



Western Australia

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



Western Australia

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

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

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

**1. Short title**

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

**2. Terms used**

In this Act —

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

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

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

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

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

*[Section 2 amended: No. 82 of 1986 s. 4; No. 27 of 1997 s. 4; No. 41 of 2010 s. 4; No. 33 of 2015 s. 4.]*

**3. Ratification of Agreement**

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

**4. Variation agreement approved**

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

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

**5. Ratification of Second Variation Agreement**

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

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

**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.

*[Section 6 amended: No. 41 of 2010 s. 5.]*

**7. Ratification of Fourth Variation Agreement**

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

*[Section 7 inserted: No. 33 of 2015 s. 5.]*

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

[s. 2]

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

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

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

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

NOW THIS AGREEMENT WITNESSETH —

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

(2) In this Agreement subject to the context —

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

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



“Fremantle Port Authority Act” means the *Fremantle Port Authority Act 1902*;

“Jetties Act” means the *Jetties Act 1926*;

“Land Act” means the *Land Act 1933*;

“miles” mean statute miles;

“Mining Act” means the *Mining Act 1904*;

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

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

“Minister for Works” means the Minister of the Government of the State who is for the time being responsible for the administration of the *Fremantle Port Authority Act 1902*;

“month” means calendar month;

“notice” means notice in writing;

“person” or “persons” include bodies corporate;

“ratifying Act” means any Act which results from a Bill introduced in accordance with the terms of clause 2 hereof;

“the jetty” means the jetty to be constructed by the Company pursuant to clause 4 hereof;

“the sand banks” refers to the Success and Parmelia sand banks in Cockburn Sound delineated and coloured green on the map marked “A”, which map is initialled by the parties hereto for the purpose of identification;

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

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

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

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

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

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

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

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

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

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

4. (1) Notwithstanding the provisions of the Jetties Act the Authority shall permit the Company to erect on and from the shore in the approximate position marked “J”, delineated and coloured blue on the said map marked “A”,

a jetty in accordance with plans and specifications and subject to reasonable terms and conditions to be agreed between the Company and the Authority. The Company may use the jetty for the removal of shell sand which it has obtained from Cockburn Sound in accordance with the terms of this Agreement and for any other purpose agreed to by the Authority or, in the event of the Authority's refusal, by the Minister for Works. No charge shall be imposed by the Authority for the use of the jetty for dredging or for the removal by any means of the shell sand to the Company's works on the works site. In the event of the jetty being used for any other purposes under this subclause charges will be made at reasonable rates to be arranged between the Company and the Authority.

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

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

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

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

6. (1) The Authority shall subject to the Company complying with its obligations under this Agreement permit the Company for a period of forty (40) years from the date hereof and free of rent royalty or other charges payable to the State or the Authority but at its own cost in all other respects to dredge and use for the purposes of the Company's cement and clinker manufacturing operations and any other operations approved by the Authority from time to time within that part of the sand banks as lie within a radius of five (5) miles

from a point marked “R” in red on the said map marked “A”. In considering applications from the Company for approval for areas from which shell sand may be obtained the Authority will have regard for technical and economic considerations related to the Company’s operations and where the area requested is not approved, the Authority will give its reasons and will use its best endeavours to mutually agree with the Company on alternative locations from which shell sand may be obtained PROVIDED THAT the Company in obtaining the shell sand shall comply with any reasonable terms and conditions set by the Authority and communicated to the Company by notice and shall not in any event do or omit to do anything which creates a hazard to or obstruct or delays navigation nor anything which is detrimental to the navigable channels or port installations or will probably interfere with the efficient working of the port.

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

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

(4) Where a notice states that the Company’s operations are creating a hazard to or are obstructing or delaying navigation or are detrimental to the navigable channels or port installations or will probably interfere with the efficient working of the port then no dispute or difference between the parties concerning that notice or the respective rights and obligations of the parties in relation thereto may be referred to arbitration pursuant to the provisions of clause 17 of this Agreement but any such dispute or difference shall be referred to and settled by the arbitration of the Minister for Works and the Minister for Works after hearing submissions from the parties shall give such directions for the determination of that dispute or difference as he deems proper having regard to the maintenance of the efficiency of the port and the reasonable requirements of the Company and the parties shall comply with any such direction.

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

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

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

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

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

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

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

(2) That so long as the Company continues to perform its obligations under the provisions of this Agreement and continues to carry out cement and clinker manufacturing operations and any other operations approved by the State from time to time on the works site or such other sites owned by the Company which the State may approve pursuant to Clause 3(1) hereof the State shall ensure that no person shall be granted any rights under the provisions of the Mining Act or the Land Act over the works site, or such other sites as aforesaid, or such other land as the State may in its absolute discretion approve

subject to any reservations, qualifications or conditions that it thinks proper in any case, such other land being —

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

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

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

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

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

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

by the Company which the State may approve or such other land as the State may approve and will grant a permit for the use of explosives in such operations for quarrying or otherwise obtaining the said raw materials.

