



Western Australia

Pilbara Energy Project Agreement Act 1994

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Defined terms

Pilbara Energy Project Agreement Act 1994

An Act to ratify, and authorise the implementation of, an agreement between the State and BHP Minerals Pty. Ltd. and others in relation to the development of a gas turbine power station at Port Hedland and associated works and to ratify a further agreement for the termination of that agreement.

[Long title amended: No. 3 of 2014 s. 4.]

1. Short title

This Act may be cited as the *Pilbara Energy Project Agreement Act 1994*¹.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent¹.

3. Interpretation

In this Act, unless the contrary intention appears —

termination agreement means the agreement a copy of which is set out in Schedule 2;

the Agreement means the Pilbara Energy Project Agreement, a copy of which is set out in Schedule 1, and includes that agreement as varied from time to time in accordance with its provisions.

[Section 3 amended: No. 3 of 2014 s. 5.]

s. 4

4. Agreement ratified and implementation authorised

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

5. Ratification and operation of termination agreement

- (1) The termination agreement is ratified.
- (2) Without limiting or otherwise affecting the operation of the *Government Agreements Act 1979*, the termination agreement is to operate and take effect despite any other Act or law.

[Section 5 inserted: No. 3 of 2014 s. 6.]

Schedule 1 — Pilbara Energy Project Agreement

[s. 3]

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

PILBARA ENERGY PROJECT AGREEMENT

THIS AGREEMENT is made the 30th day of November 1993

B E T W E E N:

THE HONOURABLE RICHARD FAIRFAX COURT, B.Com., M.L.A.
Premier of the State of Western Australia, acting for and on behalf of the said
State and its instrumentalities from time to time (hereinafter called “the State”)
of the one part and **BHP MINERALS PTY. LTD.** ACN 008 694 782 a
company incorporated in the State of Western Australia and having its
registered office at Level 18, 200 St. George’s Terrace, Perth, **BHP ENERGY
HOLDINGS PTY. LTD.** ACN 058 025 960 a company incorporated in the
State of Western Australia and having its registered office at Level 18, 200 St.
George’s Terrace, Perth, and **BHP POWER HOLDINGS PTY. LTD.**
ACN 058 169 743 a company incorporated in the State of Western Australia
and having its registered office at Level 18, 200 St. George’s Terrace, Perth,
(hereinafter collectively called “the Joint Venturers” in which term shall be
included their respective successors and permitted assigns) of the other part.

W H E R E A S:

- (a) for the purpose of providing gas and electricity to the operations carried on pursuant to the Iron Ore Agreements (as hereinafter defined) and facilitating access by industrial consumers to gas and electricity the Joint Venturers intend to develop a gas turbine power station of at least 100 megawatts at Port Hedland, a 355mm diameter buried gas pipeline from an off-take point in the vicinity of Karratha to the power station and either a 220 kilovolt high voltage transmission line from the power station to Newman or a gas pipeline system from an off-take point in the vicinity of Newman on the proposed gas transmission pipeline between Dampier and Kalgoorlie and a gas turbine power station of at least 70 megawatts at Newman;
- (b) the State, for the purpose of promoting employment opportunity and industrial development in Western Australia, has agreed to assist the establishment and operation of the said works upon and subject to the terms of this Agreement; and

- (c) by an agreement of even date herewith and made between the State of the one part and Pilbara Iron Limited, the said BHP Minerals Pty. Ltd., Mitsui-Itochu Iron Pty. Ltd. and CI Minerals Australia Pty. Ltd. of the other part, the State has agreed to the deletion of clauses 12, 13, 14, 15, 16 and 16A of the Mount Newman Agreement upon and subject to the construction of the works referred to in recital (a) hereof.

NOW THIS AGREEMENT WITNESSES:

Definitions

1. In this Agreement subject to the context —

“advise”, “apply”, “approve”, “approval”, “consent”, “certify”, “direct”, “notify”, “request”, or “require”, means advise, apply, approve, approval, consent, certify, direct, notify, request, or require in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning; **“approved proposal”** means a proposal approved or determined under this Agreement;

“Clause” means a clause of this Agreement;

“Commonwealth” means the Commonwealth of Australia and includes the Government for the time being thereof;

“Electricity Act” means the *Electricity Act 1945*;

“EPA Act” means the *Environmental Protection Act 1986*;

“gas pipeline” means a gas pipeline system for the transmission and distribution of gas and includes a 355mm diameter steel pipeline commencing at an off-take point in the vicinity of Karratha and extending to the power station;

“Goldsworthy-Nimingarra Agreement” means the Agreement (as amended from time to time) ratified by the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*;

“Iron Ore Agreements” means the Goldsworthy-Nimingarra Agreement, the Marillana Creek Agreement, the McCamey’s Monster Agreement, the Mount Goldsworthy Agreement and the Mount Newman Agreement;

“Joint Venturers’ workforce” means the persons (and the dependents of those persons) engaged whether as employees, agents or contractors in the construction and operation of the gas pipeline, the power station, the Newman facilities and any Port Hedland facilities;

“Land Act” means the *Land Act 1933*;

“laws relating to traditional usage” means laws applicable from time to time in Western Australia in respect of rights or entitlements to or interests in land or waters which rights, entitlements or interests are acknowledged, observed or exercisable by Aboriginal persons (whether communally or individually) in accordance with Aboriginal traditions, observances, customs and beliefs;

“local authority” means the council of a municipality that is a city, town or shire constituted under the *Local Government Act 1960*;

“Marillana Creek Agreement” means the Agreement (as amended from time to time) ratified by the *Iron Ore (Marillana Creek) Agreement Act 1991*;

“McCamey’s Monster Agreement” means the Agreement (as amended from time to time) the execution of which was authorized by the *Iron Ore (McCamey’s Monster) Agreement Authorization Act 1972*;

“Minister” means the Minister in the Government of the State for the time being responsible for the administration of the Act to ratify this Agreement and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Joint Venturers and includes the successors in office of the Minister;

“month” means calendar month;

“Mount Goldsworthy Agreement” means the Agreement (as amended from time to time) approved by the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*;

“Mount Newman Agreement” means the Agreement (as amended from time to time) approved by the *Iron Ore (Mount Newman) Agreement Act 1964*;

“Newman facilities” means a system for the transmission of electricity from the power station to Newman by way of a 220 kilovolt high voltage transmission line between the power station and Newman and includes

facilities to transmit electricity to operations carried on pursuant to the Marillana Creek Agreement or, at the option of the Joint Venturers, a gas turbine power station of at least 70 megawatts at Newman and a gas pipeline system to that power station from an off-take point in the vicinity of Newman on the proposed gas transmission pipeline between Dampier and Kalgoorlie;

“notice” means notice in writing;

“Petroleum Pipelines Act” means the *Petroleum Pipelines Act 1969*;

“person” or **“persons”** includes bodies corporate;

“Port Hedland facilities” means the facilities (if any) to be provided by the Joint Venturers to transmit electricity from the power station to operations carried on at Port Hedland pursuant to the Iron Ore Agreements and to mining operations under the Goldsworthy-Nimngarra Agreement and the Mount Goldsworthy Agreement.

“power station” means a gas turbine power station with a nominal total installed capacity of at least 100 megawatts;

“power station site” means the land proposed by the Joint Venturers as the site for the power station as shown coloured red on the plan marked “X” initialled by or on behalf of the parties hereto for the purposes of identification or such other land approved as the power station site pursuant to approved proposals;

“private roads” means the roads referred to in subclause (1) of Clause 15 and any other roads constructed by the Joint Venturers in accordance with an approved proposal or agreed by the parties to be a private road for the purposes of this Agreement;

“processing agreement” means an agreement entered into between the State and BHP Minerals Pty. Ltd. alone or with a person or persons approved by the Minister and ratified by the Parliament of Western Australia which creates obligations with regard to the processing of iron ore in lieu of similar obligations existing at the date of this Agreement under the Iron Ore Agreements other than the Mount Newman Agreement;

“project” means the power station, the gas pipeline, the Newman facilities and any Port Hedland facilities;

“public road” means a road as defined by the *Road Traffic Act 1974*;

“Public Works Act” means the *Public Works Act 1902*;

“said State” means the State of Western Australia;

“State Energy Commission” means The State Energy Commission of Western Australia as described in section 7 of the *State Energy Commission Act 1979*;

“subclause” means subclause of the Clause in which the term is used;

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

Interpretation

2. In this Agreement —

- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
- (b) power given under any clause other than Clause 28 to extend any period or date shall be without prejudice to the power of the Minister under Clause 28;
- (c) clause headings do not affect the interpretation or construction;
- (d) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
- (e) one gender includes the other genders;
- (f) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder; and
- (g) any covenant or agreement on the part of the Joint Venturers hereunder shall be deemed to be a joint and several covenant or agreement as the case may be.

Initial obligation of the State

3. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1993 or such later date as may be agreed between the parties hereto.

