

WESTERN AUSTRALIA.

---

CEMENT WORKS (COCKBURN  
CEMENT LIMITED)  
AGREEMENT.

---

No. 45 of 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.

[Assented to 10th December, 1971.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Cement Works (Cockburn Cement Limited) Agreement Act, 1971.* Short title.

No. 45.] *Cement Works (Cockburn Cement Limited) Agreement* [1971.

Interpreta-  
tion.

2. In this Act—

“the Agreement” means the Agreement of which a copy is set forth in the First Schedule to this Act as amended by the Agreement a copy of which is set forth in the Second Schedule to this Act.

Ratification  
of the  
Agreement.

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

**FIRST SCHEDULE.**

Section 2.

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 Fre-  
mantle Port Authority Act, 1902;

"Jetties Act" means the Jetties Act, 1926;

"Land Act" means the Land Act, 1933;

"miles" mean statute miles;

No. 45.] *Cement Works (Cockburn Cement Limited) Agreement.* [1971.

“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;

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.

1971.] *Cement Works (Cockburn Cement [No. 45.  
Limited) Agreement.*

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.

Ratification  
by Act of  
Parliament.

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.

Obligations  
of the  
Company.

(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.

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.

Jetty.

(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.

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

Removal of  
Coal Ash.

No. 45.] *Cement Works (Cockburn Cement Limited) Agreement.* [1971.

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.

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 State from time to time (which approval shall not be unreasonably withheld) the shell sand from areas 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 obstructs 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

1971.] *Cement Works (Cockburn Cement [No. 45.  
Limited) Agreement.*

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.

No. 45.] *Cement Works (Cockburn Cement Limited) Agreement.* [1971.

Further obligations of the State.

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

1971.] *Cement Works (Cockburn Cement [No. 45.  
Limited) Agreement.*

such provisions made applicable as a condition of any approval of the State given in accordance with this sub-clause).

(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.

Labour  
Conditions.

(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.

Licenses.

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 road 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.

Transport  
by Road.

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.

Railway  
revenue.

No. 45.] *Cement Works (Cockburn Cement Limited) Agreement.* [1971.

(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.**

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.**

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.**

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.**

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.

1971.] *Cement Works (Cockburn Cement [No. 45.  
Limited) Agreement.*

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.

Variation.

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.

Assignment.

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.

Power to extend periods.

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.

Arbitration.

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.

Immunity.

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

Delays.

No. 45.] *Cement Works (Cockburn Cement Limited) Agreement.* [1971.]

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.

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.

1971.] *Cement Works (Cockburn Cement [No. 45.  
Limited) Agreement.*

The Common Seal of the FRE-  
MANTLE PORT AUTHORITY }  
was hereunto affixed pursuant to } [C.S.]  
a resolution of the said Authority }  
by and in the presence of— }

J. McCONNELL,  
Chairman of Commissioners.

J. G. MANFORD,  
Commissioner.

C. A. FAULDS,  
Secretary.

The Common Seal of COCK-  
BURN CEMENT LIMITED was }  
hereunto affixed by authority of } [C.S.]  
the Board and in the presence }  
of— }

C. P. BIRD,  
Director.

L. G. S. HYLAND,  
Director.

---

Section 2.

## SECOND SCHEDULE.

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 at Third Floor Manufacturers' Building 212-220 Adelaide Terrace Perth (hereinafter referred to as "the Company" which terms shall include its successors and permitted assigns) of the fourth part.

No. 45.] *Cement Works (Cockburn Cement Limited) Agreement.* [1971.

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.

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 sub-clause (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 T. TONKIN.  
JOHN TREZISE TONKIN M.L.A. in } (L.S.)  
the presence of—

R. J. SEDDON.

SIGNED SEALED AND DELIVERED }  
by the said THE HONOURABLE } C. J. JAMIESON.  
COLIN JOHN JAMIESON M.L.A. in } (C.S.)  
the presence of—

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

1971.] *Cement Works (Cockburn Cement [No. 45.  
Limited) Agreement.*

The COMMON SEAL of the FRE-  
MANTLE PORT AUTHORITY was } (C.S.)  
hereunto affixed pursuant to a reso-  
lution of the said Authority by and in  
the presence of—

MAX B. GRACE,  
Acting Chairman of  
Commissioners.

W. J. HUGHES,  
Commissioner.

C. A. FAULDS,  
Secretary.

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

L. G. S. HYLAND,  
Director.

D. W. BIBBY,  
Director.

---