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

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

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

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

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

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

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

10. The Company shall so far as reasonably and economically practicable use labour available within the State and give preference to bona fide Western Australian manufacturers and contractors in the placement of orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere. In calling tenders and

letting contracts for works materials plant equipment and supplies the Company will ensure that bona fide Western Australian manufacturers and contractors are given reasonable opportunity to tender quote or otherwise be properly considered for such works materials plant equipment and supplies.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

19. This Agreement is made subject to any delays in the performance of obligations under this Agreement which may be occasioned by or arise from

circumstances beyond the power and control of the party responsible for the performance of such obligations including delays caused by or arising from act of God, act of war, force majeure, act of public enemies, strikes, lockouts, stoppages, restriction of labour or other similar acts whether partial or general, shortage of essential materials reasonable failure to secure or delays of contractors riots or civil commotion.

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

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

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

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

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

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

}

DAVID BRAND  
[L.S.]

ROSS HUTCHINSON.

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

}

ROSS HUTCHINSON  
[C.S.]

T. J. LEWIS.

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

}

[C.S.]

J. McCONNELL,  
Chairman of Commissioners.

J. G. MANFORD,  
Commissioner.

C. A. FAULDS,  
Secretary.

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

}

[C.S.]

C. P. BIRD,  
Director.

L. G. S. HYLAND,  
Director.

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

[s. 2]

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

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

WHEREAS:

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

NOW THIS AGREEMENT WITNESSETH —

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

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

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

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

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

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

}

JOHN T. TONKIN.  
(L.S.)

R. J. SEDDON.

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

}

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

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

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

}

(C.S.)

MAX B. GRACE,  
Acting Chairman of  
Commissioners.

W. J. HUGHES,  
Commissioner.

C. A. FAULDS,  
Secretary.

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

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

}

(C.S.)

L. G. S. HYLAND,  
Director.

D. W. BIBBY,  
Director.

### **Third Schedule — Variation agreement**

[s. 2]

*[Heading inserted: No. 82 of 1986 s. 6; amended: No. 19 of 2010 s. 4.]*

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

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

NOW THIS AGREEMENT WITNESSETH:

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

“ “Mining Act” means the *Mining Act 1978*”;

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



- (i) proposed dredging areas;
- (ii) proposed spoil dumping areas; and
- (iii) any installations or works associated with the proposed dredging operations

in relation to significant physiographic and other features of the area;

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

- 6B. (1) On receipt of a DMP the Minister shall either:
  - (a) approve of the DMP either wholly or in part; or

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

6D. The Company shall on or before the 31st day of March, 1987 surrender to the State the lease dated the 15th day of May, 1974 and made between The Commonwealth of Australia as lessor of the one part and the Company as lessee of the other part and all the lands comprised therein and upon such surrender the State shall grant to the Company a lease and licence in the form set out in the Schedule hereto in respect of the land therein described for the purposes and the term and at the rentals therein specified and on and subject to the terms and conditions therein contained.”.

(3) Clause 7 —

(a) subclause (2) —

by deleting subclause (2) and substituting the following —

“(2) That so long as the Company continues to perform its obligations under the provisions of this Agreement and continues to carry out cement and clinker manufacturing operations and any other operations approved by the State from time to time on the works site or such other sites owned by the Company which the State may approve pursuant to clause 3(1) hereof the State shall ensure that no person shall be granted any rights under the provisions of the Mining Act or the Land Act over the works site, or such other sites as aforesaid, or such other land as the State may in its absolute discretion approve subject to any reservations, qualifications or conditions that it thinks proper in any case, such other land being —

(a) land owned by the Company during the currency of this Agreement;

(b) land in respect of which the Company has obtained a mining tenement (as defined in the Mining Act) and which is —

(i) Crown land within the meaning of the Mining Act (other than such as is, or may at any time be, constituted a reserve under the Land Act);  
or

- (ii) a State forest or timber reserve under the *Conservation and Land Management Act 1984*;
- (c) land owned by a third party in respect of which the Company has entered into an agreement with the owner for the extraction of limestone and/or lime sand therefrom and the owner consents to the exemption provided by this subclause;

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

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

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

  - (i) being mined by the Company for limestone, lime sand and/or specified mineral; or
  - (ii) in the opinion of the Minister for Minerals and Energy being held by the Company for the purpose of future mining for limestone, lime sand and/or specified mineral and the Company is not carrying out any mining operations (other than exploring for limestone, lime sand and/or specified mineral) thereon.”;
- (c) subclause (3) —

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

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

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

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

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

- (5) Clause 8 —

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

“the said map marked “X””.

