence number 70/1247 shall on that date be deemed surrendered (if then still current) in respect of all of that part of Area A shown cross hachured on the Plan.

**Royalties on Shell Sand or Alternative Material**

- 6E. The Company shall in respect of all shell sand mined by the Company from within Area A (excluding the area shown cross hachured on the Plan), from the mining lease or otherwise pursuant to this Agreement, and on all 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:
  - (a) 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; and

- (b) royalties on shell sand so mined shall be paid at the rates from time to time prescribed under the Mining Act as payable in respect of limestone used for metallurgical purposes as a neutralising agent.

This clause does not limit any obligation that the Company may have under the Mining Act or any other Act to pay royalties in respect of shell sand or alternative material mined by the Company from the area shown cross hachured on the Plan before the grant of the mining lease, from Area B or otherwise than pursuant to this Agreement or in respect of other minerals mined by the Company.

**Continuation of Exploration Licences**

- 6F. Each of the Exploration Licences shall in respect of the land from time to time the subject thereof and subject to compliance by the Company with the terms and conditions applicable thereto (as modified by this clause) be, until the earlier of:
- (a) its forfeiture under the Mining Act or other Act under which it may from time to time be held or its surrender in whole or conversion in full to another title or titles; and
  - (b) 11 December 2025 or the expiration of the term of this Agreement if the Minister so approves on application made by the Company not earlier than 1 January 2024,
- held under and subject to the provisions of the Mining Act or other Act under which it may at the time be held modified as follows:
- (c) the Company shall not be required to surrender any part or parts of the licence as otherwise may be required by the Mining

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- Act or other Act under which it may from time to time be held;
- (d) the Company shall be entitled to 2 yearly extensions of its term upon application for such extension made by the Company in accordance with the Mining Act, or other Act under which it may from time to time be held;
  - (e) the Company shall not be required to comply with any expenditure conditions imposed by or under the Mining Act or other Act under which it may from time to time be held in regard thereto;
  - (f) any assignment or other disposal thereof shall be subject to clause 15; and
  - (g) if during the term of a licence it ceases to have the benefit of this clause pursuant to paragraph (b) it shall continue in force under and subject to the Mining Act or other Act under which it is at the time held for the balance of its term then current.”;
- (10) by inserting immediately above the re-designated clause 6G, the following new heading:  
**“Surrender of lease from the Commonwealth”;**
- (11) in re-designated clause 6G by:
- (a) inserting the subclause designation “(1)” before the existing provisions;
  - (b) in the re-designated subclause (1) deleting “the Schedule” and inserting “Schedule 1”; and
  - (c) inserting after the subclause (1) the following new subclause:  
“(2) On application made by the Company not later than 31 December 2010 the State shall grant to the Company an extension to



18 February 2031 of the term of the lease and licence referred to in subclause (1) of this clause which was granted to the Company on 28 October 1988 (if such lease and licence is then still current) subject to its provisions in respect of earlier determination of its term and to it being varied to also provide for re-appraisalment of the annual rent payable thereunder in respect of each three (3) year period of the extended term commencing on 1 April 2011 and to confirm that the rights conferred by it in respect of Lot 51 on L.T.O. Plan 14756 and Lot 56 on L.T.O. Plan 14758 have ceased and determined. The Company shall sign an extension and variation of the lease and licence in such form as the State shall reasonably require. The State and the Company may further vary that lease and licence to provide for the Company's rights under it in respect of Lot 61 on L.T.O. Diagram 67078 to cease and determine in exchange for the Company being granted a pipeline easement over that Lot 61, portion of Lot 51 on L.T.O. Plan 14756 and portion of Lot 501 on Deposited Plan 56133 under the Land Act.”;

- (12) in clause 7:
- (a) by deleting subclause (1);
  - (b) in subclause (2) by:
    - (i) inserting “(not being within Area A or Area B)” after “aforesaid, or such other land”;
    - (ii) deleting in paragraph (c) “this subclause” and substituting “subclause (2a)”;
    - (iii) by deleting the semi-colon at the end of the paragraph (2)(c) and all the words in that

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paragraph immediately after that  
semi-colon;

- (c) by deleting the subclause designation “(2a)” and substituting the subclause designation “(2b)”;
- (d) by inserting immediately before the redesignated sub-clause (2b) the following new subclause (2a):

“(2a) The Company shall during the currency of this Agreement in respect of:

- (a) the works site;
- (b) other sites approved pursuant to clause 3(1) hereof;
- (c) other land approved in accordance with subclause (2) of this clause; and
- (d) those parts of Area A referred to in clause 6(1)(a) or approved by the Authority as referred to in clause 6(1)(b),

be exempted from all provisions of the Mining Act (subject to subclause (2b) of this clause) and of the Land Act (other than the payment of royalties as provided in, and any provision of the Mining Act applying pursuant to, clause 6E and any provision 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 subclause (2) of this clause).”