Ratification and operation

4. (1) The provisions of this Agreement other than this Clause and Clauses 1, 2 and 3 shall not come into operation unless and until —
- (a) the Bill to ratify this Agreement as referred to in Clause 3; and
 - (b) a Bill to ratify the agreement referred to in recital (c) to this Agreement
- are passed as Acts before 31 December 1993 or such later date (if any) as the parties hereto agree upon.
- (2) If before 31 December 1993 or such later agreed date the said Bills have not commenced to operate as Acts then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (3) On the said Bills commencing to operate as Acts all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

Initial obligations of the Joint Venturers

5. (1) The Joint Venturers shall continue their field and office engineering, environmental, market and finance studies and other matters necessary to enable them to finalise and to submit to the Minister the detailed proposals referred to in Clause 6.
- (2) The Joint Venturers shall keep the State fully informed in writing quarterly as to the progress and results of their activities under subclause (1).
- (3) The Joint Venturers shall cooperate with the State and consult with the representatives or officers of the State regarding matters

referred to in subclauses (1) and (2) and any other relevant studies in relation to those subclauses that the Minister may wish to undertake.

- (4) For the purposes of this Clause and to the extent reasonably necessary to enable the Joint Venturers to carry out their obligations under this Clause subject to laws relating to traditional usage and to the adequate protection of the environment (including flora and fauna) —
- (a) the State shall, subject to the adequate protection of the land affected (including improvements thereon), allow the Joint Venturers to enter upon Crown lands (including land the subject of a pastoral lease); and
 - (b) the Joint Venturers may subject to the Petroleum Pipelines Act and any authorisations required under that Act enter land to carry out surveys and other works in relation to the gas pipeline and in relation to the Newman facilities and any Port Hedland facilities subject to section 82 of the Public Works Act and authorisation pursuant to that section exercise the powers set out in that section as if those facilities were works under that Act.

Joint Venturers to submit proposals

6. (1) Subject to and in accordance with the EP Act, the laws relating to traditional usage and the provisions of this Agreement the Joint Venturers shall on or before 30 June 1994 submit to the Minister to the fullest extent reasonably practicable their detailed proposals (including plans where practicable and specifications where reasonably required by the Minister and any other details normally required by the local authority in which area any of the works are to be situated and by the State Energy Commission in relation to electricity generating or transmission works) with respect to the establishment and operation of the project and shall include the location, area, gas pipelines and transmission line routes, lay-out, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely —

- (a) the power station site and routes for gas pipeline or pipelines and electricity transmission lines and any leases, licences or easements of land required from the State;
- (b) the power station;
- (c) the gas pipeline;
- (d) the Newman facilities;
- (e) any Port Hedland facilities desired by the Joint Venturers;
- (f) roads serving the power station, the gas pipeline the Newman facilities and any Port Hedland facilities;
- (g) accommodation and ancillary facilities for the Joint Venturers' workforce on or in the vicinity of the power station site and housing or other appropriate accommodation and facilities generally for the Joint Venturers' workforce;
- (h) water supply;
- (i) any other works, services or facilities desired by the Joint Venturers;
- (j) use of local labour professional services manufacturers suppliers contractors and materials; and
- (k) an environmental management programme as to measures to be taken in respect of the Joint Venturers' activities under this Agreement, for rehabilitation and the protection and management of the environment.

Order of proposals

- (2) Each of the proposals pursuant to subclause (1) may with the approval of the Minister or if so required by him be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (k) of subclause (1).

Use of existing infrastructure

- (3) The proposals relating to any of the matters mentioned in subclause (1) of this Clause may with the approval of the Minister and that of any third parties concerned instead of providing for the construction of new facilities of the kind therein mentioned other

than the gas pipeline, the power station and the Newman facilities (other than any gas pipeline forming part of those facilities) provide for the use by the Joint Venturers upon reasonable terms and conditions of any existing facilities of such kind.

Additional submissions

- (4) At the time when the Joint Venturers submit the said proposals they shall submit to the Minister details of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies that they propose to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with their reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto.

Consideration of proposals

7. (1) Subject to the EP Act and laws relating to traditional usage, in respect of each proposal pursuant to subclause (1) of Clause 6 the Minister shall —
- (a) approve of the proposal without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Joint Venturers submit a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 6 not covered by the said proposal; or
 - (c) require as a condition precedent to the giving of his approval to the said proposal that the Joint Venturers make such alteration thereto or comply with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Joint Venturers of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such alterations or conditions,

PROVIDED ALWAYS that where implementation of any proposals hereunder 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 Joint Venturers make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

Advice of Minister's decision

- (2) The Minister shall within two months after receipt of proposals pursuant to subclause (1) of Clause 6 or where the proposals are to be assessed under section 40(1)(b) of the EP Act or where laws relating to traditional usage apply then within two months after service on him of an authority under section 45(7) of the EP Act or satisfaction of the requirements under laws relating to traditional usage (as the case may be) give notice to the Joint Venturers of his decision in respect to the proposals.

Consultation with Minister

- (3) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) the Minister shall afford the Joint Venturers full opportunity to consult with him and should they so desire to submit new or revised proposals either generally or in respect to some particular matter.

Minister's decision subject to arbitration

- (4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) and the Joint Venturers consider that the decision is unreasonable the Joint Venturers within two months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder.

Arbitration award

- (5) An award made on an arbitration pursuant to subclause (4) shall have force and effect as follows —
- (a) if by the award the dispute is decided against the Joint Venturers then unless the Joint Venturers within 3 months

after delivery of the award give notice to the Minister of their acceptance of the award this Agreement shall on the expiration of that period of 3 months cease and determine; or

- (b) if by the award the dispute is decided in favour of the Joint Venturers the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

Effect of non-approval of proposals

- (6) Notwithstanding that under subclause (1) any proposals of the Joint Venturers are approved by the Minister or determined by arbitration award, unless each and every such proposal and matter is so approved or determined by 30 June 1995 or by such extended date or period if any as the Joint Venturers shall be granted or be entitled to pursuant to the provisions of this Agreement then the Minister may give to the Joint Venturers 12 months notice of intention to determine this Agreement and unless before the expiration of the said 12 months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of Clause 30.

Implementation of proposals

- (7) Subject to and in accordance with the EP Act and any approvals and licences required under that Act and laws relating to traditional usage the Joint Venturers shall implement the approved proposals in accordance with the terms thereof so that each of the power station, the gas pipeline, the Newman facilities and any Port Hedland facilities is constructed by 31 December 1996. For the purpose of this subclause, the power station, the gas pipeline, the Port Hedland facilities and the Newman facilities shall be deemed to be constructed when they are able to be used for the purposes for which they were built.

Extension or termination of Agreement

- 8. (1) The dates set forth in subclause (1) of Clause 6 and subclauses (6) and (7) of Clause 7 will be extended (in addition to any extension granted pursuant to Clause 27 or 28) upon request of either the Joint Venturers or the State for such reasonable period or periods

as may be necessary from time to time to enable either of the parties hereto to comply with laws relating to traditional usage.

- (2) The Joint Venturers may at any time before the approval or determination of the proposals required pursuant to subclause (1) of Clause 6 determine this Agreement by notice to the State whereupon this Agreement shall cease and determine and neither the state nor the Joint Venturers shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement.

Additional proposals

9. (1) If the Joint Venturers at any time during the continuance of this Agreement desire to significantly modify expand or otherwise vary their activities carried on pursuant to any approved proposals they shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (k) of subclause (1) of Clause 6 as the Minister may require.
- (2) The provisions of Clause 6 and Clause 7 (other than subclauses (5), (6) and (7) of Clause 7) shall mutatis mutandis apply to detailed proposals submitted pursuant to this Clause with the proviso that the Joint Venturers may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that they shall not be proceeding with the same. Subject to and in accordance with the EP Act and any approvals and licences required under that Act and laws relating to traditional usage the Joint Venturers shall implement approved proposals pursuant to this Clause in accordance with the terms thereof.

Petroleum Pipelines Act modification

10. (1) The Joint Venturers shall provide to the Minister, as part of their proposals for the gas pipeline pursuant to subclause (1) of Clause 6 and for any gas pipeline forming part of the Newman facilities, the information and other matters referred to in paragraphs (c) — (j) of

section 8(1) of the Petroleum Pipelines Act and sections 8(2), 8(3), 8(4) and 8(5) shall apply mutatis mutandis to those proposals as if those proposals were an application for a licence under that Act but otherwise section 8 of that Act shall not apply in relation to the gas pipeline.

- (2) For the purposes of this Agreement in respect of the gas pipeline and any gas pipeline forming part of the Newman facilities and any licence or licences relating thereto the Petroleum Pipelines Act shall be deemed modified by —
 - (a) the substitution for section 10 of the following section —

“10. The Minister may on application made pursuant to clause 11(1) of the agreement (as amended from time to time) ratified by the *Pilbara Energy Project Agreement Act 1994* grant a licence in accordance with the provisions of that agreement and cause to be published in the *Government Gazette* a notice that the licence has been granted.”;
 - (b) in subsection (5) of section 21 by inserting —
 - (i) after “own petroleum” the following —

“or petroleum of other persons which the licensee has contracted to convey”; and
 - (ii) after “so conveyed” the following —

“Provided that any direction as to amounts to be paid shall not be determined until after consultation between the Minister, the Minister administering the *Pilbara Energy Project Agreement Act 1994* and the Joint Venturers under the agreement ratified by that Act”;
 - (c) the deletion of paragraph (c) in the definition of “pipeline” in section 4;
and
 - (d) the deletion of sections 9, 11, 12, 13, 19, 24, 26, 27 and 28.