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

“10A. The Company shall keep the Minister fully informed in respect of, and when and in such form as reasonably required by the Minister from time to time report to the Minister on, the measures it has taken, is taking or proposes to take for the monitoring, protection and management of the environment in respect of its operations including without limiting the generality of the foregoing provisions with respect to the following matters —

- (a) noise from the works site;

- (b) emissions and discharges into the air from the works site;
- (c) emissions, discharges and disposals of matter on or from the works site onto or into land;
- (d) sand recovery and washing at Woodman Point including the effects thereof on surrounding land and water areas;
- (e) the Company's operations under clauses 6 and 6B(5) hereof and as and when required by the Minister the Company shall liaise and co-operate with the Minister on measures it is taking and take additional reasonable measures with respect to the monitoring, protection and management of the environment arising from its operations.

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

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

manner hereinafter provided the question of the reasonableness of the decision; or

- (b) advise the Minister that the Company does not wish to proceed with the matters the subject of the said proposal whereupon the said proposals shall lapse.

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

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

- (7) Clause 17 —

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

“*Commercial Arbitration Act 1985*”;

- (c) by inserting the following subclause —

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

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

“

THE SCHEDULE  
WESTERN AUSTRALIA





and

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

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

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

- (a) The Company will pay to the Lessor the rent hereby reserved (subject however to reappraisalment as herein provided) at the time and in the manner aforesaid without any abatement or deduction whatsoever;
- (b) Subject to the Agreement the Company will pay and discharge on the due date for payment thereof all present and future rates taxes charges assessments duties impositions penalties and other outgoings whatsoever which now are or during the said term shall be assessed and charged upon or in respect of the demised land and the licensed areas and the services and utilities provided therefor and all charges for water electricity and power used and consumed thereon;
- (c) The Company will at its own cost and expense in all things maintain the works and facilities now and hereafter established on the demised land and the licensed areas for the purpose of dredging washing processing and pumping of shell sand and the Company will at no time during the said term without the prior consent of the Lessor use the demised land or the licensed areas for any other purpose;
- (d) The Company will not without the consent of the Lessor build erect or install on or affix to or permit or allow to be built erected or installed on

or affixed to the demised land or the licensed areas any additional buildings structures or improvements (either above or below the surface of the demised land and the licensed areas) and will submit to the Lessor with each application for consent thereto for approval by the Lessor plans and specifications in duplicate of the proposed works AND will make complete and carry out the work to the satisfaction of the Lessor in accordance with the plans and specifications approved by the Lessor;

- (e) Except for the purposes of necessary maintenance repairs or reinstatement and then only for such length of time as shall be necessary and proper for such purpose, the Company will not pull down demolish or remove or cause to be pulled down demolished or removed during the term hereby granted any building structure or improvement erected in upon under or over the demised land or the licensed areas without the prior consent of the Lessor;
- (f) The Company will at its own expense and to the satisfaction of the Lessor at all times during the said term put keep and maintain the demised land and the licensed areas and all new altered and improved buildings erections additions and improvements (including inter alia all fences gates tanks roadways and pipelines) and also all plant machinery electrical installations and electrical and other fixtures and fittings which may be for the time being erected or in the process of construction or situation thereon therein or thereover in good and substantial repair order and condition and in clean tidy and sanitary condition and safe for workmen and visitors to the demised land and the licensed areas;
- (g) The Company will forthwith on demand of the Lessor and at its own cost and expense make good replace and restore any damage which may be caused to or suffered by the land and buildings of the Lessor or of any other lessees of the Lessor by reason of the erection construction operation working maintenance and use of the works and facilities established on the demised land and the licensed areas by the Company its servants agents contractors invitees or licensees;
- (h) The Company will at all times and in all respects at its cost and expense perform and comply with the provisions of all statutes (both State and Federal) now or hereafter in force and of all regulations statutory rules and by-laws made thereunder and all lawful requirements and orders of any authority statutory or otherwise which affect the demised land or the licensed areas or the use thereof or the construction operation maintenance and use of any work installation plant machinery equipment

service or facility thereon or used in connection therewith or which impose any duty or obligation upon the owner or occupier of the demised land or the licensed areas AND in particular without derogating from the generality of the foregoing the Company will comply with the provisions of the *Fremantle Port Authority Act 1902* the *Local Government Act 1960* the *Electricity Act 1945* the *Factories and Shops Act 1963* the *Machinery Safety Act 1974* the *Water Authority Act 1984* and the *Health Act 1911* and all by-laws regulations proclamations and orders made thereunder and will perform discharge and execute all requisitions and work and do and perform all such acts and things upon and unto the demised land and the licensed areas or any pipeline or road or way or any part thereof as are or may be required or directed to be executed or done (whether by the Lessor or the Company) by any Local Authority Health Board Health Commissioner or Water Board or by any other local or public authority or by order or in pursuance of any statute (State or Federal) now or hereafter in force or by order or in pursuance of any by-law or regulation under any such statute;