- (e) in the re-designated subclause (2b):
  - (i) by deleting “subclause (2)” and substituting “subclause (2a)”;
  - (ii) by deleting “that subclause” and substituting “subclause (2) of this clause”; and

- (iii) by deleting in paragraph (ii) “Minister for Minerals and Energy” and substituting “Minister for Mines”;
- (f) by deleting the heading “Expenditure Conditions” immediately above subclause (3);
- (g) in subclause (3):
  - (i) by deleting the bracket after “the Mining Act” and substituting “but excluding the mining lease and all other mining tenements held by the Company pursuant to this Agreement in respect of Area A or Area B) held by the Company”;
  - (ii) by deleting “Minister for Minerals and Energy” and substituting “Minister for Mines”; and
- (h) by deleting the heading “Licences” immediately above subclause (4);
- (13) in clause 7A by inserting immediately above clause 7A the following new heading:

**“Disposal of part of works site”;**
- (14) in clause 10A:
  - (a) by inserting immediately above clause 10A, the following new heading:

**“Reporting on environmental measures”;**
  - (b) by inserting “and” after the semi-colon in paragraph (d);
  - (c) by inserting “and under the mining lease.” immediately after “hereof” in paragraph (e); and
  - (d) by deleting all the words immediately after subclause (e) and replacing them with the following:

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“However, if the Company has already provided such information under clause 6(8) it will be sufficient for the Company to respond by reference to the relevant programme, plan or report already provided. As and when required by the Minister the Company shall liaise and cooperate 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.”;

(15) in clause 10B:

(a) by inserting immediately above clause 10B, the following heading:

**“Modification, expansion or variation of operations”;**

(b) by inserting in subclause (2) “(including without limitation the EP Act)” after “all applicable laws”;

(c) by inserting in subclause (3) “subject to the EP Act in respect of each proposal submitted” after “shall” and immediately before the colon in the opening words of that subclause;

(d) by deleting the full stop at the end of subclause (3)(c) and substituting a comma and by inserting at the end of subclause (3) the following proviso:

“PROVIDED ALWAYS that where implementation of any proposals pursuant to subclause (1) of this clause have been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this clause shall, if the case so requires, incorporate a requirement that the Company make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.”;

- (e) by deleting the full stop at the end of subclause (4) and inserting the following at the end of that subclause and immediately after “same”:

“PROVIDED THAT:

- (a) where a proposal is to be assessed under part IV of the EP Act the Minister shall be required to give notice to the Company of his decision in respect to the proposal within 2 months after the later happening of the receipt of the proposal and the service on him of an authority under section 45(7) of the EP Act; and
- (b) where implementation of a proposal by the State will or may require the State to do any act which affects any native title rights and interests the Minister shall be required to give notice to the Company of his decision in respect to the proposal not later than 2 months after the later happening of the receipt of the proposal and the completion of all processes required by laws relating to native title to be undertaken by the State before that act may be done by the State.”;

- (16) by inserting the following heading immediately above subclause 10C:

“**Compliance with the EP Act**”;

- (17) by inserting after clause 12 the following new clauses:

“**No resumption**

- 12A. Subject to the performance by the Company of its obligations under this Agreement the State shall not during the currency of this Agreement without the consent of the Company resume or suffer or permit to be resumed by any State instrumentality or by any local or other authority of the State any of the works installations plant

equipment or other property for the time being belonging to the Company and the subject of or used for the purpose of this Agreement nor any lands or sea bed the subject of any lease or licence granted to the Company in terms of this Agreement.

**Non-Interference with the Company's rights**

- 12B (1) Subject to the performance by the Company of its obligations under this Agreement the State shall not during the currency of this Agreement register or grant or permit to be registered or granted any lease or other mining tenement under the Mining Act in respect of Area A (excluding the area shown cross hachured on the Plan) by which:
- (a) any person will obtain any rights to prospect or explore for, mine or take shell sand; or
  - (b) any person will obtain any rights to prospect or explore for, mine or take other minerals unless the Minister reasonably determines that it is not likely to unduly prejudice or to interfere with the operations of the Company hereunder assuming the taking by the Company of all reasonable steps to avoid the interference.
- (2) Subject to the performance by the Company of its obligations under this Agreement the State shall not during the currency of the mining lease register or grant or permit to be registered or granted any lease or other mining tenement under the Mining Act in respect of the land the subject of the mining lease by which any

person will obtain any rights to prospect or explore for, mine or take other minerals unless the Minister reasonably determines that it is not likely to unduly prejudice or to interfere with the operations of the Company hereunder assuming the taking by the Company of all reasonable steps to avoid the interference.