Lands

11. (1) On application made by the Joint Venturers, not later than 3 months after all their proposals submitted pursuant to subclause (1) of Clause 6 have been approved or determined and the Joint Venturers have complied with the provisions of subclause (4) of Clause 6, the State shall in accordance with the approved proposals grant to the Joint Venturers, or arrange to have the appropriate authority or other interested instrumentality of the State grant, for periods coterminous with the mineral lease defined in clause 1 of the Mount Newman Agreement or other periods agreed between the Joint Venturers and the State and on such terms and conditions as shall be reasonable having regard to the requirements of the Joint Venturers —
- (a) a lease of the power station site;
 - (b) a pipeline licence in respect of the gas pipeline and any gas pipeline forming part of the Newman facilities;
 - (c) leases or easements for access roads to the Joint venturers' works under this Agreement; and
 - (d) other leases licences or easements as appropriate in respect of the project
- under and, except as otherwise provided in this Agreement, subject to the Land Act or the Petroleum Pipelines Act as the case may require (each as modified by this Agreement).

Licence fees and rentals

- (2) (a) The Joint Venturers shall pay in respect of the pipeline licences referred to in paragraph (b) of subclause (1) and any other licences granted hereunder pursuant to the Petroleum Pipelines Act, licence fees in accordance with the Petroleum Pipelines Act.
- (b) In respect of other licences and leases and easements granted hereunder the Joint Venturers shall pay reasonable rentals or other reasonable amounts to be agreed between the Minister and the Joint Venturers.

Modification of Land Act

- (3) For the purpose of this Agreement in respect of any land leased to the Joint Venturers by the State the Land Act shall be deemed to be modified by —
- (a) the substitution for subsection (2) of section 45A of the following subsection —

“(2) Upon the Minister signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be leased.”;
 - (b) the deletion of the proviso to section 116;
 - (c) the deletion of section 135;
 - (d) the deletion of section 143;
 - (e) the inclusion of a power to grant occupancy rights over land on such terms and conditions as the Minister for Lands may determine;
 - (f) the inclusion of a power to grant leases or licences for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, the terms and conditions and the forms referred to in the Land Act.

The provisions of this subclause shall not operate so as to prejudice the rights of the State to determine any lease licence or other right or title in accordance with the other provisions of this Agreement.

Stone sand clay and gravel

- (4) The State shall in accordance with approved proposals grant to the Joint Venturers a mining lease or mining leases for the obtaining of stone sand clay and gravel for the construction of the project such mining lease or mining leases to be granted under and, except as otherwise provided herein, subject to the *Mining Act 1978* but limited in term to a reasonable period required for construction of the project and rehabilitation in accordance with the approved proposals of the leased areas. No royalty shall be payable under the *Mining Act 1978* in respect of stone sand clay and gravel obtained from any such mining lease.

Surrounding land

- (5) With respect to the area coloured blue on the said plan marked “X” (“the blue area”) the State shall ensure —
- (a) that the boundaries of the Port Hedland Town Planning Scheme within the blue area at the date of this Agreement shall not be altered;
 - (b) that the part of the blue area within those boundaries shall not be zoned urban; and
 - (c) that neither the State nor its agencies shall approve residential development in the part of the blue area outside those boundaries

without in each case prior consultation with the Joint Venturers by the Minister.

Use of local labour professional services and materials

12. (1) The Joint Venturers shall, for the purposes of this Agreement —
- (a) except in those cases where the Joint Venturers can demonstrate it is impracticable so to do, use labour available within Western Australia or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;
 - (b) as far as it is reasonable and economically practicable so to do, use the services of engineers surveyors architects and other professional consultants experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within Western Australia or if such services are not available within Western Australia then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;
 - (c) during design and when preparing specifications, calling for tenders and letting contracts for works materials plant equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that suitably qualified Western Australian and Australian suppliers

manufacturers and contractors are given fair and reasonable opportunity to tender or quote;

- (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere or, subject to the foregoing, give that consideration and where possible preference to other Australian suppliers manufacturers and contractors; and
 - (e) if notwithstanding the foregoing provisions of this subclause a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, give proper consideration and where possible preference to tenders arrangements or proposals that include Australian participation.
- (2) Except as otherwise agreed by the Minister the Joint Venturers shall in every contract entered into with a third party for the supply of services labour works materials plant equipment or supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) and shall report to the Joint Venturers concerning such third party's implementation of that condition.
- (3) The Joint Venturers shall submit a report to the Minister at monthly intervals or such longer period as the Minister determines commencing from the date of this Agreement concerning their implementation of the provisions of this Clause together with a copy of any report received by the Joint Venturers pursuant to subclause (2) during that month or longer period as the case may be PROVIDED THAT the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine.
- (4) The Joint Venturers shall keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations design and management) and any works materials

plant equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia together with its reasons therefor and shall as and when required by the Minister consult with the Minister with respect thereto.

Protection and management of the environment

13. (1) The Joint Venturers shall in respect of the matters referred to in paragraph (k) of subclause (1) of Clause 6 and which are the subject of approved proposals, carry out a continuous programme including monitoring to ascertain the effectiveness of the measures they are taking pursuant to such approved proposals for rehabilitation and the protection and management of the environment and shall as and when reasonably required by the Minister from time to time submit to the Minister a detailed report thereon.
- (2) Whenever as a result of their activities pursuant to subclause (1) or otherwise information becomes available to the Joint Venturers which in order to more effectively rehabilitate, protect or manage the environment may necessitate or could require any changes or additions to any approved proposals or require matters not addressed in any such proposals to be addressed the Joint Venturers shall forthwith notify the Minister thereof and with such notification shall submit a detailed report thereon.
- (3) The Minister may within 2 months of the receipt of a detailed report pursuant to subclauses (1) or (2) notify the Joint Venturers that he requires additional detailed proposals to be submitted in respect of all or any of the matters the subject of the report and such other reasonable matters as the Minister may require in connection therewith.
- (4) The Joint Venturers shall within 2 months of receipt of a notice given pursuant to subclause (3) submit to the Minister additional detailed proposals as required and the provisions of subclauses (1), (2), (3) and (4) of Clause 7 shall mutatis mutandis apply.
- (5) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Joint Venturers shall implement the decision of the Minister or any award on arbitration as the case may be in accordance with the terms thereof.

Electricity Act

14. For the purpose of this Agreement in respect of the construction and operation of the power station, the Newman facilities and any Port Hedland facilities the Electricity Act shall be deemed to be modified by —
- (a) the deletion of sections 7, 8, 12, 13(4), (5) and (6), 17, 32(1)(a), (d) and (1) and 43;
 - (b) the deletion of “Commission” wherever it occurs in sections 13(1), (2) and (3), 14, 16 and 20 and the substitution in each case of the following —
“Minister”;
 - (c) in section 28 —
 - (i) by inserting after “this Act” in paragraph (a) the following —
“as modified by the Agreement (as amended from time to time) ratified by the *Pilbara Energy Project Agreement Act 1994*”; and
 - (ii) by inserting after “the Act” the following —
“as modified as aforesaid”; and
 - (d) the addition at the end of section 33(1) of the following proviso —
“PROVIDED THAT to the extent of any inconsistency between approved proposals under the agreement (as amended from time to time) ratified by the *Pilbara Energy Project Agreement Act 1994* and any by-laws made pursuant to this subsection, the approved proposals will prevail.”.

Roads — Private roads

15. (1) The Joint Venturers shall —
- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in their activities hereunder;

- (b) at their own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles other than those engaged upon the Joint Venturers' activities and their invitees and licensees from using the private roads; and
- (c) at any place where any private roads are constructed by the Joint Venturers so as to cross any railways or public roads provide at their cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the Railways Commission as the case may be.

Maintenance of public roads

- (2) The State shall maintain or cause to be maintained those public roads under the control of the Commissioner of Main Roads or a local authority which may be used by the Joint Venturers for the purposes of this Agreement to a standard similar to comparable public roads maintained by the Commissioner of Main Roads or a local authority as the case may be.

Upgrading of public roads

- (3) In the event that for or in connection with the Joint Venturers' activities hereunder the Joint Venturers or any person engaged by the Joint Venturers uses or wishes to use a public road (whether referred to in subclause (2) or otherwise) which is inadequate for the purpose, or any use by the Joint Venturers or any person engaged by the Joint Venturers of any public road results in excessive damage to or deterioration thereof (other than fair wear and tear) the Joint Venturers shall pay to the State or the local authority as the case may require the whole or an equitable part of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads having regard to the use of such public road by others.

Acquisition of private roads

- (4) Where a road constructed by the Joint Venturers for their own use is subsequently required for public use, the State may, after consultation with the Joint Venturers and so long as resumption

thereof shall not unduly prejudice or interfere with the activities of the Joint Venturers under this Agreement, resume and dedicate such road as a public road. Upon any such resumption the State shall pay to the Joint Venturers such amount as is reasonable.

Water

16. The water requirements of the Joint Venturers for their operations under this Agreement shall be obtained in accordance with the provisions of the *Water Authority Act 1984* or other relevant Act.

Access to integrated power systems

17. (1) The State shall ensure that the State Energy Commission shall, where it is reasonable and practicable so to do, grant the Joint Venturers access for bulk electricity transmission at a capacity of not less than 66 kilovolts to any integrated system of power supply of the State Energy Commission in the Pilbara area for the purpose of the supply of electricity to operations carried on pursuant to the Iron Ore Agreements or any of them or the processing agreement (if any) but any such access shall be subject to arrangements to be agreed between the Joint Venturers and the State Energy Commission or, failing agreement, determined by the Minister.
- (2) The Joint Venturers are empowered to enter into any arrangements for the sale and exchange of power to or with the State Energy Commission as may be agreed between the Joint Venturers and the State Energy Commission.