- (i) The Company shall keep the land of the Lessor free and clean of any rubbish or spoil which may be spilt or deposited thereon by the Company or its servants workmen agents or contractors using the demised land the licensed areas or any pipeline or road or way and the Company will at all times take all such reasonable measures as are required by the Lessor for the purpose of preventing any materials whatsoever escaping from any pipeline or any road or way whilst they are in use and will install such devices for this purpose as are reasonably required by the Lessor;
- (j) At all times during the continuance of this lease and license the Company its officers agents servants and workmen will use their best endeavours to prevent any injury to or loss of life of any person and any damage of or injury to any property by reason of the erection construction maintenance and use of any powerline pipeline road or way on the licensed areas;
- (k) The Company will permit the Lessor or its agents workmen architects surveyors engineers or employees to enter upon the licensed areas to carry out such works or services on the licensed areas (not being works or services which would if carried out prejudice or interfere with the use by the Company of the demised land or the licensed areas in accordance with the provisions of this Indenture) as the Lessor in its discretion shall deem fit PROVIDED THAT in exercising the rights conferred on it by this clause the Lessor shall use its best endeavours to ensure that use by

the Company of the demised land and the licensed areas in accordance with the provisions of this Indenture is not prejudiced or interfered with;

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

or public authority or within the meaning of any statute (State or Federal) now or hereafter in force or any regulations or by-laws made thereunder may exist or continue upon or in connection with the demised land or the licensed areas or any business carried on upon the same or the use or occupancy thereof AND will forthwith abate any such nuisance or alleged nuisance and carry out and comply with all the provisions of every such statute regulations or by-laws and of every requisition and order of any local or other public authority in reference thereto;

- (p) The Company will pay to the Lessor on demand all sums of money which the Lessor may at any time and from time to time hereafter pay or expend or be called upon to repay in or about or in connection with performing discharging or executing any requisitions or works or abating any nuisance or alleged nuisance or with undertaking any obligation or paying any money which the Company is obliged to perform discharge execute or pay pursuant to the terms hereof and which contrary to the agreement herein contained the Company neglects or fails to perform discharge execute or pay and to pay the same to the Lessor notwithstanding that by any statute by-law or regulation the Lessor is liable alone or jointly with the Company and/or others to perform discharge execute or pay for the same or any part thereof;
- (q) The Company shall insure and keep insured at its own cost and expense all buildings structures and improvements erected or made by the Company on the demised land and the licensed areas from loss or damage by fire storm tempest and/or explosion and will provide to the Lessor or its agents on request full particulars of such insurance;
- (r) The Company will not do or permit to be done anything whereby the policy or policies of insurance or coverage in respect of damage by fire on any property of the Crown or of any instrumentality of the Crown or of the Lessor in or about the neighbourhood of the demised land and the licensed areas may become void or voidable AND where the rate of premium on any policy or policies of insurance in respect of any property of the Crown or any instrumentality of the Crown or the Lessor —
  - (i) which is insured against damage by fire at the date of commencement of this lease and licence is increased on account of any of the purposes for which the demised land or the licensed area is or is about to or may hereafter be used pursuant to this Indenture;

or

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

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

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

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

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

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

- (a) If —
  - (i) the rent hereby reserved or any part thereof is unpaid for one month after becoming payable (whether formally demanded or not) and such default continues for a further period of one month after



notice by the Minister for Lands to the Company specifying the non-payment complained of; or

- (ii) the Company fails or ceases to use the demised land or the licensed areas for the purposes aforesaid for a continuous period of one hundred and eighty (180) days without the approval of the Lessor (such approval not to be unreasonably withheld); or
- (iii) any covenant on the Company's part herein contained or implied is not performed or observed and the default in such performance or observance continues for one month after service of a notice on the Company calling upon it to remedy such default within that time or such longer period as may be specified in that notice; or
- (iv) the Company shall go into liquidation either voluntarily or involuntarily (except for the purposes of reconstruction or amalgamation); or
- (v) the Agreement terminates