**No discriminatory charges**

12C. Except as provided in this Agreement the State shall not impose, nor shall it permit or authorise any of its agencies or instrumentalities or any local government or authority of the State 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 activities of the Company in the conduct of its business hereunder nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Company of the full enjoyment of the rights granted or intended to be granted under this Agreement. In the application of this clause the conferral of rights upon parties to other Government agreements (as defined in the *Government Agreements Act 1979*) shall be disregarded.”;

(18) in clause 13:

(a) by deleting:

- (i) “the Minister for Works and the Authority” and substituting “the Port Authorities Minister, the Authority, the Minister for Mines and the Minister”;
- (ii) “wish” and substituting “with”; and

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- (b) by inserting the following new sentence at the end of the existing provisions:

“The Company will also indemnify and keep indemnified the State and the Authority from and against all liability (if any) to pay compensation to native title holders (as defined in the *Native Title Act 1993* (Commonwealth)) for, or in respect of, the grant to, or exercise by, the Company of rights, as referred to in clause 6(1), to dredge shell sand in Area A.”; and

- (c) by inserting the subclause designation “(1)” before the existing provisions and by inserting after subclause 13(1) the following new subclause:

“(2) The Company shall indemnify the Authority for any damage to the seabed, port works or any loss or damage that the Authority suffers as a result of the Shipping Channels or either of them, port works or port services of the Authority being obstructed or delayed provided that:

- (a) this indemnity only applies to loss or damage that is caused by the Company or an employee, agent or contractor of the Company; and
- (b) this indemnity shall not apply to consequential damages, business disruption or loss of profits.”;

- (19) in clause 14 by inserting the subclause designation “(1)” before the existing provisions and by inserting after subclause 14(1) the following new subclauses:

“(2) The Minister shall cause any agreement made pursuant to subclause (1) of this clause in respect of any addition to, variation or cancellation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.



- (3) Either House may, within 12 sitting days of that House after the agreement has been laid before it, pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.”;
- (20) in clause 15 by deleting the existing wording and substituting the following:
- “The Company shall not assign or otherwise dispose of the whole or any part of its rights hereunder (including without limitation to or as the holder of the mining lease or of the Exploration Licences while such licences have the benefit of clause 6F), without the prior consent of the Minister and, in the case of rights conferred by clause 6 hereof, without also the prior consent of the Port Authorities Minister and the Authority. The Minister, the Port Authorities Minister 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. Notwithstanding the provisions of the Mining Act insofar as the same may apply, no assignment or other disposal made or given by the Company pursuant to this clause of or over the mining lease or any of the Exploration Licences shall require any approval or consent other than such consent as may be necessary under this clause.”;
- (21) in clause 16:
- (a) by deleting “the State” and substituting “the Minister”; and
- (b) by deleting the comma and all the words immediately after “thinks fit”;
- (22) in clause 18 by deleting “the Minister for Works or the Authority” and substituting “the Port Authorities Minister, the Authority, the Minister for Mines or the Minister”;

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- (23) in clause 20:
- (a) by inserting in paragraph (i) “or from the Minister” after “from the State”;
  - (b) by deleting in paragraph (ii) “Minister for Works” and substituting “Port Authorities Minister”;
  - (c) by deleting in paragraph (iii) the existing wording and substituting the following:  
  
“if from the Authority, be signed by the chairperson of the board of directors of the Authority or by the chief executive officer of the Authority acting by direction of the board of directors of the Authority”; and
  - (d) by amending the paragraph numbering from (i) to (iv) to (a) to (d);
- (24) by inserting after clause 20 the following new clauses:

**“Determination of Agreement”**

21. (1) In any of the following events namely if:
- (a) (i) the Company makes default which the State considers material in the due performance or observance of any of its covenants or obligations in this Agreement or in the mining lease or in the Company’s lease and licence referred to in clause 6G;
  - (ii) the Company abandons or repudiates this Agreement or its activities under this Agreement,  
  
and such default is not remedied or such activities resumed within a period of 6 months after notice is

given by the State as provided in subclause (2) or, if the default or abandonment is referred to arbitration, then within the period mentioned in subclause (3); or

- (b) the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 6 months from the date of such liquidation the interest of the Company is assigned to an assignee approved by the Minister under clause 15,

the State may by notice to the Company determine this Agreement.