Gas Undertakings Act exemption

18. The provisions of the *Gas Undertakings Act 1947* shall have no application to the Joint Venturers in relation to sales by the Joint Venturers for industrial purposes of gas conveyed through the gas pipeline.

Training levy exemption

19. The provisions of the *Building and Construction Industry Training Levy Act 1990* and the *Building and Construction Industry Training Fund and Levy Collection Act 1990* shall have no application to the Joint Venturers when acting pursuant to and in accordance with the provisions of this Agreement.

Zoning

20. The State shall ensure after consultation with the relevant local authority that the power station site and any other lands the subject of any lease, licence or easement granted to the Joint Venturers under this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the activities of the Joint Venturers hereunder may be undertaken and carried out thereon without any interference or interruption by the State or by any State agency or instrumentality or by any local or other authority of the State on the ground that such activities are contrary to any zoning by-law regulation or order.

Rating

21. (1) The State shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of the lands the subject of any lease licence or easement granted pursuant to this Agreement (except any parts of such lands on which accommodation units or housing for the Joint Venturers' workforce is erected or which is occupied in connection with such accommodation units or housing and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the activities carried out by the Joint Venturers pursuant to approved proposals) shall for rating purposes under the *Local Government Act 1960*, be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate.
- (2) It is hereby declared and agreed that the provisions of section 533B of the *Local Government Act 1960* shall not apply to any lands the subject of this Agreement.

No discriminatory rates

22. 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 or other 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 Joint Venturers in the conduct of their 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 Joint Venturers of full enjoyment of the rights granted and intended to be granted under this Agreement.

No resumption

23. Subject to the performance by the Joint Venturers of their obligations under this Agreement the State shall not during the currency of this Agreement without the consent of the Joint Venturers resume nor suffer nor 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 Joint Venturers and the subject of or used for the purpose of this Agreement AND without the consent of the Joint Venturers (which shall not be unreasonably withheld) the State shall not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road right-of-way water right or easement of any nature or kind whatsoever over or in respect of the power station site which may unduly prejudice or interfere with the Joint Venturers' activities under this Agreement.

Resumption for the purposes of this Agreement

24. (1) The State is hereby empowered to resume as and for a public work under the Public Works Act, any land required for the gas pipeline, the power station site, the Newman facilities and any Port Hedland facilities in accordance with approved proposals and notwithstanding any other provisions of that Act may grant leases licenses or easements of that land to the Joint Venturers and the provisions of subsections (2) to (7) inclusive of section 17 and section 17A of that Act shall not apply to or in respect of that land or the resumption thereof. The Joint Venturers shall pay to the State on demand the costs of and incidental to any land resumed at the request of and on behalf of the Joint Venturers.
- (2) For the purposes of this Agreement, and in the Public Works Act, when construed for the purposes of this Agreement, a reference to "land" shall be read as extending to any land, or to any portion of any land, or to the subsoil, surface or airspace relating thereto and to any estate, right, title, easement, lease, licence, privilege, or other interest, in, over, under, affecting or in connection with that land or any portion, stratum or other specified sector of that land

(whether or not that interest is an interest recognisable at Common Law).

Assignment

25. (1) Subject to the provisions of this Clause the Joint Venturers or any of them may at any time with the consent of the Minister assign mortgage charge sublet or dispose of to each other or to any other company or person the whole or any part of the rights of the Joint Venturers hereunder (including their rights to or as the holders of any lease licence or easement) and of the obligations of the Joint Venturers hereunder subject however in the case of an assignment subletting or disposition to the assignee sublessee or disponent (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Joint Venturers to be complied with observed or performed in regard to the matter or matters the subject of such assignment subletting or disposition.
- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) the Joint Venturers shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on their part contained in this Agreement and in any lease licence or easement the subject of an assignment mortgage subletting or disposition under subclause (1) PROVIDED THAT the Minister may agree to release the Joint Venturers or any of them from such liability where the Minister considers such release will not be contrary to the interests of the State.
- (3) Notwithstanding the provisions of the Land Act and the Petroleum Pipelines Act, insofar as the same or any of them may apply —
- (a) no assignment mortgage charge sublease or disposition made or given pursuant to this Clause during the currency of this Agreement of or over any lease licence or easement granted under or pursuant to this Agreement by the Joint Venturers or any assignee sublessee or disponent who has executed and is for the time being bound by deed of covenant made pursuant to this Clause; and

- (b) no transfer assignment mortgage or sublease made or given during the currency of the Agreement in exercise of any power contained in any such mortgage or charge

shall require any approval or consent other than such consent as may be necessary under this Clause.

Variation

26. (1) The parties to this Agreement may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement or of any lease licence easement grant or other title granted under or pursuant to this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.
- (2) The Minister shall cause any agreement made pursuant to subclause (1) in respect of any addition substitution cancellation or variation 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.

Force majeure

27. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement and to the temporary suspension of continuing obligations under this Agreement that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including without limiting the generality of the foregoing delays or any such temporary suspension as aforesaid caused by or arising from act of God force majeure earthquakes floods storms tempest washaways fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) acts or omissions of the Commonwealth shortages of labour or essential materials reasonable failure to secure

contractors delays of contractors and factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

Power to extend periods

28. Notwithstanding any provision of this Agreement the Minister may at the request of the Joint Venturers from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement or in any approved proposal for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

Determination of Agreement

29. (1) In any of the following events namely if —
- (a) (i) the Joint Venturers make default which the State considers material in the due performance or observance of any of the covenants or obligations of the Joint Venturers in this Agreement or in any lease licence or easement granted or assigned under this Agreement on their part to be performed or observed;
or
 - (ii) the Joint Venturers abandon or repudiates this Agreement or their activities under this Agreement
and such default is not remedied or such activities resumed within a period of 180 days 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 Joint Venturers or any of them go into liquidation (other than a voluntary liquidation for the purpose of

reconstruction) and unless within 3 months from the date of such liquidation the interest of the Joint Venturer is assigned to another Joint Venturer or to an assignee approved by the Minister under Clause 25

the State may by notice to the Joint Venturers 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 Joint Venturers and all such assignees mortgagees chargees and disponees for the time being of the Joint Venturers said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 25 whose name and address for service of notice has previously been notified to the State by the Joint Venturers or any such assignee mortgagee chargee or disponee.
- (3)
 - (a) If the Joint Venturers contest the alleged default abandonment or repudiation referred to in paragraph (a) of subclause (1) the Joint Venturers shall within 60 days after notice given by the State as provided in subclause (2) refer the matter in dispute to arbitration.
 - (b) If the question is decided against the Joint Venturers, the Joint Venturers 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 Joint Venturers 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 occupied by the Joint Venturers 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 Joint Venturers to the State on demand.

Effect of cessation or determination of Agreement

30. (1) On the cessation or determination of this Agreement pursuant to subclause (6) of Clause 7 or Clause 29 —
- (a) except as otherwise agreed by the Minister the rights of the Joint Venturers to in or under this Agreement and the rights of the Joint Venturers or of any assignee of the Joint Venturers or any mortgagee to in or under any lease licence or easement or right granted hereunder or pursuant hereto shall thereupon cease and determine but without prejudice to the liability of either 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;
 - (b) the Joint Venturers shall forthwith pay to the State all moneys which may then have become payable or accrued due;
 - (c) save as aforesaid and as otherwise provided in this Agreement neither of the parties shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.
- (2) Subject to the provisions of subclause (3) upon the cessation or determination of this agreement except as otherwise determined by the Minister all buildings erections and other improvements (including the gas pipeline, any gas pipeline forming part of the Newman facilities and all electricity transmission works constructed pursuant to this Agreement) erected on any land then occupied by the Joint Venturers under 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 Joint Venturers or any other party and freed and discharged from all mortgages and other encumbrances and the Joint Venturers 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) In the event of the Joint Venturers immediately prior to the cessation or determination of this Agreement or within three months after such cessation or determination desiring to remove any of their fixed or movable plant and equipment (including gas turbines at the power station and any power station constructed hereunder at Newman) or any part thereof from any part of the land occupied by them at the date of such cessation or determination they 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.

Environmental protection

31. Nothing in this Agreement shall be construed to exempt the Joint Venturers from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made pursuant to the EP Act.

Indemnity

32. The Joint Venturers shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Joint Venturers pursuant to this Agreement or relating to their activities hereunder or arising out of or in connection with the construction maintenance or use by the Joint Venturers or their servants agents contractors or assignees of the Joint Venturers' works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith PROVIDED THAT the foregoing provisions of this Clause shall not apply to any resumption by the State pursuant to Clause 24 AND PROVIDED FURTHER THAT subject to the provisions of any other relevant Act such indemnity shall not apply in circumstances where the State, its servants, agents, or contractors are negligent in carrying out work for the Joint Venturers pursuant to this Agreement.

Commonwealth licences and covenants

33. (1) The Joint Venturers shall from time to time make application to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to them of any licence or consent under the laws of the Commonwealth necessary to enable or permit the Joint Venturers to enter into this Agreement and to perform any of their obligations hereunder.
- (2) On request by the Joint Venturers the State shall make representations to the Commonwealth or to the Commonwealth constituted agency authority or instrumentality concerned for the grant to the Joint Venturers of any licence or consent mentioned in subclause (1).

Subcontracting

34. The State shall ensure that without affecting the liabilities of the parties under this Agreement either party shall have the right from time to time to entrust to third parties the carrying out of any portions of the activities which it is authorised or obliged to carry out hereunder.