THEN in any of the said cases it shall be lawful for the Lessor at any time thereafter to re-enter into and upon the demised land and licensed areas or any part thereof in the name of the whole and the same to have again repossess and enjoy and to determine the rights liberties and authorities hereinbefore granted to the Company and eject the Company from the demised land and the licensed areas as if this Indenture had never been executed without making any compensation to the Company but without prejudice to any right of action of the Lessor in respect of any breach of the Company's covenants or agreements or of any terms conditions and provisions herein contained;

- (b) Subject to the provisions of the Agreement it shall be lawful at all times for the Lessor —
  - (i) to require the Company to consent to the granting of such easements (including easements without dominant tenements) or rights in or over the licensed areas as may from time to time be necessary for the overall development of the licensed areas or for the overall development or use of the surrounding lands; and
  - (ii) to use or permit the use of the licensed areas as may be necessary for the overall development or use of the licensed areas or for the overall development or use of the surrounding lands

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

- (c) The Lessor shall be at liberty to reappraise the annual rent of the demised land and the licensed areas in respect of —
- (i) each three (3) year period of the said term commencing on the 1st day of April 1990;
- and
- (ii) the balance of the said term commencing on the 1st day of April 2020

AND subject to the Minister for Lands or a person authorised by him in that behalf within the period of three (3) months immediately preceding the first day of the period in respect of which the reappraised rent is payable giving notice to the Company stating therein the amount of the reappraised rent and the period in respect of which it is payable the reappraised rent so notified shall be payable for the demised land and the licensed areas during the period notified at the times and in the manner hereinbefore provided and in all respects the demised land and the licensed areas shall continue to be held by the Company on the same terms and conditions as are herein contained unless within one month from the date of that notice the Company by notice addressed to the Minister for Lands objects to the reappraised rent so notified and requests a determination of the rent to be applicable for the relevant period in which event the rent shall be submitted for arbitration as hereinafter provided and the rent so determined shall be payable in respect of the demised land and the licensed areas for the relevant period and until the rent is so determined the Company shall pay to the Lessor the reappraised rent notified by that notice without any deduction or abatement and upon the rent being so determined the Lessor will refund any rent which according to such determination appears to have been overpaid or such rent shall be adjusted as required by the determination PROVIDED THAT in the event of the rent determined being the same as or greater than the rent notified by the notice aforesaid all costs of the determination shall be borne by the Company and in the event of such rent being less than notified as aforesaid all such costs shall be borne by the Lessor PROVIDED FURTHER THAT in determining the amount of the reappraised rent no regard shall be had to the value of any buildings structures improvements plant or equipment constructed or erected on or

affixed to the demised land or the licensed areas at the cost and expense of the Company AND PROVIDED ALSO THAT in the event of failure to reappraise the annual rent of the demised land and the licensed areas in respect of any period as aforesaid then the annual rent payable for that period shall be the annual rent payable in respect of the immediately preceding period;

- (d) If at the expiration or sooner determination of this Indenture there shall be no subsisting material breach of any condition herein contained on its part to be observed and performed the Company may at any time within three (3) months (or such longer period not exceeding six (6) months as the Minister in his discretion may determine) immediately following such expiration or sooner determination as aforesaid take down remove and carry away the buildings structures improvements plant and equipment erected or brought upon the demised land or (with the exception of any road or way) the licensed areas by the Company. The Company shall fill in consolidate and level off any unevenness excavation or hole caused thereby and leave the demised land and the licensed areas in a clean and tidy condition PROVIDED that no compensation shall be payable to the Company in respect of the buildings structures and improvements not so removed from the demised land nor in respect of any part of the powerlines pipelines and the roads and ways remaining on the licensed areas at the expiration of the aforesaid period and thereupon they shall become the absolute property of the Lessor;
- (e) (i) Any dispute or difference between the parties arising out of or in connection with this Indenture or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Indenture or any such amendment variation or addition or as to the rights duties or liabilities of any party thereunder or as to any matter to be agreed upon between the parties under this Indenture shall in default of agreement between the parties and in the absence of any provision in this Indenture to the contrary be referred to and settled by arbitration under the provisions of the *Commercial Arbitration Act 1985* PROVIDED THAT this paragraph shall not apply to any case where the Lessor the State or any Minister in the Government of the State is by the Agreement or this Indenture given either expressly or impliedly a discretionary power;
- (ii) Notwithstanding the provisions of Section 20 of the *Commercial Arbitration Act 1985* on any reference to arbitration pursuant to

paragraph (i) of this subclause any party may be represented by a duly qualified legal practitioner or other representative;