- (2) The notice to be given by the State in terms of paragraph (a) of subclause (1) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Company and all such assignees and disponees for the time being of the Company's rights under this Agreement to or in favour of whom or by whom an assignment or disposition has been effected in terms of clause 15, whose name and address for service of notice has previously been notified to the State by the Company or any such assignee or disponee.
- (3) (a) If the Company contests the alleged default abandonment or repudiation referred to in paragraph (a) of subclause (1) it shall within 60 days after notice given by the State as

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provided in subclause (2) refer the matter in dispute to arbitration.

(b) If the question is decided against the Company, the Company shall comply with the arbitration award within a reasonable time to be fixed by that award PROVIDED THAT if the arbitrator finds that there was a bona fide dispute and that the Company was not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.

(4) If the default referred to in paragraph (a) of subclause (1) shall not have been remedied after receipt of the notice referred to in that subclause or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands, water or seabed occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand.

**Effect of determination or cessation of Agreement**

22. (1) On the determination or cessation of this Agreement:

- (a) (i) subject to paragraph (b), except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement and the rights of the Company or any mortgagee or chargee to in or under the mining lease and any other lease licence or other title or right granted under or pursuant to this Agreement shall thereupon cease and determine but without prejudice to the liability of any of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given under this Agreement;
- (ii) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due; and
- (iii) save as aforesaid and as otherwise provided in this Agreement none of the parties shall have any claim against the others of them with respect to any matter or thing in or arising out of this Agreement; and
- (b) each of the Exploration Licences that the Company holds on the cessation or determination of this Agreement and which immediately beforehand had the benefit of clause 6F shall continue in force under and subject to the Mining Act

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or other Act under which it is held for the balance of its term then current and any renewals granted pursuant to any such Act but without the benefit of the rights and privileges conferred by this Agreement.

- (2) Subject to the provisions of subclause (3) and the provisions of the Company's lease and licence referred to in clause 6G, upon the cessation or determination of this Agreement except as otherwise determined by the Minister all buildings erections and other improvements erected on any land then occupied by the Company under the mining lease or any other lease licence easement grant or other title made under or pursuant to this Agreement shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Company or any other party and free and discharged from all mortgages and other encumbrances and the Company shall do and execute all such deeds documents and other acts matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.
- (3) Subject to the provisions of the Company's lease and licence referred to in clause 6G, in the event of the Company immediately prior to the cessation or determination of this Agreement or subsequently thereto desiring to remove any of its fixed or movable plant and equipment or any part thereof from any part of the land occupied by it at the date of such cessation or determination it shall give to the State

notice of such desire and thereby shall grant to the State the right or option exercisable within 3 months thereafter to purchase in situ such fixed or moveable plant and equipment at a fair valuation to be agreed between the parties or failing agreement determined by arbitration under this Agreement.

**Term of this Agreement**

23. (1) Subject to the provisions of this Agreement relating to sooner determination this Agreement shall expire on 18 February 2031.
- (2) Unless this Agreement has already determined the State will, at the request of the Company made after 1 January 2024, confer with the Company with respect to agreeing to commence negotiations for an extension of the term of this Agreement. Clause 17 shall not apply to this subclause.

**Applicable law**

24. This Agreement shall be interpreted according to the law for the time being in force in the State of Western Australia.”; and
- (25) by redesignating the existing Schedule to the Agreement as “Schedule 1” and inserting immediately after that Schedule the following new Schedule:

**“SCHEDULE 2**

**WESTERN AUSTRALIA**

***MINING ACT 1978***

***CEMENT WORKS  
(COCKBURN CEMENT LIMITED)  
AGREEMENT ACT 1971***

**MINING LEASE**

**MINING LEASE NO.**

The Minister a corporation sole established by the *Mining Act 1978* (hereinafter called “the Mining Act”) with power to grant leases of land for the purposes of mining in consideration of the rents hereinafter reserved and of the covenants on the part of the Lessee described in the First Schedule to this lease and of the conditions hereinafter contained and pursuant to the Mining Act (except as otherwise provided by the Agreement (hereinafter called “the Agreement”) described in the Second Schedule to this lease) hereby leases to the Lessee the land more particularly delineated and described in the Third Schedule to this lease for shell sand subject however to the exceptions and reservations set out in the Fourth Schedule to this lease and to any other exceptions and reservations which are by the Mining Act and by any Act for the time being in force deemed to be contained herein to hold to the Lessee this lease for a term commencing on the date set out in part A of the Fifth Schedule to this lease and expiring on the date set out in Part B of the Fifth Schedule to this lease (subject to the sooner determination of the said term upon the earlier determination of the Agreement) upon and subject to such of the provisions of the Mining Act except as otherwise provided by the Agreement as are applicable to mining leases granted thereunder and to the terms covenants and conditions set out in the Agreement and to the covenants and conditions herein contained or implied and any further conditions or stipulations set out in the Sixth Schedule to this lease the Lessee paying therefor the rents for the time being and from time to time prescribed pursuant to the provisions of the Mining Act at the times and in the manner so prescribed and royalties as provided in the Agreement PROVIDED ALWAYS that this lease shall not be determined or forfeited otherwise than in accordance with the Agreement.



In this lease -

“Lessee” includes the successors and permitted assigns of the Lessee.

If the Lessee be more than one the liability of the Lessee hereunder shall be joint and several.

Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and to the regulations and by-laws for the time being in force thereunder.

**FIRST SCHEDULE**

(Name and address of “the Lessee”)

**SECOND SCHEDULE**

The agreement ratified by the *Cement Works (Cockburn Cement Limited) Agreement Act 1971*, as varied.

**THIRD SCHEDULE**

(Description of land:)

Locality:

Mineral Field: Area, etc.:

Being the land delineated on Survey Diagram No. and recorded in the Department of [ ], Perth.

**FOURTH SCHEDULE**

All petroleum as defined in the *Petroleum (Submerged Lands) Act 1982* on or below the surface of the land the subject of this lease is reserved to the Crown in right of the State of Western Australia with the right of the Crown in right of the State of Western Australia and any person lawfully claiming thereunder or otherwise authorized to do so to have access to the land the subject of this lease for the purpose of searching for and for the operations of obtaining petroleum (as so defined) in any part of the land.”

**FIFTH SCHEDULE**

Part A: Commencement date:

Part B: Expiration date: 18 February 2031

**SIXTH SCHEDULE**

Pursuant to section 25 of the Mining Act the Minister consents to the Lessee mining for shell sand in accordance with the Agreement subject to the following terms and conditions (terms and conditions, consistent with the Agreement, imposed by the Minister on his consent).

(Any further conditions or stipulations as during the term of the Agreement the Minister may, consistent with the provisions of the Agreement, determine and thereafter may impose pursuant to the Mining Act).

In witness whereof the Minister has affixed his seal and set his hand hereto this            day of  
20            .”

5. Upon clause 4 of this Agreement coming into operation (“variation date”), then notwithstanding the provisions of the *Mining Act 1978* and the *Mining Regulations 1981*:
- (a) that part of the Company’s exploration licence number 70/1247 shown coloured grey on Plan D shall be deemed to have been surrendered by the Company on the variation date; and
  - (b) that part of the Company’s exploration licence number 70/1136 shown coloured green on Plan D shall be deemed to have been surrendered by the Company on the variation date.

For the purposes of this clause Plan D means the plan marked “D” initialled by or on behalf of the parties for the purpose of identification.

**EXECUTED** as a deed.

**SIGNED** by **THE HONOURABLE**            )

**COLIN JAMES BARNETT** ) [Signature]  
in the presence of: )  
[Signature]

\_\_\_\_\_  
Name: Sean David

**SIGNED by THE HONOURABLE** )  
**SIMON MCDONNELL O'BRIEN** ) [Signature]  
in the presence of: )  
[Signature]

\_\_\_\_\_  
Name: Brett Barton

**THE COMMON SEAL of** )  
**FREMANTLE PORT** ) C.S.  
**AUTHORITY** was hereunto affixed )  
in the presence of: )  
[Signature]

\_\_\_\_\_  
Director  
Name: Robert Pearce  
[Signature]

\_\_\_\_\_  
~~Secretary~~ Chief Executive Officer  
Name: Christopher Leatt-Hayter

**THE COMMON SEAL of** )  
**COCKBURN CEMENT LIMITED** ) C.S.  
ACN 008 673 470 was hereunto )  
affixed in accordance with its constitution )  
in the presence of: )  
[Signature]

\_\_\_\_\_  
Director  
Name: Martin Brydon  
[Signature]

\_\_\_\_\_  
~~Director~~/Secretary  
Name: Marcus Clayton

**Cement Works (Cockburn Cement Limited) Agreement Amendment  
Act 2010**

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[Signature]

\_\_\_\_\_  
Director

Name: Thomas Douglas

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