Stamp duty exemption

35. (1) The State shall exempt from any stamp duty which but for the operation of this Clause would or might be assessed and chargeable on —
- (a) this Agreement;
 - (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Joint Venturers or any permitted assignee any lease licence or easement; and
 - (c) assignments made in conformity with the provisions of subclause (1) of Clause 25 as follows —
 - (i) an assignment by BHP Power Holdings Pty. Ltd. to Mitsui Iron Ore Corporation Pty. Ltd. or a related body corporate of that company;
 - (ii) an assignment by BHP Energy Holdings Pty. Ltd. to CI Minerals Australia Pty Ltd or a related body corporate of that company;
- or

- (d) subject to paragraph (b) of subclause (2) —
 - (i) a purchase by Mitsui Iron Ore Corporation Pty. Ltd. or a related body corporate of that company of all the issued share capital of BHP Power Holdings Pty. Ltd.;
 - (ii) a purchase by CI Minerals Australia Pty. Ltd. or a related body corporate of that company of all the issued share capital of BHP Energy Holdings Pty. Ltd.;

PROVIDED THAT this subclause shall not apply to any instrument or other document executed or made more than 2 years from the date hereof.

- (2)
 - (a) In subclause (1), “related body corporate” means a body corporate related within the meaning of that term as used in section 50 of the Corporations Law.
 - (b) The provisions of paragraph (d) of subclause (1) shall only apply if at the time of a purchase therein mentioned the only assets of the company the share capital of which is being purchased are its interest in this Agreement and any property held or developed for the purpose of this Agreement.
- (3) If prior to the date on which the Bill referred to in Clause 3 to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document or transaction referred to in subclause (1) the State when such Bill is passed as an Act shall on demand refund any stamp duty paid on any such instrument or other document or transaction to the person who paid the same.

Arbitration

- 36. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to the rights duties or liabilities of either party under this Agreement or as to any matter to be agreed upon between the parties under 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 *Commercial Arbitration Act 1985* and

notwithstanding section 20(1) of that Act each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.

- (2) Except where otherwise provided in this Agreement, the provisions of this Clause shall not apply to any case where the State the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered upon the application of either of the parties to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties under this Agreement and an award may in the name of the Minister grant any further extension or variation for that purpose.

Consultation

- 37. The Joint Venturers shall during the currency of this Agreement consult with and keep the State fully informed on a confidential basis concerning any action that the Joint Venturers propose to take with any third party (including the Commonwealth or any Commonwealth constituted agency authority instrumentality or other body) which might significantly affect the overall interest of the State under this Agreement.

Supply of gas and electricity

- 38. (1) The State authorises the sale or supply of gas, electricity and/or throughput capacity of the gas pipeline and the gas pipeline forming part of the Newman facilities by each of the Joint Venturers to operations carried on pursuant to the Iron Ore Agreements or any of them or the processing agreement (if any) pursuant to agreements entered into between the Joint Venturers or any of them and the persons carrying on those operations.
- (2) In respect of any persons (other than those referred to in subclause (1)) wishing to obtain gas or electricity from the Joint Venturers, the Joint Venturers shall supply those persons at reasonable commercial rates from any uncontracted or unutilised capacity of the works constructed pursuant to this Agreement.

Notices

39. Any notice consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Public Service of the said State acting by the direction of the Minister and forwarded by prepaid post or handed to the Joint Venturers at their respective addresses in the said State hereinbefore set forth or other address in the said State nominated by the Joint Venturers to the Minister from time to time and by the Joint Venturers if signed on their behalf by any person or persons authorised by them or by their solicitors as notified to the State from time to time and forwarded by prepaid post or handed to the Minister and except in the case of personal service any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

Term of Agreement

40. Subject to the provisions of subclause (6) of Clause 7 and Clauses 29 and 30 this Agreement shall expire on the expiration or sooner determination or surrender of the lease granted pursuant to Clause 11 of the power station site.

Applicable law

41. This Agreement shall be interpreted according to the law for the time being in force in the State of Western Australia.

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

SIGNED by the said THE	)	
HONOURABLE RICHARD	)	RICHARD F COURT
FAIRFAX COURT in the presence of:	)	

COLIN BARNETT
MINISTER FOR RESOURCES
DEVELOPMENT

THE COMMON SEAL of **BHP**)
MINERALS PTY. LTD. was hereunto)
affixed by authority of the Directors:)

Director R J CARTER

Secretary CLAIR MEDHURST

THE COMMON SEAL of **BHP**)
ENERGY HOLDINGS PTY. LTD.)
was hereunto affixed by authority of the)
Directors:)

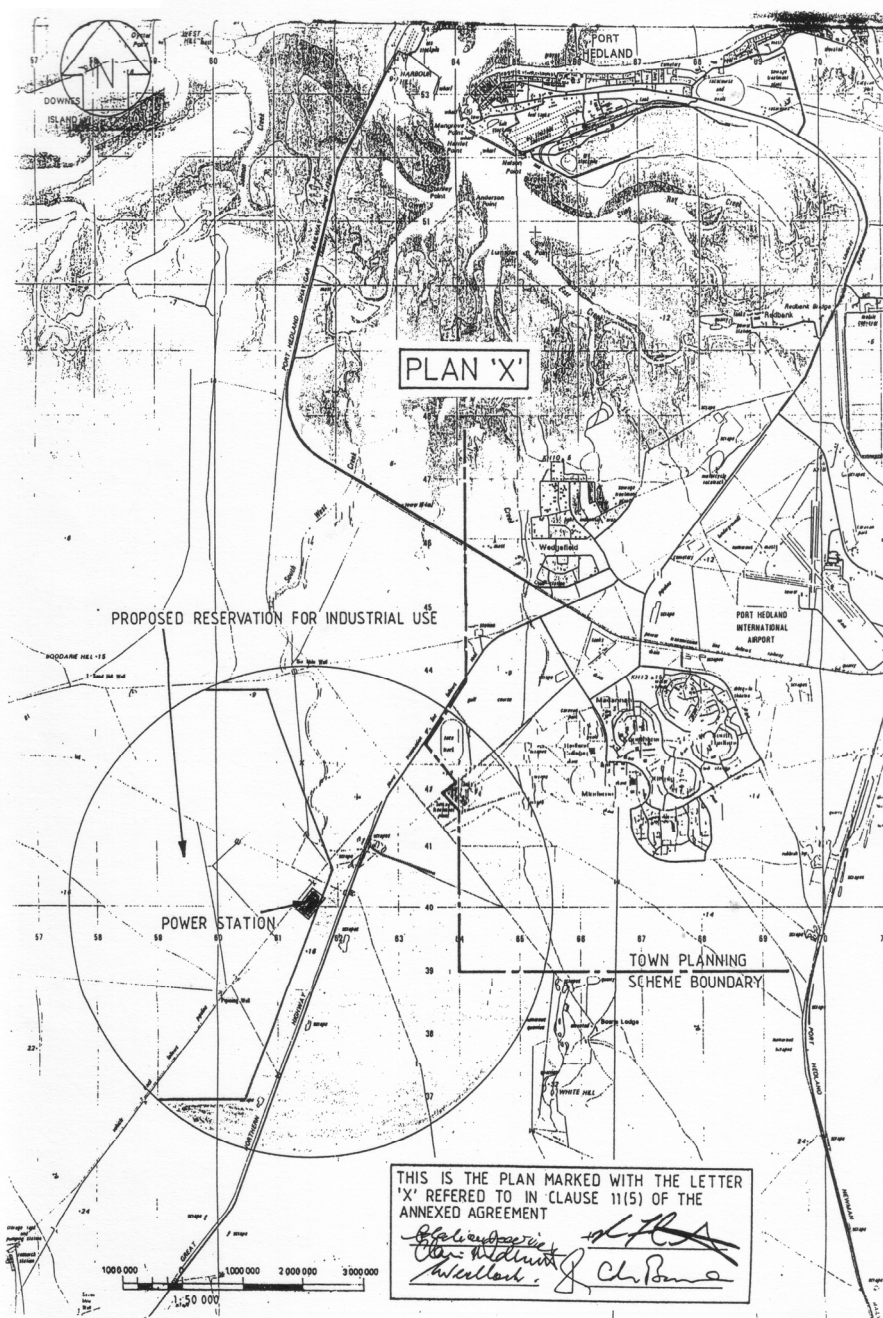
Director G L WEDLOCK

Secretary L DAVIES

THE COMMON SEAL of **BHP**)
POWER HOLDINGS PTY. LTD.)
was hereunto affixed by authority of the)
Directors:)

Director G L WEDLOCK

Secretary L DAVIES



Schedule 2 — Termination agreement

[s. 3]

[Heading inserted: No. 3 of 2014 s. 7.]

2013

THE STATE OF WESTERN AUSTRALIA

and

ALINTA DEWAH PTY LTD
ACN 083 051 950

ALINTA DEWAP PTY LTD
ACN 058 070 689

PILBARA ENERGY PROJECT AGREEMENT 1993
TERMINATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 8th day of NOVEMBER 2013

BETWEEN

THE HONOURABLE COLIN JAMES BARNETT, MEc., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "**the State**") of the first part,

ALINTA DEWAH PTY LTD ACN 083 051 950 of Level 13, 1 William Street, Perth, Western Australia and **ALINTA DEWAP PTY LTD** ACN 058 070 689 of Level 13, 1 William Street, Perth, Western Australia (hereinafter called "**Joint Venturers**" in which term shall be included their successors and permitted assigns) of the second part.