- (f) Any notice consent or other writing authorised or required by this Indenture to be given or sent shall be deemed to have been duly given or sent by the Lessor if signed by the Minister for Lands or by any senior officer of the public service of the State acting by direction of that Minister and forwarded by prepaid registered post to the Company at its registered office for the time being in the State and by the Company if signed by a director manager or secretary of the Company or by any person or persons authorised in that behalf or by its solicitors as notified to the State from time to time and forwarded by prepaid registered post to the Minister for Lands at his office in Perth AND any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post;

- (g) In this Indenture unless the contrary intention appears —

“the Agreement” means the Agreement (of which a copy is set out in the First Schedule to the *Cement Works (Cockburn Cement Limited) Agreement Act 1971*) as amended by the two Agreements (of which copies are set forth in the Second and Third Schedules to that Act) all of which Agreements were ratified by that Act;

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

“Crown” means the Crown in right of the State of Western Australia;

“Minister” means the Minister in the Government of the State for the time being responsible (under whatsoever designation style or title) for the administration of the *Cement Works (Cockburn Cement Limited) Agreement Act 1971* and includes the successors in office of that Minister;

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

“month” means calendar month;

“person” or “persons” include bodies corporate;

“the State” means the State of Western Australia;

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

#### FIRST SCHEDULE

(“the land”)

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

#### Encumbrance

As to Lots 56, 57, and 58 on L.T.O. Plan 14758 only —

Transfer                      (Water Authority easement).

#### SECOND SCHEDULE

(“the demised land”)

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

#### THIRD SCHEDULE

#### Power Lines

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

- (a) The term “power line” includes all poles wires cables fittings and equipment associated therewith;
- (b) All power lines shall be constructed to specifications approved by the State Energy Commission of Western Australia and shall be completed

and thereafter maintained in a standard to the reasonable satisfaction of both the Commission and the Lessor;

- (c) Forthwith after opening up any part of this licensed area to fill in the same and clear and make safe and level the surface thereof;
- (d) As to any section of a power line which is laid or to be laid underground to ensure that the same is covered to a depth of at least seventy five (75) centimetres and does not interfere with Telecom Australia telegraph or telephone lines;
- (e) As to any line overhead or underground which is laid in any part of this licensed area subject to the easement hereinbefore notified as an encumbrance in favour of the Water Authority of Western Australia to comply with any conditions relating thereto lawfully imposed by that Authority;

and

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

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

#### FOURTH SCHEDULE

##### Rights of Way

The right for the Company its servants agents workmen and others thereunto authorised by the Company in common with others from time to time entitled to use the same to go pass and repossess at all times hereafter during the said term and for all purposes connected with the demised land and the licensed areas either with or without vehicles into and out of and from the demised land through over and along the road or way or several roads or ways situated on those portions of the land hereunder in this Schedule mentioned ("this licensed area") and the Company agrees with the Lessor:

- (a) The Company will pay to the Lessor the whole or an equitable part of the cost of making good any damage to or deterioration of the roads and

ways as may be reasonably required by the Lessor having regard to the use of those roads and ways by others;

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

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

#### FIFTH SCHEDULE

##### Car Parking

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

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

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

#### SIXTH SCHEDULE

##### Pipelines

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

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

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

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





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

}

GAVAN TROY

B. MARSHALL  
ADMINISTRATIVE OFFICER  
MINISTER FOR TRANSPORT AND SMALL BUSINESS

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

}

(C.S.)

Chairman of Commissioners T. J. LEWIS

Commissioner J. R. WATSON

A/Secretary R. SIMPSON

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

}

(C.S.)

Director D. W. BIBBY

Secretary B. J. FARRELL

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

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

[s. 2]

*[Heading inserted: No. 27 of 1997 s. 6; amended: No. 19 of 2010  
s. 4.]*

THIS AGREEMENT is made the 14th day of May 1997

B E T W E E N:

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

AND

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

AND

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

AND

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

WHEREAS:

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

NOW THIS AGREEMENT WITNESSES:

1. Subject to the context and save as otherwise defined herein words and phrases used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1997 or such later date as the parties hereto may agree.
3.
  - (1) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not commence to operate until the Bill referred to in Clause 2 has been passed by the Parliament of Western Australia and comes into operation as an Act.
  - (2) If before 31 December 1997 or such later date as may be agreed pursuant to Clause 2 the said Bill has not come into operation as an Act then unless the parties hereto otherwise agree this Agreement shall cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of done performed or omitted to be done or performed under this Agreement.
  - (3) On the said Bill coming into operation as an Act all provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.
4. The Principal Agreement is hereby varied as follows:
  - (1) Clause 1 subclause 2 —

by inserting in the appropriate alphabetical position the following definitions —

““alternative material” means material mined and used by the Company as an alternative to shell sand for the Company’s cement and clinker manufacturing operations or any other operation approved by the State from time to time;”

““EP Act” means the *Environmental Protection Act 1986*;” and

““shell sand” for the purpose of payment of royalties under the Mining Act means limestone;”

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



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

} [C.S.]