WHEREAS:

- A. The State and the Joint Venturers are the parties to the agreement dated 30 November 1993, which agreement was ratified by the *Pilbara Energy Project Agreement Act 1994* (WA), as varied by agreements dated 7 June 1994, 16 October 1995 and 31 March 1998. The first mentioned agreement as so varied is referred to in this Agreement as "**the Principal Agreement**".
- B. The State and the Joint Venturers wish to terminate the Principal Agreement in the manner and on the terms set out in this Agreement.

NOW THIS AGREEMENT WITNESSES:

1. Definitions

In this Agreement subject to the context:

"Deed of Assignment and Covenant 1999" means the document entitled "Deed of Assignment, Covenant and Acknowledgment in relation

to the Pilbara Energy Project State Agreement" dated 4 February 1999 between the State, the PEPA Minister, Duke Energy WA Holdings Pty Ltd (now known as Alinta DEWAH Pty Ltd), BHP Minerals Pty Ltd, Duke Energy WA Power Pty Ltd (now known as Alinta DEWAP Pty Ltd) and Duke Energy Australian Holdings Pty Ltd (now known as Alinta EH Pty Ltd);

"EP Act" means the *Environmental Protection Act 1986* (WA);

"Iron Ore Beneficiation Termination Agreement" means the agreement ratified by and scheduled within Part 7 of the *Iron Ore Agreements Legislation (Amendment, Termination and Repeals) Act 2011* (WA);

"Land Act Minister" means the Minister for Lands, a body corporate under section 7 of the Land Administration Act;

"Land Administration Act" means the *Land Administration Act 1997* (WA);

"laws relating to native title" means laws applicable from time to time in Western Australia in respect of native title and includes the *Native Title Act 1993* (Cth);

"Mining Act" means the *Mining Act 1978* (WA);

"Minister" means the Minister in the Government of the State for the time being responsible for the administration of the Act to ratify this Agreement and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Joint Venturers and includes the successors in office of the Minister;

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

"Newman Facilities" means the power station facilities constructed under or pursuant to the Principal Agreement at Newman comprising:

- (a) the turbines;
- (b) the electrical switchyard, including associated on-site electrical feeders;
- (c) the gas receival facility;

- (d) the diesel unloading and forwarding pumps and associated diesel storage tanks;
- (e) the oily water treatment system and associated evaporation pond; and
- (f) associated plant, equipment and infrastructure, including gas distribution infrastructure,

each at the date of this Agreement located upon Mineral Lease 244SA and contained within the boundaries of the area shown in Plan D of Schedule A;

"Operative Date" has the meaning given in clause 3(2);

"PEPA Minister" means the Minister in the Government of the State for the time being responsible for the administration of the Principal Agreement;

"PEPA Titles" means the following titles granted pursuant to the Principal Agreement and continuing as at the Operative Date:

- (a) Crown lease L371264 in respect of the Port Hedland power station; and
- (b) any Crown easement granted in respect of the Port Hedland Transmission Lines;

"Port Hedland Facilities" means the power station facilities constructed under or pursuant to the Principal Agreement:

- (a) at Port Hedland, comprising:
 - (i) the Port Hedland power station, at the date of this Agreement on land the subject of lot 255 on deposited plan 192056 contained within Crown land volume 3104 folio 330 and being land the subject of Crown lease L371264 in favour of the Joint Venturers, comprising:
 - (A) the turbines;
 - (B) the electrical switchyard, including associated on-site electrical feeders;
 - (C) the gas receival facility;

- (D) the diesel unloading and forwarding pumps and associated diesel storage tanks;
- (E) the oily water treatment system and associated evaporation pond; and
- (F) associated plant, equipment and infrastructure, including gas distribution infrastructure,

("Port Hedland power station") and contained within the boundaries of the area shown in Plan A of Schedule A;

- (ii) the 66kV transmission line from the Port Hedland power station to Boodarie on the area the subject of the proposed easement shown in deposited plans 30122, 32820, 33649 and 400582;
- (iii) the 66kV transmission line from the Port Hedland power station to the Wedgefield substation on the area the subject of the proposed easement shown in deposited plans 219101 and 400582; and
- (iv) the 66kV transmission line from the Port Hedland power station to the Murdoch Drive substation on the area the subject of the proposed easement shown in deposited plans 219101 and 400582;

(together, "**Port Hedland Transmission Lines**") and contained within the boundaries of the area shown in Plan B of Schedule A; and

(b) at Boodarie near Port Hedland, comprising:

- (i) the turbines;
- (ii) the electrical switchyard, including associated on-site electrical feeders;
- (iii) the gas receival facility; and
- (iv) associated plant, equipment and infrastructure, including gas distribution infrastructure;

located at the date of this Agreement upon General Purpose Leases 45/78, 45/79, 45/89, 45/90, and 45/102 and contained within the boundaries of the areas shown in Plan C of Schedule A ("**Boodarie power station**"); and

- (v) the underground electrical feeders connecting the turbines referred to in paragraph (b)(i) above with the electrical switchyard referred to in paragraph (b)(ii) above as shown in Plan B of Schedule A;

"**this Agreement**", "**hereof**" and "**hereunder**" refer to this Agreement, whether in its original form or as from time to time added to, varied or amended.

2. Interpretation

(1) In this Agreement:

- (a) clause headings do not affect interpretation or construction;
- (b) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
- (c) one gender includes the other genders;
- (d) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- (e) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;
- (f) reference in this Agreement to any other document includes that document as from time to time added to, varied or amended and notwithstanding any change in the identity of the parties;
- (g) reference to a clause or schedule is a reference to a clause in or schedule to this Agreement, and a reference to a subclause or paragraph is a reference to the subclause of the clause or paragraph of the clause or subclause as the case may be in, or in relation to, which the reference is made;

- (h) "including" means "including, but not limited to"; and
 - (i) reference to a "person" includes a body corporate.
- (2) Nothing in this Agreement shall be construed to exempt the State or the Joint Venturers from compliance with or to require the State or the Joint Venturers to do anything contrary to any law relating to native title or any lawful obligation or requirement imposed on the State or the Joint Venturers as the case may be pursuant to any law relating to native title. The provisions of this Agreement shall not operate so as to require the State or the Land Act Minister to grant or vary, or cause to be granted or varied, any lease licence or other right or title until all processes necessary (if any) under any laws relating to native title to enable that grant or variation to proceed, have been completed.
- (3) Nothing in this Agreement shall be construed to exempt the Joint Venturers from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made by or under the EP Act.

3. Ratification and operation

- (1) This Agreement, other than this clause and clauses 1 and 2, does not come into operation except in accordance with subclause (2).
- (2) This Agreement, other than this clause and clauses 1 and 2, comes into operation on the day on which it is ratified by an Act of the Parliament of Western Australia ("**Operative Date**") unless, before that day, it terminates under subclauses (4) or (5).
- (3) The State must introduce in the Parliament of Western Australia before 30 April 2014, or a later date agreed between the parties to this Agreement, a Bill to ratify this Agreement and must endeavour to secure its passage as an Act.
- (4) If by 30 September 2014 this Agreement has not been ratified by an Act of the Parliament of Western Australia then, unless the parties to this Agreement otherwise agree, this Agreement terminates on that day 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.

- (5) The parties agree that, if the Principal Agreement is otherwise determined in accordance with its provisions on a day prior to the Operative Date, then this Agreement shall also terminate on and from that day 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. Termination of Principal Agreement

- (1) Subject to subclause (2), the Principal Agreement is hereby terminated with effect on and from the Operative Date and, except as otherwise provided in this Agreement, neither the State nor the Joint Venturers shall have any claim against the other with respect to any matter or thing in or arising out of the Principal Agreement.
- (2) Notwithstanding subclause (1):
- (a) the Joint Venturers shall remain liable for any antecedent breach or default under the Principal Agreement and in respect of any indemnity given under the Principal Agreement; and
 - (b) clause 14 of the Principal Agreement shall be deemed to subsist in its application to the Port Hedland Facilities and the Newman Facilities respectively until the earlier of:
 - (i) the grant of electricity generation and electricity transmission licences or integrated regional licences under the *Electricity Industry Act 2004* (WA) in relation to the Port Hedland Facilities and the Newman Facilities (as the case may be); or
 - (ii) the date that is 12 months after the Operative Date, or such later date agreed by the Minister (but not exceeding 15 months after the Operative Date).
- (3) (a) Subject to subclause (2) and on and from the Operative Date:
- (i) the Joint Venturers as the holders of the PEPA Titles, the Port Hedland Facilities and the Newman Facilities shall cease to have the benefit of any rights and privileges conferred by the Principal Agreement; and

- (ii) each PEPA Title shall otherwise continue in force, subject to its terms and conditions and under and subject to the provisions of the Land Administration Act, for a period not exceeding 3 months after the Operative Date (or such greater period agreed by the Minister) pending the variation of its terms and conditions as contemplated by paragraph (b).
- (b) The State acknowledges that the Joint Venturers intend to make application for the grant of titles and, having regard to paragraph (a), variation of the PEPA Titles under and in accordance with the Land Administration Act and subject to the interests and rights of third parties and the obligations of the State to third parties, and to the extent relevant having regard to clause 4(3)(e) of the Iron Ore Beneficiation Termination Agreement, for such periods and on such terms and conditions including commercial rentals and renewal rights as the Land Act Minister may consider reasonable having regard to the requirements of the Joint Venturers in respect of the Port Hedland Facilities and the Newman Facilities. As at the date of this Agreement, the parties anticipate the Joint Venturers making the applications described in column 2 of the table to Schedule B in respect of the grant or variation, on or after the Operative Date, of titles relating to the facilities described in column 1 of that table.
- (c) The State further acknowledges that the Joint Venturers intend to make application for the grant of easements for the construction and operation of roads to access the Boodarie power station and the Newman power station respectively under and in accordance with the Land Administration Act and subject to the interests and rights of third parties and the obligations of the State to third parties, and to the extent relevant having regard to clause 4(3)(e) of the Iron Ore Beneficiation Termination Agreement, for such periods and on such terms and conditions including commercial easement fees as the Land Act Minister may consider reasonable.
- (d) If the registered holders of Mineral Lease 244SA and Crown lease K858923 surrender a portion of the land (including if

such surrender is limited to depth) that is subject to those leases for the purpose of facilitating the grant to the Joint Venturers of a lease under section 79 of the Land Administration Act for the Newman Facilities as contemplated by paragraph (b) above, the State shall, notwithstanding the terms of section 19 of the Mining Act, cause the Minister for Mines to exempt that portion of the land from mining under that section for the term of that lease (including as renewed or extended).

- (4) (a) On and from the Operative Date the Joint Venturers will indemnify and keep indemnified the State and its employees, agents and contractors in respect of all actions, suits, claims, demands or costs of third parties arising out of or in connection with any work carried out by the Joint Venturers pursuant to the Principal Agreement or relating to their operations under the Principal Agreement or arising out of or in connection with the construction, maintenance or use by the Joint Venturers or their employees, agents, contractors or assignees of the Joint Venturers' works or services the subject of the Principal Agreement or the plant, apparatus or equipment installed in connection with the Principal Agreement.
- (b) The indemnity in paragraph (a) shall remain in force for a period ending on the date which is 20 years after:
- (i) the date agreed between the State and the Joint Venturers; or
- (ii) if the parties fail to agree a date under subparagraph (i), the date determined by the State,
- as being the date of cessation of all operations (including as expanded or otherwise modified) originally established under and pursuant to the Principal Agreement (including the Port Hedland Facilities and the Newman Facilities).
- (c) The Joint Venturers will indemnify and keep indemnified the State and its employees, agents and contractors in respect of all actions, suits, claims, demands or costs of third parties arising out of or in connection with any works or activities of the Joint Venturers or their employees, agents or

contractors or assignees on and subsequent to the Operative Date relating to operations (including as expanded or otherwise modified) that were originally established under or pursuant to the Principal Agreement (including the Port Hedland Facilities and the Newman Facilities).

- (d) The indemnity in paragraph (c) remains in force for a period ending on the same date as the indemnity in paragraph (a).

5. Release of State and PEPA Minister from Deed of Assignment and Covenant 1999

On and from the Operative Date, the Joint Venturers release the State and the PEPA Minister from any obligation, liability or claim relating to the acknowledgement and agreement of the State and the PEPA Minister set out in clause 6 of the Deed of Assignment and Covenant 1999.

6. Assignment

A Joint Venturer may only assign, mortgage or charge or otherwise dispose of its rights and obligations under this Agreement with the consent of the Minister and such consent may be given subject to conditions.

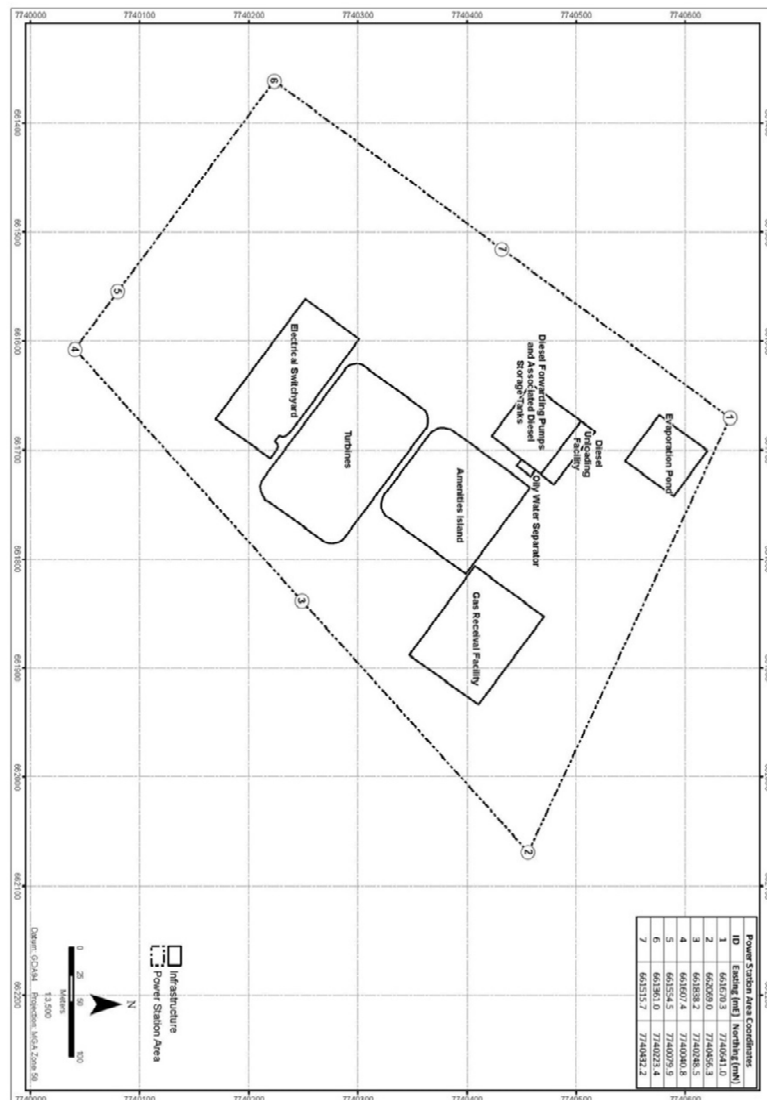
7. Applicable Law

This Agreement is to be interpreted according to the law for the time being in force in the State of Western Australia.