---

Director

DONALD ERNEST  
HUGH McDONALD

---

Secretary

ANTHONY OWEN  
DOBBS

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

**Fifth Schedule — Third Variation Agreement**

[s. 2]

*[Heading inserted: No. 41 of 2010 s. 6.]*

**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**

---

**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;

“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;

“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
      - (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 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 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 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.
- (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 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 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:

“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

(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”;
- (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 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 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]

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Director  
Name: Robert Pearce

[Signature]

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~~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]

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Director  
Name: Martin Brydon

[Signature]

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~~Director~~/Secretary  
Name: Marcus Clayton

[Signature]

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Director  
Name: Thomas Douglas

*[Fifth Schedule inserted: No. 41 of 2010 s. 6.]*

**Sixth Schedule — Fourth Variation Agreement**

[s. 2]

*[Heading inserted: No. 33 of 2015 s. 6.]*

**2015**

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

**AND**

**THE HONOURABLE DEAN CAMBELL NALDER  
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**

**RATIFIED VARIATION AGREEMENT**

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[Solicitor's details]

**THIS AGREEMENT** is made this 20th                      day of April                      2015

**BETWEEN**

**Cement Works (Cockburn Cement Limited) Agreement Act 1971**  
**Fourth Variation Third Variation Agreement**  
**Agreement**

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**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**) of the one part,

**AND**

**THE HONOURABLE DEAN CABELL NALDER** 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* (WA) (**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;
  - (b) an agreement dated 14 May 1997, ratified by the Cement Works (Cockburn Cement Limited) Agreement Amendment Act 1997; and
  - (c) an agreement dated 14 June 2010, ratified by the Cement Works (Cockburn Cement Limited) Agreement Amendment Act 2010.

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



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- 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.

**NOW THIS AGREEMENT WITNESSES:**

**1. Ratification and operation**

- (1) This Agreement, other than this clause, does not come into operation except in accordance with subclause (2).
- (2) This Agreement, other than this clause, 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 June 2015 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 31 December 2015 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.

**2. Variations of the Principal Agreement**

The Principal Agreement is hereby varied as follows:

- (a) in clause 1(2) by:
  - (i) in the definition of "alternative material" deleting "cement and clinker " and substituting "cement or clinker ";

- (ii) in the definition of "specified mineral" deleting "cement and clinker" and substituting "cement or clinker"
- (iii) in the definition of "works site":
  - (A) deleting "and clinker"; and
  - (B) inserting "and clinker manufacturing operations may be carried out by the Company in accordance with this Agreement" after "are carried out"; and
  - (C) inserting ", excluding any part or parts of such site disposed of by the Company pursuant to clause 7A hereof" before the semi colon at the end of that definition;
- (iv) inserting in its appropriate alphabetical position the following new definition:

"clinker" means clinker manufactured from limestone and other raw materials for use in the manufacture hereunder of cement;
- (b) in clause 3(1) by:
  - (i) deleting "and clinker"; and
  - (ii) inserting after the current sentence the following additional sentence:

"During the currency of this Agreement the Company may also carry out clinker manufacturing operations on the works site in accordance with this Agreement.";
- (c) in clause 6(1) by deleting "cement and clinker manufacturing operations" and substituting "cement manufacturing operations hereunder, clinker manufacturing operations hereunder";
- (d) in paragraph (b) of clause 6E by deleting "as a neutralising agent" with such deletion to take effect from and including

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the date those words were inserted in the Principal Agreement;

- (e) in clause 7(2) by:
  - (i) deleting "and clinker"; and
  - (ii) inserting "(other than clinker manufacturing operations)" after "and any other operations";
- (f) in clause 7(3) by deleting "cement and clinker manufacturing operations" and substituting "cement manufacturing operations hereunder, clinker manufacturing operations hereunder";
- (g) in clause 7(4) deleting "cement and clinker manufacturing operations" and substituting "cement manufacturing operations hereunder, clinker manufacturing operations hereunder";
- (h) in clause 10 by numbering the existing provision as subclause (1) and inserting immediately after it the following new subclause:
  - "(2) The Company shall from time to time when requested by the Minister submit to the Minister a report concerning the implementation of the provisions of subclause (1) of this clause.";
- (i) in clause 10B(1) by:
  - (i) deleting "cement and clinker" where it appears first and substituting "cement"; and
  - (ii) deleting "cement and clinker" where it appears second and substituting "cement or clinker";
- (j) in clause 10B by inserting after subclause (7) the following new subclauses:
  - "(8) If the Company at any time during the currency of this Agreement suspends or ceases (whether or not after a period of suspension) to carry out its clinker manufacturing operations on the

works site it shall promptly notify the Minister of the date of such suspension or cessation and:

- (a) in the case of a suspension of such operations, its anticipated recommencement date if and when known;
  - (b) in the case of a cessation of operations, its plans to decommission the facilities upon the works site used in such operations if and when formulated.
- (9) The Company must, if required by the Minister, consult from time to time with the Minister in regard to such suspension or cessation of operations including in relation to any decommissioning plans notified to the Minister under subclause (8).
- (10) Subject to the EP Act, the Company may recommence the carrying out on the works site of clinker manufacturing operations in accordance with this Agreement after suspending or after ceasing such operations provided that:
- (a) it has not decommissioned the facilities upon the works site used in the carrying out of such operations;
  - (b) such recommencement of operations will be within the then operational manufacturing capacity of such facilities; and
  - (c) it has given notice to the Minister that it intends to recommence its clinker manufacturing operations hereunder and of the date of its anticipated recommencement date.

- (11) If the Company desires:
- (a) to recommence the carrying out hereunder of clinker manufacturing operations upon the works site after decommissioning the facilities upon the works site previously used in such operations; or
  - (b) to otherwise significantly modify, expand or otherwise vary the clinker manufacturing operations it is carrying on upon the works site beyond the then operational manufacturing capacity of the facilities upon the works site used in such operations (including after the recommencement of operations as referred to in subclause (10)),

it shall give notice of such desire to the Minister. If required by the Minister within 2 months of the giving of such notice the Company shall then submit to the Minister (within such period as the Minister may reasonably allow) to the fullest extent reasonably practicable detailed proposals in respect of all matters covered by such notice and other relevant information as the Minister may reasonably require. The provisions of subclauses (2) – (7) above shall mutatis mutandis apply in relation to such proposals."

**EXECUTED** as a deed.

**SIGNED** by **THE HONOURABLE COLIN** ) [Signature]

**Cement Works (Cockburn Cement Limited) Agreement Act 1971**  
**Fourth Variation Third Variation Agreement**  
**Agreement**

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**JAMES BARNETT** in the presence of:            )

[Signature]

Signature of witness

NICOLE JANE HENDERSON

Name of witness

**SIGNED** by **THE HONOURABLE DEAN**        )            [Signature]  
**CAMBELL NALDER** in the presence of:        )

[Signature]

Signature of witness

DARREN CLIFFORD MUDGE ASM

Name of witness

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

[Signature]

Director

[Signature]

Chief Executive Officer

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

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[Signature]

Director BRADLEY DONALD LEMMON

[Signature]

Secretary MARCUS ROLAND DEAN CLAYTON

*[Sixth Schedule inserted: No. 33 of 2015 s. 6.]*

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## Notes

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

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Cement Works (Cockburn Cement Limited) Agreement Act 1971</i>	45 of 1971	10 Dec 1971	10 Dec 1971
<i>Cement Works (Cockburn Cement Limited) Agreement Amendment Act 1986</i>	82 of 1986	9 Dec 1986	9 Dec 1986 (see s. 2)
<i>Cement Works (Cockburn Cement Limited) Agreement Amendment Act 1997</i>	27 of 1997	24 Sep 1997	24 Sep 1997 (see s. 2)
<b>Reprint of the <i>Cement Works (Cockburn Cement Limited) Agreement Act 1971</i> as at 17 May 2002</b> (includes amendments listed above)			
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Cement Works (Cockburn Cement Limited) Agreement Amendment Act 2010</i>	41 of 2010	28 Oct 2010	s. 1 and 2: 28 Oct 2010 (see s. 2(a)); Act other than s. 1 and 2: 29 Oct 2010 (see s. 2(b))
<b>Reprint 2: The <i>Cement Works (Cockburn Cement Limited) Agreement Act 1971</i> as at 5 Dec 2014</b> (includes amendments listed above)			
<i>Cement Works (Cockburn Cement Limited) Agreement Amendment Act 2015</i>	33 of 2015	2 Nov 2015	s. 1 and 2: 2 Nov 2015 (see s. 2(a)); Act other than s. 1 and 2: 3 Nov 2015 (see s. 2(b))

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



## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
Agreement.....	2
Fourth Variation Agreement .....	2
Second Variation Agreement .....	2
Third Variation Agreement .....	2
variation agreement.....	2