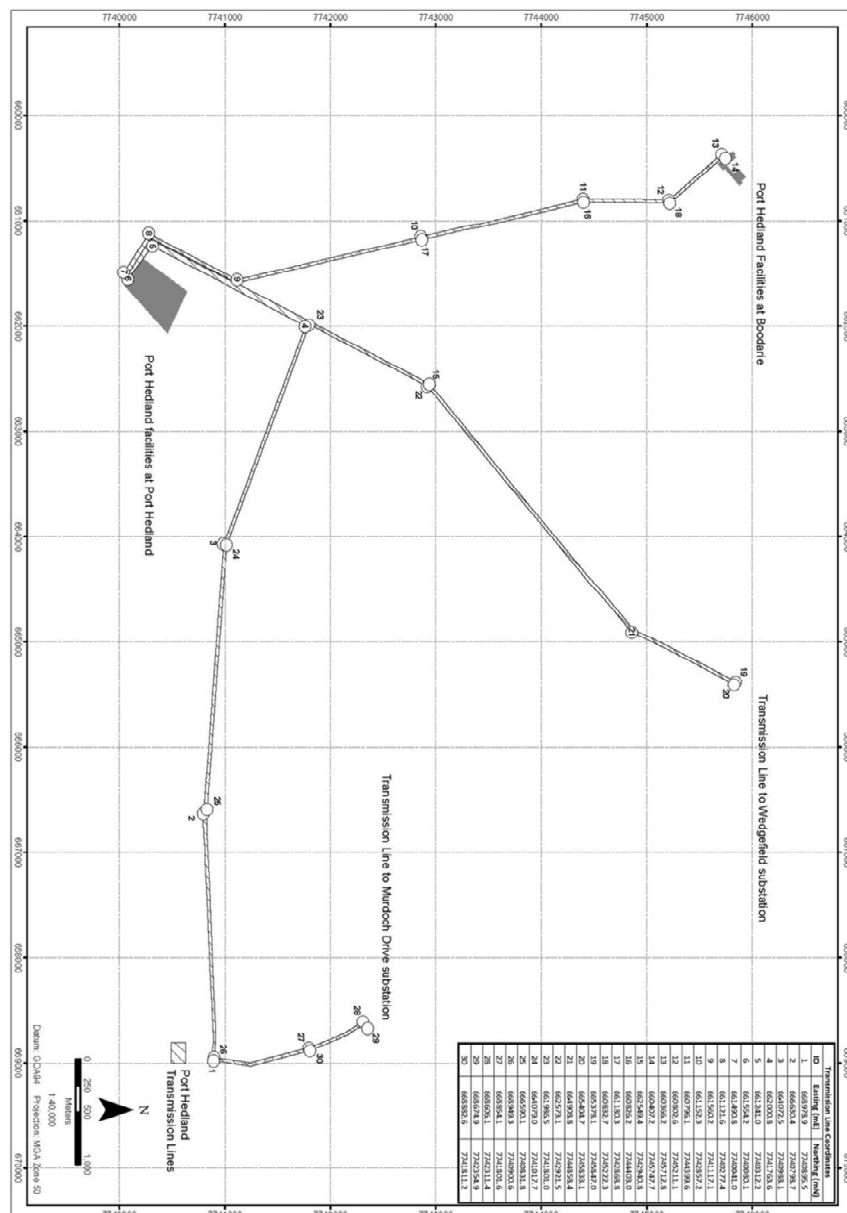
SCHEDULE A
PORT HEDLAND FACILITIES AND NEWMAN FACILITIES

Plan A

Port Hedland power station

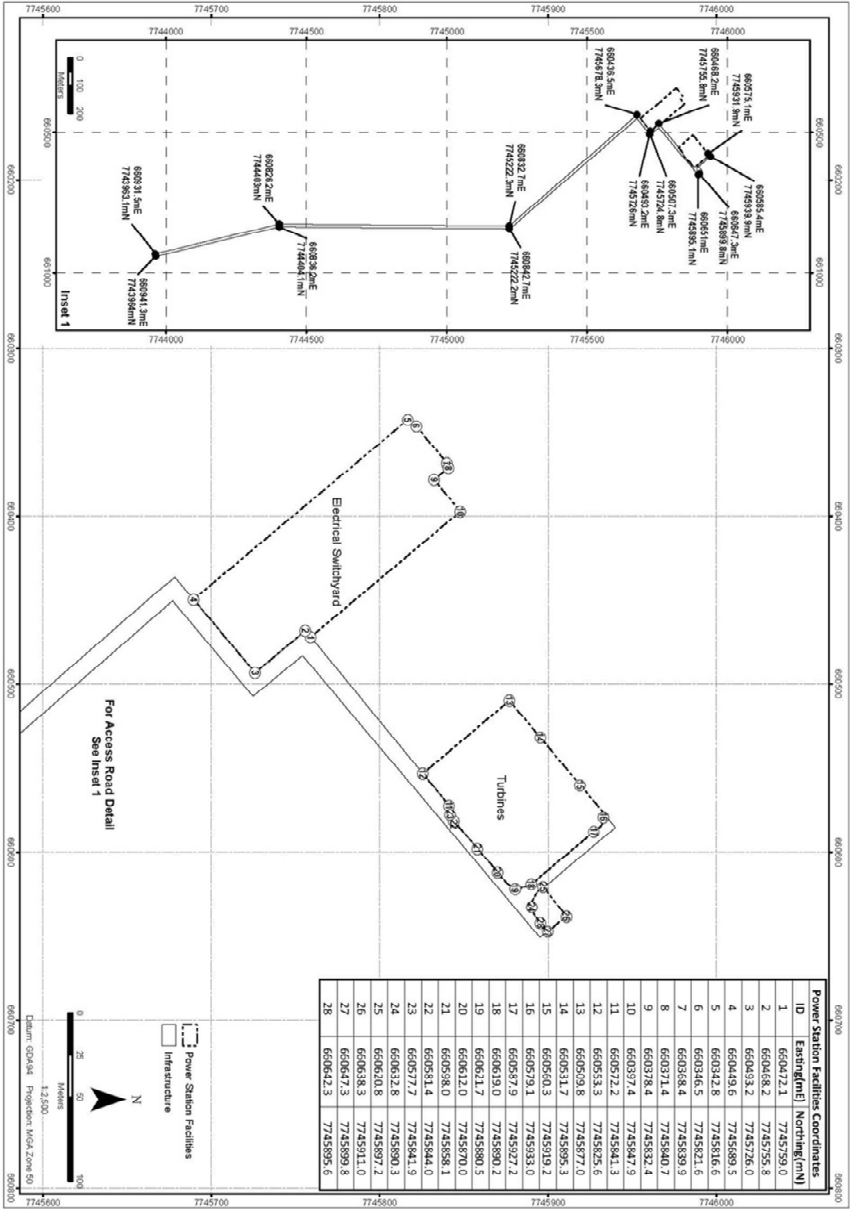


Plan B
Port Hedland Transmission Lines

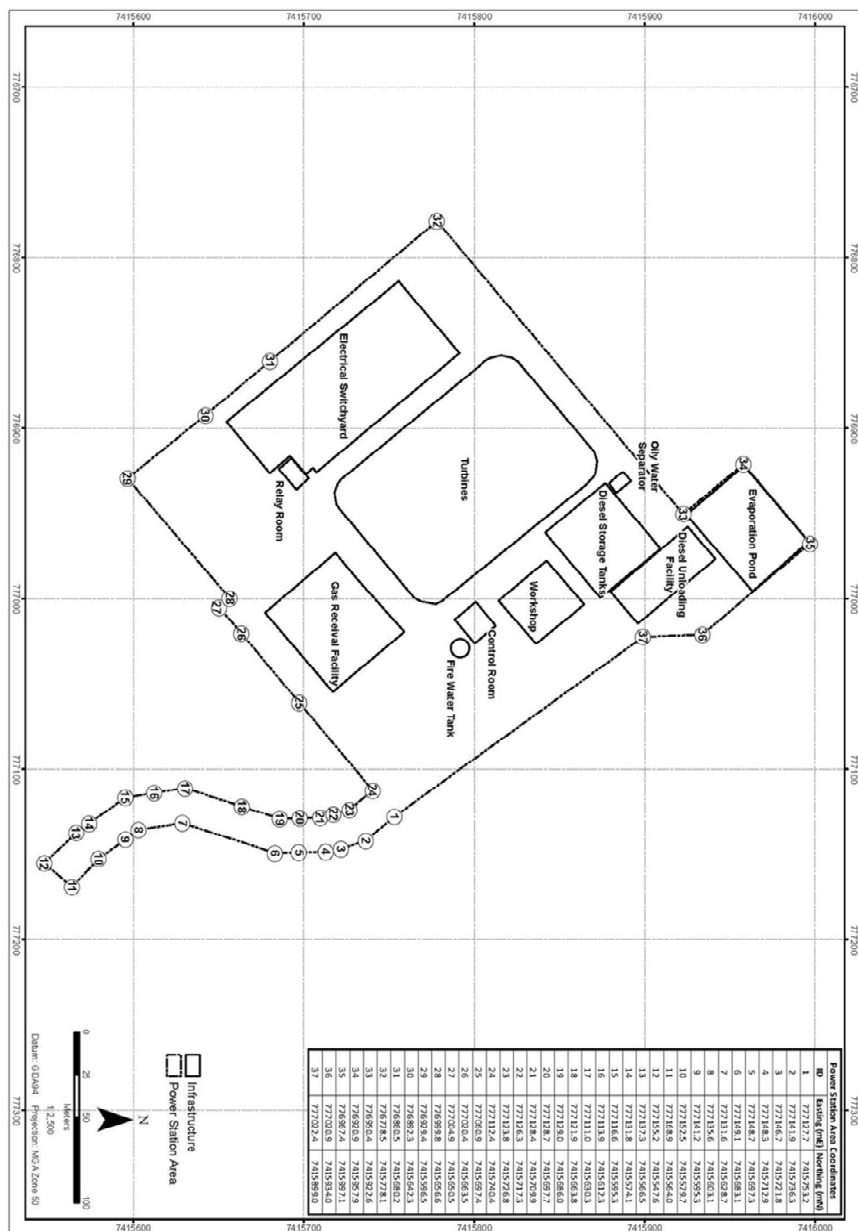


Plan C

Boodarie power station



Plan D Newman Facilities



SCHEDULE B
ANTICIPATED TENURE FOR FACILITIES

Port Hedland Facilities	Tenure Application under Land Administration Act (and applicable section reference)
<i>At Port Hedland</i>	
Port Hedland power station	Variation to Crown Lease (s79)
Port Hedland Transmission Lines	Crown Easement (s144) or Variation of Easement (s144) if any Crown easement is granted in respect of the Port Hedland Transmission Lines as at the Operative Date.
<i>At Boodarie</i>	
Boodarie power station	Crown Lease (s79)
Newman Facilities	
Newman power station	Crown Lease (s79)

EXECUTED as a deed.

SIGNED by THE HONOURABLE)
COLIN JAMES BARNETT) [Signature]
in the presence of:)

[Signature] _____
Signature of witness

SCOTT FRY _____
Name of witness

EXECUTED by ALINTA DEWAH)
PTY LTD ACN 083 051 950)
in accordance with section 127(1) of)
the Corporations Act)

[Signature] _____
Signature of Director

[Signature] _____
Signature of Secretary

KEN WOOLLEY _____
Full Name

MICHAEL RICHES _____
Full Name

EXECUTED by **ALINTA DEWAP**)
PTY LTD ACN 058 070 689)
in accordance with section 127(1) of)
the Corporations Act)

[Signature]
Signature of Director

[Signature]
Signature of Secretary

KEN WOOLLEY
Full Name

MICHAEL RICHES
Full Name

[Schedule 2 inserted: No. 3 of 2014 s. 7.]

Notes

- ¹ This is a compilation of the *Pilbara Energy Project Agreement Act 1994* 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>Pilbara Energy Project Agreement Act 1994</i>	7 of 1994	15 Apr 1994	15 Apr 1994 (see s. 2)
Reprint 1: The <i>Pilbara Energy Project Agreement Act 1994</i> as at 20 Aug 2004			
<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)
<i>Pilbara Energy Project Agreement (Termination) Act 2014</i>	3 of 2014	25 Mar 2014	s. 1 and 2: 25 Mar 2014 (see s. 2(a)); Act other than s. 1 and 2: 26 Mar 2014 (see s. 2(b))

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
termination agreement	3
the Agreement.....	3